COUNTY AGENDA REQUEST

Department:	Stormwater Management	Presenter(s):	Vanessa Birrell
Meeting Date:	Thursday, October 11, 2012	Type of Request:	New Business

Wording for the Agenda:

Consideration of staff's request to enter into Intergovernmental and Services Franchise Agreements with the Town of Woolsey that would allow Fayette County to provide stormwater management services to the Town of Woolsey and to bill residents of the Town of Woolsey for said services, and authorization for the Chairman to sign the agreements contingent upon the County Attorney's review.

Background/History/Details:

On September 22, 2011, the Fayette County Board of Commissioners approved the establishment of a Stormwater Utility that became effective on January 1, 2012. During the initial feasibility discussions, the Board expressed interest in exploring the possibility of a multi-jurisdictional approach to stormwater management in order to achieve cost savings of stormwater management. To this end, representatives from the Town of Tyrone, Town of Brooks, and Town of Woolsey were participants in the Stormwater Advisory Committee meetings held in early 2011.

During these meeting, several approaches to achieve multi-jurisdictional "partnering" were discussed. These approaches included establishing unique stormwater utility districts allowing each jurisdiction to establish their own user fee and intended services. Partnerships could range from the County's Stormwater Management Department either accepting full or partial responsibility for operation of each jurisdiction's stormwater management program to simply partnering together for specific contracted services such as future floodplain delineation or pipe video services.

The Town of Woolsey is asking Fayette County to perform stormwater management services and to bill residents for services provided.

What action are you seeking from the Board of Commissioners?

Consideration of staff's request to enter into Intergovernmental and Services Franchise Agreements with the Town of Woolsey that would allow Fayette County to provide stormwater management services to the Town of Woolsey and to bill residents of the Town of Woolsey for said services, and authorization for the Chairman to sign the agreements contingent upon the County Attorney's review.

If this item requires funding, please describe:

Stormwater Management User Fees, collected from Woolsey Town residents, will pay for the provided stormwater management services.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Yes	Reviewed by Legal	Yes
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

STATE OF GEORGIA
COUNTY OF FAYETTE

INTERGOVERNMENTAL AGREEMENT BETWEEN FAYETTE COUNTY, GEORGIA AND THE TOWN OF WOOLSEY, GEORGIA REGARDING A UNIFIED STORMWATER UTILITY

THIS AGREEMENT is made and entered into this 10th day of September, 2012, by and between **FAYETTE COUNTY**, a political subdivision of the State of Georgia acting by and through its Board of Commissioners, hereinafter referred to as the "County", and **TOWN OF WOOLSEY**, a Georgia Municipal Corporation, acting by and through its Mayor and Council, hereinafter referred to as the "Town".

WHEREAS, the County and the Town have authority to enter into this agreement pursuant to powers vested to each party by the General Assembly of the State of Georgia and the Constitution of the State of Georgia, including but not limited to Article 9, Section 3, ¶ 1.

WHEREAS, the County and the Town share jurisdictional boundaries and have jurisdictionally shared watersheds; and,

WHEREAS, the County and the Town are planning to implement a multi-jurisdictional stormwater utility; and,

WHEREAS, the County established a Stormwater Utility and Enterprise Fund that is responsible for stormwater management services throughout the unincorporated County limits, and that provides for the management, protection, control, regulation, use and enhancement of the County's stormwater management system; and,

WHEREAS, the Town desires to engage the services of the County to provide stormwater management services to the Town residents.

NOW, THEREFORE, in consideration of mutual interests, the County and the Town hereby agree as follows:

1.

The agreement is to facilitate open communication, provide a basis for sharing data and information, and establish an efficient and effective process to implement a unified stormwater utility between the County and the Town.

2.

The County shall provide for the Town within the Town of Woolsey Limits, consistent with the level of service provided by County throughout the unincorporated area of Fayette County, all stormwater management services that relate to transfer, control, conveyance or movement of stormwater runoff through the Fayette County Stormwater Management System; maintenance, repair and replacement of existing stormwater drainage system; regulation of the use of stormwater management services and systems; and compliance with applicable state and federal stormwater management regulations.

3.

The Town does hereby agree to allow the County to bill the Town residents yearly for stormwater management services based upon a stormwater user fee defined by the Town of Woolsey Stormwater Management Ordinance.

4.

The Town agrees to adopt a Stormwater Management Ordinance that incorporates all stated provisions of the Fayette County Stormwater Management Ordinance, Article VI, including the stormwater service charges and all other documents referenced in the referenced ordinance.

5.

The term of this agreement shall be for the period of twelve (12) months beginning on the date of execution. This agreement will automatically renew for successive twelve (12) month terms unless terminated pursuant to Paragraph 12 of this agreement.

6.

This agreement may be modified or amended only by subsequent written documentation, signed by authorized representative(s) of the County and the Town, expressly stating the intention to modify or amend this agreement.

7.

Participation in this agreement shall not abrogate the legal rights or reserved interests of either party outside of the obligations of this agreement. The parties have reserved herefrom, the right to enter into an intergovernmental franchise agreement regarding stormwater management services for an extended irrevocable term. In the event the Town of Woolsey has heretofore granted or at any time hereafter grants to Fayette County, rights pursuant to a stormwater services franchise agreement, the parties declare and aver that it is their intent that all terms and provisions of such

franchise agreement shall take precedence over and supersede any provisions herein, and in the event of a conflict in provisions of this agreement and those of such franchise agreement, provisions of such franchise agreement shall control and shall bind the parties.

8.

The validity, interpretation and performance of this agreement with each of the obligations and duties set forth herein shall be governed by and interpreted under the laws of the State of Georgia.

9.

This agreement constitutes the full and complete agreement between the Town and the County. All promises, representations, terms, conditions, agreements, or other understandings related to the subjects addressed in this agreement are set forth in this document.

10.

This agreement constitutes the complete understanding between the parties in this matter. All previous agreements in conflict with this agreement are hereby repealed. No other agreement, statement or promise relating to the subject matter of this agreement that is not contained herein shall be valid or binding unless in writing and signed by the Town and the County.

11.

If any portion of this agreement is found to be unenforceable, the remainder of the agreement shall continue in full force and effect and bind the parties hereto.

12.

This agreement may be terminated by either party with or without cause by giving the other party written notice of termination at least six months prior to the annual expiration of this agreement. Such notice shall be considered delivered and the service thereof completed three days following the deposit, in the United States mail, of said notice, either certified or registered, addressed to the other party at the official address set forth in Paragraph 14.

13.

The premises stated on the first page of this agreement are specifically made a part hereof and incorporated herein by this reference.

14.

The official address for notification purposes as to each party shall be as follows:

Clerk
Fayette County Board of Commissioners
140 West Stonewall Avenue
Fayetteville, Georgia 30214

Town Clerk
Mayor and Council of the Town of Woolsey
117 B Hill Ave.
Woolsey, Georgia 30215

IN WITNESS WHEREOF, the parties hereto have made and entered into this agreement on:

_____ _____ _____.
MONTH DAY YEAR

TOWN OF WOOLSEY, GEORGIA

By: _____
Mayor

Attest: _____
Clerk

FAYETTE COUNTY, GEORGIA

By: _____
Chairman, Board of Commissioners

Attest: _____
Clerk

STATE OF GEORGIA
COUNTY OF FAYETTE

FAYETTE COUNTY-TOWN OF WOOLSEY STORMWATER MANAGEMENT SERVICES FRANCHISE AGREEMENT

WHEREAS, Fayette County (hereinafter called "County") proposes to acquire, construct and equip a stormwater management system and provide stormwater management services to serve customers within its geographical limits; and

WHEREAS, the County desires to include within the area served by such system the area included within the corporate limits of the Town of Woolsey, Georgia, (hereinafter called the "Town") and within any extensions of said corporate limits; and

WHEREAS, in order for County to acquire, construct and equip such stomwater management system and provide stormwater management services it will be necessary for the County to issue and sell its stormwater bonds; and

WHEREAS, after due investigation and careful consideration, the Mayor and Council of the Town deem it advisable to grant a franchise to the County upon the terms and conditions hereinafter set forth; and

WHEREAS, the entering into of this contract is authorized under the Constitution and laws of the State of Georgia, particularly Article IX, section III, Paragraph I of the Constitution.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the Town, acting by and through its Mayor and Council, pursuant to an ordinance duly adopted, hereby grants to County the exclusive right, privilege and franchise and the consent of the Town to enter the corporate limits of the Town and said corporate limits now exist and as same may hereafter be extended, and therein acquire and construct, and thereafter operate, maintain, repair, replace, add to, extend and improve a stormwater management system and provide stormwater management services as herein provided, together with all necessary structural and nonstructural drainage systems, facilities, operations, and programs that address the issues of drainage management (flooding) and environmental quality (pollutions, erosion and sedimentation) of receiving rivers, streams creeks, lakes, ponds, and reservoirs for the purpose of providing the Town and the inhabitants thereof with the services of a modern stormwater management system, and to accomplish such purpose to operate, maintain and repair such stormwater management system in said Town along, across, over and under the streets, and other public ways and places of the Town of Woolsey.

It is expressly covenanted and agreed, however, that the County initially shall acquire, construct and operate the stormwater management system within the corporate limits of the Town and operate same as a part of the County's stormwater management system. The following conditions are made a part of this exclusive privilege and franchise:

1. This grant and franchise shall be dated as of September 10th 2012, and

the term hereof shall be for a period of 50 years from such date.

2. The County shall in all cases restore all roads, public right-of-ways and public places, disturbed by the County in the exercise of this exclusive franchise to the condition prior to such disturbance, and shall conduct its operation, maintenance, repair, replacement, extension and additions to the system without undue obstruction of traffic, foot or vehicular, and shall make all restorations as above required within a reasonable time.

3. In the construction, operation, maintenance, replacement, repair and extension of said system, County shall assume all liability insofar as the Town might be liable for damage to persons or property caused by it or its agents in connection with the exercise of any of the powers or privileges of this franchise, and will indemnify and hold the Town harmless from any such liability.

4. The County covenants and agrees that it will make additions and extensions to said system within the present corporate limits of the Town and any extension of said corporate limits, if such additions and extensions are deemed necessary and desirable by the governing body of the County and the revenues to be derived therefrom, in the discretion of the governing authority of the County, will justify the cost of such additions and extensions and, further, if funds are available to the County for such purpose.

5. Any transferee, assignee, or successor of County shall hold and exercise such rights, and privileges hereinabove granted under this exclusive franchise, subject to all the terms and conditions as herein set forth.

6. County will adopt, for customers residing within the present corporate limits of the Town, an initial schedule of rates, fees and charges for stormwater management services.

7. In granting this exclusive franchise, the Town recognizes that the County, in order to provide stormwater management services, may issue and sell its revenue bonds to finance such undertaking and that County, in its resolution to be adopted, authorizing the issuance of such revenue bonds, as provided by the Revenue Bond Law, will covenant to adopt, maintain and revise rates and collect fees and charges to the extent necessary to produce funds sufficient at all times to operate and maintain said system on a sound businesslike basis, to pay the principal of and interest on any revenue bonds hereafter issued by County as same mature and to create and maintain an adequate reserve for that purpose, as well as to create and maintain a reserve for extensions and improvements to the system. It is further recognized by the Town that County may hereafter issue from time to time refunding bonds to refund any or all of the then outstanding bonds of County and the aforesaid covenant, relative to the adoption, maintenance, and revision of rates and the collection of fees and charges for stormwater management services would likewise be applicable to any such bonds or obligations. County, however, by the acceptance of this franchise, covenants to operate and maintain, at all times, its said system

in a businesslike manner and that it will undertake to maintain rates and collect fees and charges on a reasonable and equitable basis and in keeping with its obligations under any resolution authorizing the issuance of any of its obligations, and that all such rates shall, as far as practicable, be uniform in application consistent with the cost involved. It is further recognized by the Town, in granting this exclusive franchise, that all obligations herein imposed on said County shall be performable by it solely from the revenues of the stormwater management utility to be acquired, constructed and equipped and as thereafter added to, extended and improved.

8. It is expressly understood and agreed that the ability of the County to manage such system is predicated upon its being able to issue and deliver its revenue bonds for such purpose and to receive the proceeds therefrom and in the event County is unable to issue and deliver said bonds, then this contract shall be of no force and effect and the Town shall have no recourse against County either in law, equity or otherwise.

9. While this franchise is between the parties hereto, it is hereby agreed that the holders of the revenue bonds of the County will have an interest herein and the parties hereto covenant that this franchise cannot be modified or amended in any particular way which would in any respect adversely affect the rights of any such holders.

10. Should any phrase, clause, sentence or paragraph of this franchise be held invalid or unconstitutional by any Court of competent jurisdiction of this State or of the United States in any manner or respect whatsoever, it shall in nowise effect any or all of the remaining provisions, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the Town of Woolsey, Georgia, pursuant to resolution duly adopted by its Mayor and Council, has caused this exclusive franchise to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, this the 10th day of September, 2012.

ATTEST:

Town Cerk

TOWN OF WOOLSEY, GEORGIA

BY: _____
Mayor

[SEAL]

Resolved, that the above and foregoing exclusive franchise granted by the Town of Woolsey, Georgia, be and the same is hereby accepted, this day of _____ , 2012, as authorized by a resolution of the Board of Commissioners of Fayette County, Georgia passed on this date.

FAYETTE COUNTY

By: _____
Chairman, Board of Commissioners for Fayette County, Georgia

ATTEST:

_____
Clerk
(SEAL)

(SEAL)