

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("IGA") is made and entered into as of the ~~4th~~ day of *December*, 2019, by and between the CITY OF DULUTH, GEORGIA, a municipal corporation in the State of Georgia ("DULUTH"), and FULTON COUNTY, a political subdivision of the State of Georgia ("FULTON")

WITNESSETH:

WHEREAS, DULUTH is a duly chartered municipal corporation authorized by law to enter into intergovernmental agreements; and

WHEREAS, FULTON COUNTY is a political subdivision of the state authorized by law to enter into intergovernmental agreements; and

WHEREAS, DULUTH will be the sole owner of the new Rogers Bridge structure (the "Bridge") once its construction is complete and accepted by the Georgia Department of Transportation and the Federal Highway Administration; and

WHEREAS, FULTON COUNTY will own, operate, and maintain three water lines attached to the Bridge, along with the single 30" existing water line on each approach to the Bridge; and

WHEREAS, the parties wish to work cooperatively to allow for the water lines to be affixed to the Bridge, and for access to the water lines to be granted for regular inspection, maintenance, and repair purposes; and

WHEREAS, Article IX, Section III, Paragraph I of the Constitution of the State of Georgia authorizes Intergovernmental Agreements for up to fifty (50) years for the provision of services or uses of property not otherwise prohibit by law

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DULUTH and FULTON do hereby agree as follows:

AGREEMENT

**Section 1
Purpose**

The purpose of this Agreement is to allocate responsibility among the parties for the:

- A. Ownership, operation, inspection, maintenance and repair responsibility of the water lines.
- B. Access rights to perform such inspections, maintenance, and repairs.

**Section 2
Term**

This Agreement shall become effective after the date of execution, upon the date of construction project acceptance by Federal Highway Administration (FHWA), and shall continue in full force and effect for the maximum duration permissible by law.

**Section 3
Ownership, Operation, Inspection, Maintenance, and Repair**

- A. Ownership of the waterlines on the approaches to and on the Bridge shall be established by a separate agreement between Gwinnett County and Fulton County.
- B. Notwithstanding Part D of this Section, responsibility for the operation, inspection, maintenance, liabilities and repairs of the Bridge shall be established by a separate agreement between DULUTH and JOHNS CREEK, a duly chartered municipal corporation authorized by law to enter into intergovernmental agreements.
- C. FULTON shall be solely responsible for operation, inspection, maintenance, liabilities and repairs of the water line and its appurtenances, on the Bridge and along the Bridge approaches, for the entire limits of its ownership. All costs relating to the ownership, operation, inspection, maintenance, and repair of the water lines and their appurtenances shall be borne by FULTON.
- D. Any damage caused to any part of the Bridge resulting from FULTON's performance of operation, inspection, maintenance, and repair of the water lines shall be repaired within 14 calendar days by a qualified contractor, approved by DULUTH. All costs related to such Bridge repair will be borne by FULTON.

**Section 4
Access Rights**

The parties agree that DULUTH will provide reasonable access to the Bridge for the purposes of inspection, maintenance, and repair of the water line. FULTON shall give DULUTH reasonable notice in advance of such needs such that DULUTH has time to close the Bridge and alert the public, the National Parks Service, and the City of Johns Creek of such closure. DULUTH will cooperate with FULTON to help establish emergency closures in the event the water line fails and immediate repairs are required.

**Section 5
Governing Law**

This Agreement shall be deemed to have been made and shall be construed and enforced in accordance with the Constitution and the laws of the State of Georgia.

**Section 6
Entire Agreement**

This Agreement expresses the entire understanding and agreement between the parties hereto and supersedes any and all prior agreements, negotiations, and communications between the DULUTH and FULTON as it relates to the ownership, maintenance, and repair of the emergency water line. Notwithstanding the foregoing, DULUTH and FULTON agree to remain bound by the previous intergovernmental agreements to provide funding for preconstruction and construction efforts with regard to this project.

**Section 7
Severability**

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

**Section 8
Amendments or Modifications**

No waiver, amendment, release, or modification of this Agreement shall be effective unless made in writing and executed by all parties hereto.

**Section 9
Counterparts**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

Section 10
Legal Actions

Unless otherwise specifically provided herein, nothing in this Intergovernmental Agreement is intended to create any rights in any individual, firm, corporation, or entity not a party to this Intergovernmental Agreement. The parties acknowledge and agree that any liability arising out of the operation, inspection, maintenance and repairs of the water line and its appurtenances shall be borne by FULTON.

Section 11
Notices

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid to the parties hereto at the following addresses or such other addresses designated by such party in writing:

Fulton County: County Administrator
Fulton County Board of Commissioners
141 Pryor Street, SW 10th Floor
Atlanta, Georgia 30303

With a copy to: County Attorney
Fulton County Department of Law
141 Pryor Street, SW 10th Floor
Atlanta, Georgia 30303

City of Duluth: City Manager
City of Duluth, Georgia
3167 Main Street
Duluth, Georgia 30097

With a copy to: Stephen D. Pereira, City Attorney
Thompson, Sweeny, Kinsinger & Pereira, P.C.
P.O. Drawer 1250
Lawrenceville, Georgia 30046

IN WITNESS WHEREOF, DULUTH and FULTON acting by and through their duly authorized agents, have caused this Agreement to be executed in multiple counterparts under seals on the date indicated herein.

CITY OF DULUTH, GEORGIA

By: _____

Print Name and Title: Nancy Harris, Mayor

Date: _____

Attest: _____

Print Name and Title: Teresa Lynn, City Clerk

(SEAL)

FULTON COUNTY, GEORGIA

By: *Robert L. Pitts*

Robert L. Pitts, Chairman
Board of Commissioners

Date: *12/18/2019*

Attest: *Tonya R. Carter*

Tonya R. Carter
Interim Clerk to the Board of Commissioners



(SEAL)

APPROVED AS TO FORM

Patricia Parks *pet*
Office of the County Attorney

ITEM # *19-0952* RM *12/4/19*
REGULAR MEETING