

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN FULTON COUNTY, GEORGIA  
AND CITY OF MILTON, GEORGIA**

**For Morris Road Widening Project**

**THIS INTERGOVERNMENTAL AGREEMENT** (this “IGA”) is executed as of the 6 day of ~~November~~, 2024, by and between **CITY OF MILTON, GEORGIA**, a municipal corporation of the State of Georgia (“**City**”), and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia (“**Fulton County**”). The term “**Party**” refers individually to either City or Fulton County and the term “**Parties**” refers to both City and Fulton County.

**WHEREAS**, City has undertaken a project to widen Morris Road from Webb Road/Deerfield Avenue to Bethany Bend (the “**Project**”) through its competitive bidding procedures; and

**WHEREAS**, Fulton County has the following utility (Water) facilities which must be adjusted, added, or relocated and provided connection along new roadway as a result of the proposed Project (hereinafter called the “**Utilities Relocation**”); the facilities include fire hydrants, water main, water meters, and valve boxes, as shown on construction plans for the Project; and

**WHEREAS**, Fulton County does not have adequate equipment or staff to adjust or relocate its facilities or for other reasons considers it advantageous to have this work included in City’s construction contract; and

**WHEREAS**, the plans and specifications for the Utilities Relocation (hereinafter called the “**Plans**”) have been approved by both City and Fulton County and are attached hereto and incorporated herein as **Exhibit “A”**; and

**WHEREAS**, the Constitution of the State of Georgia provides, in Article IX, Section III, Paragraph I, Subparagraph (a), that any county or municipality of the State of Georgia may contract for any period not exceeding 50 years, with each other or with any other public agency, public corporation, or public authority for the provision of services, or for the joint or separate use of facilities or equipment when such contracts deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide; and

**WHEREAS**, Fulton County and City desire to enter into this IGA wherein City, through its contractor, can adjust and relocate Fulton County’s facilities in a more economical and efficient manner without disruption to the Project; and

**WHEREAS**, as consideration for City adjusting, adding, or relocating Fulton County’s facilities, Fulton County will reimburse the cost to City; and

**WHEREAS**, Fulton County and City have determined that this IGA serves the best interest of all Parties and their citizens by the improvement of public infrastructure.

**NOW THEREFORE**, incorporating the foregoing recitals, and in consideration of the mutual promises, covenants, and undertakings of the Parties hereinafter set forth, and for the public purposes herein contained and provided for, Fulton County and City covenant, agree and bind themselves as follows:

**I. PURPOSE.**

This IGA is entered into with the understanding by the Parties that the primary purpose of this IGA is for the Parties to meet the public purpose of transportation and infrastructure improvements, including water facilities.

**II. COMPENSATION AND PAYMENT.**

1. The estimate of the total cost of the Utilities Relocation work contemplated under this IGA, subject to change based upon bid acceptance and as otherwise provided herein, is \$336,051.60 (Three Hundred Thirty-Six Thousand Fifty-One and 60/100 Dollars) based on the contractor's bid received by the City as summarized in **Exhibit "B"** attached hereto and incorporated herein. Fulton County shall pay to City 100 percent of the final cost of the Utilities Relocation work performed on behalf of the Fulton County, after receiving the as-built plans and performing a walkthrough of the project, as such cost is determined pursuant to the terms of this IGA. It is agreed that the compensation specified includes both direct costs and indirect costs, specifically including overhead expenses but excluding attorney's fees, incurred in the performance of this IGA. As soon as practicable after acceptance of a bid by City, City shall notify Fulton County in writing of the cost amount due City.
2. City will submit invoices to Fulton County monthly, quarterly, and/or after completion of the Utilities Relocation work. Fulton County shall pay such invoices within thirty (30) days from receipt until and through completion of the Utilities Relocation. City shall submit a final invoice to Fulton County as provided herein.
3. In the event there is a change in the Project or it becomes necessary to add pay items that are not provided for in this IGA, City shall negotiate prices with the construction contractor and enter into a supplemental agreement with the contractor for completion of the additional items, after obtaining the written consent of the County on items that affect the Utilities Relocation. Once approved, Fulton County shall bear 100 percent of the additional cost of the Utilities Relocation, including, without limitation, the cost of any improvements or betterments to the water facilities requested by Fulton County, as determined in accordance with this IGA.
4. The final cost of the Utilities Relocation work performed on behalf of Fulton County shall be determined by measurement of the actual quantities of installed materials, including added items as provided herein, multiplied by the actual bid prices. Accordingly, after the Utilities Relocation has been completed and as-built plans have

been provided to Fulton County. City shall determine the final as built cost to be borne by Fulton County and, as the case may be, shall refund to Fulton County or shall request of Fulton County an additional payment in the amount of the difference between the final cost to be borne by Fulton County and the amount which Fulton County has previously paid to City. In the event additional payment is due to City, Fulton County agrees to pay same within thirty (30) days after the invoice is received from City. In the event a refund is due Fulton County, City agrees to pay Fulton County within thirty (30) after the refund amount is determined by City.

### **III. OVERVIEW.**

The work contemplated by this IGA consists of constructing the Utilities Relocation for the Project. Upon completion of the work and upon certification by City and Fulton County's Engineers that the work has been completed in accordance with the Plans, Fulton County will accept the adjusted, relocated and additional facilities and will thereafter operate and maintain said facilities without further cost to City or its contractor. Such maintenance and all operations and activities will meet Fulton County's rules, policies, procedures, standards, and specifications, and be subject to City's requirements related to utility accommodations.

### **IV. FULTON COUNTY RESPONSIBILITIES.**

1. Fulton County agrees that the Project and Utilities Relocation designs are accurately shown in the Plans attached hereto as **Exhibit "A"** to the best of the Parties' knowledge.
2. Subject to the provisions of Section X hereof, Fulton County shall have the right to visit and to inspect the work activities and any reports, drawings, studies, specifications, estimates, maps, and computations related to the work for Fulton County's facilities at any time to ensure they meet Fulton County's rules, policies, procedures, standards, and specifications and to advise City's Project Manager / Engineer-in-Charge of any observed discrepancies or potential problems.
3. Fulton County shall respond in a timely manner to any issue that may arise during the construction phase. Every effort shall be made not to delay the contractor under any circumstances.
4. Subject to the provisions of Section II hereof, Fulton County is responsible to reimburse all material and labor costs to City related to the Utilities Relocation for this Project that are completed to the reasonable satisfaction of Fulton County in accordance with the Plans.

### **V. CITY'S RESPONSIBILITIES.**

1. City shall undertake the contracting and assume responsibility for its management and completion.
2. All work necessary for the Utilities Relocation in accordance with the final Plans shall be included in the contract and let to bid by City.

3. All construction, engineering and contract supervision shall be the responsibility of City. City shall keep accurate records with regard to the activities conducted under this IGA and provide Fulton County access to such records upon request. City shall consult with Fulton County for its approval as provided herein before authorizing any changes or deviations which affect Fulton County's facilities.
4. City shall respond in a timely manner to any issue that may arise during the construction phase. All efforts shall be made not to delay the contractor under any circumstances.
5. City shall be responsible to assure that all Utilities Relocation work is accomplished in accordance with the Plans.

#### **VI. ADDITIONAL UNDERSTANDINGS.**

The Parties to this IGA have mutually acknowledged and agreed to the following:

1. The Parties shall work together in a cooperative and coordinated effort, and in such a manner and fashion to bring about the achievement and fulfillment of the goals and objectives of this IGA.
2. It is not the intent of this IGA to restrict the Parties to this IGA from their involvement or participation with any other public or private individuals, agencies or organizations.

#### **VII. TERM.**

This IGA shall be effective upon execution by both Parties and continue until completion of the Utilities Relocation and the Project and full reimbursement by Fulton County to City for the cost of the work. In no event shall this IGA exceed a fifty (50) year term. The Parties may agree to amend this IGA at any time.

#### **VIII. RESPONSIBILITY FOR CLAIMS AND LIABILITY.**

It is hereby stipulated and agreed between the Parties that, with respect to any claim or action brought by a third party and arising out of the activities described in this IGA or stemming from any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations, each Party shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements, or judgments resulting from the negligence actions or omissions of its own agents, officers, and employees. Either Party may self-fund its obligations under this IGA. However, nothing herein shall be construed as a waiver of any Party's sovereign immunity or the immunities available to the officials, officers and employees of the Parties. Under the construction contract between City and the contractor performing the Utilities Relocation, such contractor shall agree to indemnify and hold harmless Fulton County as an additional indemnified party under the construction contract with respect to the Utilities Relocation work.

**IX. INSURANCE.**

Under the construction contract between City and the contractor performing the Utilities Relocation, such contractor shall agree to include Fulton County, as the owner of the utility facilities affected by the Utilities Relocation work, as an additional insured on bodily injury and property damage liability insurance required to be purchased and maintained by the contractor in accordance with the terms of the construction contract. Such insurance shall be in an amount of not less than \$1,000,000.00 per occurrence. Certificates of insurance stating coverages and policy limits and showing City, Fulton County, and other insured parties as additional insured shall be provided in accordance with the terms of the construction contract.

**X. REVIEW OF WORK.**

Authorized representatives of Fulton County may at all reasonable times review and inspect the Utilities Relocation work under the terms of this IGA and any amendments thereto. If requested by Fulton County under the terms hereof, its review recommendations shall be reviewed and considered by City's Project Manager / Engineer-in-Charge. Should City's Project Manager / Engineer-in-Charge determine incorporation of such recommendations into the work activities of City is not appropriate, the Project Manager / Engineer-in-Charge shall promptly notify Fulton County and, should Fulton County so request, the Parties will meet within seven (7) days to discuss and review Fulton County's recommendations. Should the Parties be unable to agree after meeting, Fulton County's recommendations shall be incorporated into the work activities if they relate solely to Fulton County's facilities. Otherwise, the determination of the Project Manager / Engineer-in-Charge shall control.

**XI. TIME OF PERFORMANCE.**

Time is of the essence in all matters pertaining to this IGA. In the event Fulton County requests any changes in the work related to the Utilities Relocation after the Project work is underway, Fulton County shall cooperate in a prompt and timely manner to any requests by City for changes in the work to avoid delays on the progress of the Utilities Relocation. Fulton County will be responsible for any unforeseen site condition related to the Fulton County's Utilities Relocation that create a reasonable Project delay.

**XII. MISCELLANEOUS.**

1. **Entire Agreement; Counterparts.** This IGA may be executed by the Parties in counterparts, each of which shall constitute an original. This IGA, including the attached exhibits, sets forth the entire understanding between the Parties and supersedes all previous agreements and understandings between them, oral or written, and may be amended only in a document executed by both Parties. No amendment, modification, termination, or waiver of any provision of this IGA, nor

consent to any departure by the Parties, shall in any event be effective unless the same shall be in writing and signed by Fulton County and City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

2. **Governing Law.** This IGA and the Parties' rights and obligations hereunder, shall be governed by, and construed and enforced in accordance with, the laws of the State of Georgia, without regard to its conflict of laws rules.
3. **Sovereign Immunity.** Nothing herein shall be construed as a waiver of either Party's sovereign immunity as a governmental body or waiver of any governmental immunities available to its officers, officials, employees, or agents.
4. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, Fulton County and City hereby represent and warrant to each other (which representations and warranties shall be deemed independently material notwithstanding any prior inquiries) the following:
  - A. **Authority.** Each Party hereto expressly represents and warrants that (i) it has the power to make, deliver and perform this IGA, and has taken all necessary action to authorize the execution, delivery and performance of this IGA; (ii) this IGA when executed will constitute the valid obligations with respect to each Party, legally binding upon the same and enforceable in accordance with the terms hereof; and (iii) no further consent or approval of any other Party not specifically mentioned herein is required in connection with the execution, delivery, performance, validity and enforcement of this IGA. Without limiting the generality of the foregoing, each Party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this IGA at a meeting of its governing authority in accordance with the Constitution and laws of the State of Georgia, to include, without limitation, the Georgia Open Meetings Act, O.C.G.A. 50-14-1 *et seq.*
  - B. **Public Purpose.** This IGA and the services contemplated herein are for the public welfare and benefit and are undertaken in accordance with the laws and Constitution of the State of Georgia. Without limiting the foregoing, the Parties specifically and expressly warrant and represent, and do hereby find, that this IGA (i) pertains to the provision of services and activities which the Parties are by law authorized to undertake and provide; (ii) is otherwise authorized under the Intergovernmental Contracts Clause of the Georgia Constitution of 1983, Art. IX, Sec. III, Par. 1(a); and (iii) does not authorize the creation of new debt as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. 1(a).

5. **Assignment; Binding Effect.** The rights and obligations of the Parties under this IGA are personal and may not be assigned by one Party without the prior written consent of the other Party. Subject to the foregoing, this IGA shall be binding upon and enforceable against, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
6. **No Third-Party Beneficiaries.** This IGA is made between and limited to Fulton County and City, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than Fulton County and City, and no other person or entity shall be considered a third-party beneficiary by virtue of this IGA or otherwise entitled to enforce the terms of this IGA for any reason whatsoever.
7. **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this IGA is attached to this IGA and is and shall be construed to be made a part of this IGA by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full and at length every time it is referred to or otherwise mentioned.
8. **Relationship of Parties.** Notwithstanding anything in this IGA to the contrary, neither Party shall have the power to bind nor obligate the other Party except as expressly set forth in this IGA.
9. **Notices.** Any notice or communication required or permitted under this IGA shall be in writing and shall be deemed received when: i) delivered in person, or ii) upon actual delivery when sent by national overnight express commercial carrier, or iii) on the third day after the postmark date when mailed by certified mail, return receipt requested, to the Party at the address given below.

**TO FULTON COUNTY:**

David E. Clark  
Director, Department of Public Works  
141 Pryor Street, S.W., Suite 6001  
Atlanta, GA 30303

**Copy to:**

County Attorney  
Office of the County Attorney  
141 Pryor Street, S.W., Suite 4038  
Atlanta, GA 30303

**TO CITY:**

Sara Leaders  
City of Milton Public Works  
2006 Heritage Walk  
Milton, Georgia 30004

**Copy to:**

Jarrard & Davis, LLP  
222 Webb Street  
Cumming, Georgia 30040  
Attention: Ken Jarrard, Esq.

10. **Severability.** If any provision of this IGA shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
11. **Force Majeure.** Neither Party shall be deemed to be in violation of this IGA if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation.

[SIGNATURES FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, the Parties, by and through their duly authorized representatives, have executed this IGA to be effective as of the date first set forth above.

**CITY OF MILTON, GEORGIA**

By:   
Peyton Jamison, Mayor

Attest:   
Jimmy L. Louit  
City Clerk

(SEAL)



**FULTON COUNTY, GEORGIA**

By:   
Robert L. Pitts, Chairman  
Board of Commissioners

Attest:

By:   
Tonya R. Grier  
Clerk to the Commission

(COUNTY SEAL)



Approved as to Form:

By:   
Y. Soo Jo, County Attorney