

AGREEMENT BETWEEN FULTON COUNTY, GEORGIA, CITY OF ALPHARETTA, GEORGIA, AND NORTH FULTON COMMUNITY IMPROVEMENT DISTRICT FOR CONSTRUCTION OF APPROXIMATE 1650 LF WATERLINE AT DAVIS DRIVE FROM MANSELL ROAD TO WESTSIDE PARKWAY

THIS AGREEMENT (the “Agreement”) is entered into by and between **FULTON COUNTY GEORGIA** (“COUNTY”), a political subdivision of the State of Georgia; the **CITY OF ALPHARETTA, GEORGIA** (hereinafter “CITY”), a municipality of the State of Georgia; and the **NORTH FULTON COMMUNITY IMPROVEMENT DISTRICT** (the “CID”). The County, City, and CID are referred to herein each as a “Party” and collectively as the “Parties.” This Agreement is effective on the date fully executed by the Parties.

WHEREAS, the Parties desire for certain improvements to Davis Drive to be constructed in accordance with plans entitled “Davis Drive Extension and Multimodal Improvements Mansell Road to Westside Parkway” prepared by AECOM and dated March 22, 2021 and incorporated herein by reference (such improvements referred to as the “Project”), and which Project shall be constructed in accordance with applicable laws as a public right-of-way owned by the CITY; and

WHEREAS, the CID funded, and continues to fund, the design completion and program management of the Project; and

WHEREAS, the CID will provide construction management of the Project; and

WHEREAS, the entirety of the Project will be constructed within the CITY limits; and

WHEREAS, the COUNTY has utility (Sewer and Water) facilities which must be adjusted or relocated as a result of the proposed contract including fire hydrant, water main, water meter and valves, as shown on construction plans for the Project, and more particularly 1650 LF of waterline at Davis Drive from Mansell Road to Westside Parkway (the “Improvements”); and

WHEREAS, the COUNTY has requested that adjustment or relocation of the aforementioned Improvements (the “Work”) be included in the Project, and the COUNTY does not have adequate equipment and staff to conduct the Work, or for other reasons considers it advantageous to have the Work included in the Project; and

WHEREAS, the CID is willing to include the Work in the Project provided the COUNTY agrees to fund reimbursement for the cost of the Work, the COUNTY promptly provides said reimbursement to the CITY, and the CITY agrees to reimburse the CID for the cost of the Improvements upon, and only upon, receipt of said reimbursement from the COUNTY; and

WHEREAS, CITY agrees to coordinate with the CID for funds to flow to the CID for the Project contractor’s (the “Contractor”) performance of the Work; and

WHEREAS, as consideration for the CITY’S coordination with the Contractor for performance of the Work, the COUNTY will reimburse to the CITY the cost of Contractor’s

performance of the Work as outlined herein, which amounts (or portions of such amounts) will be paid by CITY to the CID as reimbursement for payment to Contractor for its performance of the Work; and

WHEREAS, COUNTY, CITY, and CID have determined that this Agreement serves the best interest of the Parties and their citizens by improving infrastructures; and

WHEREAS, the Constitution of the State of Georgia provides, in Article IX, Section III, Paragraph I, Subparagraph 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.

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 it is agreed as follows:

I. PURPOSE.

The COUNTY is entering into this Agreement with the understanding that the primary purpose of this Agreement is to meet the public purpose of transportation and infrastructure improvements including water & sewer, which includes the Work.

II. COMPENSATION AND PAYMENT.

The total estimated cost of the Work is Three Hundred Sixty-Four Thousand Four Hundred Eighty-Seven Dollars and Fifty Cents (\$364,487.50) (the "Cost"). It is agreed that the Cost includes both direct and indirect costs incurred in the performance of the Work under generally accepted accounting principles and as allowed in the Federal Acquisition Regulations Subpart 31.6 and not prohibited by the laws of the State of Georgia. Should any Party, pursuant to the provisions of this Agreement, terminate the Work on the Project, the COUNTY shall pay the CITY such sums as may be owed by the CID to the Contractor as of the date of termination.

III. OVERVIEW.

The CID will construct the Project, including performance of the Work, within CITY limits, provided a Land Disturbance Permit ("LDP") has been obtained by the CID. Upon completion of the Work and upon certification by CITY that the Work has been completed in accordance with the plans and specifications, COUNTY will accept the adjusted and additional facilities and will thereafter operate and maintain said facilities without further cost to CITY, the CID, or Contractor.

IV. FULTON COUNTY RESPONSIBILITIES.

1. COUNTY shall undertake the project design for the Work and submit a cost estimate to CITY for the Work based on GDOT specifications and mean item summary.
2. The plans and estimate for the Work shall be subject to approval of COUNTY prior to advertising for bids.
3. COUNTY shall have the right to visit and to inspect the Work at any time and to advise the engineer-in-charge of any observed discrepancies or potential problems.
4. 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.
5. COUNTY is responsible to reimburse all Costs to CITY related to the Work and which are incurred by the CID. The reimbursement shall be based on the actual Costs incurred and shall be paid by COUNTY within ten (10) business days after a reimbursement request is made by CITY as provided in Section V(2) of this Agreement.

V. CITY OF ALPHARETTA'S RESPONSIBILITIES.

1. The CITY will allow the CID to construct the Project, including Improvements, within CITY limits, provided an LDP has been obtained by the CID.
2. Within ten (10) business days of receipt of an invoice for reimbursement of the CID's Costs pertaining to any portion of the Work as provided for herein, the CITY will submit a request for reimbursement to COUNTY for an equivalent amount of such Costs (the "Reimbursement Amounts"). Within ten (10) business days of actual receipt by the CITY of any Reimbursement Amounts, the CITY will remit such Reimbursement Amounts to the CID. In the event that the COUNTY disputes the reimbursability of any CID invoice submitted to the CITY for reimbursement, or any portion thereof, CID shall be solely responsible for resolving any such dispute directly with the COUNTY. The CITY's responsibility to remit the Reimbursement Amounts to the CID will be limited to the amounts actually received from the FCWS.

VI. CID RESPONSIBILITIES.

1. The CID will incorporate plans for the Work provided by COUNTY into the Project as shown on drawings 44-001 to 44-006 of the Project (the "Plans"), as may be amended or updated from time-to-time, all in accordance with the terms of this Agreement.

2. The CID acknowledges and agrees that COUNTY will provide bid quantities related to the Work. The CID will incorporate these quantities within the bid for construction of the Project. The quantities will be clearly differentiated under a heading "Fulton County Water and Sewer."
3. The CID shall be solely responsible to manage all construction, engineering and contract supervision of the Project, including the Work. The CID shall respond, in a timely manner, to any issue that may arise during the construction phase.
4. The CID shall require the Contractor to accomplish all Work in accordance with the Plans and will consult with COUNTY before authorizing any changes or deviations which affect the COUNTY's facilities. If changes or deviations to the Plans relating to the COUNTY Improvements are required, the CID will not proceed without written consent from COUNTY. If change or deviations shall increase the cost of the Project, no change or deviation shall be granted to any contractor unless and until the COUNTY agrees to fund such.
5. The CID will review Contractor pay applications for CID approval and payment and will timely invoice the CITY for the Reimbursement Amounts of any pay applications pertaining to the Work and which are eligible for reimbursement by the COUNTY. The CID will provide, upon request by the CITY, any additional documentation the CITY deems necessary, in its sole estimation, to obtain reimbursement from the COUNTY or which may be expressly requested or required by the COUNTY.
6. The CID shall obtain an agreement from any Contractor providing services related to the Project, and shall so provide in any and all contracts or subcontracts, to indemnify and hold harmless (i) COUNTY, including its commissioners, officers, officials, employees, and agents; and (ii) the CITY, and/or CITY's Mayor, City Council Members, officers, officials, employees, and/or agents, from and against any and all loss and/or expense which they or any of them may suffer or pay as a result of claims or suits for injuries, deaths and/or damage in connection with or arising from Contractor's negligent acts and omissions or intentionally wrongful misconduct in performance of its contract, irrespective of COUNTY's or the CITY's negligence; provided however indemnification shall not benefit or apply to COUNTY or CITY to the extent such party is solely negligence. The CID shall obtain agreement from any Contractor providing services related to the Project that, if requested, it shall assume and defend, at such Contractor's own expense, any suit, action or other legal proceedings arising therefrom in which (i) COUNTY, and/or COUNTY's commissioners, officers, officials, employees, and agents, are named as a party; and/or (ii) the CITY, and/or CITY's Mayor, City Council Members, officers, officials, employees, and/or agents, are named as a party, and that such Contractor shall satisfy, pay, and cause to be discharged of record any judgment which may be rendered against (i) COUNTY, and/or COUNTY's commissioners, officers, officials, employees, and agents; and/or (ii) the CITY, and/or CITY's

Mayor, City Council Members, officers, officials, employees, and/or agents, arising there from.

7. Prior to beginning work, CID shall obtain and, where CID is utilizing the services of any contractor to perform the Work, shall also cause any such contractor (and/or any subcontractors) to obtain and furnish certificates of insurance in which COUNTY and the CITY are named as "Additional Insureds," for the following minimum amounts of insurance prior to the undertaking of any of the activities:
 - i. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
 - ii. Commercial General Liability Insurance in an amount of not less than one million dollars (\$1,000,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$1,000,000) on an account of any one occurrence.
 - iii. Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000).
 - iv. Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work contemplated under this agreement.

Insurance shall be maintained in full force and effect during the life of this Agreement and until final completion of the Project contemplated under this Agreement. The scope and coverage of the insurance protection shall extend beyond the completion of the project until the expiration of any applicable statutes of limitations. The CID retains the right to satisfy any or all of its insurance obligations by means of a Self-Funded Plan or Program. Nothing herein shall be construed as a waiver of either COUNTY or CITY'S sovereign immunity as a governmental body, or waiver of any governmental immunities available to its officers, officials, employees or agents.

8. The CID shall require the Contractor(s) to provide payment and performance bonds each in the penal sum of the amount of the contract amount, and naming the CITY, COUNTY, and CID as obligees.

VII. ADDITIONAL UNDERSTANDINGS.

The Parties to this Agreement each acknowledge and agree 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 Agreement.
2. It is not the intent of this Agreement to restrict the Parties to this Agreement from their involvement or participation with any other public or private individuals, agencies, or organizations.
3. This Agreement shall in no way hold or obligate any Party to supply or transfer funds to maintain and/or sustain the Agreement or keep in place any contract, except as specifically provided in this Agreement

VIII. TERM. This Agreement shall be effective on the date fully executed by all Parties and continue until 12/31/2024, unless the Agreement is terminated by a Party in accordance with this Agreement, and in no event shall exceed a fifty (50) year term.

IX. TERMINATION. Anything contained herein to the contrary notwithstanding, the COUNTY, CITY, or CID may terminate the Agreement if any other Party commits a material breach of the Agreement and fails to cure said breach to the non-breaching Party's satisfaction after receiving thirty (30) days written notice of the breach.

X. 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: (1) the activities described in this Agreement; (2) any actual or alleged infringement of any patent, trademark, copyright, or service mark; (3) actual or alleged unfair competition; (4) disparagement of product or service; (5) other tort of any type whatsoever; (6) 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. Any Party may self-fund its obligations under this Agreement. However, nothing herein shall be construed as a waiver of any Party's sovereign immunity, if applicable, or the immunities available to the officials, officers and employees of the Parties, if applicable.

XI. CONFIDENTIALITY.

The Parties each agree to establish appropriate administrative, technical, and physical safeguards to ensure that each does not provide and make available confidentiality, protected, proprietary or privileged data of the others. The Parties agree to abide and comply with all applicable laws, rules and regulations relating to privacy and confidentiality of protected information.

XII. REPRESENTATIONS REGARDING DATA.

Each Party has made its best efforts to ensure the accuracy and completeness of the

information and data transferred or made available. Each Party makes no warranties or representations to the public, to any other Party, or to third parties regarding data made available through its performance of this Agreement. It shall be the responsibility of each Party or any third party to verify the accuracy of data. Each Party to this Agreement accepts no liability that may arise from the use of data by any person or any third party. All information is provided "as is" with no warranty of any kind concerning fitness of use. No Party to this Agreement shall be liable for the use of data or any inferences, judgments, or decisions resulting from use of data.

XIII. TIME OF PERFORMANCE.

Time is of the essence in all matters.

XIV. REVIEW OF WORK.

Authorized representatives of COUNTY may, at reasonable times and upon reasonable notice, review and inspect the activities and data collected and any amendments thereto, including but not limited to, all reports, drawings, studies, specifications, estimates, maps and computations prepared by or for CID or CITY. COUNTY reserves the right for reviews and acceptance on the part of affected public agencies, railroads and utilities insofar as the interest of each is concerned. Acceptance shall not relieve CID of its professional obligation to correct, at its expense, any of its errors in the work. COUNTY'S review recommendations shall be incorporated into the work activities of CID and its contractors.

CITY and CID shall keep accurate records in a manner approved by COUNTY with regard to the activities conducted under this Agreement and shall submit to COUNTY, upon request, such information as is required in order to ensure compliance with this Agreement.

XV. MISCELLANEOUS.

1. **Entire Agreement; Counterparts.** This Agreement may be executed by the Parties in counterparts, each of which shall constitute an original. This Agreement, including any attached exhibits, sets forth the entire understanding between the Parties with regard to the subject matter hereof, and supersedes all previous agreements and understandings between any of them with regard to the subject matter hereof, whether oral or written, and may be amended only in a document executed by all Parties. No amendment, modification, termination, or waiver of any provision of this Agreement, nor consent to any departure by the Parties, shall in any event be effective unless the same shall be in writing and signed by each of the Parties 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 Agreement, 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. **Limitation on Liability.** No rights or limitation of rights shall arise or be assumed between the Parties as a result of the terms of this Agreement, except as expressly provided herein. Nothing herein shall be construed as a waiver of any Party's sovereign immunity, if applicable.
4. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this Agreement, COUNTY, CITY, and CID 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 Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; (ii) this Agreement, when executed, will constitute valid obligations with respect to such executing party and will be 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 Agreement. Without limiting the generality of the foregoing, each Party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this Project 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 Agreement 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 Agreement (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); (iii) does not authorize the creation of new debt" as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. I(a); and (iv) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent fee legislation by any Party in matters of government, and shall be binding and enforceable against the Parties and their successors during the term hereof in accordance with its terms.
5. **No Conflicting Agreements.** The execution, delivery and performance of this Agreement will not violate or contravene any contract, undertaking, instrument or other agreement to which COUNTY, CITY and/or CID are a party, or which purports to be binding upon said COUNTY, CITY and/or CID. Furthermore, the execution, delivery and performance of this Agreement do not violate the provisions of any Party's respective charter or Code of Ordinances, or any statutory or decisional laws of the State of Georgia respecting similarly situated municipal corporations or political subdivisions of said State (as the case may be). The representations and warranties contained in this Section E shall be true and correct as

of the date hereof and such representations and warranties, and the obligation of COUNTY, CITY, and CID to perform their respective obligations under this Agreement shall be expressly conditioned upon said representations and warranties being true and correct on the date hereof. Furthermore, each Party hereto specifically acknowledges and agrees that it shall be forever estopped from making any claim, counterclaim, assertion, or other argument of any kind contrary to the representations and warranties set forth hereinabove or otherwise contained in this Agreement.

6. **Assignment; Binding Effect.** The rights and obligations of the Parties under this Agreement are personal and may not be assigned without the prior written consent of all of the Parties. The foregoing notwithstanding, COUNTY expressly acknowledges and agrees that CITY has made certain arrangements with the CID and that such arrangements are not objectionable to COUNTY. Subject to the foregoing, this Agreement shall be binding upon and enforceable against, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
7. **No Third-Party Beneficiaries.** This Agreement is made between and limited to COUNTY, CITY and CID, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than COUNTY, CITY and CID, and no other person or entity shall be considered a third-party beneficiary by virtue of this Agreement or otherwise entitled to enforce the terms of this Agreement for any reason whatsoever.
8. **Exhibits.** Each and every exhibit referred to or otherwise mentioned in this Agreement is attached to this Agreement and is and shall be construed to be made a part of this Agreement 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.
9. **Relationship of Parties.** No Party shall have the power to bind or obligate any other Party except as expressly set forth in this Agreement.
10. **Survival of Representations.** All terms, conditions, covenants, warranties contained in any determination of this Agreement shall survive the termination of this Agreement until amended by the applicable governing authority.
11. **Notices.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the following addresses:

To Fulton County:

Abul K. Howlader
Engineering Administrator
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 of Alpharetta:

Mayor Jim Gilvin
City of Alpharetta
2 Park Plaza
Alpharetta, Georgia 30009

Copy to:

Molly Esswein, City Attorney, City of Alpharetta
Jarrard & Davis, LLP
222 Webb Street
Cumming, Georgia 30040

To the North Fulton Community Improvement District:

Executive Director Brandon Beach
North Fulton Community Improvement District
11605 Haynes Bridge Road
Suite 100
Alpharetta, Georgia 30009

Copy to:

J. Lynn Rainey
Rainey & Vaughan, LLC
358 Roswell Street
Suite 1130
Marietta, Georgia 30060

12. **Severability Clause.** In the event that any provision of this Agreement shall be deemed to be severable or invalid, and if any term, condition, phrase or portion of this Agreement shall be determined to be unlawful or otherwise unenforceable, the remainder of the Agreement shall remain in full force and effect, so long as the clause severed does not affect the intent of the Parties. If a court should find that any provision of this Agreement to be invalid or unenforceable, but that by limiting said provision it would become valid

and enforceable, then said provision shall be deemed to be written, construed and enforced as so limited.

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

FULTON COUNTY, GEORGIA

By: [Signature]
Robert L. Pitts, Chairman
Board of Commissioners

Attest:

By: [Signature]
Tonya R. Grier
Clerk to the Commission



Approved as to Form:

By: [Signature]
County Attorney

CITY OF ALPHARETTA

By: [Signature] 5/11/2022
Jim Gilvin, Mayor

Attest:

By: [Signature] 5/11/2022
Lauren Shapiro, City Clerk

Approved as to Substance:

By: [Signature] 5/11/2022
Pete Sewczwicz, Director of Public Works

Approved as to Form:

By: [Signature] 5/4/22
Molly Esswein, City Attorney

NORTH FULTON COMMUNITY IMPROVEMENT DISTRICT

By: [Signature]

Printed Name: Kerry Armstrong

Title: Chairman

Date: 5/17/2022