

1 A RESOLUTION BY THE FULTON COUNTY BOARD OF COMMISSIONERS
2 APPROVING A FORM TEMPORARY RIGHT OF ENTRY AGREEMENT AND
3 RELATED DOCUMENTS FOR PUBLIC WORKS STAFF OR CONTRACTORS TO
4 ENTER ONTO PRIVATE PROPERTY TO DETERMINE THE COMPOSITION OF
5 WATER SERVICE LINES PURSUANT TO FEDERAL REGULATIONS 40 C.F.R.
6 141.84; DELEGATING AUTHORITY TO THE DIRECTOR OF THE DEPARTMENT OF
7 PUBLIC WORKS TO EXECUTE THE TEMPORARY RIGHT OF ENTRY AGREEMENT
8 AND RELATED DOCUMENTS; REQUIRING THE DIRECTOR OF THE DEPARTMENT
9 OF PUBLIC WORKS TO SPREAD SUCH EXECUTED DOCUMENTS ON THE
10 MEETING MINUTES OF THE BOARD OF COMMISSIONERS ON A QUARTERLY
11 BASIS; AND FOR OTHER PURPOSES.

12 WHEREAS, Fulton County considers the health and well-being of its residents as
13 its highest priority; and

14 WHEREAS, water service lines in municipalities, counties, and states across the
15 United States were constructed using lead pipes, which continue to be used in the
16 distribution of water; and

17 WHEREAS, the Environmental Protection Agency has determined that the use of
18 lead pipes for drinking water is unsafe in that the water travelling through the pipes may
19 be affected by the lead resulting in detrimental effects on the health and well-being of
20 those who consume it; and

21 WHEREAS, as a result, the federal government has promulgated regulations,
22 currently found at 40 C.F.R. 141.84, requiring that entities operating water systems, such
23 as Fulton County, take steps to remove lead pipes from its water system; and

24 WHEREAS, as an initial step in complying with the federal regulations and
25 removing any lead pipes in its water service area, Fulton County is required to compile
26 an initial inventory of the composition of its water service lines by October 16, 2024, which
27 will be made available to the public online and will be resubmitted annually to the
28 Environmental Protection Division of the State of Georgia; and

29 WHEREAS, the Department of Public Works has begun planning the best process
30 for removing any lead pipes identified, but the specific means for going about that process

1 will depend in part on the results of the inventory of the water service line composition;
2 and

3 **WHEREAS**, the Department of Public Works in conjunction with the Office of the
4 County Attorney has created a Temporary Right of Entry Agreement, in substantially the
5 form attached hereto as Exhibit "A"; and

6 **WHEREAS**, once executed by the authorized Fulton County representative and a
7 Fulton County private property owner, the Temporary Right of Entry Agreement will permit
8 Fulton County Public Works employees or Fulton County approved contractors to enter
9 onto private property in Fulton County to conduct tests to determine the composition of
10 the water line servicing the property so as to allow Fulton County to create the inventory
11 required by federal regulations; and

12 **WHEREAS**, the Board of Commissioners has previously granted the Director of
13 Public Works the authority to execute agreements, including development agreements
14 necessary for Fulton County's ownership, operation and maintenance of proposed
15 potable water distribution systems, which was granted through Resolution No. 14-0331
16 and codified in Article II, Chapter 82, Section 82-77 of the Fulton County Code of
17 Ordinances; and

18 **WHEREAS**, it is the recommendation of the Department of Public Works that the
19 Director of Public Works is also given the authority to execute temporary right of entry
20 agreements in substantially the form attached hereto as Exhibit "A" between the property
21 owners in Fulton County so as to begin the process of Fulton County complying with 40
22 C.F.R. 141.84; and

23 **WHEREAS**, the Board of Commissioners finds that delegating to the Director of
24 Public Works the authority to execute the Temporary Right of Entry Agreement will best
25 serve the County's interest in preserving Fulton County resources, avoiding delay, and
26 complying with federal law; and

27 **WHEREAS**, pursuant to Article 9, Section 2, Paragraph 1(a) of the Georgia
28 Constitution, the Board of Commissioners has the "power to adopt clearly reasonable. . .

1 resolutions . . . relating to its . . . affairs . . . for which no provision has been made by
2 general law and which is not inconsistent with [the] Constitution or any local law applicable
3 thereto.”

4 **NOW, THEREFORE, BE IT RESOLVED**, that the Fulton County Board of
5 Commissioners approves the Temporary Right of Entry Agreement in substantially the
6 form attached hereto as Exhibit “A” to permit Fulton County Public Works employees or
7 Fulton County approved contractors to enter onto private property in Fulton County to
8 conduct tests to determine the composition of the water line servicing the property so as
9 to allow the County to create the inventory required by federal regulations.

10 **BE IT FURTHER RESOLVED**, that Fulton County Board of Commissioners hereby
11 authorizes and delegates to the Director of the Department of Public Works with the
12 authority to execute the Temporary Right of Entry Agreement, in substantially the form
13 attached hereto as Exhibit “A” on behalf of Fulton County for the purpose of conducting
14 testing of water service line material.

15 **BE IT FURTHER RESOLVED**, that the Director of Public Works is required to
16 spread the executed Temporary Right of Entry Agreement on the meeting minutes of the
17 Board of Commissioners on a quarterly basis.

18 **BE IT FURTHER RESOLVED**, that prior to execution the County Attorney shall
19 approve the documents as to form and make any necessary changes thereto to protect
20 the County’s interests.

21 **BE IT FINALLY RESOLVED**, that this Resolution shall become effective upon its
22 adoption, and that all resolutions and parts of resolutions in conflict with this Resolution
23 are hereby repealed to the extent of the conflict.

24
25 **PASSED AND ADOPTED** by the Board of Commissioners of Fulton County,
26 Georgia, this 26th day of June, 2024.

FULTON COUNTY BOARD OF COMMISSIONERS



Robert L. Pitts, Chairman (At Large)

ATTEST:



Tonya R. Grier, Clerk to the Commission



APPROVED AS TO FORM:



Y. Soo Jo, County Attorney

Exhibit A



**FULTON COUNTY, GEORGIA
DEPARTMENT OF PUBLIC WORKS
DIVISION OF WATER RESOURCES**

REQUEST FOR ENTRY ONTO PROPERTY

TO:

Date: _____, 2024

**PROJECT: 20E-SE03
Testing of Water Service Line Material**

Parcel Number: _____

Dear _____:

This letter is to notify the owners of the property identified above that Fulton County is requesting their permission to allow Fulton County personnel—wearing proper identification—to enter onto the property referenced above to assess its water service line and to determine from what materials it is made. Pursuant to federal regulations, specifically 40 C.F.R. 141.84(a), the County is required to create a Water Service Line Inventory that identifies the materials used in the water service lines servicing County properties by October 16, 2024. A Temporary Right of Entry form is enclosed for the property owner's review and execution.

Signing the Temporary Right of Entry form will permit Fulton County personnel or contractors to conduct the necessary testing to determine from what materials the property's water service lines are made. Fulton County personnel and/or its contractors will only enter the property for testing and their work will be confined to the area immediately surrounding your water service line. No extensive land disturbance activities will be conducted on the property. In most cases, Fulton County personnel and/or contractors will only need to access a small amount of soil and grass in order to visually inspect the service line and determine its composition. Upon completion, Fulton County will restore the portion of the Owner's property as nearly as possible to its former condition.

Once we receive your signed Temporary Right of Entry form, we will contact you to arrange a date for Fulton County personnel and/or contractors to come out to the property and conduct the necessary testing.

Should you have any questions, please contact Timothy P. Mullen, P.E., Engineering Administrator at 404-612-9564 or 404-234-4323 at any time.

Sincerely yours,
Fulton County Department of Public Works

Timothy P. Mullen, P.E.

Cc: Terry I. Peters, P.E., Deputy Director
Sam Tamakloe, Senior Construction Project Manager

Enclosure

TEMPORARY RIGHT OF ENTRY

STATE OF GEORGIA,

COUNTY OF FULTON

THIS TEMPORARY RIGHT OF ACCESS AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2024 ("Effective Date") by and between **Fulton County**, a political subdivision of the State of Georgia (the "Grantee"), and _____ (the "Owner(s)" or "Grantor(s)"), who own the land and the improvements thereon (together, the "Property") having a street address of _____, Georgia w(the "Property");

1. **Grant.** Owner hereby grants to Grantee, its contractors, assigns, and successors, a non-exclusive license for temporary right of access and entry for the purpose of conducting testing to determine the composition of the Owner's water service line (the "Work"). By granting this license, Owner does not convey any property interest and does not intend for this Agreement to be or become an easement. By permitting Grantee access to the Property to test the water service line, Owner is not conveying any ownership interest in the water service line to Fulton County. By entering the Property, Grantee agrees to restore the impacted area as near as possible to its original condition following the completion of the Work. For the purposes of this Agreement, "original condition" shall mean the condition of the Property and/or surrounding areas immediately prior to the commencement of the Work.

2. **Grantee Obligations.** Grantee shall comply with all applicable laws and perform the Work at its own cost and expense. Grantee shall keep the Property in its current condition to the extent reasonably possible and keep the Property clean and free of debris and trash during the work period, defined below.

3. **Term.** Owner shall provide Grantee access to the Property to perform the Work at a mutually agreed upon date(s) and time(s) between ____ 1, 2024 to October 15, 2024, during normal business hours (the "Work Period").

4. **Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES.

IN WITNESS WHEREOF, we have set our hand and seal this the _____ day of _____, 2024.

OWNER

Name: _____

Name: _____

FULTON COUNTY, GEORGIA

Name: _____