

**INTERGOVERNMENTAL AGREEMENT
BETWEEN FULTON COUNTY, GEORGIA, AND
THE CITY OF ALPHARETTA, GEORGIA, FOR
COORDINATED WATER UTILITY OPERATION AND MAINTENANCE
WITHIN PUBLIC ROADWAYS AND ENVIRONS AT
THE GATHERING ALPHARETTA DEVELOPMENT**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is executed as of 7th day of November, 2022, by and between **CITY OF ALPHARETTA, GEORGIA** (hereinafter the “CITY”), a municipality of the State of Georgia, and **FULTON COUNTY GEORGIA** (hereinafter the “COUNTY”), a political subdivision of the State of Georgia. The term “Party” refers individually to either the CITY or the COUNTY and the term “Parties” refers to both the CITY and the COUNTY.

WHEREAS, the CITY desires to improve the live/work environment of its citizens by promoting more concentrated residential and commercial areas and providing greater community open and green space; and

WHEREAS, the CITY, by promoting such concentrated development, recognizes that utilities will be required to be located in The Gathering Alpharetta Development, a 25-acre mixed-use master planned development located at the corner of Haynes Bridge Road and Morrison Parkway, Alpharetta, Georgia (the “Development”), in areas including below paved public roadways (see the project Site Plan attached hereto as “Exhibit A”), areas not previously permitted due to the greater expense for repairs required from potential failures of the utilities (e.g., potable water system); and

WHEREAS, the CITY realizes such developments will result in significantly increased property values and associated general fund tax revenue; and

WHEREAS, the CITY realizes that such utilities experience failures from both natural and man-made causes from time to time; and

WHEREAS, the COUNTY does not wish the additional risk associated with failures of such utilities placed below paved public roadway areas in the Development, as depicted on Exhibit A, to become the responsibility of the abutting private property owners or the underlying utility owner; and

WHEREAS, the COUNTY is the water utility owner and provides potable water for domestic and fire protection use to the property owners in the Development; and

WHEREAS, the COUNTY has the facilities, equipment and staff to diligently and rapidly make repairs to its water system when failures occur; and

WHEREAS, the CITY maintains the public roadways in the Development and has the facilities, equipment and staff to diligently and rapidly make repairs to its paved roadways when failures occur; and

WHEREAS, the COUNTY does not own or operate any paved roadways in the Development, and does not have adequate facilities, equipment or staff to rapidly make repairs to roadway failures; and

WHEREAS, the COUNTY and CITY desire to enter into an Intergovernmental Agreement (“IGA”) wherein they each assume appropriate responsibility for maintenance of their individually owned and maintained infrastructure (i.e., Roadways for CITY and Water System for COUNTY) in the Development when failures occur in areas where the Parties permit COUNTY Water System components to be placed or exist under the CITY’S paved public roadways; and

WHEREAS, the COUNTY and CITY have determined that this IGA serves the best interest of the Parties and their citizens by coordinating the operation and maintenance of these public infrastructures.

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, the COUNTY and the 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 and maintenance including roadways and water infrastructure in the Development.

II. CITY and COUNTY RESPONSIBILITIES.

1. Where water system infrastructure is installed under paved roadways in the Development, at the request or requirement of CITY, COUNTY’s responsibility for repairs to infrastructure and environs due to a failure or required maintenance to COUNTY’s water infrastructure shall be limited to repair of COUNTY’s water infrastructure, stabilization and backfill of any required excavation and a concrete cap finished at the roadway subgrade level in the Development.
2. The COUNTY shall exercise diligence in repair of water system components including temporary repairs to maintain transportation capabilities of public roadways in the Development.
3. All other repair of the public roadway and environs shall be the responsibility of the CITY.

III. 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.
 3. It is not the intent or purpose of this IGA to create any rights, benefits and/or trust responsibilities by or between the Parties.
 4. This IGA shall in no way hold or obligate either Party to supply or transfer funds to maintain and/or sustain the IGA or keep in place any contract, except as specifically provided in this IGA.
- IV. TERM.** This IGA shall be effective upon execution by both Parties and continue until 12/31/2072, unless the IGA is terminated by either Party, and in no event shall exceed a fifty (50) year term. The Parties may agree to amend this IGA at any time.
- V. TERMINATION.** Anything contained herein to the contrary notwithstanding, either Party may terminate the IGA:
1. If the other Party commits a material breach of the IGA and fails to cure said breach to the non-breaching Party's satisfaction after receiving thirty (30) days written notice; or
 2. Without cause, if the terminating Party gives ninety (90) days' prior written notice to the other Party.
 3. Upon termination, the responsibilities of each Party shall be to continue to maintain their respectively owned infrastructure and neither Party shall be obligated to the other Party for damages caused by the failure of its infrastructure to the other Party's infrastructure.
- VI. MISCELLANEOUS.**
- A. **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 pending the execution of the Agreement, and supersedes all previous agreements and understandings between them regarding the subject matter hereof, 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 the COUNTY and the CITY, and then such amendment, modification, termination, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
 - B. **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 any conflict of laws rules.

- C. **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 IGA. Nothing herein shall be construed as a waiver of any Party's sovereign immunity.
- D. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, the COUNTY and the City hereby represent and warrant to each other (which representations and warranties shall be deemed independently material notwithstanding any prior inquiries) the following:
1. **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 valid obligations with respect to it, will be legally binding upon the same and will be 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.
 2. **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); (iii) does not authorize the creation of "new debt" as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. 1(a); and (iv) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent free 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.
- E. **No Conflicting Agreements.** The execution, delivery and performance of this IGA does not violate or contravene any contract, undertaking, instrument or other agreement to which the COUNTY or the CITY are a Party or which purports to be binding upon said parties.

Furthermore, the execution, delivery and performance of this IGA does 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 D shall be true and correct as of the date hereof and such representations and warranties, and the obligation of the COUNTY or the CITY to perform their respective obligations under this IGA 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 they 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 IGA.

- F. **Assignment; Binding Effect.** The rights and obligations of the Parties under this IGA are personal and may not be assigned without the prior written consent of both the COUNTY and the CITY. 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.
- G. **No Third-Party Beneficiaries.** This IGA is made between and limited to the COUNTY and the CITY and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than the COUNTY and the 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.
- H. **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.
- I. **Relationship of Parties.** Notwithstanding anything in this IGA to the contrary, neither Party shall have the power to bind nor obligates the other Party except as expressly set forth in this IGA.
- J. **Survival of Representations.** All terms, conditions, covenants, and warranties contained in any determination of this IGA shall survive the termination of this IGA until amended by the Parties.
- K. **Notices.** Any notice or communication required or permitted under this IGA shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the following addresses:

To Fulton County:

County Manager
Fulton County Government
141 Pryor Street, S.W
Atlanta, Ga 30303

Copy to:

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

Director
Department of Public Works
141 Pryor Street, S.W., Suite 6001
Atlanta, Ga 30303

To City of Alpharetta:

Mayor
City of Alpharetta
2 Park Plaza
Alpharetta, Georgia 30009

- L. **Severability Clause.** In the event that any provision of this IGA shall be deemed to be severable or invalid, or if any term, condition, phrase or portion of this IGA shall be determined to be unlawful or otherwise unenforceable, the remainder of the IGA 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 IGA 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.

[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 Alpharetta

By: 
Jim Gilvin, Mayor

Attest:
By: 
City Clerk

Approved as to Form:

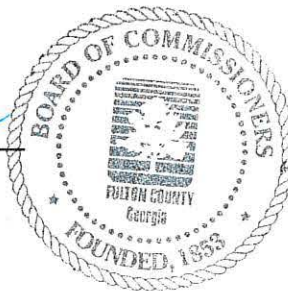
By: 
City Attorney

FULTON COUNTY, GEORGIA

By: 
Robert L. Pitts, Chairman
Board of Commissioners

Attest:

By: 
Tonya R. Grier
Clerk to the Commission



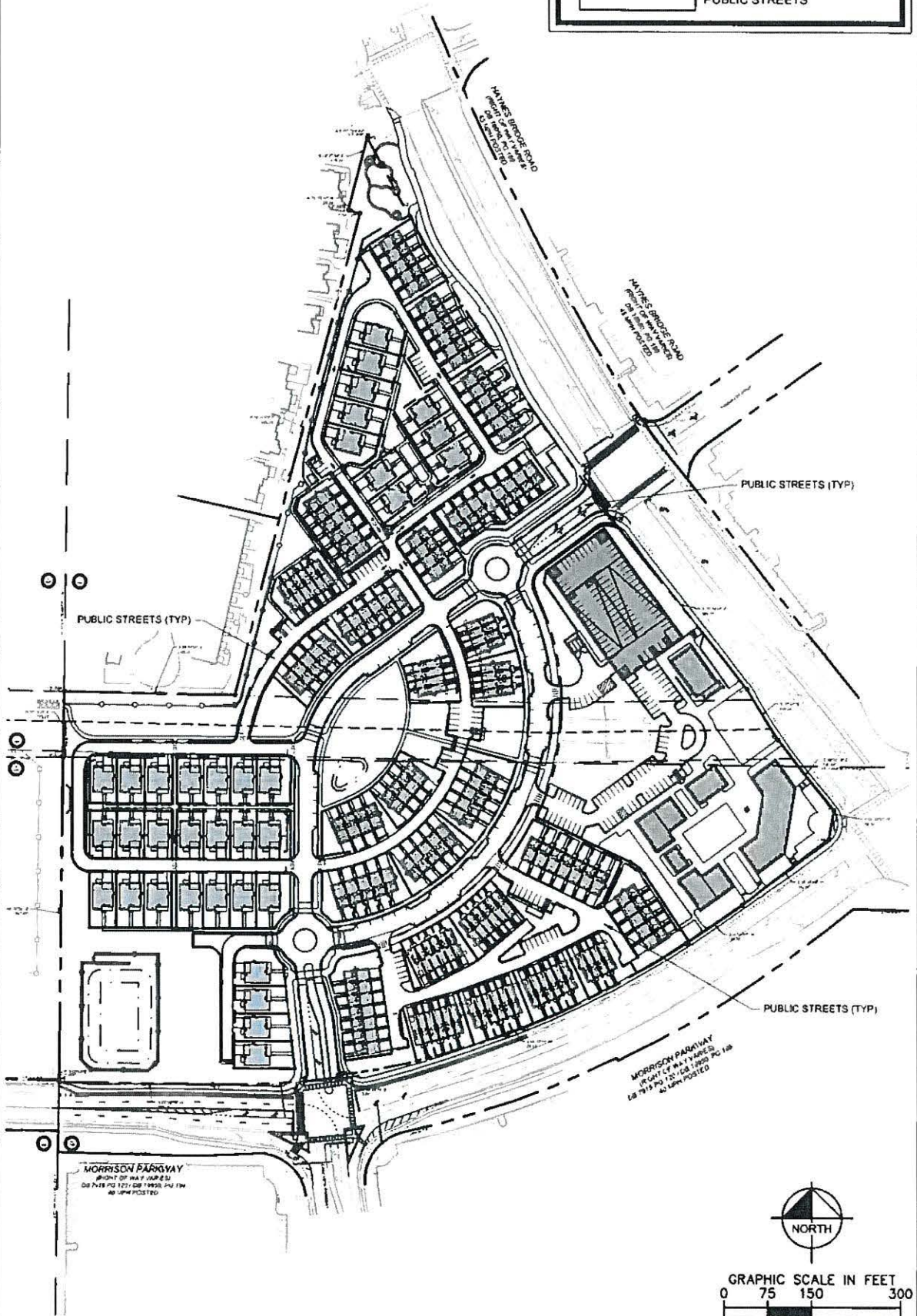
Approved as to Form:

By: 
Y. Soo Jo
County Attorney

EXHIBIT A

SITE PLAN LEGEND:

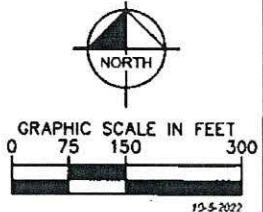
- PROPOSED PROPERTY LINES
- ▭ PUBLIC STREETS



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THE GATHERING - PUBLIC STREETS



15-5-2022