

**FORSYTH COUNTY, THE CITY OF MILTON, AND FULTON COUNTY
INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WATER TO CERTAIN
PROPERTY LOCATED WITHIN THE CITY OF MILTON/FULTON COUNTY**

COME NOW **FORSYTH COUNTY, GEORGIA**, a political subdivision of the State of Georgia acting by and through its Board of Commissioners (“Forsyth County”), and **THE CITY OF MILTON, GEORGIA**, a municipal corporation of the State of Georgia acting by and through its Mayor and City Council (“Milton”), and **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia acting by and through its Board of Commissioners (“Fulton County”), with Forsyth County, Milton, and Fulton County being collectively referred to as the “Parties,” and hereby enter into this Intergovernmental Agreement for the Provision of Water to certain property located within the City of Milton, Fulton County (the “Agreement”), effective as of ____ day of _____, 2022 (the “Effective Date”) to govern the Parties’ responsibilities and obligations in providing water service to the property (the “Property”, as described in Exhibit “A”, a copy of which is attached hereto and incorporated herein by reference), partially located in Forsyth County, and partially located in the City of Milton, Georgia/Fulton County, Georgia. In this agreement, references to “the City of Milton/Fulton County” are intended to signify that Milton is the municipal jurisdiction granting approval for Forsyth County to provide water utility services within its boundary and that Fulton County is the water supplier in the City of Milton.

WITNESSETH:

WHEREAS, the Parties are authorized to enter into this Agreement in accordance with Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 regarding intergovernmental contracts (“Intergovernmental Contracts Clause”); and

WHEREAS, the Intergovernmental Contracts Clause provides, in pertinent part, as follows:

The state, or any institution, department, or other agency thereof, and any county, municipality, school district, or other political subdivision of the state may contract for any period not exceeding 50 years with each other or with any other public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.

WHEREAS, intergovernmental agreements under Article IX, Section III, Paragraph I must “involve the provision of services, or . . . the joint or separate use of facilities or equipment, and deal with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide” (*City of Decatur v. DeKalb County*, 289 Ga. 612, 614, 713, S.E.2d 846, 849 (2011) (internal quotations omitted)); and

WHEREAS, a residential development is proposed on the Property, which is located in the City of Milton/Fulton County; and

WHEREAS, this Agreement is necessary to set forth the terms and provisions pursuant to which Forsyth County will be authorized to provide water service to the Property, including but not limited to Forsyth County’s ability to bill customers whose property is located in the City of Milton/Fulton County, and Forsyth County’s ability to pursue and secure payment from such customers; and

NOW THEREFORE, in consideration of the mutual promises of the Parties and the mutual benefits flowing from each Party to the other, and other good and valuable consideration exchanged, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
SCOPE OF SERVICES

Section 1.0. Services to be Provided.

(a) Forsyth County agrees to provide water service, all water related billing, collection, and remittance service (collectively referred to as the “Water Services”) to the Property, whether and to the extent that such property is located in Forsyth County or in the City of Milton/Fulton County. Specifically, Forsyth County will provide the following:

- (i) Furnish all Water Services, make all necessary repairs to water meters, water mains and related appurtenances; read all water meters; and keep all records incidental to the Water Services in accordance with all applicable Forsyth County standards regarding same, including, but not limited to, Forsyth County fire flow standards; and
- (ii) Issue bills, either by paper or electronically, to each customer for the payment of Water Service fees in accordance with applicable laws and regulations of Forsyth County, as may be amended, with such bills to be

calculated based upon the volume of water registered by Forsyth County's water meter(s) servicing each customer in the Property in accordance with the terms of Article III of this Agreement; and

- (iii) Collect Water Service fees from customers in the Property in accordance with the terms of Article IV of this Agreement; and
- (iv) Keep accurate records and accounts for each customer in the Property for all Water Services provided to such customers by Forsyth County pursuant to this Agreement; and
- (v) Maintain, test, repair, and/or replace defective water meters on a basis consistent with those policies generally employed by Forsyth County for the delivery of water services; and
- (vi) Provide each customer, upon request, with full and complete reporting of such account information maintained by Forsyth County regarding the delivery of Water Services pursuant to this Agreement.

(b) The Parties hereto consent and acknowledge that this Agreement does not authorize Forsyth County to provide sewer service within the City of Milton/Fulton County or to any portion of the Property located in the City of Milton/Fulton County. Additionally, this Agreement shall not authorize Forsyth County to install sewer infrastructure to the Property within the City of Milton/Fulton County, even if such sewer infrastructure is intended only as a collection or conveyance system for sewer service delivery in other jurisdictions.

Section 1.1 Scope of Services.

The parties agree that this Agreement will apply to and govern Forsyth County's provision of Water Services to those owners of the Property existing as of the date of this Agreement, and shall also govern the provision of Water Services to any and all subsequent owners who acquire real estate in the Property after the Effective Date of this Agreement by virtue of new development in the Property, the transfer of ownership of real property located in the Property, changes in leasehold tenants with possessory interests in real estate located in the Property, and/or other developmental activity that results in any person or property requesting services under this Agreement.

ARTICLE II
METERING

Section 2.0 Meters.

All water delivered by Forsyth County to customers in the Property will be metered, and the volume of water registered by the meter shall provide the basis for calculating the applicable charges due to Forsyth County for the provision of Water Services to each customer.

Section 2.1 Meter Standards.

At the time of installation, metering equipment provided by Forsyth County for measuring the quantity of water delivered shall be consistent and in accordance with the standards for such equipment in Forsyth County. Forsyth County will be responsible for the maintenance and repair of all County owned water meters, and associated appurtenances, serving customers in the Property.

Section 2.2 Meter Inaccuracies.

If any water meter fails to register or appears to have registered inaccurately for any billing period, the amount of water delivered during such billing period will be estimated in accordance with Forsyth County's then-current policies and procedures.

Section 2.3 Meter Readings.

Meters serving customers in the Property will be read by Forsyth County personnel at a frequency consistent with Forsyth County's policies and procedures governing the reading of water meters generally by Forsyth County. A representative of Milton or Fulton County may be present during any meter readings upon prior notification to Forsyth County.

ARTICLE III
DETERMINATION AND PAYMENT OF APPLICABLE WATER RATES

Section 3.0 Water Rates.

The parties agree that Forsyth County has exclusive jurisdiction with respect to the establishment of water rates for customers to whom it provides Water Services in the Property including those customers in whose property is located in City of Milton/Fulton County. However, in no event shall Forsyth County charge customers in the Property whose property is located in the

City of Milton/Fulton County a water rate that is higher than the water rate charged to customers in the Property whose property is located in Forsyth County.

ARTICLE IV
BILLING, COLLECTION, REMITTANCE FOR WATER SERVICES

Section 4.0 Billing Responsibility.

The Parties acknowledge that Forsyth County shall be solely responsible for the issuance of invoices to customers to whom Water Services are provided in the Property whether such customers' property is located in the City of Milton/Fulton County or in Forsyth County. Additionally, the Parties further acknowledge that all payments for such Water Services shall be made solely and exclusively to Forsyth County.

Section 4.1 Authority to Collect.

The Parties acknowledge that the City of Milton/Fulton County shall bear no liability for unpaid or past due amounts due to Forsyth County for Water Services provided pursuant to this Agreement. However, Forsyth County shall have any and all authority provided or allowed for by law to pursue and collect such payments from customers in the Property by using the same procedures and protocols as employed by Forsyth County for the collection of unpaid or past due amounts on accounts from other customers to whom Forsyth County provides Water Services, including but not limited to notices, water service cut-offs, placement of liens, use of outside debt collection agencies, account balance write-offs, and other applicable collection methods utilized in accordance with industry and Forsyth County standards. The Parties agree that the collection efforts for such unpaid or past due accounts, including all legal and equitable remedies, shall be the right and obligation of Forsyth County, and that the City of Milton/Fulton County agree not to interfere with or impede such collection efforts.

Section 4.2 Enforcement of Ordinances

Fulton County and the City of Milton, as applicable, agree to enforce all applicable Fulton County and City of Milton ordinances in the Property regarding Water Services (including, but not limited to, any such ordinances prohibiting unauthorized use of fire hydrants). Moreover, Fulton County and the City of Milton agree to investigate and, if warranted, take reasonable enforcement action regarding any notice or complaint of a water-based violation (to include any unauthorized

encroachment within utility easements) tendered by Forsyth County personnel to Fulton County and/or City of Milton personnel.

ARTICLE V
TERMINATION OF SERVICES

Section 5.0 Right to Terminate Water Services.

With respect to the termination of water services to customers located in the Property whose property is located in the City of Milton/Fulton County for non-payment, Forsyth County will follow those same policies and procedures governing the termination of Water Services to other customers to whom Forsyth County provides water service. The City of Milton and Fulton County agree to honor and reasonably support any such action by Forsyth County.

ARTICLE VI
TERM OF AGREEMENT

Section 6.0 Fifty-Year Term.

The Term of this Agreement shall commence upon the Effective Date and shall continue for a period of fifty (50) years. Prior to the expiration of the term of this Agreement, the Parties hereby agree to use their best efforts to renegotiate this Agreement so as to arrive at terms pursuant to which residents in the Property will continue to be provided Water Services.

ARTICLE VII
TERMINATION OF AGREEMENT

Section 7.0 Right to Terminate.

This Agreement may be terminated prior to its stated expiration date by any Party on the terms and conditions set forth in this Article, but only after adherence to the Alternative Dispute Resolution Provisions in Article VIII. The rights of the Parties to terminate this Agreement shall be exclusively as stated herein and shall be strictly construed in accordance with the provisions of this Article.

Section 7.1 Default.

(a) Upon the occurrence of an Event of Default, as defined below, by any Party, the other

Part(y/ies) shall have the right to terminate this Agreement or pursue a cause of action for actual damages, or both, all as more fully described in this Section 7.1. Upon any such termination, each Party's duties and obligations pursuant to this Agreement shall cease. The following shall constitute Events of Default:

- (i) The City of Milton's unexcused interference with Forsyth County's provision of Water Services to residents in the Property; and/or
- (ii) Fulton County's unexcused interference with Forsyth County's provision of Water Services to residents in the Property; and/or
- (iii) The City of Milton's unexcused interference with Forsyth County's issuance or collection of invoices to City of Milton/Fulton County customers to whom Water Services are provided in the Property; and/or
- (iv) Fulton County's unexcused interference with Forsyth County's issuance or collection of invoices to the City of Milton/Fulton County customers to whom Water Services are provided in the Property; and/or
- (v) Forsyth County's unreasonable refusal to provide water service cut-offs in the Property upon the City of Milton or Fulton County's request.

(b) Upon the happening of any Event of Default described in subparagraphs (i), (ii), (iii), (iv), or (v) above, the non-breaching Party may declare an Event of Default by providing written notice to such event to the breaching Party with such notice to set forth in detail the alleged default. The breaching Party shall have thirty (30) days after receipt of such written notice to cure any such default. In the event that the breaching Party does not cure the default within said thirty-day period, then the non-breaching Party may terminate the Agreement for cause by providing written notice of termination to the breaching Party as specified herein.

(c) If any Party determines that there has been a breach of another Party's duties or obligations, other than an Event of Default, under this Agreement, the non-breaching Party will notify the breaching Party of such breach. If the breach is not cured within forty-five (45) days after such notice, the non-breaching Party may terminate this Agreement by providing written notice of said termination to the breaching Party.

(d) In the event that any Party defaults under this Agreement, and/or terminates this

Agreement, the Parties hereby agree to use their best efforts to renegotiate this Agreement so as to arrive at terms pursuant to which residents in the Property will continue to be provided Water Services.

ARTICLE VIII
ALTERNATE DISPUTE RESOLUTION

Section 8.0 Negotiation.

The Parties will attempt in good faith to resolve any controversy or claim arising out of, or relating to, this Agreement by prompt negotiations between one or two senior representatives of each Party, which representatives shall have authority to settle the controversy on behalf of their respective Party; subject to any necessary ratification by the governing authority of either or all of Forsyth County and/or the City of Milton and/or Fulton County.

Section 8.1 Meeting.

The Representatives of the Parties shall meet at a mutually-acceptable time and place within twenty (20) days of the date of the disputing Party providing notice of a dispute arising out of, or relating to, this Agreement, and, after that, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.

Section 8.2 Mediation.

In the event any dispute arising under this Agreement is not resolved by informal negotiations as provided above, the dispute shall be referred to mediation.

Section 8.3 Choice of Mediator.

The Parties are free to select promptly any mutually acceptable mediator. If the Parties cannot agree, or have no particular choice of the mediator, then Henning Mediation (or, if Henning Mediation is not available, another mutually acceptable, properly licensed mediation entity) will conduct the mediation. For purposes of selecting a mediator in that case, a list of the resumes of available mediators who have an expertise in local government law, numbering one more than there are parties, will be sent to the Parties by Henning Mediation (or such other mediation entity as may be chosen), each of whom may strike one name leaving the remaining name as the mediator. If more than one mediator remains, then the designated mediator shall be selected by Henning Mediation (or such other mediation entity as may be chosen) from the remaining names.

Section 8.4 Mediation Sessions.

After the mediator has been selected, the Parties shall promptly agree upon a date and time for the mediation. The Parties understand and agree that, in addition to their respective attorneys, a representative from each Party with full settlement authority (subject to ratification by the governing authority of Milton and/or Fulton County and/or Forsyth County) will be present at the mediation unless excused by the mediator. In addition, each Party may bring additional representatives as needed to respond to questions, contribute information, and participate in the mediation. The number of additional persons may be agreed upon in advance with the assistance and advice of the mediator.

Section 8.5 Exchange of Information.

In the event any Party has substantial need for information in the possession of another Party to prepare for the mediation, the Parties shall attempt, in good faith, to agree upon procedures for the expeditious exchange of any such information, with the assistance and advice of the mediator, if necessary.

Section 8.6 Position Statements.

Unless otherwise specified by the mediator or agreed upon by the Parties, no later than seven (7) days before the mediation, each Party may deliver a concise written summary of its position together with any appropriate documents, to the mediator and shall also serve a copy of the same on all other Parties.

Section 8.7 Fees & Costs.

The fees and costs shall conform to the then current fee schedule of the mediator so selected by the Parties, and, in the absence of an agreement to the contrary, such fees and costs shall be borne equally by all Parties.

Section 8.8 Confidentiality of Proceedings.

The mediation process is to be considered a settlement or compromise negotiation for the purpose of all state and federal rules protecting disclosures made during such proceedings from later discovery or use in evidence. The entire mediation process is confidential, and no stenographic or other record shall be made except to memorialize a settlement record, if applicable. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any Party or a Party's agent, employee, or attorney are confidential and, where appropriate, are to be considered attorney work product and privileged. Such conduct, statements,

promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the Parties. This is provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this mediation process.

Section 8.9 Termination of Mediation.

The mediation process shall continue until the case is resolved, until the mediator makes a finding that there is no possibility of settlement through mediation, or until any Party announces its decision not to continue further in the mediation process. In the event of termination of mediation, the parties may proceed under Article VII of this Agreement and may pursue any and all judicial remedies available to them.

ARTICLE IX
GENERAL PROVISIONS

Section 9.0 Enforcement; Waiver.

The failure on the part of any Party to enforce any provision of this Agreement shall not be construed as a waiver of that Party's right to enforce such provisions in the future. A waiver of any term of this Agreement on the part of any Party in one case shall not be construed as a waiver in any other case and shall not affect any other term of this Agreement.

Section 9.1 Assignment.

This Agreement shall not be assigned by any Party without the prior written consent of the other Parties.

Section 9.2 Binding Effect.

This Agreement shall inure to the benefit of, and be binding upon Forsyth County's, the City of Milton's and Fulton County's respective successors, heirs and assigns.

Section 9.3 Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto and supersedes all previous or contemporaneous communications, representations, or agreements pertaining to the subjects addressed herein.

Section 9.4 Recordkeeping.

The Parties agree that the public shall have access, at all reasonable times, to all documents and information pertaining to the services provided hereunder, subject to the provisions of the

Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, and Forsyth County agrees to require any independent contractor providing services hereunder to allow access by Fulton County and the City of Milton and the public to all documents subject to disclosure under applicable law. Forsyth County further agrees to require any independent contractor providing services hereunder to retain all public records in accordance with applicable records retention and disposal requirements, including but not limited to the Georgia Records Act, O.C.G.A. § 50-18-90, *et seq.*

Section 9.5 Notices.

All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid, or by utilizing the services of a nationally recognized overnight courier service with signed verification of delivery. Notices shall be deemed given only when actually received at the address first given below with respect to each Party.

Notices required to be given to Forsyth County pursuant to this Agreement shall be addressed as follows:

Chairman
Forsyth County Board of Commissioners
110 East Main Street
Cumming, Georgia 30040

With copies to:

Director
Forsyth County Water and Sewer
110 East Main Street
Cumming, Georgia 30040

Forsyth County Attorney
Jarrard & Davis, LLP
222 Webb Street
Cumming, Georgia 30040

Notices required to be given to Fulton County pursuant to this Agreement shall be addressed as follows:

Chairman
Fulton County Board of Commissioners
141 Pryor Street, SW
Atlanta, Georgia 30303

With copies to:

Director
Fulton County Department of Public Works
141 Pryor Street, SW
Atlanta, Georgia 30303

Fulton County Attorney
141 Pryor Street, SW
Suite 4083
Atlanta, Georgia 30303

Notices required to be given to City of Milton pursuant to this Agreement shall be addressed as follows:

Mayor
City of Milton
Milton City Hall
13000 Deerfield Parkway, Suite 107
Milton, Georgia 30004

With copies to:

Director
City of Milton Department of Public Works
Milton City Hall
13000 Deerfield Parkway, Suite 107
Milton, Georgia 30004

City of Milton Attorney
Jarrard & Davis, LLP
222 Webb Street
Cumming, Georgia 30040

Section 9.6 Choice of Law.

This Agreement shall be construed and governed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes, and laws of the State of Georgia will control.

Section 9.7 No Third Party Rights.

This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third-parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

Section 9.8 Uncontrollable Circumstances.

The performance or non-performance of any term or provision of this Agreement shall be excused if the Party is reasonably precluded from such performance by the occurrence of an uncontrollable circumstance. Such excuse of performance or non-performance shall be only to the minimum extent reasonably forced on such Party by such event, and that Party shall continue to perform all other duties and responsibilities hereunder. A Party relying on the occurrence of an uncontrollable circumstance as an excuse for non-performance of a duty required by this Agreement shall, as soon as is reasonable possible upon becoming aware of such an event and its consequences, notify the other Party of the same and shall take all reasonable efforts to eliminate the cause of such non-performance and to resume full performance in accordance with this Agreement.

Section 9.9 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall constitute an original. It shall not be necessary that each signatory sign the same counterpart, provided, however, that each has signed an identical counterpart.

Section 9.10 Authority to Enter Agreement.

Each of the individuals who execute this Agreement on behalf of the respective Parties agree and represent that they are authorized to do so and further agree and represent that this Agreement has been duly passed upon by the required governmental agency or board in accordance with all applicable laws. The Parties hereto agree that this Agreement is an intergovernmental contract, and is entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia 1983.

Section 9.11 Amendment of Service Delivery Strategy.

Each Party agrees to cooperate fully with the others in amending its Service Delivery Strategy (required pursuant to O.C.G.A. § 36-70-20, et seq.) to the extent such amendment is necessary as a result of this Agreement.

Section 9.12 Severability.

If one or more of the provisions of this Agreement is held or declared to be illegal or invalid, that illegality or invalidity shall not affect any other provision of this Agreement and this Agreement will be construed and enforced as if the illegal or invalid provision had not been contained in it.

Section 9.13 Title VI Compliance.

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Parties agree that, during the performance of this Agreement, the Parties, for themselves, their assignees and successors in interest, will not discriminate against any employee or applicant for employment, any contractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, the Parties agree to comply with all applicable implementing regulations and shall include the substance of this Section in every contract for services contemplated under this Agreement.

Section 9.14 Section Headings.

All section headings herein are inserted for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement.

Section 9.15 Agreement Construction and Interpretation.

Each Party represents that it has reviewed and become familiar with this Agreement and has notified the other Parties of any discrepancies, conflicts, or errors herein. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against one Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Agreement may omit modifying words such as “all” and “any” and articles such as “the” and “an” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

Section 9.16 Use of Singular and Plural.

Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

Section 9.17 E-Verify Compliance.

Pursuant to O.C.G.A. § 13-10-91, Forsyth County, the City of Milton and Fulton County hereby certify and affirm that each, independently, comply with the E-Verify requirements of State law and that all of its contractors and subcontractors are required to register with and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement

program, in according with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period. Forsyth County, the City of Milton and Fulton County further certify and affirm that each comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Rule 300-10-1-.02.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal as of the date first written above.

FORSYTH COUNTY, GEORGIA

ATTESTED:

Greg G. Allen
County Clerk

By: _____
Alfred John, Chairman
Board of Commissioners

APPROVED AS TO CONTENT:

APPROVED AS TO FORM

Director of Forsyth County
Water and Sewer Department

Ken Jarrard
Office of the County Attorney

FULTON COUNTY, GEORGIA

ATTESTED:

Tonya R. Grier
Clerk to the Commission

By: _____
Robb Pitts, Chair
Board of Commissioners

APPROVED AS TO CONTENT:

APPROVED AS TO FORM

David E. Clark
Director of Public Works

Y. Soo Jo
Office of the County Attorney

CITY OF MILTON, GEORGIA

ATTESTED:

Tammy Lowit
City Clerk

By: _____
Peyton Jamison, Mayor
City Council

APPROVED AS TO CONTENT:

APPROVED AS TO FORM

Sara Leaders
Director of Public Works

Ken Jarrard
Office of the City Attorney

EXHIBIT A