

INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN
THE CITY OF JOHNS CREEK, GEORGIA AND FULTON COUNTY, GEORGIA
FOR THE ADJUSTMENT, RELOCATION AND/OR CONSTRUCTION
OF APPROXIMATELY 400 LF OF WATERLINE ALONG BARNWELL ROAD AT
RIVERMONT PARKWAY INTERSECTION

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is executed as of 7th day of Dec., 2020, by and between **CITY OF JOHNS CREEK, GEORGIA ("CITY")**, a municipality of the State of Georgia, and **FULTON COUNTY, GEORGIA ("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 proposes to undertake a transportation project to enhance Barnwell Road at Rivermont Parkway by contract through its competitive bidding procedures ("TRANSPORTATION PROJECT"); and

WHEREAS, the COUNTY has fire hydrant, water main, water meter, service lines, and valves, as shown on construction plans for the TRANSPORTATION PROJECT ("UTILITIES"); and

WHEREAS, the UTILITIES must be adjusted or relocated as a result of the TRANSPORTATION PROJECT ("UTILITIES RELOCATION"); and

WHEREAS, the COUNTY does not have adequate equipment and staff to adjust or relocate its UTILITIES, or for other reasons considers it advantageous to have this work included in the TRANSPORTATION PROJECT contract to be let to bid by the CITY; 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 fifty (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, the COUNTY and CITY desire to enter into an IGA to facilitate the UTILITIES RELOCATION; and

WHEREAS, as consideration for UTILITIES RELOCATION the COUNTY will reimburse the adjustment or relocation cost incurred by the CITY; and

WHEREAS, the COUNTY and CITY have determined that this IGA serves the best interest of all parties and their citizens by improving transportation and utility 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 utility infrastructure improvements.

II. COMPENSATION AND PAYMENT.

The total estimated cost of UTILITIES RELOCATION work contemplated under this IGA is **Two Hundred Fifty Thousand and No/Dollars (\$250,000.00)**. Said amount shall be the total COUNTY contribution to the UTILITIES RELOCATION work contemplated under this IGA and is the maximum amount of the COUNTY's obligation under this IGA, unless the IGA is amended by the parties as provided herein. It is agreed that the compensation specified herein includes both direct and indirect costs incurred in the performance of this IGA 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 either Party, pursuant to the provisions of this IGA, terminate the work under this IGA, the performing Party shall be paid for the percentage of work completed as of the date of termination.

III. OVERVIEW.

The UTILITIES RELOCATION project contemplated by this IGA consists of the following:

ADJUSTMENT, RELOCATION AND/OR CONSTRUCTION OF APPROXIMATELY 400 LF OF WATERLINE ALONG BARNWELL ROAD AT RIVERMONT PARKWAY INTERSECTION).

IV. FULTON COUNTY'S RESPONSIBILITIES.

1. The COUNTY shall undertake the UTILITIES RELOCATION project design and submit a cost estimate to the CITY for its utility adjustment or relocation based on GDOT specifications and mean item summary.
2. The plans and estimate for the UTILITIES RELOCATION work shall be subject to approval of the COUNTY prior to advertising for bids.
3. The COUNTY shall have the right to visit and to inspect the UTILITIES RELOCATION work at any time and to advise the CITY's engineer of any observed discrepancies or potential problems with the approved UTILITIES RELOCATION plan.
4. The COUNTY shall respond, in a timely manner, to any issue that may arise during the construction phase of the UTILITIES RELOCATION. Every reasonable effort shall be made with respect to matters within the control of the COUNTY so as not to delay the contractor under any circumstances.

5. The COUNTY is responsible to reimburse all material and labor costs to the CITY related to specified UTILITIES RELOCATION work perform as part of the TRANSPORTATION PROJECT. The reimbursement shall be based on the actual construction costs and shall be paid by the COUNTY within thirty (30) days after delivery of payment request by the CITY.
6. Upon certification by the CITY's engineer that the UTILITIES RELOCATION work has been completed in accordance with the plans and specifications, the COUNTY will accept the adjusted, relocated and/or newly construction UTILITIES and will thereafter operate and maintain said UTILITIES without further cost to the CITY or its contractor.

V. CITY OF JOHNS CREEK'S RESPONSIBILITIES.

1. The CITY shall undertake the UTILITIES RELOCATION contracting and construction and shall assume responsibility for management and completion of the UTILITIES RELOCATION project.
2. The plans and estimate for the UTILITIES RELOCATION work shall be subject to approval of the CITY prior to advertising for TRANSPORTATION PROJECT bids.
3. All UTILITIES RELOCATION work, necessary for the adjustment or relocation of the described UTILITIES in accordance with the final UTILITIES RELOCATION plans when approved, shall be included in the TRANSPORTATION PROJECT contract and let to bid by the CITY.
4. All construction, engineering and contract supervision for the TRANSPORTATION PROJECT shall be the responsibility of the CITY. The CITY shall be responsible to assure that all UTILITIES RELOCATION work is accomplished in accordance with the plans and specifications and to consult with the COUNTY before authorizing any changes or deviations which affect the COUNTY's UTILITIES.
5. The CITY shall respond, in a reasonably timely manner, to any issue that may arise during the construction phase for the UTILITIES RELOCATION. Every reasonable effort shall be made with respect to matters with the control of the CITY so as not to delay the contractor under any circumstances.

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.
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.

VII. TERM. This IGA shall be effective upon execution by both Parties and continue until December 31, 2022, unless the IGA is terminated as provided herein 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 as provided for herein.

VIII. 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.

IX. 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 stems 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. To the extent allowed by law, the CITY shall ensure that any contractor retained or selected by the CITY to provide services related to the UTILITIES RELOCATOIN work contemplated in this IGA shall agree to indemnify and hold harmless the COUTNY as well as its commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which it or any of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, arising out of the UTILITIES RELOCATION work irrespective of the COUNTY's negligence (except that no Party shall be indemnified for their own sole negligence). Any contractor retained by the CITY, if requested, shall assume and defend at the contractor's own expense, any suit, action or other legal proceedings arising therefrom in which the COUNTY, and/or its commissioners, officers, officials, employees, and agents, are named as a party, and the contractor hereby agrees to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against the COUNTY and/or its commissioners,

officers, officials, employees, and agents, arising therefrom. The CITY shall ensure that the provisions of this Article are included in all contracts and subcontracts.

X. INSURANCE. Prior to beginning the UTILITIES RELOCATION work, the CITY shall obtain and where the CITY is utilizing the services of a contractor to carry out the UTILITIES RELOCATION work, shall also cause its contractors to obtain and furnish certificates of insurance in which the COUNTY is named as an "Additional Insured," for the following minimum amounts of insurance prior to the undertaking of any of the activities contemplated under this IGA, as applicable:

- i. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- ii. Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) 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 IGA and until final completion of the UTILITIES RELOCATION work contemplated under this IGA. The scope and coverage of the insurance protection shall extend beyond the completion of the UTILITIES RELOCATION project until the expiration of any applicable statutes of limitations. The CITY shall retain the right to satisfy any or all of its insurance obligations under this IGA by means of a Self-Funded Plan or Program. 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.

XI. CONFIDENTIALITY.

The CITY agrees to establish appropriate administrative, technical, and physical safeguards to ensure that it does not provide and make available confidentiality, protected, proprietary or privileged data in the System. The CITY agrees 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 through the performance of the IGA. Each

Party makes no warranties or representations to the public, to the other Party or to third parties regarding data made available through the performance of the IGA. It shall be the responsibility of each Party or any third party to verify the accuracy of data. Each Party to this IGA 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 IGA 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 pertaining to this IGA. The CITY shall perform its responsibilities under this IGA, commencing on receipt a copy of written "Notice to Proceed" from Fulton County, shall complete the UTILITIES RELOCATION project based on the construction time for the TRANSPORTATION PROJECT.

XIV. REVIEW OF WORK.

Authorized representatives of the COUNTY may at all reasonable times review and inspect the activities and data collected under the terms of this IGA and any amendments thereto, including but not limited to, all reports, drawings, studies, specifications, estimates, maps and computations prepared by or for the CITY related to the UTILITIES RELOCATION. The 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 of the UTILITIES RELOCATION work shall not relieve the CITY to exercise reasonable care to correct, at its expense, any of its errors in the UTILITIES RELOCATION work. The COUNTY's review recommendations shall be incorporated into the UTILITIES RELOCATION work activities of the CITY.

XV. RECORDS.

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

XVI. MISCELLANEOUS.

- A. **Entire Agreement; Counterparts.** This IGA may be executed by the Parties in counterparts, each of which shall constitute an original. This IGA sets forth the entire understanding between the Parties pending the execution of the Agreement, 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 the

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.

- 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 its 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 or other governmental immunity as allowed by law.
- D. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, the 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:
 - 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 the valid obligations with respect to it 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.
 - 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. 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.

3. **No Conflicting Agreements.** The execution, delivery and performance of this IGA will not violate or contravene any contract, undertaking, instrument or other agreement to which the COUNTY and/or 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 and 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.

- E. **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 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.
- F. **No Third-Party Beneficiaries.** This IGA is made between and limited to the 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 the 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.
- G. **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.
- H. **Survival of Representations.** All terms, conditions, covenants, warranties contained in any determination of this IGA shall survive the termination of this IGA until amended by the applicable governing authority.

- I. **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 the 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 the CITY:

Joan Jones
City Clerk
11360 Lakefield Drive
Johns Creek, Ga 30097

Copy to:

City Attorney
CAROTHERS & MITCHELL, LLC
1809 Buford Highway
Buford, Ga 30518

- J. **Severability Clause.** In the event that any provision of this IGA shall be deemed to be severable or invalid, and 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.

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.

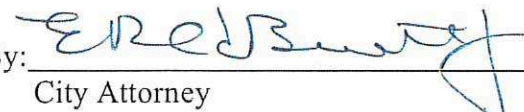
CITY OF JOHNS CREEK, GEORGIA

By: 
Michael E. Bodker, Mayor

Attest:

By: 
Joan C. Jones, City Clerk

Approved as to Form:

By: 
City Attorney

FULTON COUNTY, GEORGIA

By: 
Rob Pitts, Chairman
Board of Commissioners

Attest:

By: 

TONYA R. GRIER
CLERK TO THE COMMISSION

By: 
County Attorney

