



Fulton County Board of Commissioners
Agenda Item Summary

14-0821

BOC Meeting Date
10/15/2014

Requesting Agency

Facilities and Transportation Services

Commission Districts Affected

1, 2, 7

Requested Action *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*

Request approval to execute a Utility Relocation Agreement with Georgia Power Company for work to be performed on Old National Highway from North of Flat Shoals Road to Sullivan Road. Fulton County will pay Georgia Power Company a total amount of \$39,790 for utility adjustment on Old National Highway project, P.I. 0006912, GDOT Project Number CSSTP-0006-00(912), because of utility prior rights claim by Georgia Power. Effective upon BOC approval

Requirement for Board Action *(Cite specific Board policy, statute or code requirement)*

In accordance with Purchasing Code Section 102-420, contract modifications within the scope of the contract and necessary for contract completion of the contract, in the specifications, services, time of performance or terms and conditions of the contract shall be forwarded to the Board of Commissioners for approval.

Is this Item Goal Related? *(If yes, describe how this action meets the specific Board Focus Area or Goal)*

Yes Focus Areas – Community Services
Goal 1 – Provide cost-effective municipal services to sustain the quality of life in
Fulton County
Objective 4 – Improve transportation and mobility.

Is this a purchasing item?

No

Summary & Background

(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)

Fulton County is required to certify utility relocations with GDOT before the project being authorized for the construction phase. GA Power Company submitted prior rights and requested compensation to relocate its utilities required for the sidewalk project approved by GDOT.

The Old National Highway Sidewalks project has Federal Funds programed for utility relocations in the amount of \$150,000. Fulton County will request reimbursements upon construction letting of the project from GDOT. This project is identified in the Transportation Improvement Program (TIP 2014-2019) PI # 0006912.

Contract & Compliance Information

(Provide Contractor and Subcontractor details.)

| Agency Director Approval | | County Manager's Approval |
|--------------------------|-------|---------------------------|
| Typed Name and Title | Phone | |
| Signature | Date | |

Revised 03/12/09 (Previous versions are obsolete)

| Agency Director Approval | | County Manager's Approval |
|--------------------------|-------|---------------------------|
| Typed Name and Title | Phone | |
| Signature | Date | |

Revised 03/12/09 (Previous versions are obsolete)

| | | | | |
|--|-----------------|------------|------------|--------------|
| Solicitation Information | NON-MFBE | MBE | FBE | TOTAL |
| No. Bid Notices Sent: | | | | |
| No. Bids Received: | | | | |
| | | | | |
| Total Contract Value | . | | | |
| Total M/FBE Values | . | | | |
| Total Prime Value | . | | | |
| | | | | |
| Fiscal Impact / Funding Source <i>(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)</i> Federal Reimbursements(80%) - 509-540-5400-T209: \$39,790 | | | | |
| Exhibits Attached <i>(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)</i> | | | | |
| Source of Additional Information <i>(Type Name, Title, Agency and Phone)</i> | | | | |

| | | |
|---------------------------------|--------------|----------------------------------|
| Agency Director Approval | | County Manager's Approval |
| Typed Name and Title | Phone | |
| Signature | Date | |

Procurement**Contract Attached:**

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Previous Contracts:

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Solicitation Number:

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Submitting Agency:Facility and
Transportation
Services Department**Staff Contact:**

Antonio Valenzuela

Contact Phone:

404-612-2052

Description:.**FINANCIAL SUMMARY****Total Contract Value:**

Original Approved Amount: \$39,790.00

Previous Adjustments: .

This Request: \$39,790.00

TOTAL: .

MBE/FBE Participation:

Amount: . %: .

Amount: . %: .

Amount: . %: .

Amount: . %: .

Grant Information Summary:

Amount Requested: .

☐

Cash

Match Required: .

☐

In-Kind

Start Date: .

☐

Approval to Award

End Date: .

☐

Apply & Accept

Match Account \$: .

Funding Line 1:

509-540-5400-T209

Funding Line 2:

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Funding Line 3:

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Funding Line 4:

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KEY CONTRACT TERMS**Start Date:**

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End Date:

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Cost Adjustment:

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Renewal/Extension Terms:

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ROUTING & APPROVALS

(Do not edit below this line)

| | | | |
|---|--------------------------------------|-------------------|-----------------|
| X | Originating Department: | Pye, April | Date: 9/29/2014 |
| . | County Attorney: | . | Date: . |
| . | Purchasing/Contract Compliance: | . | Date: . |
| . | Finance/Budget Analyst/Grants Admin: | . | Date: . |
| . | Grants Management: | . | Date: . |
| X | County Manager: | O'Connor, Patrick | Date: 10/9/2014 |

UTILITY RELOCATION AGREEMENT

PROJECT NAME: **SR 279/OLD NATIONAL HWY FM N OF
FLAT SHOALS TO SULLIVAN RD**

PROJECT NUMBER: **0006912**

GDOT PROJECT NUMBER: **CSSTP-0006-00(912)**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 20____, by and between **FULTON COUNTY**, State of Georgia (hereinafter referred to as the "County"), and **GEORGIA POWER COMPANY** (hereinafter referred to as the "Company"). This Agreement may refer to either County or Company, or both, as a "Party" or "Parties."

WITNESSETH:

WHEREAS, the County proposes under the above written Project to construct SR279/OLD NATIONAL HWY FM N. OF FLAT SHOALS TO SULLIVAN RD (hereinafter referred to as the "Project"); and

WHEREAS, due to the construction of the Project, it will become necessary for the Company to remove, relocate or make certain adjustments to the Company's existing facilities (such facilities, including but not limited to overhead and underground electric transmission, distribution and communication lines, towers, frames, poles, facilities, wires, transformers, service pedestals, apparatus, manholes, conduits, fixtures, appliances, cables, protective wires and devices all being hereinafter referred to collectively as the "Facilities" or individually as the "Facility"); and

WHEREAS, the Company, as hereinafter provided, may assert that it has certain property interests and rights and utilized such property interests and rights for the placement of its Facilities prior in time to County's acquisition of the road right(s)-of-way, all as involved in said Project; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants of the Parties hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Section 1 THE WORK**1.1 Company Facilities**

Company, with its regular construction or maintenance crews and personnel, at its standard schedule of wages and working hours (as may be applicable from time to time during the term of this Agreement), and working in accordance with the terms of its agreements with such employees, will remove, relocate or make adjustments to its Facilities in accordance with the scope of work and Estimate (defined below) attached hereto as Exhibit "A" and incorporated herein by reference (the "Work"). Company shall make all technical decisions concerning the Work and may elect to contract any portion of the Work.

1.2 Road Right-of-Way

Prior to Company commencing the Work, County will provide written assurances to Company that it has acquired the necessary new road right-of-way (including information on the property rights acquired).

1.3 Traffic Control

Company shall make a reasonable effort to provide signing and other traffic control measures during the Work, in accordance with PART VI of the U. S. Department of Transportation Manual on Uniform Traffic Control Devices, current edition, all at the expense of the County.

Section 2 COSTS AND PAYMENT

2.1 Compensable Property Interests.

Company shall perform the Work in accordance with the estimate attached hereto as Exhibit "A" and incorporated herein by reference (the "Total Estimate"). The total amount of the Total Estimate is THIRTY NINE THOUSAND, SEVEN HUNDRED NINETY Dollars (\$39,790.00). The amount of the Total Estimate that corresponds to Company's claim that it has compensable property interests with respect to the Project (the "Reimbursement Claim") is THIRTY NINE THOUSAND, SEVEN HUNDRED NINETY Dollars (\$39,790.00), otherwise reflected as ONE HUNDRED percent (100%) of the Total Estimate. The Reimbursement Claim is limited to: (a) the costs of removing, relocating or adjusting those Facilities which are physically in place and in conflict with the proposed construction and/or maintenance; (b) where replacement is necessary, the costs of replacement in kind, and any improvements or betterments made necessary by the proposed construction and/or maintenance; and (c) the costs incurred in acquiring additional easements or private rights-of-way, including without limitation easements for lines, access, tree trimming, guy wires, anchors and other devices, appliances and other equipment, and any and all other such easements and property rights as may be reasonably necessary for the Company's installation, operation and maintenance of its Facilities (collectively, the "Relocation Costs").

The cost of any improvements or betterments that are not made necessary by the proposed construction or maintenance shall not be subject to the percentage split contemplated above. Such costs shall be paid as follows: (a) the costs of any improvements or betterments of a Facility being made solely at Company's option (and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by Company; and (b) the costs of any improvements or betterments of a Facility being made solely at County's request and not being made necessary by the proposed construction and/or maintenance) shall be fully paid by County.

Upon completion by Company of the Work and subject to determination of Company's Prior Rights Claim in accordance with Sections 3 and 4 below, County will pay Company a sum equal to the lesser of (a) THIRTY NINE THOUSAND, SEVEN HUNDRED NINETY Dollars (\$39,790.00), otherwise reflected as ONE HUNDRED percent

(100%) of the Total Estimate and representing the aforementioned Reimbursement Claim, or (b) the corresponding percentage of actual Relocation Costs representing Company's compensable property interests with respect to the Project. County will also pay Company for the costs of any improvements or betterments of a Facility being made solely at County's request and not being made necessary by the proposed construction and/or maintenance.

2.2 **Progress Payments**

If Company chooses to submit invoices for progress payments, County will pay same within thirty (30) days from receipt of the invoice, subject to Verification (as defined below) thereof by the County. Upon completion of the Work, Company shall submit a final bill to County and County shall make a final payment within thirty (30) days from receipt of the final bill, subject to Verification thereof by the County.

2.3 **Change in Scope**

In the event there is a change in the Project, including without limitation a change in scope, design, plans, service, property interests to be acquired, engineering or costs, due to either (a) events or circumstances beyond Company's reasonable control, or (b) County's request, the Parties will negotiate in good faith a mutually acceptable agreement or amendment to this Agreement, in writing, to address such change and any increase in costs above those set forth in the Estimate.

Section 3 **PRIOR RIGHTS DETERMINATION**

3.1 If Company determines it has compensable property interests with respect to the Project, Company will submit a Reimbursement Claim. The Parties agree that they will in good faith share non-privileged information with each other related to the issue of prior rights for the Project. If County determines that Company's evidence is insufficient to make a determination as to Company's compensable property interests and the percentage of the Relocation Costs to be paid by Company based upon such compensable property interests, County will provide Company with a written basis for such insufficiency and request that Company provide additional information. County will make a determination as to any asserted Reimbursement Claim before the earlier of: (a) the date that is thirty (30) days after receipt of the Reimbursement Claim; and (b) the date on which Company needs to commence the Work in order to prevent a Project delay (the "Commencement Date").

3.2 In the event that a determination cannot reasonably be made prior to the Commencement Date, provided that County certifies in writing to Company that the Project is time-sensitive due to construction scheduling with the possibility of damages for delay, safety concerns, or critical funding deadlines, Company will commence the Work without a written determination having been made. In such case, the Party's rights, claims and defenses with regard to the issue of compensable property interests and prior rights will not be waived or affected in any manner. If County does not thereafter make a determination regarding the Reimbursement Claim within six (6) months from the date of County's receipt of same, the Reimbursement Claim will be deemed approved by County.

Section 4 **DISPUTE RESOLUTION**

4.1 **Disagreement**

If Company disagrees with County's determination with regard to the Reimbursement Claim and the Parties are unable to settle the issue through informal negotiations, then, at the request of either Party, the Parties agree to escalate the matter pursuant to Section 4.2 below.

4.2 **Dispute Notice**

Except as otherwise set forth in this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, will be settled: (a) first, by good faith efforts to reach mutual agreement of the Parties; and (b) second, if mutual agreement is not reached within thirty (30) calendar days of a written request by a Party to resolve the controversy or claim (the "Dispute Notice"), each of the Parties will appoint a designated representative who has authority to settle the dispute (or who has authority to recommend to the governing body of such Party a settlement of the dispute) and who is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives, provided, however, that all reasonable requests for relevant information made by one Party to the other Party will be honored if such information is reasonably available. If within sixty (60) days after issuance of a Dispute Notice (a) the Parties are unable to resolve issues related to the dispute, or (b) County fails to approve any tentative agreement reached, the Parties agree to participate in confidential, non-binding mediation pursuant to Section 4.3 below, it being understood, however, that nothing herein will diminish or relieve either Party of its rights or obligations under this Section 4.

4.3 **Mediation**

If the Parties are unable to resolve a dispute through informal negotiations or pursuant to Section 4.2, the Parties agree to participate in confidential, non-binding mediation by an impartial, third party mediator mutually agreed upon by the Parties, at a mutually convenient location. The Parties agree that a potential mediator's experience in prior rights and real estate law will be relevant factors in selecting a mediator. In the event the Parties are unable to agree on a third party mediator within ninety (90) days of issuance of the Dispute Notice, each Party shall designate a mediation representative, and the two mediator representatives shall in good faith select a third party mediator. Each Party shall be responsible for its own attorneys' fees and expenses and for providing its own information and documentation applicable to the dispute to the mediator. All other agreed upon costs of the mediation will be apportioned equally to each Party. Any dispute not resolved by negotiation, escalation or mediation may then be submitted to a court of competent jurisdiction, and either Party may invoke any remedies at law or in equity. Nothing contained herein, however, will preclude the Parties from first seeking temporary injunctive or other equitable relief. The Parties agree that any statute of limitations,

equity or other time-based periods shall be tolled as of and from the date of the Dispute Notice until a complaint, if any, is filed.

Section 5 VERIFICATION

5.1 Material Discrepancy

For purposes of this Section 5, "Verification" means that County has reasonably determined that there is a material discrepancy between Company's invoiced charges and County's calculation of charges owed, which invoiced charges are subject to a bona fide dispute; provided, however, County agrees to provide the Company with written notice, including supporting documentation, illustrating the basis for such bona fide dispute, within sixty (60) days of receipt of the invoice in dispute. Should County fail to provide such documentation within the specified time period, County must pay the disputed amount. County must pay any undisputed portion of the invoice total within thirty (30) days after its receipt of the invoice. County must pay any disputed portion of the invoice total within thirty (30) days of the date the dispute is resolved, to the extent the dispute is resolved in favor of Company.

5.2 Audit

At any time within thirty-six (36) months after the date of final payment, County, at its sole expense, may audit the non-privileged cost records, support documentation and accounts of Company pertaining to this Project to solely assess the accuracy of the invoices submitted by Company and notify Company of any amount of any unallowable expenditure made in the final payment under this Agreement, or, if no unallowable expenditure is found, notify Company of that fact in writing. Any such audit will be conducted by representatives of County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, after reasonable advance written notice to Company and during regular business hours at the offices of Company in a manner that does not unreasonably interfere with Company's business activities and subject to Company's reasonable security requirements. As a prerequisite to conducting such audit, County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, will sign Company's Nondisclosure Agreement. Company may redact from its records provided to County information that is confidential and irrelevant to the purposes of the audit. Company will reasonably cooperate in any such audit, providing access to Company records that are reasonably necessary to enable County to test the accuracy of the invoices to which the audit pertains, provided that County or, if applicable, the Georgia Department of Transportation or the Federal Highway Administration, may only review, but not copy, such records. If Company agrees with the audit results and does not pay any such bill within ninety (90) days of receipt of the bill from County (based on the mutually agreed upon audit results), County may set off the amount of such bill against the amounts owed Company on any then-current contract between Company and County. If, following the audit, the Parties are unable to resolve any dispute concerning the results of the audit through informal negotiation, the provisions of Sections 4.2 and 4.3 will govern the resolution of the dispute. County may not perform an audit pursuant to this Agreement more frequently than once per calendar year and may not conduct audits twice within any six (6) months.

Section 6 **Buy America**

In accordance with the BUY AMERICA requirements of the Federal regulations (23 U.S.C. 313 and 23 CFR 635.410) all manufacturing processes for steel and iron products or predominantly of steel or iron (at least 90% steel or iron content) furnished for permanent incorporation into the work on this project shall occur in the United States. The only exception of this requirement is the production of pig iron and the processing, pelletizing and reduction of iron ore, which may occur in another County. Other than these exceptions, all melting, rolling, extruding, machining, bending, grinding, drilling, coating, etc. must occur in the United States.

- a) Products of steel include, but are not limited to, such products as structural steel piles, reinforcing steel, structural plate, steel culverts, guardrail steel supports for signs, signals and luminaires, and cable wire/strand. Products of iron include, but are not limited to, such products as cast iron frames and grates and ductile iron pipe. Coatings include, but are not limited to, the applications of epoxy, galvanizing and paint. The coating material is not limited to this clause, only the application process.
- b) A Certificate of Compliance shall be furnished for steel and iron products as part of the backup information with the billing. The form for this certification entitled "Buy America Certificate of Compliance" is attached to this agreement as "Exhibit B". Records to be maintained by the City and the Georgia Department of Transportation-Office of Utilities for this certification shall include a signed mill test report and a signed certification by each supplier, distributor, fabricator, and manufacturer that has handled the steel or iron product affirming that very process, including the application of a coating performed on the steel or iron product has been carried out in the United States of America, except as allowed by this Section. The lack of these certifications will be justification for rejection of the steel and/or iron product or nonpayment of the work.
- c) The requirements of said law and regulations do not prevent the use of miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble and construct the above products, manufactured products that are not predominantly steel or iron or a minimal use of foreign steel and iron materials if the cost of such materials used does not exceed one-tenth of one percent (0.1%) of the total contract price or \$2,500.00, whichever is greater.

Section 7 **COUNTY AS PARTY**

County acknowledges that this Agreement is "proprietary" in nature under applicable Georgia law, as permitted by O.C.G.A. § 36-60-130), and not "governmental" or "legislative," as prohibited by O.C.G.A. § 36-30-3(a). County further represents and warrants that this Agreement will comply with all applicable laws concerning County actions and approvals and execution of binding agreements. County covenants to undertake all actions necessary to bind County.

Section 8 **COMMENCEMENT AND TERMINATION CONDITIONS**

Company is not obligated to commence the Work until Parties agree on the removal, relocation and/or adjustment to Company's facilities required by the Project. If County fails to authorize commencement of the Work by July 28, 2015, Company will have no obligation to begin the Work and may terminate this Agreement without penalty by providing County with notice in writing. If County fails to sign and return this Agreement to Company by January 28, 2015, any offer made by Company pursuant to the Agreement is automatically revoked and the agreement is void and of no effect.

Section 9 **MISCELLANEOUS PROVISIONS**

Duplicate originals of this Agreement will be executed, each of which will be deemed an original but both of which together will constitute one and the same instrument. This Agreement may be modified only by an amendment executed in writing by a duly authorized representative for each Party. This Agreement contains the entire agreement of the Parties, and all prior oral agreements are superseded and integrated into this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia. This Agreement shall accrue to the benefit of and be binding upon the successors and assigns of the Parties. The Parties agree that this Agreement shall be deemed to have been executed in Georgia.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Contract in four (4) counterparts, each of which shall be deemed an original in the year and day first above mentioned.

ATTEST:

FULTON County, GEORGIA

By: _____

By: _____

Title: _____

Chairman, Board of Commissioners

Witness: -----

(SEAL)

Notary: -----
(SEAL)

Approved as to Form by:

Fulton County Department of Transportation

ATTEST:

GEORGIA POWER COMPANY

By: _____

By: _____

Title: -----

Title: Distribution Resource Manager

Witness: _____

Date: -----

Notary: _____
(SEAL)

[Give proper title of

each person executing

Agreement. Attach seal as

required.] PI#0006912