

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN FULTON COUNTY, GEORGIA  
AND CITY OF MILTON, GEORGIA**

**For Hopewell Road @ Bethany Bend Project**

**THIS INTERGOVERNMENTAL AGREEMENT** ("IGA") is executed as of \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the **CITY OF MILTON, GEORGIA** ("City" or "City of Milton"), a municipality of the State of Georgia, and **FULTON COUNTY GEORGIA** ("County" or "Fulton County"), a political subdivision of the State of Georgia. The term "Party" refers individually to either City of Milton or Fulton County and the term "Parties" refers to both City of Milton and Fulton County.

**WHEREAS**, the City has undertaken a project to improve the intersection of Hopewell Road @ Bethany Bend. (hereinafter, "Project") through its competitive bidding procedures; and

**WHEREAS**, the County has the following utility (Water) facilities which must be adjusted or relocated and provide connection along new roadway as a result of the proposed contract: The facilities include fire hydrant, water main, water meter and valve boxes, as shown on construction plans for the Project; and

**WHEREAS**, the County does not have adequate equipment and staff to adjust its facilities or for other reasons considers it advantageous to have this work included in the City's construction contract; and

**WHEREAS**, the Constitution of the State of Georgia provides, in Article IX, Section III, Paragraph I, Subparagraph (a), that any county or municipality of the State of Georgia may contract for any period not exceeding 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 wherein the City, through its Contractor, can adjust and relocate the County's facilities in a more economical and efficient manner without disruption to the Project and

**WHEREAS**, as consideration for the City's relocation work, County will reimburse the relocation cost to the City; and

**WHEREAS**, the County and City have determined that this IGA serves the best interest of all parties and their citizens by the improvement of public infrastructure.

**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 including water.

## **II. COMPENSATION AND PAYMENT.**

The total estimated cost of work contemplated under this IGA is \$503,585.00 (Five Hundred Three Thousand Five Hundred Eighty Five dollars and No Cents). This \$503,585.00 amount shall be the total Fulton County contribution to the work contemplated under this IGA and is the maximum amount of Fulton County's obligation under this IGA, unless the IGA is amended by the parties. It is agreed that the compensation hereinafter specified 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/s shall be paid for the percentage of work completed at the point of termination, in addition to any just claims by the performing party/s.

## **III. OVERVIEW.**

The Project contemplated by this IGA consists of:

- (i) Constructing the waterline relocation for the **Hopewell Road @ Bethany Bend Project**. Upon completion of the work and upon certification by the City's and County's Engineers that the work has been completed in accordance with the plans and specifications, the County will accept the adjusted and additional facilities and will thereafter operate and maintain said facilities without further cost to the City or its contractor.

## **IV. FULTON COUNTY RESPONSIBILITIES.**

1. County agrees that the Project design is accurately shown in the plans and specifications attached hereto as Exhibit A.
2. The County shall have the right to visit and to inspect the work at any time and to advise the City's Engineer-in-Charge of any observed discrepancies or potential problems.
3. The County shall respond, in a timely manner, to any issue that may arise during the construction phase. Every effort shall be made not to delay the contractor under any circumstances.
4. The County is responsible to reimburse all material and labor costs to the City related to specified utility relocations for this Project that are completed to the reasonable satisfaction of the County in accordance with the plans and specifications. The reimbursement shall be based on the actual construction costs and shall be paid by the County within forty-five (45)

days after request by the City.

5. The County shall be responsible to assure that all utility work is accomplished in accordance with the plans and specifications.

#### **V. CITY OF MILTON 'S RESPONSIBILITIES.**

1. The City shall undertake the contracting and assume responsibility for its management and completion.
2. All work, necessary for the adjustment or relocation of the described utilities in accordance with the final plans shall be included in the contract and let to bid by the City.
3. All construction, engineering and contract supervision shall be the responsibility of the City. The City shall consult with the County before authorizing any changes or deviations which affect the County's facilities.
4. The City shall respond, in a timely manner, to any issue that may arise during the construction phase. All efforts shall be made 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 completion of the Project and full reimbursement for the cost of the work by the County, 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.

**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 City of Milton shall ensure that any contractor retained or selected by City of Milton to provide services related to the work contemplated in this agreement shall agree to indemnify and hold harmless Fulton County as well as Fulton County's commissioners, officers, officials, employees, and agents, from and against any and all loss and/or expense which they 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, irrespective of Fulton County's negligence (except that no party shall be indemnified for their own sole negligence). Any contractor retained by City of Milton, if requested, shall assume and defend at the contractor's own expense, any suit, action or other legal proceedings arising there from in which Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, are named as a party, and the contractor must agree to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against Fulton County, and/or Fulton County's commissioners, officers, officials, employees, and agents, arising there from. City of Milton shall ensure that the provisions of this Article are included in all contracts and subcontracts.

## **X. INSURANCE.**

Prior to beginning work, City shall obtain and, where City is utilizing the services of a contractor to carry out the work, shall also cause its contractors to obtain and furnish certificates of insurance 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. Where City of Milton is utilizing the services of a contractor to carry out the work, it shall also cause its contractors

to obtain and furnish certificates of insurance in which Fulton County is named as an "Additional Insured."

- 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).

Insurance shall be maintained in full force and effect during the life of this IGA and until final completion of the work contemplated under this IGA. The scope and coverage of the insurance protection shall extend beyond the completion of the Project until the expiration of any applicable statutes of limitations. 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 warrantee 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 of written "Notice to Proceed" from Fulton County, shall complete the Project (based on the construction time).

#### **XIV. REVIEW OF WORK.**

Authorized representatives of Fulton 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 . Fulton 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 shall not relieve the City of its professional obligation to correct, at its expense, any of its errors in the work. Fulton County's review recommendations shall be incorporated into the work activities of the City.

The City shall keep accurate records in a manner approved by Fulton County with regard to the activities conducted under this IGA and submit to Fulton County upon request, such information as is required in order to ensure compliance with this agreement.

## **XV. 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, 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 Fulton 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.
- D. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, Fulton 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.
- E. **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 Fulton County and/or the City are a Party or which purport 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 shall be true and correct as of the date hereof and such representations and warranties, and the obligation of Fulton County and 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 Fulton 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 Fulton 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 Fulton 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, warranties contained in any determination of this IGA shall survive the termination of this IGA until amended by the applicable governing authority.
- 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:**

David E. Clark  
Director  
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 City of Milton:**

Sara Leaders  
City of Milton Public Works  
2006 Heritage Walk  
Milton, GA 30004

**Copy to:**

Jarrard & Davis, LLP  
222 Webb Street  
Cumming, GA 30040

- L. **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 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 MILTON, GEORGIA**

By: [Signature]  
Peyton Jamison, Mayor

Attest:

By: [Signature]  
City Clerk



Approved as to Form:

By: [Signature]  
City Attorney  
Dec. 14, 2021

**FULTON COUNTY, GEORGIA**

By: \_\_\_\_\_  
Rob Pitts, Chairman  
Board of Commissioners

Attest:

By: \_\_\_\_\_  
Tonya R. Grier  
Clerk to the Commission

Approved as to Form:

By: \_\_\_\_\_  
County Attorney