

**INTERGOVERNMENTAL AGREEMENT
BETWEEN FULTON COUNTY, GEORGIA
AND FORSYTH COUNTY, GEORGIA**

For G.D.O.T. Project Number: 0004634

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is executed as of the _____ day of _____, 2022, by and between **FORSYTH COUNTY, GEORGIA** (“Forsyth County”), a political subdivision of the State of Georgia, and **FULTON COUNTY GEORGIA** (“Fulton County”), a political subdivision of the State of Georgia. The term “Party” refers individually to either Forsyth County or Fulton County and the term “Parties” refers to both Forsyth County and Fulton County.

WHEREAS, Forsyth County proposes under the above-referenced project to widen McGinnis Ferry Road from Union Hill Road to Sargent Road in Forsyth and Fulton Counties, Georgia (hereinafter through its competitive bidding procedures; and

WHEREAS, Forsyth County has entered into an intergovernmental agreement regarding the Project with the City of Alpharetta, Georgia, and the City of Johns Creek, Georgia, pursuant to which Forsyth County is authorized to undertake all necessary activities within the jurisdictional boundaries of each city in furtherance of Forsyth County’s rights and responsibilities for completion of the Project, including, without limitation, authorization to order relocation of any third-party utilities located in each city; and

WHEREAS, Fulton County has the following utility (Water & Sewer) facilities which must be adjusted and/or relocated and provided connection along new roadway as a result of the proposed Project (hereinafter called the “W&S Relocation”); the facilities include fire hydrants, water main, sewer line, sewer manholes, water meters and valve boxes, as shown on construction plans for the Project; and

WHEREAS, Fulton County does not have adequate equipment and staff to adjust and/or relocate its facilities or for other reasons considers it advantageous to have this work included in Forsyth C construction contract; and

WHEREAS, the plans and specifications for the W&S Relocation (hereinafter called the “Plans”) have been approved by both Forsyth County and Fulton County and are attached hereto and incorporated herein as **Exhibit “A”**.

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, Fulton County and Forsyth County desire to enter into an IGA wherein Forsyth County, through its contractor, can adjust and relocate Fulton County's facilities in a more economical and efficient manner without disruption to the Project; and

WHEREAS, as consideration for Forsyth County adjusting and/or relocating Fulton County's facilities, Fulton County will reimburse the relocation cost to Forsyth County; and

WHEREAS, Fulton County and Forsyth County 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, Fulton County and Forsyth County 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 and sewer.

II. COMPENSATION AND PAYMENT.

1. The approximate non-binding pre-let estimate of the total cost of the W&S Relocation work contemplated under this IGA, subject to change based upon bid acceptance and as otherwise provided herein, is \$1,323,000.00 (One Million Three Hundred Twenty-Three Thousand and 00/100 Dollars) based on Fulton County's estimate attached hereto and incorporated herein as . Fulton County shall pay to Forsyth County 100 percent of the final cost of the W&S Relocation work, as such cost is determined pursuant to the terms of this IGA, performed on behalf of Fulton County. It is agreed that the compensation specified includes both direct and indirect costs incurred in the performance of this IGA.
2. As soon as practicable after the opening of bids and acceptance of a bid by Forsyth County, Forsyth County shall notify Fulton County in writing of the cost amount due Forsyth County. Fulton County shall promptly respond to Forsyth County with either its acceptance of the amount payable by Fulton County for the W&S Relocation or its reasonable determination that there is a material discrepancy or error in the calculation of the amount due Forsyth County. The parties agree that if Fulton County has not responded to Forsyth County's notice of the accepted bid contract amount within ten (10) days after Fulton County's receipt of such notice, Fulton County will be deemed to have accepted such amount and, therefore, Forsyth County will proceed with the work necessary for the W&S Relocation as provided herein.

3. Forsyth County will provide Fulton County with monthly invoices in amounts equal to the amounts Forsyth County has paid each month to the contractor performing the W&S Relocation. Fulton County shall pay such invoices within thirty (30) days from receipt. Upon completion of the W&S Relocation, Forsyth County shall submit a final invoice to Fulton County as provided herein.
4. In the event there is a change in the Project or it becomes necessary to add pay items that are not provided for in the contract, Forsyth County shall negotiate prices with the contractor and enter into a supplemental agreement with the contractor for completion of the additional items. Fulton County shall bear 100 percent of the additional cost of the W&S Relocation, including, without limitation, the cost of any improvements or betterments to the water and sewer facilities requested by Fulton County, as determined in accordance with this IGA.
5. The final cost of the W&S Relocation work performed on behalf of Fulton County shall be determined by measurement of the actual quantities of installed materials, including added items as provided herein, multiplied by the actual bid prices. Accordingly, after the W&S Relocation has been completed, Forsyth County shall determine the final cost to be borne by Fulton County and, as the case may be, shall refund to Fulton County or shall request of Fulton County an additional payment in the amount of the difference between the final cost to be borne by Fulton County and the amount which Fulton County has previously paid to Forsyth County. In the event additional payment is due to Forsyth County, Fulton County agrees to pay same within thirty (30) days after the invoice is received from Forsyth County. In the event a refund is due Fulton County, Forsyth County agrees to pay Fulton County within thirty (30) after the refund amount is determined by Forsyth County.

III. OVERVIEW.

The work contemplated by this IGA consists of constructing the W&S Relocation for the Project. Upon completion of the work and upon certification by Forsyth County and Fulton Engineers that the work has been completed in accordance with the Plans, Fulton County will accept the adjusted, relocated and additional facilities and will thereafter operate and maintain said facilities without further cost to Forsyth County or its contractor. Such maintenance and all operations and activities shall be subject to Forsyth County's rules, policies, procedures, standards, and specifications related to utility accommodations.

IV. FULTON COUNTY RESPONSIBILITIES.

1. Fulton County agrees that the Project and W&S Relocation design are accurately shown in the Plans attached hereto as Exhibit A.
2. Fulton County shall have the right to visit and to inspect the work and any reports, drawings, studies, specifications, estimates, maps, and computations related to the work for Fulton County's facilities at any time and to advise Forsyth County's Project Manager / Engineer-in-Charge of any observed discrepancies or potential problems.

3. Fulton 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. Subject to the provisions of Section II above, Fulton County is responsible to reimburse all material and labor costs to Forsyth County related to the W&S Relocation for this Project that are completed to the reasonable satisfaction of Fulton County in accordance with the Plans.

V. FORSYTH COUNTY'S RESPONSIBILITIES.

1. Forsyth County shall undertake the contracting and assume responsibility for its management and completion.
2. All work necessary for the W&S Relocation in accordance with the final Plans shall be included in the contract and let to bid by Forsyth County.
3. All construction, engineering and contract supervision shall be the responsibility of Forsyth County. Forsyth County shall keep accurate records with regard to the activities conducted under this IGA and provide Fulton County access to such records upon request. Forsyth County shall consult with Fulton County for its approval as provided herein before authorizing any changes or deviations which affect Fulton County's facilities.
4. Forsyth County 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.
5. Forsyth County shall be responsible to assure that all W&S Relocation work is accomplished in accordance with the Plans.

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.

VII. TERM. This IGA shall be effective upon execution by both Parties and continue until completion of the W&S Relocation and the Project and full reimbursement by Fulton County to Forsyth County for the cost of the work. In no event shall this IGA exceed a fifty (50) year term. The Parties may agree to amend this IGA at any time.

VIII. 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, to the extent permitted by law 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. Under the construction contract between Forsyth County and the contractor performing the W&S Relocation, such contractor shall agree to indemnify and hold harmless Fulton County as an additional indemnified party under the construction contract with respect to the W&S Relocation work.

IX. INSURANCE.

Under the construction contract between Forsyth County and the contractor performing the W&S Relocation, such contractor shall agree to include Fulton County, as the owner of the utility facilities affected by the W&S Relocation work, as an additional insured on bodily injury and property damage liability insurance required to be purchased and maintained by the contractor in accordance with the terms of the construction contract. Such insurance shall be in an amount of not less than \$300,000 per occurrence. Certificates of insurance stating coverages and policy limits and showing Forsyth County, Fulton County, and other insured parties as additional insured shall be provided in accordance with the terms of the construction contract.

X. REVIEW OF WORK.

Authorized representatives of Fulton County may at all reasonable times review and inspect the W&S Relocation work under the terms of this IGA and any amendments thereto. If requested by Fulton County under the terms hereof, its review recommendations shall be reviewed and considered by Forsyth County's Project Manager / Engineer-in-Charge. Should Forsyth County's Project Manager / Engineer-in-Charge determine incorporation of such recommendations into the work activities of Forsyth County is not appropriate, the Project Manager / Engineer-in-Charge shall promptly notify Fulton County and, should Fulton County so request, the Parties will meet within seven (7) days to discuss and review Fulton County's recommendations. Should the Parties be unable to agree after meeting, Fulton County's recommendations shall be incorporated into the work activities if they relate solely to Fulton County's facilities. Otherwise, the determination of the Project Manager / Engineer-in-Charge shall control.

XI. TIME OF PERFORMANCE.

Time is of the essence in all matters pertaining to this IGA. In the event Fulton County requests any changes in the work related to the W&S Relocation after the Project work is underway, Fulton County shall cooperate in a prompt and timely manner to any requests by Forsyth County in the processing of any change orders to avoid delays on the progress of the W&S Relocation. Specifically, Fulton County shall respond within ten (10) days of receiving any change order related request from Forsyth County, including, without limitation, a request for acceptance by Fulton County of the additional cost associated with the change order. Fulton County further acknowledges that Forsyth County will suffer financial loss if the Project is not completed in accordance with the Project contract because of

Fulton County

the

Parties agree that if Fulton County has not responded to any change order related request from Forsyth County within ten (10) days after Fulton County's receipt of such request, Fulton County will be deemed to have accepted the terms of such change order as specified by Forsyth County in its request, including, without limitation, the amount of additional cost associated with such change order, and, therefore, Forsyth County will proceed with incorporating such change order into the work necessary for the W&S Relocation as provided herein.

XII. 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 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 Forsyth County, 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. **Sovereign Immunity.** 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.
- D. **Representations and Warranties of the Parties.** In furtherance of the public purposes of this IGA, Fulton County and Forsyth County 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 each Party, 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); and (iii) does not authorize the creation of new debt as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. I(a).
- 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 Fulton County and Forsyth County. 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 Fulton County and Forsyth County, 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 Forsyth County, 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. **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.
 - H. **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.
 - I. **Notices.** Any notice or communication required or permitted under this IGA shall be in writing and shall be deemed received when: i) delivered in person, or ii) upon actual delivery when sent by national overnight express commercial carrier, or iii) on the third day after the postmark date when mailed by certified mail, return receipt requested, to the Party at the address given below.

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 FORSYTH COUNTY:

John N. Jefferson
Director, Capital Projects
514 West Maple Street, Suite 504
Cumming, Georgia 30040

Copy to:

Jarrard & Davis, LLP
222 Webb Street
Cumming, Georgia 30040
Attention: Ken Jarrard, Esq.

- J. **Severability.** If any provision of this IGA shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

[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.

FORSYTH COUNTY, GEORGIA

By: Alfred John
Alfred John, Chairman
Forsyth County Board of Commissioners

Attest: Rhonda P. Hansard
Rhonda Hansard
County Clerk



FULTON COUNTY, GEORGIA

By: _____
Robert L. Pitts, Chairman
Board of Commissioners

Attest:

By: _____
Tonya R. Grier
Clerk to the Commission

Approved as to Form:

By: _____
Office of the County Attorney

EXHIBIT “A”

[ATTACH PLANS AND SPECIFICATIONS FOR THE W&S RELOCATION]