

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

**THIS INTERGOVERNMENTAL AGREEMENT (“IGA”)** is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between **CITY OF ALPHARETTA, 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 CITY or COUNTY and the term “Parties” refers to both CITY and COUNTY.

**WHEREAS**, CITY proposes to undertake a transportation project identified as “Webb Bridge Road from East of North Point Parkway to Big Creek Greenway Bridge Replacement and Roadway Improvements” (“**PROJECT**”) by contract through its competitive bidding procedures; and

**WHEREAS**, COUNTY has fire hydrant, water main, water meter, service lines, and valves (“**UTILITIES**”), as shown on construction plans for the PROJECT, which must be adjusted or relocated as a result of the PROJECT (“**UTILITIES RELOCATION**”); and

**WHEREAS**, COUNTY does not have adequate equipment and staff to adjust or relocate its UTILITIES or for other reasons considers it advantageous to have the UTILITIES RELOCATION included in the PROJECT contract to be let to bid by the CITY; and

**WHEREAS**, the plans and specifications for the UTILITIES RELOCATION have been approved by both CITY and COUNTY and are attached hereto and incorporated herein as **Exhibit “A” (“PLANS”)**; 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**, COUNTY and CITY desire to enter into this IGA to facilitate the UTILITIES RELOCATION; and

**WHEREAS**, as consideration for CITY performing the UTILITIES RELOCATION, COUNTY will reimburse the cost of the UTILITIES RELOCATION to CITY; and

**WHEREAS**, 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, COUNTY and CITY covenant, agree, and bind themselves as follows:

**I. PURPOSE.**

This IGA is entered into with the understanding by the Parties that the primary objective of this IGA is to promote a public purpose—specifically, the improvement of transportation and utility infrastructure.

**II. COMPENSATION AND PAYMENT.**

1. The approximate non-binding estimate of the total cost of the UTILITIES RELOCATION work contemplated under this IGA, subject to change based upon bid acceptance and as otherwise provided herein, is **\$333,925.00 (Three Hundred Thirty-Three Thousand and Nine Hundred Twenty-Five Dollars)**. COUNTY shall pay to CITY 100% of the final cost of the UTILITIES RELOCATION work, as such cost is determined pursuant to the terms of this IGA, performed on behalf of 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 CITY, CITY shall notify COUNTY in writing of the cost amount due CITY. COUNTY shall promptly respond to CITY with either its acceptance of the amount payable by COUNTY for the UTILITIES RELOCATION or its reasonable determination that there is a material discrepancy or error in the calculation of the amount due CITY. The parties agree that if COUNTY has not responded to CITY's notice of the accepted bid contract amount within fourteen (14) days after COUNTY's receipt of such notice, COUNTY will be deemed to have accepted such amount and, therefore, CITY will proceed with the work necessary for the UTILITIES RELOCATION as provided herein.
3. CITY will provide COUNTY with monthly invoices in amounts equal to the amounts CITY has paid each month to the contractor performing the UTILITIES RELOCATION. COUNTY shall pay such invoices within thirty (30) days from receipt. Upon completion of the UTILITIES RELOCATION, CITY shall submit a final invoice to COUNTY as provided herein.
4. Subject to the provisions of Section X below, 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, CITY shall negotiate prices with the contractor and enter into a supplemental agreement with the contractor for completion of the additional items. COUNTY shall bear 100 percent of the additional cost of the UTILITIES RELOCATION, including, without limitation, the cost of any improvements or betterments to the UTILITIES requested by COUNTY, as determined in accordance with this IGA.

5. The final cost of the UTILITIES RELOCATION work performed on behalf of 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 UTILITIES RELOCATION has been completed, CITY shall determine the final cost to be borne by COUNTY and, as the case may be, shall refund to COUNTY or shall request of COUNTY an additional payment in the amount of the difference between the final cost to be borne by COUNTY and the amount which COUNTY has previously paid to CITY. In the event additional payment is due to CITY, COUNTY agrees to pay same within thirty (30) days after the invoice is received from CITY. In the event a refund is due COUNTY, CITY agrees to pay COUNTY within thirty (30) after the refund amount is determined by CITY.

### **III. OVERVIEW.**

The work contemplated by this IGA consists of constructing the UTILITIES RELOCATION for the PROJECT. Upon completion of the work and upon certification by CITY and COUNTY's engineers that the work has been completed in accordance with the PLANS, COUNTY will accept the adjusted, relocated, and additional facilities and will thereafter operate and maintain said facilities without further cost to CITY or its contractor. The maintenance and operations activities of the facilities will be subject to the COUNTY's rules, policies, procedures, standards, and specifications. The COUNTY agrees that these facilities will be subject to CITY's rules, policies, procedures, standards, and specifications related to utility accommodations within the CITY's right-of-way.

### **IV. COUNTY'S RESPONSIBILITIES.**

1. COUNTY agrees that the PROJECT and UTILITIES RELOCATION design are accurately shown in the PLANS attached hereto as Exhibit "A".
2. In accordance with Section X below, 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 COUNTY's UTILITIES at any time and to advise CITY's Project Manager / Engineer-in-Charge of any observed discrepancies or potential problems.
3. 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, COUNTY is responsible to reimburse all material and labor costs to CITY related to the UTILITIES RELOCATION for the PROJECT.

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

1. CITY shall undertake the contracting and assume responsibility for the PROJECT's management and completion.
2. All work necessary for the UTILITIES RELOCATION in accordance with the PLANS shall be included in the contract and let to bid by CITY.
3. All construction, engineering, and contract supervision shall be the responsibility of CITY. CITY shall keep accurate records with regard to the activities conducted under this IGA and provide COUNTY access to such records upon request. In accordance with Section X below,

CITY shall consult with COUNTY for its approval as provided herein before authorizing any changes or deviations which affect COUNTY's UTILITIES.

4. 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.

## **VII. TERM.**

This IGA shall be effective upon execution by both Parties and continue until completion of the UTILITIES RELOCATION and the PROJECT and full reimbursement by COUNTY to CITY 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 CITY and the contractor performing the UTILITIES RELOCATION, such contractor shall agree to indemnify and hold harmless COUNTY as an additional indemnified party under the construction contract with respect to the UTILITIES RELOCATION work.

## **IX. INSURANCE.**

Under the construction contract between CITY and the contractor performing the UTILITIES RELOCATION, such contractor shall agree to include COUNTY, as the owner of the UTILITIES affected by the UTILITIES 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 CITY, 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 COUNTY may at all reasonable times review and inspect the UTILITIES RELOCATION work under the terms of this IGA and any amendments thereto. If requested by COUNTY under the terms hereof, its review recommendations shall be reviewed and considered by CITY's Project Manager / Engineer-in-Charge. Should CITY's Project Manager / Engineer-in-Charge determine incorporation of such recommendations into the work activities of CITY is not appropriate, the Project Manager / Engineer-in-Charge shall promptly notify COUNTY and, should COUNTY so request, the Parties will meet within seven (7) days to discuss and review COUNTY's recommendations. Should the Parties be unable to agree after meeting, COUNTY's recommendations shall be incorporated into the work activities if they relate solely to COUNTY's UTILITIES. 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 COUNTY requests any changes in the work related to the UTILITIES RELOCATION after the PROJECT work is underway, COUNTY shall cooperate in a prompt and timely manner to any requests by CITY in the processing of any change orders to avoid delays on the progress of the UTILITIES RELOCATION. Specifically, COUNTY shall respond within fourteen (14) days of receiving any change order related request from CITY, including, without limitation, a request for acceptance by COUNTY of the additional cost associated with the change order. COUNTY further acknowledges that CITY will suffer financial loss if the PROJECT is not completed in accordance with the PROJECT contract because of COUNTY's failure to timely cooperate in the processing of change orders. Accordingly, the Parties agree that if COUNTY has not responded to any change order related request from CITY within fourteen (14) days after COUNTY's receipt of such request, COUNTY will be deemed to have accepted the terms of such change order as specified by CITY in its request, including, without limitation, the amount of additional cost associated with such change order, and, therefore, CITY will proceed with incorporating such change order into the work necessary for the UTILITIES 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 any other departure consented to by the Parties, shall be effective unless the same is in writing and signed by COUNTY and CITY, and then such

waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is 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 any 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, 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) upon execution this IGA 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 generality of 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 both COUNTY and

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 COUNTY and CITY, and is not intended, and shall in no event be construed to be, for the benefit of any other person or entity, 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 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 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, 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 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 CITY:**

Pete Sewczwicz  
Director  
City of Alpharetta Department of Public Works  
1790 Hembree Road  
Alpharetta, Georgia 30009

**Copy to:**

Jarrard & Davis, LLP  
222 Webb Street  
Cumming, Georgia 30040  
Attention: Molly Esswein, 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.

**CITY OF ALPHARETTA, GEORGIA**

By: \_\_\_\_\_  
Jim Gilvin  
Mayor

Attest:

By: \_\_\_\_\_  
Lauren Shapiro  
City Clerk

Approved as to Substance:

By: \_\_\_\_\_  
Pete Sewczwicz, Director of Public Works

Approved as to Form:

By: \_\_\_\_\_  
Molly Esswein, City Attorney

**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: \_\_\_\_\_  
Y. Soo Jo, County Attorney  
Office of the County Attorney

**EXHIBIT "A"**

[ATTACH PLANS AND SPECIFICATIONS FOR THE UTILITIES RELOCATION]