

After recording return to:

Gwinnett County Law Department

**INTERGOVERNMENTAL AGREEMENT BETWEEN
GWINNETT COUNTY, GWINNETT COUNTY WATER AND SEWERAGE
AUTHORITY AND CITY OF LILBURN TO
PROVIDE UTILITY IMPROVEMENTS**

STATE OF GEORGIA

CITY OF LILBURN

COUNTY OF GWINNETT

THIS INTERGOVERNMENTAL AGREEMENT (hereinafter, the “**Agreement**”), is made and entered into on the ____ day of _____, 2018, by and between GWINNETT COUNTY, GEORGIA, a body corporate and politic and a political subdivision of the State of Georgia, acting by and through its duly elected governing authority, (hereinafter referred to as "Gwinnett"), the GWINNETT COUNTY WATER & SEWERAGE AUTHORITY, a body corporate and politic and a political subdivision of the State of Georgia, acting by and through its duly appointed governing authority, (hereinafter referred to as the “WSA”), and the CITY OF LILBURN, GEORGIA, a political subdivision and municipal corporation of the State of Georgia, acting by and through its duly elected governing authority, (hereinafter referred to as "Lilburn"). Gwinnett and the WSA are collectively, the “Utility”. Gwinnett, the WSA and Lilburn are collectively, the “Parties”.

RECITALS

WHEREAS, Lilburn is and has the governing authority of a City through its Charter for the boundaries and areas of the City of Lilburn, Georgia; and

WHEREAS, Gwinnett operates the water and sewer facilities and appurtenances owned by the WSA to provide water and sewer service to the public for compensation including the area of Lilburn; and

WHEREAS, Lilburn desires to participate with Gwinnett and the WSA in building improvements to the WSA's water system and sewer system through the implementation of the Lilburn Industrial Way Water and Sewer Modification Project (hereinafter, the "Utility Project") including associated water and sewer lines and appurtenances as depicted on the concept plan attached hereto and incorporated herein by reference as "Exhibit A"; and

WHEREAS, construction of the Utility Project will benefit public health, safety and the environment by allowing existing development served by septic tanks to connect to sewer and will allow the Utility to expand its rate base; and

WHEREAS, Gwinnett, the WSA and Lilburn desire to partner and work together in good faith for the implementation of the Utility Project; and

WHEREAS, the timing of implementation and the final alignments of the sewer for the Utility Project shall be coordinated with the proposed Lilburn road work known as the Lilburn Industrial Way Road Improvement Project, (hereinafter, the "Road Project").

WHEREAS, the Utility Project will include necessary water main upgrades to meet the current Gwinnett County specifications as set out in the "Gwinnett County Department of Water Resources Water Main and Sanitary Sewer Design and Construction Standards and Specifications" dated April 5, 2016, (hereinafter, the "Standards and Specifications").

TERMS AND CONDITIONS

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, tenants, and agreements contained herein and for other good and valuable mutual consideration, the receipt and sufficiency of which hereby is acknowledged, it is mutually agreed by and among Gwinnett, the WSA and Lilburn as follows:

1. Recitals.

The above Recitals are true, correct and form a material part of this Agreement.

2. Obligations of the City of Lilburn.

- a) Lilburn shall obtain the services of a professional engineer to prepare construction drawings and specifications in accordance with the Standards and Specifications, and shall acquire all necessary permits for the implementation of the Road Project in accordance with the Intergovernmental Agreement between Gwinnett County and the City of Lilburn regarding jointly funded 2017 SPLOST projects.
- b) Lilburn shall at its sole expense incorporate the upgrade of the existing dual 60-inch stormwater culvert located near the intersection with Arcado Road as depicted on Exhibit A into the design of the Road Project. Lilburn shall coordinate directly with Gwinnett Stormwater on the stormwater culvert design review and construction, and may seek direct reimbursement from Lilburn stormwater utility funds.
- c) Lilburn shall at its sole expense obtain any necessary permanent and temporary easements for the implementation of the Road Project if any such easements are determined to be required.
- d) Lilburn shall obtain any necessary permanent and temporary easements for the implementation of the Utility Project if any such easements are determined to be required, subject to the terms and conditions of Item 3b and Item 3c below.
- e) In accordance with its rules and regulations, Lilburn shall advertise for bid, award construction contracts to a contractor, and administer the contracts for the implementation of the Road Project and the Utility Project.
- f) Lilburn shall insure that the bid for construction of the Utility Project shall include separate bid schedules for the water mains and appurtenances and for the sewer facilities and appurtenances.
- g) Lilburn shall be financially responsible for Twenty-five Percent (25%) of the total cost to construct the sewer facilities and appurtenances, set out in the bids as required by Paragraph (e), above, as part of the Utility Project including all construction, design, permitting and land acquisition costs. Gwinnett may deduct Lilburn's share of the total cost to construct the sewer facilities from the

amount that would otherwise be due to Lilburn in accordance with Paragraph 3 (c), below.

- h) Lilburn shall reimburse Gwinnett should the actual cost of the water main and/or sewer installations be less than the contract amount at the same percentages, if applicable, as set forth in Paragraph 3 (c) (i), (ii)
- i) Within 90 days of the effective date of this Agreement, Lilburn shall adopt any necessary ordinance to require that the owner(s) of each parcel of property shown on Exhibit A make direct connection at their own cost to the Utility's sewer within 1) Ninety (90) Days after receipt of official notice from Gwinnett County that connection of the property to the County sewer system is required; or 2) one (1) year of the completion of the utility project, or 3) within thirty (30) days after the property ownership changes, whichever is the lesser. This shall be subject in all instances to payment by the owners of the Utility's then-current connection fees and sewer system development charges for each connection that is made to the Utility's sewer system.
- j) Within 90 days of the effective date of this Agreement, Lilburn shall adopt any necessary ordinance to require that any industrial sewer user whose premises are to be connected to the Utility's sewer system shall comply with the Pretreatment provisions of the Gwinnett County Code of Ordinances set out in Code Chapter 106, Article III, Division 2, Code §§ 106-125 – 106-139, inclusive, as well as any applicable federal categorical effluent guidelines.

3. Obligations of Gwinnett County.

- a) Gwinnett shall obtain the services of a professional engineer to prepare construction drawings and specifications for the water mains and appurtenances and for the sewer facilities and appurtenances, as set out in Paragraph 2 (e), above, for the Utility Project in accordance with the Standards and Specifications. Gwinnett shall acquire all necessary permits for the implementation of the Utility Project. The Utility Project shall include stub outs to all existing properties.
- b) Gwinnett shall be responsible for the costs of any necessary permanent and temporary easements that Lilburn obtains for implementation of the Utility Project if any such easements are determined to be required. Gwinnett shall have final approval of the costs associated with the easements for the Utility Project.

- c) Gwinnett shall have final approval of any and all stipulations associated with the easements for the Utility Project.
- d)
 - i. Within 30 days of award of the contract(s), Gwinnett shall pay to Lilburn One Hundred Percent (100%) of the construction bid price for the water mains and appurtenances, as set out in the bid schedule created pursuant to Paragraph 2 (e), above.
 - ii. Within 30 days of award of the contract(s), Gwinnett shall pay to Lilburn Seventy-five Percent (75%) of the construction bid price for the sewer facilities and appurtenances, as set out in the bid schedule created pursuant to Paragraph 2 (e), above, less the Twenty-five Percent (25%) deduction for Lilburn's portion set out in Paragraph 2 (f).
 - iii. Gwinnett shall also be responsible for any related change order(s) associated with the water main and sewer installations by the same percentages, if applicable, as set forth in Paragraph 3 (c) (i), (ii), and shall pay such amount to Lilburn within Thirty (30) Days after receipt of an invoice documenting substantial completion of such change order(s). Should the actual cost of the water main and/or sewer installations be less than the contract amount, Gwinnett shall receive a credit from Lilburn at the same percentages, if applicable, as set forth in Paragraph 3 (c) (i), (ii).
- e) Gwinnett shall provide inspection services for the associated water and sewer infrastructure during construction.
- f) Gwinnett shall be responsible for all operation, maintenance and repair of the sewer facilities and appurtenances constructed as part of the Lilburn Industrial Way Sewer Modification Project.

4. Reservation of Rights.

Gwinnett reserves the right to utilize all real estate rights acquired for the Project for any and all purposes not inconsistent with the property rights herein obtained.

5. Term of Agreement

This Agreement shall be in effect on the date of execution as shown above and shall continue in effect for fifty (50) years or until this Agreement is dissolved or revised by mutual consent of both Gwinnett and Lilburn. At any time during the term of the agreement, either party can request the renegotiation of the terms and

conditions by delivering written notice to the other party. Both parties shall commence renegotiations no later than ninety (90) days of receipt of written notice.

6. Remedies.

(a) In the event of a breach or attempted or threatened breach of the provisions of this instrument, the parties agree that the remedy at law available to enforce this instrument would in all likelihood be inadequate, and therefore, the provisions of this instrument may be enforced by a mandatory or prohibitory injunction or decree of specific performance upon the application of the party which is enforcing the provision.

(b) The remedies herein are in addition to and not in lieu of any other remedies available under applicable law.

7. Entire Agreement.

This Agreement constitutes the entire Agreement between Lilburn with Gwinnett County and the WSA with respect to the subject matter hereof and supersedes all prior agreements, understandings, discussions, negotiations, and undertakings, whether written or oral, and there are no inducements, representations, warranties or understandings that do not appear within the terms and provisions of this Agreement.

8. Severability.

If any provision of this Agreement is held by a court of competent jurisdiction to be illegal or unenforceable, the remaining provisions shall remain in full force and effect as if the illegal or unenforceable provision had never been contained in this Agreement.

9. Successors and Assigns.

The provisions of this Agreement shall be deemed and held to be easements, covenants and restrictions appurtenant to and running with the land, and shall bind and inure to the benefit of the parties and their successors, successors-in-title and assigns.

10. Evidence.

The Parties agree that if Gwinnett or the WSA is sued in subsequent litigation concerning the Project(s), any the facilities and appurtenances, the Agreement may be introduced into evidence.

11. Attorneys' Fees.

Each party shall bear its own costs, expenses and claims to attorneys' fees incurred or arising out of the Agreement or the Projects.

12. Controlling Law, Venue.

This Agreement was made and shall be performed in Gwinnett County, Georgia, and shall be construed and interpreted under the laws of the State of Georgia. Venue to enforce this Agreement shall be solely in the Superior Court of Gwinnett County, Georgia, and all defenses to venue are waived.

13. Further Assurances.

The Parties will sign any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

13. Construction.

This Agreement has been jointly negotiated and drafted. This Agreement shall be construed as a whole according to its fair meaning. The language of this Agreement shall not be constructed for or against either party.

15. Legal Advice.

In entering into this Agreement, the Parties acknowledge that their legal rights are affected by this Agreement and that they have sought and obtained the legal advice of their attorneys. Each Party has made such an investigation of the law and the facts pertaining to this Agreement and of all other matter pertaining thereto as it or they deem necessary. They further represent that the terms of this Agreement have been completely read by them and that all terms are fully understood and voluntarily accepted by them.

16. Amendment of Agreement.

Only a writing signed by each of the Parties may modify this Agreement.

17. Authority.

The signature of a representative of any Party to this Agreement is a warranty that the representative has authority to sign this Agreement and to bind any and all principals to the terms and conditions hereof.

18. Headings.

The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the Terms and Conditions contained herein or the rights granted hereby.

19. Time.

Time is of the essence with all duties and obligations set forth in this Agreement.

20. Notice.

- a) Any notice or documentation must be sent to the City of Lilburn at:

Lilburn City Manager
Lilburn City Hall
340 Main Street, Georgia 30047
(770) 921-2210

- b) Any notice or documentation must be sent to Gwinnett County at:

Gwinnett County Administrator
Gwinnett Justice and Administration Center
75 Langley Drive
Lawrenceville, Georgia 30046

With a copy to:
Gwinnett County Attorney
Gwinnett Justice and Administration Center
75 Langley Drive
Lawrenceville, Georgia 30046

c) Any notice or documentation must be sent to the WSA at:

Chairman
Gwinnett County Water and Sewerage Authority
684 Winder Highway
Lawrenceville, Georgia 30045

With a copy to:
Director
Department of Water Resources
684 Winder Highway
Lawrenceville, Georgia 30045

d) Notice via email is acceptable only as an additional method of notice to either regular or certified mail.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officials, have caused this Agreement to be executed in two counterparts, each to be considered as an original, by their authorized representative the day and date herein above written.

CITY OF LILBURN, GEORGIA

By: _____
Johnny D. Crist, Mayor

Signed, sealed and delivered in the
presence of:

ATTEST:

Unofficial witness

City Clerk

(City Seal)

GWINNETT COUNTY, GEORGIA

By: _____
Charlotte J. Nash, Chairman
Gwinnett County

Signed, sealed and delivered in the
presence of:

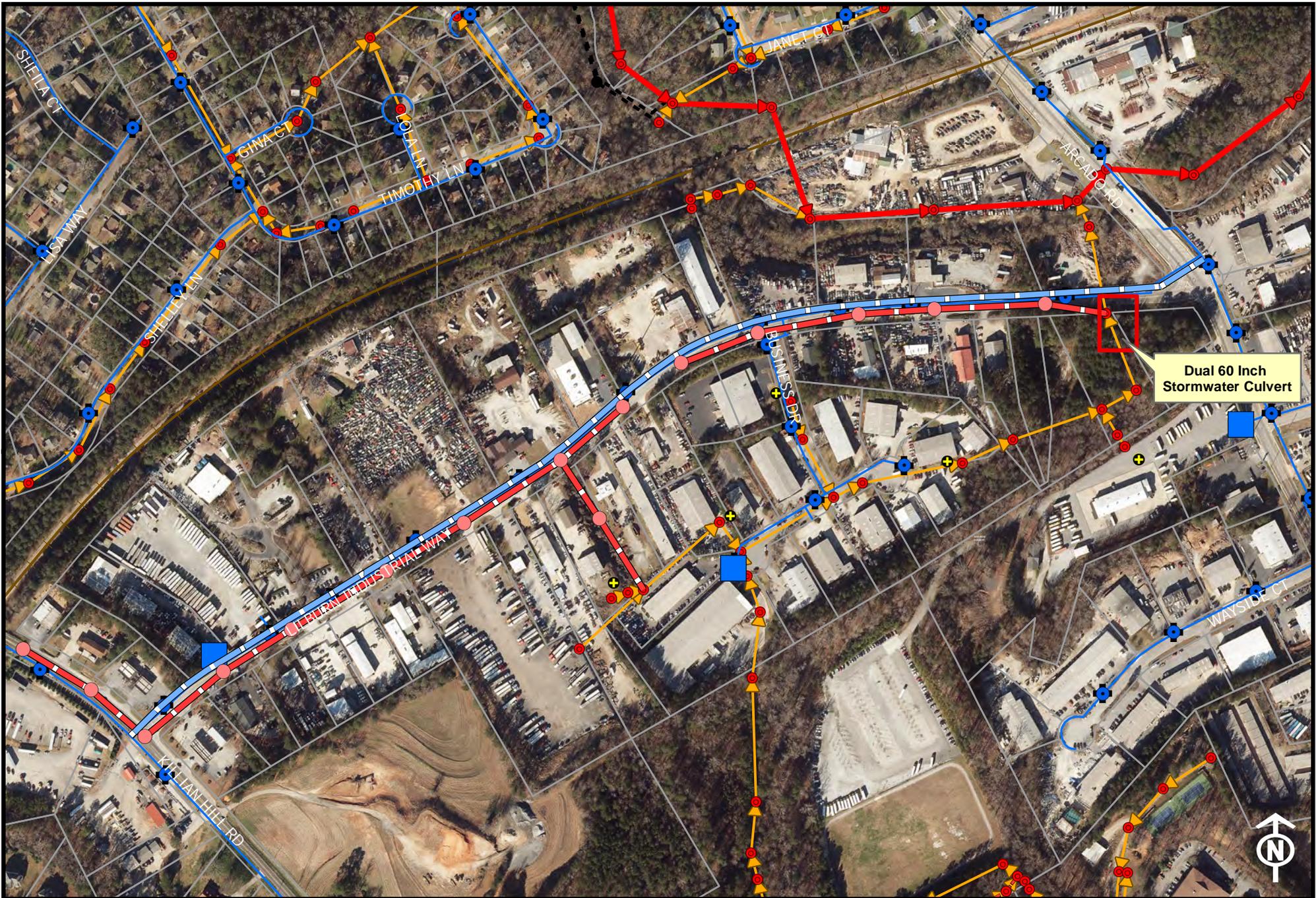
ATTEST:

Unofficial witness

County Clerk
(County Seal)

APPROVED AS TO FORM:

County Attorney



Dual 60 Inch Stormwater Culvert

Intergovernmental Agreement - Lilburn Industrial Way **Exhibit - A**

- Proposed Water Main
- Existing Water Main
- Proposed Sewer
- Existing Sewer Main

