

**INTERGOVERNMENTAL AGREEMENT BETWEEN
GWINNETT COUNTY, GWINNETT COUNTY WATER AND SEWERAGE
AUTHORITY AND THE CITY OF DACULA FOR
IMPLEMENTATION OF THE MAXEY STREET SEWER IMPROVEMENT
PROJECT**

STATE OF GEORGIA

CITY OF DACULA

COUNTY OF GWINNETT

THIS INTERGOVERNMENTAL AGREEMENT (this “Agreement”) is made and entered into on the ____ day of _____, 2023, by and between GWINNETT COUNTY, GEORGIA, a political subdivision of the State of Georgia, acting by and through its duly elected Board of Commissioners (hereinafter referred to as "Gwinnett County"), 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 DACULA, GEORGIA, a municipal corporation of the State of Georgia, acting by and through its duly elected Mayor and Council (hereinafter referred to as "Dacula"). Gwinnett County and the WSA are collectively and sometimes individually referred to herein as “Gwinnett”. Gwinnett, the WSA and Dacula may be referred to herein collectively as the “Parties” or individually as a “Party”.

RECITALS

WHEREAS, Gwinnett County operates and maintains the sewer facilities and appurtenances owned by the WSA to provide utility services to the residents of Gwinnett County, including those within the municipal limits of the City of Dacula; and

WHEREAS, Dacula desires to partner with Gwinnett for the implementation of a sewer improvement project identified to expand service in the area near the intersection of Winder Highway and Harbins Road (hereinafter the “Maxey Street Sewer Project”) the preliminary alignment of which is depicted in Exhibit “A” attached hereto and incorporated herein by this reference and;

WHEREAS, Dacula has applied for and received funding under the 2021 American Rescue Plan Act (hereinafter the “ARPA”), which may be used to fund water and sewer infrastructure projects; and

WHEREAS, ARPA funds must be obligated by December 31, 2024 and the ARPA projects must be completed by December 31, 2026; and

WHEREAS, construction of the Maxey Street Sewer Project will benefit public health, safety and the environment by allowing existing and proposed commercial and residential development to connect to sewer within the municipal limits of the City of Dacula, allow for septic-to-sewer conversion, expand service within the overall basin, and will allow Gwinnett to expand its water and sewer rate base; and

WHEREAS, the Parties desire to partner and work together in good faith for the implementation of the Maxey Street Sewer Project.

TERMS AND CONDITIONS

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

1. Recitals.

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

2. Term of Agreement and Termination.

The term of this Agreement shall begin on the day and date hereinabove written and shall extend thereafter for a period of fifty (50) years.

3. Obligations of the City of Dacula.

- a) Dacula shall acquire all necessary temporary and permanent easements, right-of-way, and other property rights for the Maxey Street Sewer Project no later than June 30, 2024 pending receipt of plats from Gwinnett pursuant to item 4(b) below. Dacula shall provide to Gwinnett a monthly acquisition status report until all easements and other property rights are obtained, beginning on the first day of the month following the execution of this agreement.
- b) Dacula shall be responsible for all associated acquisition costs for the Maxey Street Sewer Project, including all condemnation costs, if necessary.
- c) Dacula shall coordinate with Gwinnett on any third-party services for the acquisition of easements.
- d) All easements and other necessary property interests obtained by Dacula shall be donated and assigned to the WSA.
- e) Dacula shall obtain approval from Gwinnett for any and all easement stipulations and terms before finalizing any easements with the property owners.
- f) Dacula shall contribute Eighty Percent (80%) of the Maxey Street Sewer Project construction cost with a not to exceed amount of One Million Two Hundred Thousand Dollars (\$1,200,000.00), whichever is less. Dacula shall pay half this

amount within thirty (30) days of Gwinnett awarding construction of the Maxey Street Sewer Project, and the remaining half upon project completion. In no event shall Dacula's contribution exceed One Million Two Hundred Thousand Dollars (\$1,200,000.00).

4. Obligations of Gwinnett.

- a) Gwinnett shall acquire the services of a professional engineer to prepare construction drawings and specifications for both the Maxey Street Sewer Project in accordance with Gwinnett County's current water and sewer standards and specifications.
- b) Gwinnett shall provide to Dacula any temporary and permanent easement plats for the Maxey Street Sewer Project no later than February 29, 2024.
- c) Gwinnett shall award construction contract(s) and administer the contract(s) in the amount identified herein for the Maxey Street Sewer Project in accordance with its rules and regulations. Gwinnett shall notify Dacula of any changes in scope of work or the contract price.
- d) Gwinnett shall work in good faith to complete the Maxey Street Sewer Project by December 31, 2026 pending acquisition of all necessary easements by Dacula pursuant to item 3(a) above.
- e) Gwinnett shall have final approval of any and all stipulations associated with the temporary and permanent easements.
- f) Gwinnett shall contribute the remaining construction cost for the Maxey Street Sewer Project beyond the contribution made by Dacula outlined in 3(f) above for the completion of the project.
- g) Gwinnett shall be responsible for all operation, maintenance, and repair of the sewer facilities and appurtenances once constructed.

5. Reservation of Rights.

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

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 Dacula and 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.

It is understood and agreed by and between the Parties that if any condition or provision contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other such condition or provision herein contained, provided, however, that invalidity of any such condition or provision does not materially prejudice either Gwinnett County, the WSA or Dacula with respect to its respective rights and obligations contained in the remaining valid conditions or provisions of this Agreement.

9. Successors and Assigns.

The provisions of this Agreement shall bind and inure to the benefit of the Parties and their respective representatives, successors, and permitted assigns.

10. Evidence.

The Parties agree that if Gwinnett County or the WSA is sued in subsequent litigation concerning the Sewer Project, including, but not limited to, the acquisition of easements or other property interests or the construction of any of the subject facilities and appurtenances, this 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 this Agreement or the Sewer Project.

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.

14. 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 any 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 respect to all duties and obligations set forth in this Agreement.

20. Notice.

- (a) Any notice, request, direction, consent, approval, or other communication required or permitted under this Agreement must be in writing and provided to Dacula at its address set forth below:

City of Dacula
City Adimistrator
442 Harbins Road
Dacula, Georgia 30019

With a copy to:

Robert Jackson Wilson
City Attorney
295 South Culver Street, Suite C
Lawrenceville, GA 30046

- (b) Any notice, request, direction, consent, approval, or other communication required or permitted under this Agreement must be in writing and provided to Gwinnett County at its address set forth below:

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, request, direction, consent, approval, or other communication required or permitted under this Agreement must be in writing and provided to the WSA at its address set forth below:

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, statutory overnight mail, or hand-delivery.

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 DACULA, GEORGIA

By: _____
Hugh D. King, III Mayor

Signed, sealed and delivered in the
presence of:

ATTEST:

Unofficial witness

City Clerk

(City Seal)

Notary Public

Signed, sealed and delivered in the presence of:

GWINNETT COUNTY, GEORGIA

Unofficial witness

Nicole L. Hendrickson
CHAIRWOMAN
BOARD OF COMMISSIONERS

Notary Public

ATTEST:

[Notarial seal]

County Clerk

(County Seal)

Approved as to Form:

Senior Assistant County Attorney

GWINNETT COUNTY WATER &
SEWERAGE AUTHORITY

By: _____

Printed Name: _____
Chairman

ATTEST:

Printed Name: _____
Secretary

Signed, sealed and delivered in the
presence of:

NOTARY:

Unofficial witness

[Notarial seal]

Approved as to Form:

Attorney

