

INTERGOVERNMENTAL AGREEMENT BETWEEN EFFINGHAM COUNTY AND BRYAN COUNTY

THIS INTERGOVERNMENTAL AGREEMENT, (the “Agreement”) is made this ____ day of _____ 2023 by and between EFFINGHAM COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, “Effingham County”) and BRYAN COUNTY, a body corporate and politic and a political subdivision of the State of Georgia (hereinafter, “Bryan County”). Effingham County and Bryan County are, collectively, the Parties.

RECITALS

WHEREAS, Effingham County has jurisdiction over certain real property identified as Tax Parcels: 0304-10, 030-04-11, 030-40-012, 030-50-001, 030-05A-072, 032-90-041B, 0329D-001, 0331-0003, 0331-0004, 0331-0005, 0331-0013, 0331-0014, 0331-0022, 030-05-A072, and 0329-041-A01 which reside wholly within the constitutional boundaries of Effingham County, and are further described by the metes and bounds set out in the legal description attached hereto and incorporated herein by reference as Exhibit “A”, (hereinafter, the “Properties”); and

WHEREAS, the Effingham County Industrial Development Authority (hereinafter, “Effingham IDA”) holds title to the following Tax Parcels: 0329D-001, 0331-0003, 0331-0004, 0331-0005, 0331-0013, 0331-0014; and

WHEREAS, the Effingham County Board of Commissioners (hereinafter, “Effingham BOC”) holds title to portions of the Properties: (i) certain real property by Limited Warranty Deed dated June 6, 2023 and recorded in Deed Book 2852, Pages 427-429, in the records of the Clerk of Effingham County, and comprised of approximately 10.245 acres +/-, identified as Tax Parcel 329-41A01; and (ii) and certain real property by Limited Warranty Deed dated October 21, 2016 and recorded in Deed Book 2374, Pages 882-883 in the records of the Clerk of Effingham County, and comprised of approximately 1 acres +/- identified as Tax Parcel 331-22; and

WHEREAS, Bryan County has reached an agreement for permanent and temporary construction easement rights with the property owners of Tax Parcels: 030-40-010, 030-04-011, 030-40-012, 030-50-001, 030-05A-072, 032-90-041B, 032-9D-001, 0331-0003, 0331-0004, 0331-0005, 0331-0013, 0331-0014, and 030-05-A072; and

WHEREAS, the Parties have reached an agreement for permanent and temporary construction easement rights for the following Tax Parcels currently owned by Effingham BOC: 0329-041A01 and 0331-0022; and

WHEREAS, Bryan County has obtained permanent easements and temporary construction easements, through the exercise of extraterritorial condemnation, on the following Tax Parcels: 0304-0011 and 0304-0012 for the purpose of the construction and ongoing maintenance of the Bryan County I-16 Regional Sewer Improvements Project/ I-16 Regional Force Main Improvements PI Number 29088.0000 and related infrastructure (hereinafter, the “Project”); and

WHEREAS, for the purposes of this Agreement, Effingham agrees that the Project may include additional water, reuse, sewer and wastewater systems, piping, meter stations, pump stations with related equipment, generators, meters, manholes, structures, fencing, landscaping, site improvements, access roads, sampling stations, fire hydrants, electrical equipment, power lines/poles, Supervisory Control and Data Acquisition (SCADA) systems, telemetry equipment, and future improvements as may be required so long as it is within the existing boundaries of the permanent and temporary easements of the Properties.

WHEREAS, the Parties agree that upon the execution of a separate Water Services Agreement, this Agreement shall be amended by the Parties to reflect the addition of water infrastructure under the scope of service delivery of this Agreement, the approval of such shall not be unreasonably withheld, conditioned, or delayed by either of the Parties.

WHEREAS, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983 (“Supplementary Powers”), Effingham County has the authority to provide police protection, fire and emergency medical services, to collect fees, perform inspections, approve final subdivision plats and issue certificates of occupancy and permits related to the enforcement of building, electrical, plumbing, gas, housing, land disturbance, erosion control, and other similar codes and regulations and to provide stormwater management services for projects that are located within its jurisdictional limits; and

WHEREAS, Effingham County intends to exercise its authority under the Supplementary Powers provision to provide services to the Properties until such time that the provision of services have been agreed to by the Parties by contract as required by Subsection (b)(1) of Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983; and

WHEREAS, Bryan County desires the authority from Effingham County to provide for the inspection and permitting of the Project pursuant to all federal and state laws and regulations ,including the more restrictive of either Effingham or Bryan County’s then-current ordinances and regulations, as may be required for the construction and operation of the Project on the Property; and

WHEREAS, Effingham County and Bryan County agree that Effingham County shall provide all services to the Properties as required by Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, as amended, that are not otherwise expressly granted to Bryan County as part of this Agreement; and

WHEREAS, pursuant to the provisions of Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, as amended, and the general, special and local laws of the State of Georgia, Effingham County and Bryan County, by and through their respective government authorities, are each authorized to enter into agreements with each other for the provision of certain public services outside their jurisdictional limits; and

WHEREAS, in order to ensure the orderly, economical and logical provision of certain

public services to the Project, the Parties hereto desire to enter into this Agreement to resolve any potential governmental conflicts between Effingham County and Bryan County concerning issuance of development and building permits, inspections, final subdivision plats and certificates of occupancy and collection of fees thereof, stormwater utility service, provision of police protection and fire and emergency medical services to the Properties,

NOW THEREFORE, in consideration of the sum of Ten and No/100ths Dollars (\$10.00), the foregoing recitals and the representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto hereby agree as follows:

TERMS AND CONDITIONS

1. Recitals

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

2. Ownership of Project

The Parties acknowledge and agree that Bryan County shall own the Project, including all proposed and future sewer, and wastewater systems, piping, meter stations, pump stations with related equipment, generators, meters, manholes, structures, fencing, landscaping, site improvements, access roads, sampling stations, fire hydrants, electrical equipment, power lines/poles, Supervisory Control and Data Acquisition (SCADA) systems, telemetry equipment, and future improvements related to the Project and located within the temporary and permanent easement areas. The Parties agree that Bryan County shall be fully responsible for any and all costs associated with the installation, maintenance, repair, use, service, and ownership of the Project. The Parties further acknowledge and agree that Effingham County shall have no right, license, or interest in the Project or to use the Project, without Bryan County's express written consent.

3. Inspecting and Permitting

The Parties agree that Bryan County shall have authority for approving, inspecting and permitting the Project, including but not limited to performing all inspections required to build the Project, approving final plats and issuing certificates of occupancy and permits related to the enforcement of building, electrical, plumbing, gas, land disturbance, and erosion control pursuant to the more restrictive of Effingham or Bryan County's then-current ordinances and regulations, including all applicable state and federal laws and regulations. Bryan County shall have final authority to issue a commercial development permit for the Properties and certificates of occupancy, if needed, for the Project. Bryan County shall have the authority to interpret and apply federal and state laws and regulations, and of Effingham or Bryan County's then-current ordinances and regulations, in accordance with applicable law, and Bryan County's interpretation

and application of the same shall be final and binding as it pertains to the Project. Nothing contained herein shall be construed to inure any benefit or interpretation to any party other than Bryan County.

Upon receipt of a reasonable and valid compliance complaint from an authorized agent of Effingham County or other duly authorized federal or state agency, Effingham County reserves the right to inspect the Properties, and further notify Bryan County of any compliance issues as a result of the inspection.

To the extent Effingham County retains any authority for approving, inspecting, and/or permitting the Project, or any portion of the Project, then Effingham County shall not unreasonably condition, delay, or deny such approval, inspection, and/or permit.

4. Police Services

The Parties agree that Effingham County shall provide police / law enforcement services to the Properties in accordance with its normal standards and practices.

5. Fire and Emergency Medical Services

- a) Effingham County shall provide all fire protection and emergency medical services to the Properties in accordance with its normal standards and practices.
- b) Bryan County grants to Effingham County the rights, of access over and upon, and use of, all roads, paths, and other infrastructure located on the Properties only when necessary to allow Effingham County vehicles and personnel to provide such fire protection and emergency medical services to have access to the portion of the Properties owned by, or easements granted to, Bryan County. Effingham County shall immediately notify Bryan County of any use of its infrastructure for fire protection and/or emergency medical services.

6. Stormwater Services

Bryan County shall, at its sole cost and expense, design stormwater drainage measures for the easement areas under Bryan County's control within the Properties to Bryan County standards, to the extent stormwater drainage measures are necessary following the installation of sewer and related infrastructure as determined by Bryan County's reasonable judgment and engineering discretion. Under no circumstance will Bryan County be responsible for remediating, correcting, improving, or otherwise addressing any existing drainage, flooding, or other stormwater issues on the Properties unless otherwise required for compliance with federal and state laws and regulations for stormwater management. Bryan County shall operate, service, repair and maintain the stormwater facilities constructed on the Property.

7. Project Capacity

The Parties agree that upon the completion and operation of the North Bryan Water Reclamation Facility (“WRF”), Bryan County will notify Effingham County of available sewer capacity, if any, and the rates, including any and all capital recovery fees, at which such capacity may be acquired. Effingham County shall provide written request to Bryan County of the amount of sewer capacity it desires, if any, in units of 0.25 million gallons per day (MGD). Bryan County agrees to sell, and Effingham County agrees to acquire, such requested available capacity at the then-existing wholesale rate, which shall be the same or better rate that any other wholesale user may acquire available capacity at the time of Effingham County’s written request, including capital recovery fees.

If at the time of Effingham County’s written request, no capacity is available within the Project, Bryan County shall complete modifications, improvements, and/or expansions to the North Bryan WRF necessary to accommodate acceptance for treatment and disposal of sewage at the written request of Effingham and pursuant to a separate sewer service agreement. Effingham County will be responsible for one hundred percent (100%) of the costs and expenses associated with the modifications, improvements, and/or expansions necessary to accommodate the capacity requested by Effingham County. The sewer service agreement shall also provide for the wholesale rate, provisions for the design, construction, and payment of costs associated with the modifications, improvements, and/or expansions necessary to accommodate Effingham’s request for capacity, any Capital Recovery Fees, and other provisions of services or conditions as necessary. No design, construction, or installation of any modification, improvement, or expansion will commence unless and until Effingham County and Bryan County enter into a sewer service agreement related to the same.

8. Term and Termination

The term of this Agreement shall begin on upon the date of execution of this Agreement set forth above and shall extend thereafter for a period of fifty (50) years. To the greatest extent legally permissible, the term of this Agreement shall automatically be extended under the same terms and provisions, and such other mutually agreeable terms and provisions, by fifty (50) year renewal terms.

9. Miscellaneous

(a) This Agreement and the covenants of the Parties set forth herein are intended to run with the land and, subject to Section 10 hereof, shall be binding upon each of the Parties hereto and any subsequent owner of the Properties. This Agreement may be recorded in the real property records of Effingham County and Bryan County.

(b) Parties hereby agree to all provisions of this Agreement, and waive any claim that either of them may have that any of the provisions set forth herein are unlawful, invalid or beyond the scope of the lawful powers of Effingham County or Bryan County.

(c) This Agreement shall not be binding upon the Parties hereto and shall not be recorded until formal approval is granted by the appropriate authorities of Effingham County and Bryan County.

(d) By its execution hereof, each of the Parties hereto represents and warrants to the other Parties hereto that:

- i. all necessary actions and approvals have been taken or obtained, as the case may be, to authorize, approve and perform this Agreement;
- ii. upon such execution, this Agreement shall be binding on such party, enforceable against such party in accordance with its terms;
- iii. there is no claim, litigation, proceeding or governmental investigation pending or, so far as is known to such party, threatened, against or relating to such party or the transactions contemplated by this Agreement which does or would reasonably be expected to affect materially and adversely the ability of such party to enter into this Agreement and to carry out its obligations as set forth in this Agreement; and
- iv. any and all approvals required to be obtained by such party in connection with the execution, delivery performance of this Agreement have been obtained.

10. 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.

11. Entire Agreement

This Agreement constitutes the entire agreement between the Parties 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.

12. 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.

13. 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.

14. Evidence

The Parties agree that if Bryan County is sued in subsequent litigation concerning the facilities and appurtenances constructed on the Properties, the Agreement may be introduced into evidence.

15. Attorneys' Fees

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

16. Controlling Law, Venue

This Agreement was made and shall be performed in Effingham County, Georgia and in Bryan County, Georgia, and shall be construed and interpreted under the laws of the State of Georgia. Venue to enforce this Agreement for any dispute arising out of the terms and conditions herein shall be solely in the Superior Court of Effingham County, Georgia, and all defenses to venue are waived.

17. 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.

18. 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.

19. 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.

20. Amendment of Agreement

No provision of this Agreement may be amended, modified or waived unless such amendment, modification or waiver is agreed to in a writing signed by each of the Parties hereto.

21. 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.

22. 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.

23. Time

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

24. Notice

For purposes of this Agreement, notices and all other communications provided for herein shall be in writing and shall be deemed to have been given when delivered or mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Effingham County: Effingham County
 Attention: Tim Callanan, County Manager
 804 S Laurel Street
 Springfield, Georgia 31329

If to Bryan County: Bryan County
 Attention: Ben Taylor, County Administrator
 51 North Courthouse Street
 Pembroke, Georgia 31321

25. Originals

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement.

26. Water Services Agreement

Bryan County and Effingham County agree to diligently pursue the negotiation, approval, and execution of a Water Services Agreement, with such Water Services Agreement to contain the terms, conditions, and provisions by which Bryan County may install, operate, and maintain water infrastructure within the real property owned by the Effingham BOC, as contemplated by this Agreement and the easement agreement entered into by and between Bryan County and Effingham County. Both Bryan County and Effingham County agree not to unreasonably condition, delay, or deny the approval and execution of such Water Services Agreement. Notwithstanding the foregoing, Bryan County shall have the right to install, operate, maintain, repair, renew, expand and improve water, reuse, sewer and wastewater infrastructure within portions of the Properties not owned by the Effingham BOC for which Bryan County has existing easement and/or other property rights. Any permitting and inspection of future infrastructure to be installed within the Properties shall be in accordance with Section 3 of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed, sealed and delivered by the Chairman of the Effingham County Board of Commissioners and the Chairman of the Bryan County Board of Commissioners, each thereunto duly authorized to bind their respective Parties in accordance with the laws of the State of Georgia as of the day and year first above written.

Signed, sealed and delivered in the presence of:

EFFINGHAM COUNTY

Unofficial Witness

By: _____
Wesley Corbitt
Chairman At Large

Notary Public

Attest: _____
Printed Name:
Title:

My commission expires:

[NOTARY SEAL]

Signed, sealed and delivered in the presence of:

BRYAN COUNTY

Unofficial Witness

By: _____
Carter Infinger
Chairman

Notary Public

Attest: _____
Printed Name:
Title:

My commission expires:

[NOTARY SEAL]

Exhibit A

[INSERT LEGAL DESCRIPTIONS HERE]