

INTERGOVERNMENT AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made as of the 28th day of March, 2023 (the "Effective Date"), by and between Georgia Ports Authority ("GPA") and Hall County, Georgia (the "County").

WHEREAS, GPA intends to construct an inland port facility (the "Facility") on a certain tract of land located in Hall County, Georgia; and

WHEREAS, the development of the Facility includes related cooperation between GPA, Norfolk Southern Railway Company ("NSR") and County; and

WHEREAS, as part of the cooperation, the County will construct a segment of roadway over property owned by the County paralleling NSR's mainline south of the Facility, as well as certain associated work near and around the entrance to the Facility (the "Work"); and

WHEREAS, GPA values its various partnerships related to economic development with agencies and communities throughout the State of Georgia; and

WHEREAS, the Work is not required for the construction or operation of the Facility but will provide benefit to the Facility; therefore, the parties agree that in the spirit of cooperation and other benefits that will accrue to GPA, GPA will contribute financially to the completion of the Work, subject to the terms and conditions herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

ARTICLE I

SCOPE OF WORK AND PAYMENTS

Section 1.1 Description of the Work. The County agrees that it shall perform the Work, or cause the Work to be performed, as defined in Exhibit "A", Description of Work, attached hereto and incorporated herein by reference. The Work shall commence as of a mutually agreed upon date and shall be completed by no later than thirty-six (36) months from the date of commencement of the Work (the "Completion Date").

Section 1.2 Term. This Agreement shall commence as of the Effective Date and shall continue in full force and effect until the Completion Date of the Work (the "Term"). No termination of this Agreement shall affect the rights and obligations of the parties arising prior to such termination or in respect of any provision of this Agreement which survives termination.

Section 1.3 Project Contribution. GPA agrees to contribute to the cost of the Work and to pay to the County a total amount not to exceed Four Million Eight Hundred Thousand Dollars (\$4,800,000.00) (the "Project Contribution"). Ten percent (10%) of the Project Contribution shall be payable upon the commencement of the Work that is defined as a Notice to Proceed for the construction of Item 1(A) as defined in Exhibit A, and an additional forty percent (40%) shall be payable upon the completion of Items 1(A) and 1(B) as defined in Exhibit A. The final fifty percent (50%) shall be payable upon completion of Item 1(C) as defined in Exhibit A. The cost of the Work includes, without limitation, costs for all planning, engineering, labor, equipment, and materials necessary for the completion of the Work as set forth in Exhibit "B", Project Estimated Cost, attached hereto and incorporated herein by

reference. GPA shall have the right to inspect the Work prior to making the final Project Contribution payment, in order to verify that the Work has been completed. The County shall cause its engineering representative(s) to coordinate with GPA's engineering representative, Moffatt & Nichol, related to the Work including, but not limited to, project coordination, concept development, preliminary and final engineering, property impacts and acquisition, construction bidding, and construction. In the event the actual cost of the Work exceeds the Project Estimated Cost, GPA will not be obligated to increase its Project Contribution amount.

Section 1.4 Invoices. The County shall submit to GPA an invoice for each of the two Project Contribution payments in accordance with Section 1.3 hereof. Invoices will include documentation to support the payment in accordance with Section 1.3. If GPA discovers an error in an invoice or lack of supporting documentation, GPA shall notify the County thereof, and upon receipt of a correct invoice shall pay such invoice in accordance with this Agreement. Unless disputed by GPA, each invoice shall be due and payable sixty (60) days after such invoice (including all supporting documentation) is received by GPA. If GPA in good faith disputes the accuracy of an invoice or supporting documentation, GPA shall provide written notice stating the reasons why the invoice is incorrect. Upon resolution of the dispute, GPA shall pay all amounts owed within thirty (30) days after the dispute is resolved.

Section 1.5 Final Invoice. Following the Completion Date, payment of the final invoice for the Project Contribution shall be subject to the following conditions:

- a. Documentation provided by County to GPA of the closure of the highway-rail at-grade crossing (USDOT ID #717784N) at White Sulphur Road (i.e., Item 1(C) as defined in Exhibit A);
- b. Final inspection by GPA and County to determine that all Work has been completed in accordance with the project plans and specifications approved by both parties, as well as the terms and conditions set forth in Exhibit "A"; and
- c. Submittal of a letter, by a registered professional engineer in the State of Georgia that certifies that all Work has been completed in full compliance with the approved plans and specifications for the Work.

Section 1.6 Subcontracting of the Work. GPA acknowledges that the County is subcontracting with various vendors and contractors for the performance of the Work. Notwithstanding the foregoing, the County shall not be relieved of any obligation, responsibility or liability hereunder related to the Work. The County shall ensure that any contractor agrees to comply with all applicable terms and conditions of this Agreement. With respect to insurance normally required to be carried by any contractor, the County agrees that its contractor shall be required to provide to the County certificates of insurance evidencing commercially reasonable insurance coverage and limits when performing any Work. The parties agree that neither party nor its contractor(s), if any, shall be deemed to be either an agent or a licensee of the other party.

Section 1.7 Compliance with Laws. The County, or its contractor(s), shall secure, at their own expense, all permits, approvals, and licenses required by any applicable Federal, State or local laws and regulations related to the Work. The County shall comply with all applicable Federal, State and local laws, codes, regulations, and ordinances enacted by any governmental body, in force or enacted during the Term of this Agreement, in regard to any Work on GPA's property including, without limitation, any federal, state or local law, ordinance, or regulation related to environmental conditions on, under or about GPA's property or the use, generation, storage, placement, disposal or release of any hazardous or toxic

substance, material or waste, including, petroleum or crude oil, that is or becomes regulated by any local, state or federal governmental authority ("**Hazardous Substances**") in or on GPA's property ("**Environmental Laws**"). If any Hazardous Substance is released on, under or about GPA's property by County or its employees, agents, visitors, licensees, contractors or subcontractors, County agrees to promptly notify GPA. County, at its sole expense, shall promptly take all actions necessary to return GPA's property to the condition prior to the introduction of such Hazardous Substance in accordance with all Environmental Laws. County shall provide to GPA copies of all reports provided to, or received from, all regulatory agencies regarding such release of Hazardous Substances until such time as the regulatory agencies release County from any further actions or monitoring of any release or violation. County's obligations under this Section 1.7 with regard to compliance with Environmental Laws and removal of Hazardous Substances shall survive the expiration or other termination of this Agreement.

ARTICLE II REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties by GPA. GPA makes the following representations and warranties:

(a) Organization and Authority. GPA is a public body corporate and politic, created and validly existing pursuant to the Constitution and laws of the State of Georgia. GPA has the power to execute and deliver this Agreement, to enter into the transaction contemplated hereby and to perform and observe its obligations contained herein in accordance with the terms hereof. By proper action, GPA has duly authorized the execution and delivery of this Agreement.

(b) Agreements are Legal and Authorized. GPA is not subject to any statutory or contractual limitation or provisions of any nature whatsoever which in any way limits, restricts or prevents GPA from entering into or performing any of its obligations hereunder, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights.

(c) Enforceability. This Agreement is a legal, valid and binding obligation of GPA enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principles of equity, and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

Section 2.2 Representations and Warranties by the County. The County makes the following representations and warranties:

(a) Corporate Organization and Power. The County is a public body corporate and politic, created and validly existing under the laws of the State of Georgia. County has the power to enter into this Agreement and to perform and observe its obligations contained herein in accordance with the terms hereof, and has, by proper corporate action, been duly authorized to execute, deliver and perform this Agreement in accordance with the terms hereof.

(b) Pending Litigation. There are no actions, suits, proceedings, inquiries or investigations pending, or to the knowledge of the County, threatened against or affecting the County in any court or before any governmental authority or arbitration board of tribunal which is reasonably anticipated to materially and adversely affect the transaction contemplated by this Agreement.

(c) Agreements Are Valid and Authorized. The execution and delivery by the County

of this Agreement and the compliance by the County with all of the provisions hereof (i) are within the corporate power of the County; (ii) will not conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under its creation legislation, or any commitment or agreement to which the County is a party or by which it may be bound, or to which any of its properties may be subject, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over the County or any of its activities or properties; (iii) will not result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the County under the terms of any instrument or agreement; and (iv) have been duly authorized by all necessary action on the part of the County.

(d) **Enforceability.** This Agreement is a legal, valid, and binding obligation of the County enforceable in accordance with its terms, except to the extent the enforceability hereof may be subject to (i) the exercise of judicial discretion in accordance with general principals of equity; and (ii) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereinafter enacted to the extent constitutionally applicable.

ARTICLE III INDEMNITY BY THE COUNTY

Section 3.1 Indemnity. To the extent allowed by law, the County shall indemnify, defend and hold harmless GPA and its officers, directors, employees, agents and representatives from and against any and all obligations, claims, liabilities and damages, including attorney's fees, that are paid, suffered or incurred by GPA resulting from or in connection with the (i) performance of the Work by, or the presence of, the County, or its employees, agents, contractors, subcontractors, licensees or authorized representatives, on GPA's property (ii) the violation of any law including, without limitation, Environmental Laws by reason of or resulting in any way from the County's use, non-use, occupancy of or the conducting of the County's Work on GPA's property, or (iii) any breach by the County and/or its employees, agents, contractors, subcontractors, licensees or authorized representatives of any covenant or condition of this Agreement. To the extent allowed by law, this Section 3.1 shall survive the termination of this Agreement with regard to any event giving rise to the provisions of Section 3.1 that occurred during the Term.

ARTICLE IV DEFAULT

Section 4.1 Event of Default. If a party fails to perform, or comply with, any of the terms, conditions or provisions of this Agreement, such failure shall constitute an event of default by such party under this Agreement.

Section 4.2 Right to Cure; Remedies. A defaulting party shall have thirty (30) days grace within which to cure an event of default from the date of written notice from the other party that it intends to regard a violation as a default pursuant to this Agreement; provided, however, that if any such default shall be a default that cannot be cured by the payment of money and cannot with diligence be cured within such thirty (30) day period, and if the cure of such default shall be promptly commenced and prosecuted with diligence, the period within which such default may be cured shall be extended for an additional period of time, not to exceed an additional thirty (30) days, as may be reasonably necessary to cure such default as long as the defaulting party prosecutes such cure with diligence and continuity and provided the non-defaulting party receives periodic reports with respect thereto. If the defaulting party fails to cure the default within the cure period, the other party may terminate this Agreement upon written notice to the defaulting party. In addition, the non-defaulting party shall have the right to pursue any remedies which may be available at law or in equity.

Section 4.3 Consent to Jurisdiction. In the event of any litigation regarding this Agreement arising between GPA and the County, both parties do hereby mutually consent to the jurisdiction of the courts of the State of Georgia having jurisdiction in Hall County, or any Federal District Court having jurisdiction in Hall County and those same courts shall be the proper venue for the determination of all controversies and disputes arising hereunder. Parties agree to waive any objection based on *forum non conveniens*.

ARTICLE V MISCELLANEOUS

Section 5.1 Insurance. During the Term of this Agreement, County shall, at its own cost and expense, maintain and provide insurance certificates for general liability insurance in a reasonable amount and form that is satisfactory to GPA. In addition, County shall require its contractors and subcontractors, at their expense, to maintain Commercial General Liability insurance, Automobile Liability insurance and Workers' Compensation insurance.

(a) All of the insurance specified above shall be obtained from an insurance carrier or carriers authorized to do business in the State of Georgia and satisfactory to GPA. The County shall maintain any other insurance required by federal or state law. The County shall deliver certificates of insurance to GPA evidencing the existence of the required policies prior to the commencement of the Work.

(b) The above insurance shall remain in full force and effect and shall not be canceled, allowed to lapse, or allowed to expire until the earlier to occur of (a) the termination date of this Agreement, or (b) the date thirty (30) days after GPA's Risk Management Department, P.O. Box 2406, Savannah, Georgia 31402, has received written notice thereof.

Section 5.2 Reporting of Accidents, Injuries or Damages. All accidents, injuries, fires and other incidents of a serious nature including, without limitation, incidents requiring emergency response or injuries requiring any medical treatment away from the scene must be reported immediately to the appropriate emergency response agency. In addition, after the appropriate emergency response agency has been notified of the instances described above, the County shall also promptly notify GPA's Port Police Department at 912-964-3911. Additionally, all damages to GPA's property or the personal property of either party (or property in the care, custody or control of either party) must be reported at the time of discovery to GPA's Port Police Department at 912-963-5588, if such damages are related to this Agreement.

Section 5.3 Notices. Any notice permitted to be given pursuant to this Agreement shall be in writing and delivered by United States mail, certified, postage prepaid, return receipt requested, or when sent by overnight express carrier (i.e., Federal Express, UPS) with a request that the addressee sign a receipt evidencing delivery, to the following persons at the indicated address:

To the County:

Hall County
P. O. Drawer 1435
Gainesville, Georgia 30503
Attention: Zach Propes, County Administrator

To GPA:

Georgia Ports Authority
P. O. Box 2406
Savannah, Georgia 31402
Attention: James C. McCurry, Jr.

Either party may, at any time, designate by written notice to the other party a change in the above address; provided, however, such change shall be binding upon the person to whom it is sent only from and after the date of receipt by such person.

Section 5.4. Waiver. No waiver of any default by either party hereunder will be implied from any omission by either party to take action on account of such default if such default persists or is repeated, and any express waiver will be operative only for the time and to the extent therein stated. A waiver by either party of any provision hereof will not be construed as a waiver of any subsequent breach of the same provision, nor will the consent or approval by either party to or of any act by the other be deemed to waive or render unnecessary their consent or approval to or of any subsequent similar acts.

Section 5.5 Time. Time is of the essence in this Agreement.

Section 5.6 Governing Law. This Agreement shall be subject to and governed according to the laws of the State of Georgia.

Section 5.7 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors, assigns or other legal representatives. Such successor in interest or assignee shall have all rights, powers and privileges conferred by this Agreement and shall be entitled to enforce the same according to the terms of this Agreement and law.

Section 5.8. Severability. If any portion or portions of this Agreement shall be for any reason invalid or unenforceable, the remaining portion(s) shall be valid and enforceable and carried into effect unless to do so would clearly violate the present legal and valid intention of the parties hereto.

Section 5.9 Entire Agreement. This Agreement, together with the Exhibits referred to herein which are hereby incorporated herein by reference, contains the entire agreement between GPA and the County relative to the Work, and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the parties. This Agreement shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless and until set forth in a written instrument authorized and executed with the same formality as this Agreement.

Section 5.10 Consent. Except as otherwise specifically set forth herein, whenever in this Agreement GPA or the County is required to give its consent or approval, such consent or approval shall not be unreasonably withheld, conditioned, or delayed.

Section 5.11 Scrivener of Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed that the Court or arbitral tribunal interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same. It being agreed that the agents of all parties have participated in the preparation hereof.

Section 5.12 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

Section 5.13 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

IN WITNESS WHEREOF, GPA and the County have caused their duly authorized representatives to execute this Agreement as of the day and year first above written.

Georgia Ports Authority

By: _____

Name: James C. McCurry, Jr.

Title: Chief Administrative Officer

Attest: _____

Name: Paul Yarbrough

Title: Director of Contracts & Procurement

Signed, sealed and delivered

in the presence of: _____

Witness

Ashley Cantrell

Notary Public, State of Georgia

My Commission Expires: 7-20-25

(Notarial Seal)



[Signatures Continue on
Following Page]

Hall County, Georgia

By: _____

Name: _____

Title: _____

Attest: _____

Name: _____

Title: _____

Signed, sealed and delivered

in the presence of:

Witness

Notary Public, State of _____

My Commission Expires: _____

(Notarial Seal)



APPROVED AS TO FORM
William J. Linkous, III
Deputy County Attorney

EXHIBIT "A"

1. The scope of Work to be performed by the County shall include the following:
 - (a) Preliminary engineering, construction, property acquisition, and associated work associated with the construction of a roadway parallel to the Norfolk Southern Railway line on the south side of the railway. The road generally runs west to east, connecting White Sulphur Road with White Sulphur Road near the entrance of the Northeast Georgia Inland Port.
 - (b) Preliminary engineering, construction, property acquisition, and associated work associated with the paving of an existing unpaved section of Cagle Road northeast of the Northeast Georgia Inland Port.
 - (c) Closure of the existing White Sulphur Road highway-rail at-grade crossing (USDOT ID #717784N)

EXHIBIT "B"
Project Estimated Cost

Scope	Budget
Design	\$ 831,150.00
Right-of-Way	\$ 843,000.00
Construction	\$ 8,782,292.00
Contingency	\$ 2,229,818.00
Total	\$ 12,686,260.00