



AUGUSTA LAW DEPARTMENT

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July 10, 2013

VIA: CERTIFIED MAIL 7006 2150 0005 1942 3971

Mr. Mike Bolden
State Utilities Engineer
One Georgia Center, 10th Floor
600 West Peachtree Street, NW
Atlanta, GA 30308



Re: **GDOT Project #NH000-0520-01(017)**
Contractor: Pittman Construction Company
Utility Name: Augusta Utilities Department

Dear Mr. Bolden:

Please find enclosed the Uniform Petition Mediation Form for the above-referenced project.

Should you have any questions, please do not hesitate to contact me.

Thank you.

Sincerely,


Andrew G. MacKenzie

AGM/dh
Enclosures

Augusta Law Department
520 Greene Street Augusta, Georgia
(706)842-5550 – Fax (706)842-5556

PI Number: 210700

Date: Jul 10, 2013



Uniform Petition for Mediation Form

Revised 04-29-2013

1. Petitioner Information

Petitioner Name: Tom Wiedmeier- Augusta, Georgia

Address: 360 Bay Street, Suite 180
Augusta, GA 30901

Contact Person: Director of Augusta Utilities Department
Title:

Phone Number: +1 (706) 312-4160
(Enter area code & number with no spaces.)

2. Respondent Information

Respondent Name: Mike Boden-GDOT/Arnie Pittman-Pittman

Address: One Georgia Center, 10th Floor
600 West Peachtree St., NW
Atlanta, GA 30308

Contact Person: GDOT State Utilities Engineer
Title:

Phone Number: +1 (404) 631-1354
(Enter area code & number with no spaces.)

3. GDOT Information

Project Number: NH000-0520-01(017) Project Let Date: Sep 16, 2011 County: Richmond

Description: 4.7 miles of widening & reconstruction on I-520/SR 415 beginning @ US1/SR4 & extending to SR 10 (Gordon Hwy)

Contractor: Pittman Construction Company

Address: PO Box 155
Conyers, GA 30012

Contact Person: Arnie Pittman
Title: President

Phone Number: +1 (770) 922-8660
(Enter area code & number with no spaces.)

4. Utility Information

Utility Name: Augusta Utilities Department

Address: 360 Bay Street, Suite 180
Augusta, GA 30901

Contact Person: Deanna Davis
Title: Engineering Manager

Phone Number: +1 (706) 823-4429
(Enter area code & number with no spaces.)

Scope of Work on Project: Remove water and sewer conflicts with the proposed storm drain along Deans Bridge Road.

Is work reimbursable by GDOT?: No If "Yes", Date of Executed Agreement:

Amount of Agreement: Reimbursement Case (I-X): Notice to Proceed by GDOT:

Work Plan or Revised Work Plan Status: Conflicts are resolved, work is complete.

5. Escalation and Mediation Information

Notice of Potential Dispute Date: Sep 25, 2012

PI Number: 210700



Uniform Petition for Mediation Form

Revised 04-29-2013

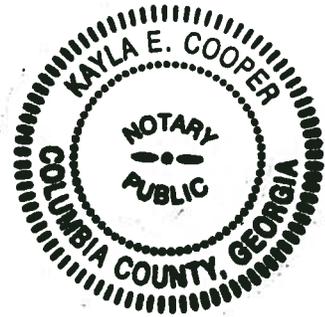
The following is a checklist of items that must be included with the Petition for Mediation. Please check each item to signify inclusion in the Petition.

Note: *Failure to provide the following documentation may result in the Petition either being dismissed or returned to the Petitioner for corrective action.*

- A narrative statement with all facts underlying the dispute(s) including statements as to what remedy is being sought by the Petitioner and a detailed explanation of the escalation process used to resolve the dispute(s).
- A detailed statement of all disputes and issues the Petitioner is submitting for resolution by the Mediation Board and a statement identifying the parties that are necessary to resolve the dispute included.
- If applicable, a statement by the Department that the dispute by the Contractor should proceed.

I certify that the Petitioner has served a copy of the Petition for Mediation on the Department and that formal mediation is being sought.

Candace A. McLaughlin, General Counsel Augusta, GA
Signature and Title of Person Representing Petitioner



Subscribed and Sworn before me on this the 10th day of July, 2013

Kayla E. Cooper
Notary Public

My Commission Expires: Dec. 20, 2016

Please submit Petition to:

Mr. Mike Bolden
 State Utilities Engineer
 One Georgia Center, 10th Floor
 600 West Peachtree Street, NW
 Atlanta, GA 30308

A. STATEMENT OF THE FACTS

Augusta, Georgia does not waive any legal defenses, including, but not limited to, Sovereign Immunity, but is in good faith participating in this mediation process in accordance with section 4.4.C of the GDOT 2009 Utility Accommodation Policy and Standards Manual. As such Augusta requested a full Mediation Board hearing pursuant to O.C.G.A. § 32-6-171 and GDOT's Board Rule 672-19.

7/26/2012

Pittman notified Augusta Utilities Department (AUD) that there were conflicts with the proposed storm drain alignment and existing utilities (water and sewer). Augusta sent Stan Aye-AUD engineer out to investigate.

7/27/2012

AUD personnel Deanna Davis, Stan Aye and William Young went to the site to talk with Pittman Project Manager Justin Savage and GDOT representative Caleb Lord. AUD was informed of the alleged conflicts that were located. AUD received updated field change plans from Caleb Lord and began working on getting the utility drawings for the area.

8/3/2012

Jerry Delaughter-AUD Assistant Director met with Blair Construction to discuss the SUE (subsurface utility exploration) field data AUD needed to identify conflicts.

8/6/2012

Deanna Davis-AUD Engineer met with Blair to further explain the SUE needed.

8/13/2012

Deanna Davis-AUD Engineer provided an email to GDOT letting them know the status of AUD's work.

8/16/2012

Received a letter from Pittman Construction dated 8/13/2012 concerning the project delays.

8/21/2012

Received SUE data redlines from Blair Construction.

8/23/2012

Received GPS data from Blair Construction.

8/28/2012

Meeting at GDOT trailer with Deanna Davis and William Young (AUD), Caleb Lord and Lynn Bean (GDOT). Lynn stated GDOT did not want to amend their contract to have Pittman Construction perform the utility conflict resolutions so AUD abandoned that plan and decided to task order the work directly to Blair Construction. At this meeting AUD discussed the conflicts, determined where field adjustments

CONFIDENTIAL STATEMENT MADE IN THE CONTEXT OF SETTLEMENT NEGOTIATIONS

could be made with the storm drain to avoid conflicts and came away with three locations of conflict that would need to be addressed. No representative of Pittman was present at this meeting.

8/30/2012

Deanna Davis-AUD Engineer sent an email to GDOT explaining the proposed adjustments and asked for guidance on what type of pavement patch would be needed as AUD were going to put the waterline into the street. Deanna also asked what the status of Pittman getting back to work was.

9/4/2012

Deanna Davis-AUD Engineer had a phone conversation with Lynn Bean and Caleb Lord-GDOT. They instructed about the pavement patch and also that the waterline in the street would need to be steel encased. Deanna asked if this requirement could be waived due to the fittings. Lynn stated to put the request in writing. Lynn later responded that the casing would not be required. Deanna again asked Caleb to update on the status of Pittman getting back to work. AUD agreed to focus on the sanitary sewer conflicts first as that would open up one side of Deans Bridge Road for Pittman to get back to work on the Storm Drain.

AUD was on this date ready to let their contractor begin work, they were just waiting for the permits to be approved.

Deanna Davis-AUD Engineer submitted (3) permit requests for the conflict work. GUPS Permit #'s: 1090447, 1090477, 1090478.

9/6/2012

Deanna Davis-AUD Engineer received an email from Pittman Construction PM Justin Savage stating that they were experiencing delays and requesting a timeline for the corrections. Deanna forwarded the email to Caleb Lord and Lynn Bean-GDOT and informed them that AUD was waiting on the permits and asked if we needed to meet with Pittman Construction.

GUPS Permit #1090447, #1090477, #1090478-GDOT rejected/requested location map, patching detail and the size of the pavement cut.

Permits-additional information was requested-a location map, patching detail and size of pavement patch. Deanna Davis-AUD Engineer was in the field in meetings so she forwarded the request to Caleb Lord and Lynn Bean requesting assistance with the permit reviewer.

9/10/2012

Deanna Davis-AUD Engineer provided the additional information requested as she had not received a response from Caleb Lord or Lynn Bean-GDOT.

GUPS Permit# 1090447, #1090477, and #1090478 Resubmitted.

9/11/2012

AUD gives the go-ahead to their contractor to order material for conflict resolution.

9/13/2012

GUPS Permits # 1090477 and #1090478 have been approved-waiting on the mail.

AUD was ready on this date to begin sewer conflict resolution.

9/18/2012

Received permit for sewer work.

9/19/2012

Atlanta GDOT office is requesting additional information for water permit-they want the changes shown on GDOT project plans, cross sections and additional dimensions. Per the GDOT manual the information will need to be shown on the GDOT plans. Deanna Davis-AUD Engineer requested drawings from GDOT to comply with the request.

9/20/2012

Deanna Davis-AUD Engineer sent the requested information on the GDOT project plans to Lynn Bean, as directed.

Email received from Mike Bolden stating that the drawings could not be modified as Deanna Davis had submitted them. After discussion between Deanna and Lynn it was determined that Deanna would not send the drawing files provided, but would instead just redline the official GDOT plans.

9/21/2012

GUPS Permit# 1090447 rejected by GDOT. Deanna Davis-AUD Engineer provided redlined plans to Mike Bolden and Jan Phelps-GDOT as requested.

Mike Bolden instructed that the redlined plans needed to be uploaded into GUPS, included in the permit application and needed to include a UAS (utility adjustment schedule).

GUPS Permit# 1090447 resubmitted.

9/25/2012

Deanna Davis emailed Mike Bolden and Lynn Bean-GDOT to check on the status of the permit and see if any additional information was needed.

GUPS Permit# 1090447 rejected. GDOT permit reviewer requested that the GDOT project number be added to the permit request-resubmitted.

GUPS Permit# 1090447 resubmitted.

9/26/2012

Deanna Davis-AUD Engineer informed Pittman PM Justin Savage that the sewer conflicts along Dean's Bridge Road had been resolved and that AUD was waiting on GDOT to issue the permit for the water resolution.

Deanna received a letter from Pittman Construction dated 9/25/2012 notifying AUD and GDOT that Pittman was initiating escalation procedure step 1.

9/27/2012

Approval for GUPS permit# 1090447-Kevin Joyner (AUD) went to Tennille to pick it up. AUD was on this date ready to begin the water conflict resolution.

Deanna Davis-AUD Engineer sent a response letter to Pittman and copying GDOT. The letter addressed issues brought up in the Pittman escalation letter dated 9/25/2012 and requested a meeting.

9/28/2012

Pittman Construction PM Justin Savage informed Deanna Davis-AUD Engineer that AUD will not be able to start any work until Pittman approved plans and a schedule. A meeting has been scheduled for Oct 2, 2012. Deanna informed AUD contractor, Blair Construction, that per Pittman direction they could not start the waterline relocation work on Oct 1, 2012 as planned.

Deanna requested Pittman allow AUD's contractor to let us deliver material on Oct 1, 2012-was told by Justin Savage that Pittman would be working in the area and that deliveries would have to wait.

10/2/2012

Representative from AUD, Pittman and GDOT met to review conflicts. AUD was told that they needed to have Pittman's approval on any plans and schedule prior to construction. This was the first time AUD had been informed of this.

10/4/2012

Deanna Davis-AUD Engineer applied to GDOT for a permit for relocating the 12" waterline in conflict. Permit # 1091609.

10/5/2012

Deanna Davis-AUD Engineer sent a letter dated 10/4/2012 to Pittman and GDOT outlining concerns/responses to issues brought up in the escalation meeting. The letter also included a schedule and proposed conflict resolutions.

Pittman Construction PM Justin Savage replied to the letter via email with his concerns about the plan.

GDOT Permit #1091609 has been approved by GDOT. AUD was now ready to remove the water conflicts.

10/17/2012

Deanna Davis-AUD Engineer sent a letter to Pittman PM Justin Savage addressing a sewer manhole Pittman damaged the previous week. Deanna also proposed a plan to fix the manhole and connecting pipe and provided a schedule. Deanna requested Pittman approval. Caleb Lord and Lynn Bean from GDOT were also copied on the letter. AUD was ready to work but waiting on permission.

10/18/2012

Pittman PM Justin Savage responded to the request informing Deanna that GDOT needed to approve the plan and that Pittman would have to review and approve any plan and schedule before AUD could work.

Deanna then asked GDOT reps. Caleb and Lynn for assistance.

AUD was ready to work but waiting on permission.

10/23/2012

Deanna Davis-AUD Engineer sent a letter to GDOT and Pittman outlining the approval she needed from each party pertaining to the sewer matter first discussed on 10/17/2012.

Deanna discussed with Lynn Bean over the phone the possibility of AUD installing a temporary lift station in GDOT ROW. Lynn asked for the request to be submitted in writing. Deanna submitted that request via email.

AUD was ready to work but waiting on permission.

10/24/2012

Deanna Davis-AUD Engineer sent an email to Pittman Construction PM Justin Savage, copying Lynn Bean and Caleb Lord-GDOT to provide an update on the AUD planned activities for the conflict resolutions for both the water and the sewer. In the email AUD proposed to eliminate the active water line that is currently in conflict with proposed Pittman work-AUD is going to tap water on Augusta Tech Blvd and then abandoning the water line along Deans Bridge Road. The sewer fix is still the same proposal from the 10/17/2012 email that Deanna has still not received an answer on. Deanna is also requesting from GDOT permission to install a temporary lift station in the GDOT ROW which will allow AUD to abandon the rest of the sewer along Deans Bridge Road that is in conflict with proposed Pittman work. Deanna is requesting comments/concerns from all parties on this proposed work.

AUD was ready to work but waiting on permission.

10/29/2012

Deanna Davis received approval from Lynn Bean to proceed with the permit request for the temporary lift station.

Deanna Davis applied for the GDOT permit for the temporary lift station, permit #1092455.

AUD is ready to work but waiting on permission.

11/2/2012

Deanna Davis received an email from Pittman Construction PM Justin Savage that forwarded a request for escalation step 2 from Pittman Construction. Justin Savage originally sent the letter via email on 10/24/2012 but did not include Deanna in the email. The letter was dated 10/23/2012.

Justin replied to Deanna's email from 10/23/2012 requesting approval for the sewer. Justin is concerned about the 36" storm that Pittman needs to remove and he is concerned that the location of the sewer line will not allow Pittman to remove the required storm drain line.

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Deanna replied that AUD and Pittman could coordinate efforts during the construction of this and that by doing so the concern Justin had was not an issue. Deanna also pointed out another area of sewer that she thought Justin might feel was in conflict and reminded him that that section of sewer would be abandoned and therefore would not pose a problem for Pittman moving forward.

Justin clarified the location he was concerned about and it was the area Deanna proposed could be handled via field coordination.

AUD was ready to work but waiting on permission.

11/7/2012

Deanna Davis-AUD Engineer spoke with Mike Lankford of GDOT to discuss a time to meet with Pittman/AUD/GDOT concerning escalation step 2. The date set was 11/20/2012.

AUD received a letter from GDOT requesting their attendance at an escalation step 2 project utility delay mitigation meeting to be held 11/20/2012.

Deanna Davis-AUD Engineer sent AUD's response to the Pittman escalation step 2 request. The letter was dated 11/6/2012.

AUD was ready to work but waiting on permission.

11/8/2012

Deanna Davis sent an email to Caleb Lord-GDOT after speaking to Lynn Bean-GDOT earlier. Deanna is requesting to have a meeting in the GDOT trailer at the project site to update both GDOT and Pittman on the status of AUD's relocation. Deanna is proposing a meeting date of 11/13/2012.

GDOT Permit #1092455 (Temporary lift station) has been approved, awaiting paperwork via mail.

AUD was ready to work but waiting on permission.

11/9/2012

Deanna Davis-AUD Engineer, having not received a response from Caleb Lord-GDOT, sent a request to Lynn Bean-GDOT requesting the use of their trailer to set up a meeting for 11/13/2012. Lynn responded that he was working on it-GDOT representative are trying to get Pittman to commit to the meeting.

AUD was ready to work but waiting on permission.

11/12/2012

Deanna Davis-AUD Engineer is checking with GDOT to see if a meeting will be held on 11/13/2012.

AUD was ready to work but waiting on permission.

11/13/2012

Corbett Reynolds-GDOT has informed that Pittman cannot meet because they are working on their bids for another project that was letting on Friday of that week. A teleconference was offered but GDOT has not been able to follow up on their offer.

AUD was ready to work but waiting on permission.

AUD/GDOT/PITTMAN CONSTURCITON CONFLICT TIMELINE
PROJECT: NH000-0520-01(017) RICHMOND PI # 210700
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11/15/2012

Lynn Bean-GDOT requested Deanna Davis-AUD Engineer provide the status of the utility relocations and timeline for completion that would have been provided in this meeting.

Deanna replied that the water line is scheduled to be completely abandoned by the end of November and the sewer should take a week after that provided no delays/bad weather occur and we get concurrence from Pittman.

AUD was ready to work but waiting on permission.

11/20/2012

Escalation Meeting for step 2 held in GDOT's Atlanta office at One Georgia Center, 10th Floor. Pittman agreed to the sewer conflict resolution originally proposed by AUD on 10/17/2012. Schedule of work was: 1. Abandon waterline along Deans Bridge Road 2. Abandon/resolve conflicts with sewer line along Deans Bridge Rd. 3. Lift Station/fill abandoned sewer/remove asbestos/general cleanup.

11/27/2012

Field meeting held at GDOT trailer. AUD laid out schedule for capping the waterline in front of Kroger. AUD's contractor will set up the sewer bypass on 12/10/2012. Pittman will start removing the storm drain on 12/12/12.

12/10/2012

Deanna Davis-AUD Engineer sent an update letter to GDOT/Pittman informing that the conflicts with the water line have been removed and that the sewer conflicts should be resolved by 12/14/2012.

12/20/2012

Deanna Davis-AUD Engineer sent an update letter to GDOT/Pittman informing them that the sewer conflicts were complete as of 12/14/2012.

1/30/2013

AUD received GDOT's finding from the escalation step 2 mitigation meeting.

3/21/2013

AUD received Pittman Construction's claim for \$919,014.00 plus any asphalt liquid index charges.

4/25/2013

AUD submitted an official request for mediation via certified mail and email.

4/29/2013

AUD received an email from Thomas Parker-GDOT State Utilities Construction Engineer providing the Petition for Mediation form to be filled out by AUD.

AUD/GDOT/PITTMAN CONSTRUCTION CONFLICT TIMELINE
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5/2/2013

Kayla Cooper-AUD Attorney received phone calls from both Thomas Parker and Mike Bolden, both of GDOT to discuss the possibility of AUD meeting with Pittman to discuss the matter and attempt to settle it before formal mediation.

5/6/2013

Tom Wiedmeier-AUD Director requested from Lynn Bean-GDOT a copy of the GDOT/Pittman contract, engineer's project diary or log, and any weather/rain days.

5/10/2013

Kayla Cooper-AUD Attorney received phone from Mathew Klein-GDOT and Arnie Pittman-Pittman Construction concerning scheduling a meeting to discuss the matter before formal mediation occurs.

5/30/2013

Meeting held at the GDOT area office with representative from AUD, Pittman Construction and GDOT present. A resolution could not be agreed upon at the meeting.

From 7/26/2012 to 9/4/2012 AUD was working to identify conflicts, develop resolutions and get approval from GDOT, the owner of the project. At no time during this period was AUD told that Pittman Construction needed to approve the proposed conflict resolutions or even be involved in the discussions, though AUD did ask. The AUD representative routinely kept in contact with representatives from GDOT, keeping them up to date as to AUD progress as well as meeting with them to receive approvals. (28 weekdays)*

From 9/5/2012 to 9/18/2012 AUD had a contractor on standby ready to perform the work to eliminate the water and sewer conflicts with the proposed GDOT project. This time was spent replying to various requests from GDOT for additional information on the required GDOT permit requests. This information and all the details for the proposed conflict resolutions were already known by GDOT personnel because AUD representatives met with them for approval before applying for the permits. (10 weekdays)*

From 9/19/2012 to 9/26/2012 AUD's contractor was working in the area to relieve the sewer conflicts. (6 weekdays)*

From 9/4/2012 to 9/27/2012 AUD was waiting on GDOT to approve the permit that would allow the water line conflicts to be resolved. (18 weekdays)*

On 9/28/2012 AUD was informed by Pittman Construction that they could not have their contractor working in the area to resolve any conflicts due to planned Pittman work.

From 9/28/2012 to 11/20/2012 AUD was involved in two escalation meetings and was told that AUD could not perform any work unless Pittman Construction approved the work and the schedule. AUD representatives routinely requested approval from both GDOT and Pittman, even going so far as to amend the proposed conflict resolutions so that AUD completely abandoned the water line and abandoned the

AUD/GDOT/PITTMAN CONSTRUCTION CONFLICT TIMELINE
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majority of the sewer line along the Pittman Construction zone on Deans Bridge Road. AUD also proposed and was granted permission to install a temporary lift station to be able to abandon the sewer line.

(37 weekdays)*

From 11/21/2012 and 12/14/2012 AUD was able to resolve all conflicts with the water and sewer lines and the proposed GDOT project. (15 weekdays)*

* Weekdays calculation does not include any rain/wet days and does not include any days off except Labor Day and (2) Thanksgiving days.

AUD feels that we have responded in a timely manner to the conflict issues that became known during the construction of this project. Furthermore, we feel that had we not experienced the inconsistent responses and/or the delays in responses from both GDOT and Pittman Construction that this matter would not have even escalated to the point that the GDOT Escalation Process would have needed to be implemented.

B. STATEMENT OF THE DISPUTE AND ISSUES

Augusta, Georgia does not waive any legal defenses, including, but not limited to, Sovereign Immunity, but is in good faith participating in this mediation process in accordance with section 4.4.C of the GDOT 2009 Utility Accommodation Policy and Standards Manual. As such Augusta requested a full Mediation Board hearing pursuant to O.C.G.A. § 32-6-171 and GDOT's Board Rule 672-19.

I. Sovereign Immunity

Augusta, Georgia is entitled to Sovereign Immunity with regard to this claim. Under Art. 1, § 2 ¶ 9 of the Georgia Constitution, Augusta, Georgia is immune from tort liability under the doctrine of sovereign immunity. The doctrine of sovereign immunity provides that "[t]he State as a sovereign cannot be sued without its consent and a judgment taken against the State without its consent to the action is a nullity." Thompson v. Continental Gin Co., 73 Ga. App. 694 (1946). This doctrine applies to all state departments and agencies, including counties. *See*, James v. Richmond County Health Dep't, 168 Ga. App. 416, 309 S.E.2d 411 (1983) and Gilbert v. Richardson, 264 Ga. 744, 452 S.E.2d 476 (1994). While Augusta, Georgia is a consolidated government, under a local Act of the General Assembly, the consolidated government of Augusta, Georgia¹ is to be treated as a county for tort liability purposes. *See*, McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 609, 618 S.E.2d 59, 63-64 (2005) (citing Ga. L. 1996, p. 3607). Ga. L. 1996, p. 3607 states:

Section 1. An act providing for the consolidated government of Augusta-Richmond County, approved March 27, 1995 (Ga. L. 1995, p. 3648), is amended by adding a new section to be designated Section 21, to read as follows: 'Section 21. The tort and nuisance liability of the consolidated government of Augusta-Richmond County shall follow the law and rules of tort liability applicable to counties in Georgia.'

Emphasis added.

¹ The name of the consolidated government was amended from "Augusta-Richmond County" to Augusta, Georgia. *See* Ga. L. 1997, p.4024.

O.C.G.A. § 36-1-4 provides that “[a] county is not liable to suit for any cause of action unless made so by statute...” A county’s defense of sovereign immunity “may only be waived by a legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver.” Smith v. Chatham County, 264 Ga. App. 566, 567(1) (2003). Georgia Courts have constantly upheld sovereign immunity of county governments. See, Rutherford v. DeKalb County, 287 Ga. App. 366, 651 S.E. 2d 771 (Ga. App. 2007) (“The distinction between governmental and proprietary functions applies, however, not to counties, but to cities...’Counties are subdivisions of the state government...organized...for the purpose of administering locally the general powers and policies of the state.”). A county’s defense of sovereign immunity can be waived only under two circumstances. First, sovereign immunity can be waived by an Act of the Georgia Assembly which specifically provides that sovereign immunity is waived and provides the extent of the waiver. See, Kordares v. Gwinnett Co., 220 Ga. App. 848 (1996); Mapp v. Drake, 178 Ga. App. 830 (1986) see also Ga. Const. Art. 1, § 2 ¶ 9(e) (“[t]he General Assembly may waive the immunity of counties, municipalities, and school districts by law”). Second, “O.C.G.A. §33-24-51 provides that a county waives its governmental sovereign immunity to the extent of the amount of liability insurance purchased for the negligence of its officers, agents, servants, attorneys, or employees arising from the use of a *motor vehicle*.” Cridler v. Zurich Ins. Co., 222 Ga. App. 177, 178-179, 474 S.E.2d 89, 91 (Ga. App. 1996) (citations and internal quotations omitted); see also Woodard v. Laurens County, 265 Ga. 404, 406 (1995). Finally, “[a] waiver of sovereign immunity must be established by the party seeking to benefit from the waiver.” Smith v. Chatham County, 264 Ga. App. 566, 567 591 S.E.2d 388, 389 (Ga. App. 2003).

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In this case there has not been a statutory exception to waiver, nor was any insurance purchased to cover this matter. Accordingly, Augusta, Georgia respectfully submits that the claims made against Augusta are barred by Sovereign Immunity.

II. Amount of Damages claimed by Pittman

In addition to, and notwithstanding Augusta's defenses in section I above, the Augusta Utilities Department (AUD) does not believe there is sufficient documentation to support the \$919,014.00+ of damages claimed by Pittman Construction. Further, Pittman Construction failed to provide sufficient evidence to support their claim that AUD is responsible for these damages. Pittman has not at this time provided receipts, daily work logs, or any other documentation, substantiating their claim. Attempts by AUD to resolve alleged conflicts were severely delayed and hampered by Pittman and inconsistent information provided by GDOT regarding approval requirements, etc. In addition to detailed timeline of facts regarding delays as outlined in Section A. Statement of Facts, there were also a number of Rain Days, Wet Day, and Holidays that could have possibly added to the additional delay regarding the completion of this project. For these reasons, the amount of damages claimed by Pittman is wholly unsubstantiated and should be reduced to nothing.

III. Mitigation of Damages by Pittman

AUD has not been provided any documentation or evidence regarding Pittman Construction's effort to mitigate damages in regards to the delay that the removal of the AUD conflicts may have caused. This road widening project contained several different locations and other causes of delay, which have not been addressed by Pittman Construction. AUD has not been provided an opportunity to determine whether Pittman Construction attempted to mitigate damages which would have an effect on the calculation of the claimed damages.

C. REQUIRED INTERESTED PARTIES

Augusta, Georgia does not waive any legal defenses, including, but not limited to, Sovereign Immunity, but is in good faith participating in this mediation process in accordance with section 4.4.C of the GDOT 2009 Utility Accommodation Policy and Standards Manual. As such Augusta requested a full Mediation Board hearing pursuant to O.C.G.A. § 32-6-171 and GDOT's Board Rule 672-19.

The following are the required interested parties for this Mediation:

- I. Augusta, Georgia Utilities Department
- II. Pittman Construction, Co.
- III. Georgia Department of Transportation