



**COBB COUNTY  
DEPARTMENT OF TRANSPORTATION  
CITY OF SMYRNA  
NICKAJACK QUIET ZONE  
INTERGOVERNMENTAL AGREEMENT**

**Project No. X2313**

This Intergovernmental Agreement (“IGA”) is made and entered into the Effective Date, as defined herein, by and between Cobb County, Georgia, a political subdivision of the State of Georgia (“County”), and the City of Smyrna, Georgia, a municipal corporation of the State of Georgia, acting by and through its Mayor and City Council (“City”), hereinafter collectively referred to as the (“Parties”). Any reference herein to the (“NSR”) shall mean the Norfolk Southern Railway.

WHEREAS, the County and the City entered into a Cobb Framework Agreement (CFA) on March 19, 2019, for services associated with the Nickajack Road Quiet Zone Railroad Crossing, Project No. X2313 (Project); and

WHEREAS, the Parties agreed in the CFA to pay, from their respective shares of the 2016 SPLOST TIP funds, for Project costs for coordination and/or construction activities required by the approved Project plans; and

WHEREAS, the Parties agreed that any additional Project costs beyond those identified in the CFA and agreed to in writing shall be apportioned in accordance with the percentages reflected in the CFA, with the City contributing 25% of the costs and the County contributing 75% of the costs; and

WHEREAS, the NSR, the governing railroad for the Quiet Zone crossing, has prepared a construction agreement for the Project which includes a requirement that the Quiet Zone Crossing modifications be maintained at the expense of the Local Government, and that said maintenance includes an annual maintenance fee, due to four-quadrant gate system maintenance costs, for so long as the Quiet Zone crossing is in use (“Annual Maintenance Fee”); and

WHEREAS, the Annual Maintenance Fee applicable to the Project is \$5,855.00, due within 60 days from the date of the Project installation in-service date and is subject to future increase; and

WHEREAS, the purpose of this IGA is to set out the terms and conditions under which the Annual Maintenance Fee will be paid by the Parties; and

NOW THEREFORE, in consideration of the mutual promises made and of the benefits to flow from one party to the other, the receipt and sufficiency of which are hereby acknowledged, the County and the City do hereby agree each with the other as follows:

1. The Parties agree to pay the Annual Maintenance Fee applicable to the Project, as listed in **Exhibit A**, for so long as the Project is in use, or until the Project is no longer necessary, or until the Project is abandoned or other legal requirements make it necessary to cease operation and maintenance, the first bill to be submitted 60 days from the date of the Project in-service date, annually thereafter on the anniversary of the in-service date, and subject to future increase to adjust for the NSR labor costs.

2. The Parties agree to apportion the costs of the Annual Maintenance Fee, with the City paying 25% and the County paying 75% of the Annual Maintenance Fee. The Parties agree that should the City later annex more property within another quadrant of the Project, then the Annual Maintenance Fee amount will be proportionate to the amount of property annexed.

3. The City agrees to pay the County the City's portion of the Annual Maintenance Fee within sixty (60) days of receipt of an invoice from the County.

4. The laws of the State of Georgia shall govern the construction, interpretation and enforcement of this Agreement and its provisions. The parties shall bring any action at law or in equity related to this Agreement and/or to construe, interpret or enforce the provisions hereof in the Superior Court of Cobb County, Georgia, or the United States District Court for the Northern District of Georgia, as applicable.

5. The term of this Agreement shall commence on the date the last party hereto executes it ("Effective Date"). Either Party may terminate this Agreement at any time, upon presentation of thirty (30) days written notice to the other Party. In no event shall the term of this Agreement continue for a period longer than fifty (50) years from the Effective Date. The parties shall remain responsible for the completion and fulfillment of any outstanding financial commitments specified herein and not otherwise satisfied before the expiration or termination of this Agreement. Upon termination of this Agreement, the Project modifications deemed nonessential to the continued operation of the public crossing warning devices shall be removed *by the NSR* and the warning devices shall be returned to their pre-modifications condition *by NSR*, thereafter the NSR's train crews will start sounding the train horn on a normal basis.

6. This Agreement, together with all exhibits, constitutes the entire understanding between the parties, and as of its Effective Date, supersedes all other understandings or agreements, whether oral or written, between the parties concerning the subject matter hereof.

7. All notices and other communications required or permitted under this Agreement shall be in writing and shall be sent by certified mail, return receipt requested with postage and fees prepaid to the addresses set forth below, and shall be deemed to be effective when actually received or refused. Either party may change the address to which future notices or other communications are to be sent by notifying the other party as follows:

If to County: Erica Parish  
Director, Cobb DOT  
1890 County Service Parkway  
Marietta, GA 30008

If to City: Mayor Derek Norton  
2800 King Street  
Smyrna, GA 30080

8. If any provision of this Agreement, or the application thereof, is determined to be invalid or unenforceable for any reason, the remainder of that provision and all other provisions of this Agreement shall remain valid and enforceable.

9. Each of the individuals executing this Agreement on behalf of the City or the County represents to the other party that such individual is authorized to do so by requisite action of the party to this Agreement.

This \_\_\_\_\_ day of \_\_\_\_\_, 2020

RECOMMEND FOR APPROVAL:

**CITY OF SMYRNA**

**COBB COUNTY, GEORGIA**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: Derek Norton

Printed Name: Michael H. Boyce

Title: Mayor, City of Smyrna, Georgia

Title: Chairman, Board of Commissioners

Date \_\_\_\_\_

Date \_\_\_\_\_

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

City Clerk

County Clerk

[ATTACH CITY SEAL]

[AFFIX COUNTY SEAL]

APPROVED TO FORM BY:

\_\_\_\_\_  
County Attorney's Office