

AGREEMENT
BETWEEN
COBB COUNTY, GEORGIA
AND
THE CITY OF SMYRNA, GEORGIA
FOR
NICKAJACK ROAD QUIET ZONE RAILROAD CROSSING PROJECT

This Cobb Framework Agreement (“CFA”) 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 “DEPARTMENT” or “GDOT” shall mean the Georgia Department of Transportation, an agency of the State of Georgia. Any reference herein to the “FRA” shall mean the Federal Railroad Administration, an agency of the United States. Any reference herein to the “NS” shall mean the Norfolk Southern Railway.

WITNESSETH:

THAT WHEREAS, the COUNTY and the CITY are interested in furthering the transportation facility identified in the COUNTY’s 2016 One Percent Special Local Option Sales Tax (“SPLOST”) Transportation Improvements Program (“TIP”) as the “Nickajack Road Quiet Zone Railroad Crossing”, Project Number X2313, more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (“PROJECT”); and

WHEREAS, the COUNTY and the CITY together are willing to pay from their respective shares of the 2016 SPLOST TIP funds for the costs, fees, expenses and/or other charges related or attributable to the engineering and design work and the preparation of plans, to be performed by NS, to undertake or construct each phase or component of the PROJECT including that design work occasioned by unexpected or contingent circumstances which, in the opinion of the COUNTY, the CITY, NS, and the FRA, GDOT, dictate a change in the PROJECT scope (“PE Activities”); and

WHEREAS, the COUNTY and the CITY are willing 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 anticipate the total PROJECT costs to be Four Hundred Thirty-Five Thousand and no/100 Dollars (\$435,000.00); and

WHEREAS, the COUNTY will be the primary party to coordinate the design/engineering and construction phases of the PROJECT to be performed by NS pursuant to the terms and conditions set forth in this agreement; 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. Within thirty (30) days of the Effective Date, the COUNTY in coordination with the CITY shall draft and provide the following documents for review by the Parties: (i) a written PROJECT scope; and, (ii) a PROJECT implementation schedule; and, (iii) a PROJECT budget.

2. The COUNTY and the CITY together will fund the PROJECT PE Activities from their respective shares of 2016 SPLOST TIP funds. The PE Activities shall include but not be limited to the obligations and requirements specified in the FRA's Guide to the Quiet Zone Establishment Process. PE Activities may include costs payable to NS Railroad.

3. The COUNTY will appoint a Project Manager ("PM") who shall be primarily responsible for coordination with NS and the FRA, for the administration and supervision of each phase of the PROJECT, and for the approval of the related payment to NS. The PM shall report to the Director of the COUNTY's Department of Transportation, or his or her designee.

4. The COUNTY's PM shall work with NS, the CITY and the FRA: (i) to coordinate the review and approval of the PROJECT and PROJECT plans and specifications by both the COUNTY, CITY, and any applicable state or federal agency, including the DEPARTMENT and FRA; and also (ii) to provide all information or documentation necessary to obtain such permits or authorization as may be required to implement and construct the PROJECT.

5. The COUNTY shall enter into an agreement with NS for the PROJECT design work. NS shall prepare all PROJECT plans under the direct supervision of a professional engineer, licensed by the State of Georgia, who shall affix his or her seal to each set of such plans to certify the appropriate oversight and review in the preparation of the same. The PROJECT plans shall

comply with all applicable federal, state and local design specifications, standards, guidelines and directives. The COUNTY shall pay NS according to the NS's payment guidelines.

6. The CITY, upon request from the PM, will furnish or obtain any information or documentation within its possession or control required for any PROJECT review, approval, authorization or permit.

7. The Parties do not intend that any estimate or projection of PROJECT costs constitute an absolute cap or bar as to the actual expenditures for the PROJECT Activities. Certain unforeseen or unanticipated contingencies inherent in the evolution of the various phases of the PROJECT, which contingencies include but are not limited to right of way acquisition negotiations, utility relocation, public and vehicular safety enhancements, reconfiguration(s) of the PROJECT scope and overall PROJECT related cost control measures, may impact the total expenditures for all of the PROJECT Activities including design and construction. Should any such contingency arise during any phase of the PROJECT, the PM shall: (i) notify the CITY if the contingency requires a change in or reconfiguration of the PROJECT scope necessary to address or remedy the same; and (ii) prepare a proposal for the CITY with sufficient detail and/or documentation to permit an informed evaluation of the proposed change and the projected costs. The CITY will, after review of the PM's proposal and subject to the funding constraints specified in paragraphs 11 and 12 below, confer as to the need for any such change in scope and the projected costs required to accomplish the same. If the Parties disagree as to the proposed change in scope, the decision of the COUNTY shall be conclusive as to the necessity therefor. The COUNTY will

also, after a review of any projected increase in costs included in such proposal, advise the CITY of its opinion as to the propriety of the same. The COUNTY shall pay such additional amounts as have been both included in the PM's proposal and approved by the Parties. The COUNTY may, in its discretion, pay for any costs included in the PM's proposal but disputed by the CITY.

8. In addition to the PE Activities, the COUNTY and the CITY together will fund the implementation and construction of the other PROJECT activities and phases. The COUNTY shall be primarily responsible for the implementation and completion of the PROJECT activities which shall include without limitation the following obligations and requirements to be coordinated or undertaken by NS or retained by the COUNTY through its public procurement policy with the assistance, as requested, and consent of the CITY:

- a. Compliance with all applicable procedures, rules and regulations for the identification of existing and proposed utility facilities and the relocation of any utility facility; and
- b. Any required coordination with the officials and/or staff of other agencies as to any accommodation or relocation request for existing or proposed utility facilities; and
- c. Review by the CITY of any proposed utility relocation within the limits of the PROJECT; and
- d. Any required coordination with and the submission for review and approval by other agencies of the proposed PROJECT right of way plans, if needed; and
- e. CITY and COUNTY shall each be responsible individually for the right-of-way acquisition and all associated costs within their respective jurisdictions as needed and, if

applicable, certification of the same to the appropriate state and/or federal agencies or departments in accordance with the pertinent laws, rules and regulations; and

f. Removal of all obstructions from the required PROJECT right of way, including but not limited to underground storage tanks, prior to the initiation of the COUNTY's public procurement process for the PROJECT construction contractor; and

g. Preparation of all shop drawings required for the PROJECT and the coordination of review and approval of the same by any applicable state and/or federal agency; and

h. Implementation and construction of the PROJECT in accordance with the final plans reviewed by the Parties and approved by the COUNTY and, as applicable, any state and/or federal agency.

9. Prior to the selection of a construction contractor for the PROJECT, the COUNTY may, at the request of the CITY, conduct at least one public meeting within CITY limits for the benefit of CITY residents and the greater community and at which the PM, NS and the CITY, or their respective designees, will be present to provide information and respond to inquiries about the PROJECT.

10. The CITY's share of the PROJECT costs is estimated to be One Hundred Eight Thousand, Seven Hundred Fifty and no/100 Dollars (\$108,750.00). The COUNTY shall, pursuant to the Intergovernmental Agreement between the Parties for the use and distribution of 2016 SPLOST TIP Proceeds, bill the CITY for the CITY's respective share of the amount billed to the COUNTY by NS for PROJECT activities.

11. Notwithstanding any provision or language to the contrary herein, the CITY understands, acknowledges and agrees that the total maximum financial contribution of the COUNTY to the PROJECT is Three Hundred Twenty-six Thousand, Two Hundred Fifty and No/100 Dollars (\$326,250.00). The COUNTY will not be obligated to provide now or hereafter any additional PROJECT funding except as may be specifically set forth and conditioned by an amendment or addendum to this CFA. Likewise, the COUNTY understands, acknowledges and agrees that the total maximum financial contribution of the CITY to the PROJECT is One Hundred Eight Thousand, Seven Hundred Fifty and no/100 Dollars (\$108,750.00). The CITY will not be obligated to provide now or hereafter any additional PROJECT funding except as may be specifically set forth and conditioned by an amendment or addendum to this CFA. Any understanding or agreement between the Parties as to the additional or future funding of the PROJECT and the respective and associated responsibilities and commitments of the Parties with respect thereto shall be in writing and shall be reflected in a subsequent amendment or addendum to this CFA.

12. The PROJECT phases including the funding commitments and responsibility of each party are as identified in Exhibit "B" attached hereto and incorporated herein by reference. Any overage amounts or additional PROJECT costs beyond those identified in Exhibit B and agreed to in writing by the Parties shall be apportioned in accordance with the percentages reflected therein.

13. After review and approval of the final PROJECT plans and related documents by the CITY and the PM, and as applicable any other state or federal agency, NS will procure a PROJECT

Contractor/Construction Services Consultant. NS shall be responsible for the award of the PROJECT contract to a qualified contractor in accordance with its public procurement policy.

14. The Parties anticipate that construction of the PROJECT will impact NS right of way and infrastructure. The COUNTY, in its PROJECT oversight role, shall be responsible for contact, communication, negotiation and coordination with NS and any railroad company/entity the infrastructure of which is to be impacted by construction of the PROJECT as indicated in the approved PROJECT concept and design. The COUNTY shall ensure that the relocation and reconstruction of any such railway infrastructure shall be in accordance with railroad specifications and regulations and in accordance with any GDOT, State and Federal guidelines, specifications and regulations governing such road improvement impacts to railroad infrastructure. The expenses incurred to accommodate railroad infrastructure and interests (i.e. including but not limited to design, engineering, right of way acquisition, plan review, supplemental agreements, relocation/construction, labor/flagging) in accordance with railroad rules, regulations and specifications shall be PROJECT costs to be satisfied as applicable from the funds contributed by the Parties and referenced in paragraph 11 above and Exhibit B attached hereto.

15. Both the COUNTY and the CITY agree and acknowledge that their respective obligations, as outlined and described herein, will be fulfilled through services performed by NS and their independent consultants and contractors in accordance with FRA guidelines, directives, specifications, rules and regulations and pursuant to COUNTY control, oversight, supervision and approval. Each Party shall require all contractors to indemnify, defend, hold harmless and insure

the COUNTY and the CITY from and against any claims, damages, actions, judgments, costs, penalties, liabilities, demands, requests for payment, loss and/or expenses, including attorneys fees and litigation costs, caused by or attributable to any consultant's or contractor's negligent acts or omissions, or willful misconduct in the design, construction, or other services or activities related to the PROJECT. If the PROJECT is funded and constructed, this provision shall apply to the additional obligations of the COUNTY or the CITY set forth in any amendment or addendum hereto.

16. The Parties hereto acknowledge and agree that the obligations as set forth herein are contingent on the receipt of sufficient and adequate SPLOST revenues. Should the amount of said tax revenues decrease or be insufficient to fund all phases of the PROJECT, the Parties reserve the right either jointly or severally to terminate this Agreement or together to modify or reduce the scope of the PROJECT accordingly.

17. The laws of the State of Georgia shall govern the construction, interpretation and enforcement of this CFA and its provisions. The Parties shall bring any action at law or in equity related to this CFA 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.

18. The term of this CFA shall commence on the date the last party hereto executes it ("Effective Date") and shall conclude at the earlier of the date of final acceptance of the PROJECT by the CITY and, as applicable, the DEPARTMENT, or the date on which the COUNTY and/or

1890 County Services Parkway
Marietta, GA 30008

Copy to: County Manager
Cobb County
100 Cherokee St
Marietta, GA 30090

If to CITY: Public Works Director
City of Smyrna
2190 Atlanta Road
Smyrna, GA 30080

21. If any term or provision herein, or any part or the application thereof, is determined to be invalid or unenforceable for any reason, the Parties intend that such part or provision not affect the remaining provisions, and that the remainder of such term or provision, and all other terms and provisions of this CFA, remain valid, enforceable and in effect.

22. Each of the individuals executing this CFA on behalf of the COUNTY or the CITY represents to the other party that he/she has been authorized to do so by requisite action of the governing body of which he/she is a member.

23. This CFA is exclusively for the benefit of the COUNTY and the CITY and is not intended to provide any third party with or to give rise to or create any duty, remedy, claim, liability, reimbursement, cause of action, obligation or other right on behalf of such third party.

24. No provision of this CFA is intended to nor shall it be construed to relieve any consultant or contractor performing services in connection with the PROJECT of any liability or of any obligation or duty to complete the work in a good, substantial and workmanlike manner.

25. No provision of this CFA is intended to nor shall it be construed in any way to waive the immunities and/or protections provided to either of the Parties hereto by the Constitution and laws, rules and regulations of the State of Georgia.

26. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which collectively shall constitute one and the same instrument.

27. This CFA may not be modified, altered or amended except by a written document approved and executed by both Parties with the same degree of formality as this indenture.

28. Notwithstanding any provision to the contrary herein, this CFA shall not be assigned by either of the Parties hereto without the prior written consent of the other party. Any assignment hereof must be in writing, and shall include an affirmative assumption by such assignee of the assignor's obligations hereunder.

29. Both the COUNTY and the CITY hereby acknowledge that time is of the essence for the obligations set forth herein.

30. The COUNTY, with respect to its own procurement process and the implementation and completion of all PROJECT Activities shall, as applicable, comply with the terms and conditions of the General Assurances, attached hereto as Exhibit "C" and incorporated herein by reference.

31. Except as may otherwise be provided herein, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors and assigns.

32. The Parties hereto understand and acknowledge that the PROJECT involves work by and coordination with third party owners of infrastructure over whom and over which they have no control or authority. Neither the COUNTY nor the CITY shall be excused from their respective funding obligations herein nor shall either be responsible or liable to the other because of any delay attributable to third party owners of public infrastructure, third party electric utility providers or other third party utility providers.

33. Either of the Parties hereto shall have the right to terminate this Agreement completely and without further obligation, damage, cost or penalty should any pre-existing condition, detected on or within the PROJECT right of way (as designated by NS's approved PROJECT plans) and prior to the initiation of or during PROJECT construction activities, threaten or entail liability, assessment(s), penalties or risk and/or require the assumption by said party of any current or future responsibility for the remediation and correction of the particular condition during the term hereof. In such instance, the party seeking to exercise its right to terminate hereunder shall notify the other party within ten (10) business days or as soon as practicable after discovery of the condition at issue.

34. The Parties hereto shall each be excused for the non-negligent or non-willful failure to perform or delay in the performance of any of their respective obligations hereunder, when such failure to perform or delay is occasioned by a cause or causes beyond such party's control, and the time for performance hereunder automatically shall be extended for a like interval. Such causes shall include without limitation: all labor disputes; strikes; lockouts; changes in the scope of

improvements as approved by the Parties hereto; inability to obtain or delay in the receipt of necessary materials or services beyond the reasonable control of either of the Parties hereto or their respective consultants and/or contractors; unavoidable injury, casualty or damage to personnel, materials or equipment; fire; earthquake or other natural disasters; any delay attributable to third party owners of public infrastructure, third party electric utility providers or other third party utility providers; any dispute or legal action brought against either of the Parties that interrupts construction or challenges title to or acquisition and ownership of the right of way or interests in real property required for construction of the PROJECT; any pre-existing condition on or within the existing or required PROJECT right of way that reasonably entails or threatens liability, assessment, penalties and/or remediation; riots; civil commotion; war; warlike operations; invasions; insurrections; rebellions; hostilities; military or usurped power; sabotage; governmental regulations or controls beyond the jurisdiction of the Parties hereto; delay or failure to act by the State of Georgia or any other governmental entity not a party hereto, and their respective officials, agencies, departments or commissions; Acts of God; and any other cause(s) beyond the respective reasonable control of either of the parties. The party seeking accommodation pursuant to this provision shall provide notice of any such event which results or will result in a delay or failure to perform hereunder within five (5) business days of the occurrence of the same.

35. Notwithstanding any provision to the contrary herein, the costs and expenditures of either party in connection with the Project shall be at the sole risk of each and without recourse

against the other party should construction of the project, for whatever reason, not occur as contemplated herein.

36. The Parties acknowledge and represent that each party and its respective legal counsel have participated in the negotiation and preparation of this CFA. This CFA shall consequently be construed without regard to any legal presumption or law which requires the terms or provisions hereof to be construed against the author or scribe.

(signatures on following page)

IN WITNESS WHEREOF, the COUNTY and the CITY have caused this CFA to be executed under seal by their duly authorized representatives.

COBB COUNTY, GEORGIA

By: _____
Michael H. Boyce, Chairman
Cobb County Board of Commissioners

Attest: _____
County Clerk

Date: _____

(COUNTY SEAL)

Approved as to form:

County Attorney's Office

CITY OF SMYRNA, GEORGIA

By: _____
A. Max Bacon, Mayor
City of Smyrna, Georgia

Attest: _____
City Clerk

Date: _____

(CITY SEAL)

Approved as to form:

City Attorney

EXHIBIT “A”

Project includes the installation of a Railroad quiet zone on Nickajack Road at the Norfolk Southern Railroad crossing. Project is in conjunction with the City of Smyrna.

EXHIBIT “B”

Project includes the installation of a Railroad quiet zone on Nickajack Rd at the Norfolk Southern Railroad crossing. Project is in conjunction with the City of Smyrna.

Funding Sources and Distribution

X2313 – Cobb County

Project	Preliminary Engineering		Right of Way			Construction		Utility Relocation /Railroad	Testing	Inspection
Project #	Funding	Managed By	Funding of Real Property	Acq. By:	Fund By:	Funding	Letting	Funding		
X2313 Nickajack Rd Quiet Zone Railroad Crossing	75% COUNTY 25% CITY	Cobb County	n/a	n/a	n/a	75% COUNTY 25% CITY	Cobb County	75% COUNTY 25% CITY	75% COUNTY 25% CITY	75% COUNTY 25% CITY

Note: R/W is not anticipated since all proposed improvements are expected to occur within Norfolk Southern Railway Company right of way. Construction amounts shown are estimated for budget and planning purposes only.