

**AGREEMENT
BETWEEN
COBB COUNTY, GEORGIA
AND
THE CITY OF SMYRNA, GEORGIA
FOR
NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT TO
CONSTRUCT IMPROVEMENTS WITHIN THE OAKDALE ROAD RIGHT OF WAY**

This Non-Exclusive Temporary Construction Easement Agreement (“Agreement”) 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”) for the purpose of allowing the CITY to install six (6) medians within Oakdale Road right of way in areas owned by the COUNTY. The CITY and the COUNTY may be referred to singularly as “Party” or jointly as “Parties”.

WITNESSETH:

WHEREAS, Oakdale Road is situated such that it meanders through areas that are located within the CITY and other areas that are located in unincorporated Cobb County; and

WHEREAS, the CITY would like to install medians within two-way left-turn lanes on Oakdale Road, some of which would be located on COUNTY right of way (the “Project”); and

WHEREAS, it is desirable that the medians referenced herein be installed within said right of way and that the landscaping placed therein be maintained by the CITY; and

WHEREAS, it is desirable that the right of way of Oakdale Road have a uniform appearance; and

WHEREAS, the COUNTY has agreed to enter into this Agreement in order to allow for the CITY to make said improvements; 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 COUNTY does grant and convey unto the CITY, its contractors, consultants, subcontractors, materialmen, suppliers, and workers a non-exclusive temporary construction easement over and under the right of way of Oakdale Road from Highlands Parkway to Veterans Memorial Highway for the purpose of installing medians as generally shown on the conceptual plan attached hereto as **Exhibit "A."**

2. All costs associated with the construction, installation, and maintenance of the medians shall be paid by the CITY. The CITY shall follow the COUNTY's requirements, standards, procedures, specifications, guidelines, and obtain all necessary permits to complete the Project. The COUNTY shall oversee and inspect the work being performed within the COUNTY limits.

3. Prior to beginning any construction, the CITY and COUNTY shall enter into a Non-Exclusive License to Landscape in the form set out in **Exhibit B** attached hereto and incorporated herein by reference. Such License shall require the CITY to maintain all landscaping within the islands contemplated herein.

4. The right of way and all structures and apparatus located therein shall be and remain the property of the COUNTY.

5. To the extent allowed by law, the CITY and its Contractor shall agree to indemnify and hold harmless Cobb County, Georgia, and all of its respective officers, employees and

directors (collectively referred to in this section as the "COUNTY") from and against any and all claims, demands, liabilities, losses, cost of expenses, including attorney's fees, and from the payment of any sum or sums of money to any persons whatsoever, for any loss due to personal injury, bodily injury, death, or property damage arising out of, attributable to, or resulting from or in any way attributable to the CITY's use of the COUNTY's right-of-way; or due to any violation of this Agreement by the CITY or its contractor, or due to the application or violation of any pertinent Federal, State, or local law, rule or regulation in connection with this Agreement. If and to the extent such damage or loss covered by this indemnification is paid from COUNTY self-insured funds (the "County Funds") established and maintained by the COUNTY, the CITY agrees to reimburse the COUNTY for such monies paid out by the County Funds. The CITY acknowledges that the activities associated with the Project may impact sight distance, and that the COUNTY makes no warranty, express or implied, concerning sight distance or other engineering considerations involved with the Project on the right-of-way. The CITY further acknowledges that the COUNTY has relied upon the representations made by the CITY, including the CITY's representations that all conditions of the Agreement shall be met and that the CITY shall meet all DOT specifications, as well as all relevant Federal, State and local laws, rules or regulations in the activities authorized. This indemnification shall apply where the COUNTY may be partially responsible for the situation giving rise to the claim.

6. The CITY shall require their contractor performing the Project to procure and maintain for the duration of the Agreement, general liability and other appropriate and usual insurance prior to any activity and/or construction on or near the COUNTY's right of way with coverage limits of not less than:

General liability: \$250,000 combined single limit per occurrence for bodily injury, personal injury and property damage including products/complete operations coverage.

Automobile liability: \$100,000 combined single limit per accident for bodily injury and property damage, when applicable.

Workers Compensation and employer's liability: workers' compensation limits as required by the Labor Code of the State of Georgia and Employers Liability limits of \$100,000 per accident.

Said policies to cover and include Cobb County, Georgia, its elected officials, appointed officials, employees, volunteers and agents as additional insureds. Any rights of subrogation or recovery will be waived in favor of Cobb County. The contractor's insurance shall be primary insurance. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees, or volunteers shall be in excess of and secondary to the contractor's insurance and shall not contribute to it. Each insurance policy required herein shall be endorsed to state that coverage shall not be suspended, voided, cancelled or reduced except after thirty-day prior written notice by certified mail has been given to the COUNTY. Insurance is to be placed with insurers with a Best's rating of no less than AA or otherwise acceptable to the COUNTY. The COUNTY reserves the right to require complete copies of all required insurance policies at any time.

7. 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 State District Court for the Northern District of Georgia, as applicable.

8. This Agreement shall take effect upon the date the last party hereto executes it ("Effective Date"). This Agreement and the easement granted herein shall be for a term not to exceed six months after the date that construction commences and will terminate on the earlier of six months after the commencement of construction or upon completion of the Project.

The foregoing provisions notwithstanding, obligations that should naturally survive the termination or expiration of this Agreement, as amended, shall so survive. The CITY 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.

9. This Agreement, together with all exhibits and attachments hereto, and the Non-exclusive License to Landscape referenced herein 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. No oral promises, conditions, representations, understandings, interpretations or terms of any kind are in effect between the parties or have been offered as an inducement for either party to execute this document, and no other agreement, statement or promise relating to the subject matter of this Agreement and not contained herein shall be valid or binding.

10. All notices, demands and/or 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 shall be sent by notifying the other party.

If to County: DOT, Director
1890 County Services Parkway
Marietta, GA 30008

If to CITY: City Engineer
 City of Smyrna
 2800 King Street
 Smyrna, GA 30080

11. 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 Agreement, remain valid, enforceable and in effect.

12. Each of the individuals executing this Agreement 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.

13. This Agreement 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.

14. No provision of this Agreement 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.

15. No provision of this Agreement 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.

16. 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.

17. This Agreement 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.

18. Notwithstanding any provision to the contrary herein, this Agreement 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.

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

20. 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.

21. 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 contemplated herein; any pre-existing condition on or within the existing or required 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.

22. The parties acknowledge and represent that each party and its respective legal counsel have participated in the negotiation and preparation of this Agreement. This Agreement 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.

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

COBB COUNTY, GEORGIA

By: _____
Lisa Cupid, Chairwoman
Cobb County Board of Commissioners

Attest: _____
County Clerk

Date: _____

(COUNTY SEAL)

Approved as to form:

County Attorney's Office

(signatures on following page)

CITY OF SMYRNA, GEORGIA

By: _____
Derek Norton, Mayor
City of Smyrna, Georgia

Attest: _____
Heather Peacon-Corn
City Clerk

Date: _____

(CITY SEAL)

Approved as to form:

City Attorney

Add EXHIBIT A

Pg 1-10

Add EXHIBIT A

Pg 1-10





OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIAN

OAKDALE RD SE

COBB COUNTY
CITY OF SMYRNA

SCALE IN FEET
0 20 40 80

COBB COUNTY
CITY OF SMYRNA

OAKDALE BLUFFS DR



OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIANS

CITY OF SMYRNA
COBB COUNTY

COBB COUNTY
CITY OF SMYRNA

SCALE IN FEET
0 20 40 80



OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIANS

EVERDALE TRACE

OAKDALE RD SE

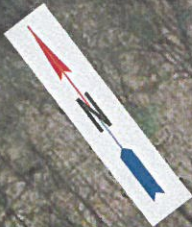
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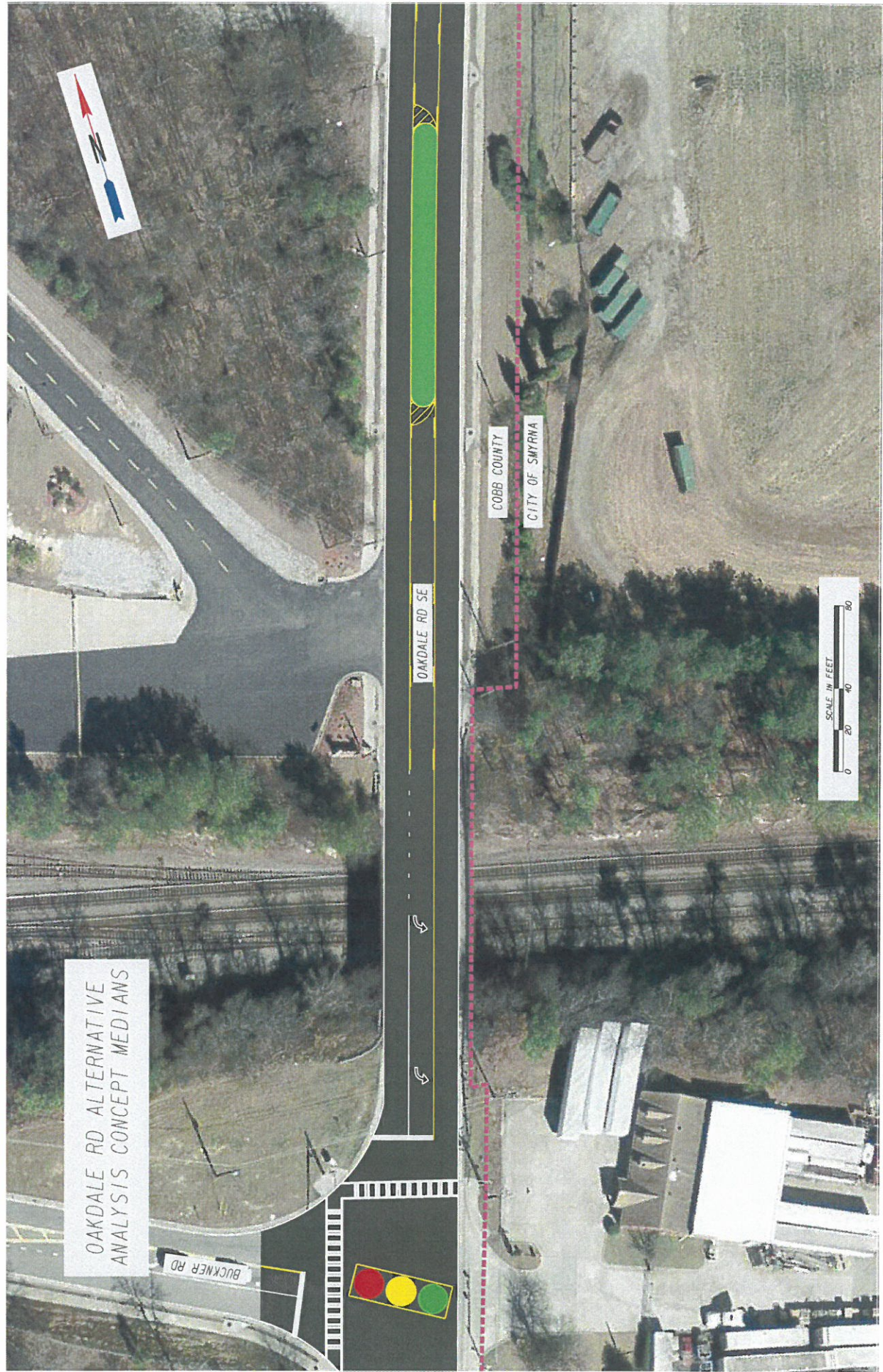
CITY OF SWYRNA
COBB COUNTY

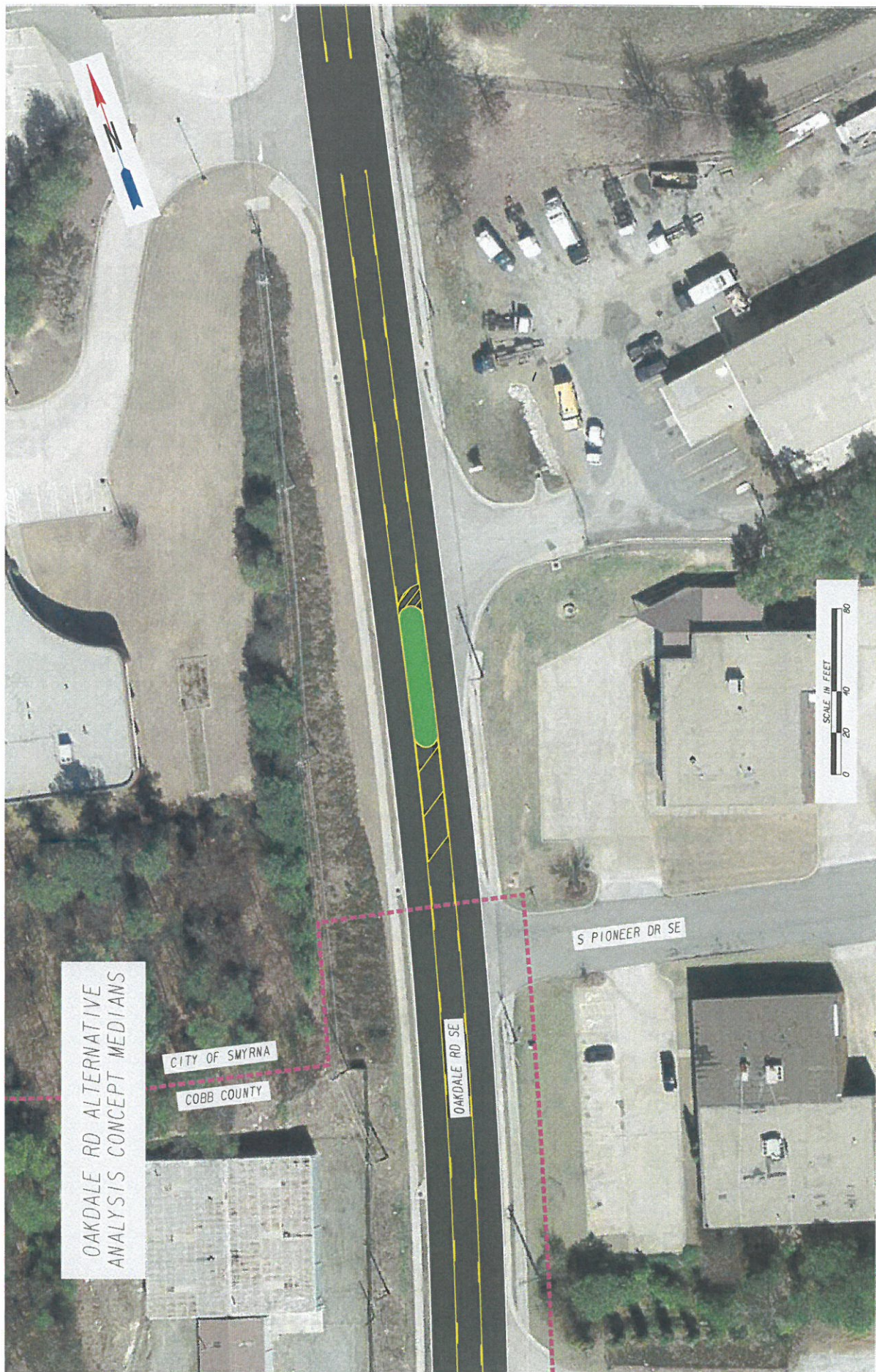


OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIANS









OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIANS

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SCALE IN FEET
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OAKDALE RD ALTERNATIVE
ANALYSIS CONCEPT MEDIANS

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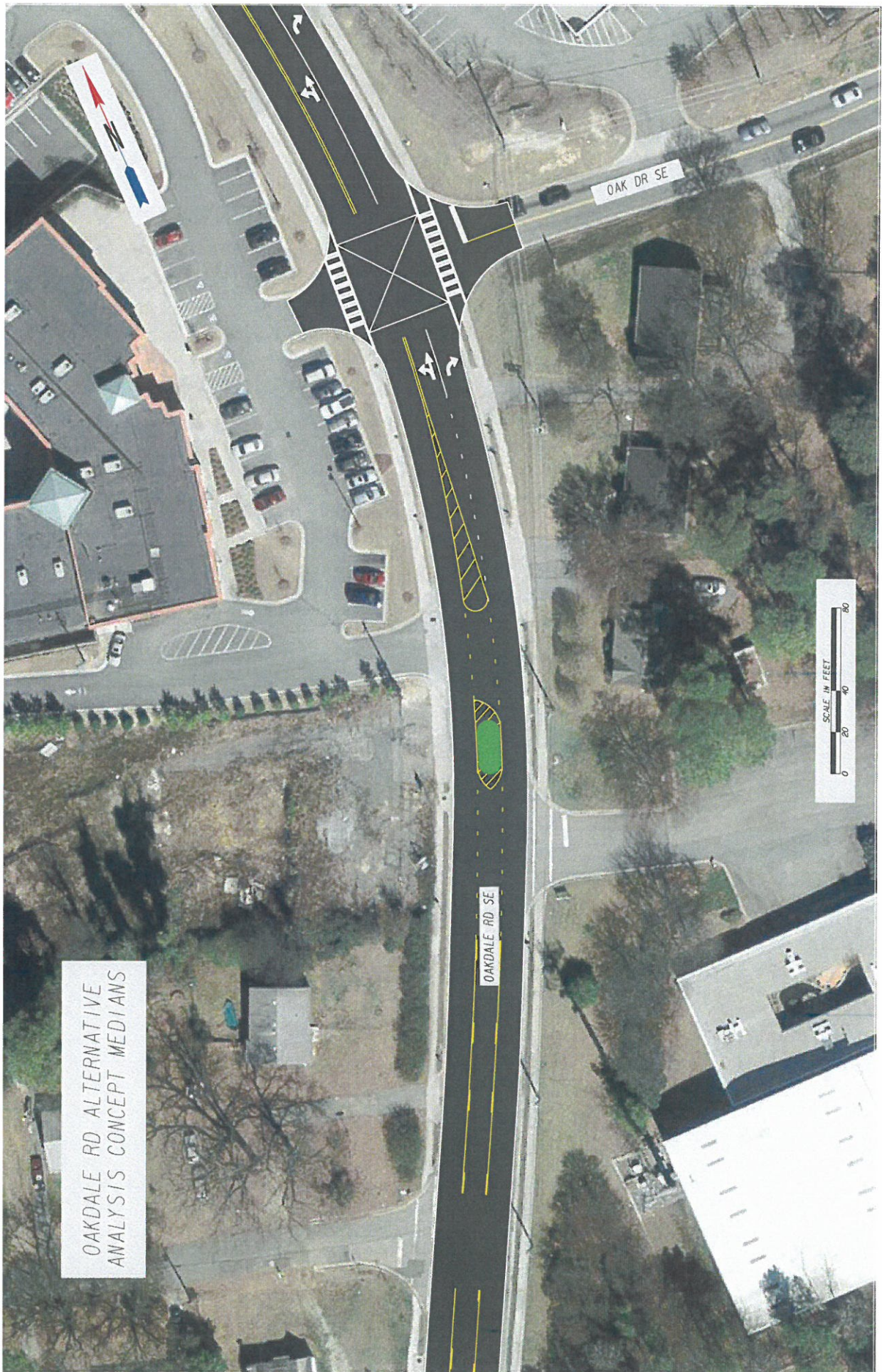


Exhibit B

STATE OF GEORGIA

COUNTY OF COBB

NON-EXCLUSIVE LICENSE TO LANDSCAPE

FOR AND IN CONSIDERATION of the sum of TEN & NO/100 DOLLAR (\$10.00) in hand paid, and other good and valuable consideration, including the assumption of certain affirmative obligations as obtained herein the receipt and sufficiency of which are hereby acknowledged, the undersigned, **Cobb County, Georgia, a political subdivision of the State of Georgia** ("Licensor") does hereby grant and convey unto **The City of Smyrna, Georgia, a political subdivision of the State of Georgia**, and/or its successors and assigns in interest ("Licensee"), a non-exclusive landscape license for the purpose of landscaping over and upon land owned by Cobb County, Georgia and being within the islands to be constructed by the City within the median of Oakdale Road as depicted on Exhibit A, attached hereto and made a part hereof by reference.

The uses contemplated by this instrument include construction and maintenance of landscaping and maintenance of same within the property. The rights conveyed herein are for the aforementioned purposes and include the right to enter upon the property to install, inspect, maintain, replace and restore the same, and the right of ingress and egress from and to referenced property within the right-of-way as Licensee may from time to time deem such activity to be necessary.

Licensee agrees by acceptance of this conveyance to utilize the said licensed area for the herein mentioned purposes at its sole risk and expense and to release Cobb County expressly and

specifically from any responsibility or obligation for damage to Licensee's improvements resulting or occurring from the use of the right-of-way by Cobb County.

Licensee shall include the property subject to this license as covered property in any Group Self-Insurance Fund established by an Interlocal Risk Management Agency in which it is a member.

Licensee also hereby agrees and understands that the rights conveyed herein are specifically non-exclusive in nature. To this end Licensee agrees to use the said licensed area in such a manner as will not interfere with the Licensor's use of said right-of-way or with any other facilities or utility lines installed therein. Licensee also acknowledges that Licensor shall retain the right to utilize the licensed area for roadway or utility purposes without compensation to Licensee for any improvement situated thereon should the licensed area be necessary for public roadway or utility improvements.

Licensee also agrees that use of the Licensor's property described herein for the herein-described purposes shall in no way affect the validity of the Licensor's title to such property, shall not in any way constitute the conveyance of any interest compensatory or otherwise in the subject real property, and shall in no way modify or restrict the use or rights of Licensor, its successors or assigns, in and to the subject property to be used by Licensee as outlined herein. Licensee acknowledges Licensor's right to the said property and the priority of Licensor's right of use and title to the subject property and consequently agrees not to resist or assail such right of use and title.

By acceptance of this license, Licensee similarly acknowledges that Licensor may terminate the right of use conveyed herein upon sixty days certified written notice to Licensee. Licensee shall upon receipt of such notice to terminate surrender the subject licensed area to the Licensor in a condition equal to or better than that which existed at the commencement of Licensee's activities.

Should the improvements to be installed and maintained by Licensee as permitted herein interfere with site distance or in any way constitute a safety hazard, Licensee acknowledges that Licensor has the right to correct the subject safety hazard with notice and with no compensation to Licensee.

Licensee shall notify all utilities (1-800-282-7411) within the Licensor's right-of-way prior to commencement of any work. Any signage must be constructed in accordance with Cobb County Department of Transportation design standards. These standards may be obtained from Operations Division, at (770) 528-1670.

This license shall bind the heirs, successors, and assigns of the undersigned and shall inure to the benefit of the successors in title of Licensee.

Signatures on next page.

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed and delivered this _____ day of _____, 2018.

Sworn to and subscribed to before me
this ____ day of _____, 2021.

Witness

Notary Public

(Seal)

LICENSEE:
THE CITY OF SMYRNA

By: _____

Title: _____

Sworn to and subscribed to before me

LICENSOR:

this ____ day of _____, 2021.

COBB COUNTY, GEORGIA

Witness

Notary Public

(Seal)

By: _____

Drew Raessler, Interim Director

Department of Transportation