

**INTERGOVERNMENTAL AGREEMENT REGARDING A PRO RATA
CONTRIBUTION TOWARD THE DESIGN AND ENGINEERING
RELATED TO THE WIDENING OF A PORTION OF MCGINNIS FERRY
ROAD**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), by and between the City of Johns Creek, Georgia (“City”) and Forsyth County, Georgia (“County”) (collectively referred to herein as the “Parties”) is entered into this _____ day of _____, 2015.

WHEREAS, Forsyth County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Johns Creek is a municipality created by the 2006 Georgia General Assembly pursuant to House Bill 1321; and

WHEREAS, the City and the County anticipate the initiation of GDOT Project 0004634, STP00-0004-00 (634), FN-233A, PEW08 regarding the widening of McGinnis Ferry Road from Sargent Road to Union Hill Road/Ronald Reagan Boulevard (the “Project,” as set forth in more detail in that Fact Sheet attached hereto and incorporated herein by reference as Exhibit “A.1” and in that preliminary concept drawing attached hereto and incorporated herein by reference as Exhibit “A.2”); and

WHEREAS, the City and County share a common boundary along McGinnis Ferry Road from Sargent Road to Douglas Road; and

WHEREAS, the City and County recognize the need to further define the rights, responsibilities and obligations of each in regard to the funding of the design of the Project; and

WHEREAS, the City agrees and acknowledges that the Project will be of value to the City and its citizens and businesses; and

WHEREAS, the City is thus committed to providing pro rata funding for the design of the Project; and

WHEREAS, Article IX, Section II, Paragraph III of the Constitution of the State of Georgia of 1983, prohibits cities and counties from exercising governmental authority within each other’s boundaries except as otherwise provided by law or by intergovernmental agreement; and

WHEREAS, the Parties are authorized to enter into this Agreement pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia of 1983 regarding intergovernmental contracts; and

WHEREAS, the Parties are further authorized to enter into Intergovernmental Agreements related to work on public roads in accord with O.C.G.A. 32-4-62; and

WHEREAS, the County and City desire to enter into an intergovernmental agreement concerning certain funding pertaining to the widening of McGinnis Ferry Road along the border between the City of Johns Creek and Forsyth County.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

ARTICLE 1

OBLIGATIONS OF THE CITY/COUNTY

A. The City agrees to the following:

1. To be responsible for contributing funds to pay its pro rata share of the design and engineering costs related to the Project. For purposes of this Agreement, the City's pro rata share is established as being 24.7% of the Project design and engineering cost. It is presently estimated that Project design and engineering will cost \$2,000,000, thereby meaning that the City's pro rata contribution toward Project design and engineering would be approximately \$494,000. This number is subject to upward or downward adjustment based upon the actual design and engineering cost, including change orders - if any;

2. In order to satisfy its obligation toward pro rata funding of the Project design and engineering cost, the City agrees that within five (5) days of the receipt of all necessary permits to commence constructing the communications tower contemplated by the Forsyth County – City of Johns Creek Intergovernmental Agreement Regarding a City of Johns Creek Communications Tower to be Constructed and Located within Forsyth County dated March ____, 2015, the City shall tender \$200,000.00 to the County;

3. Following that initial payment, the City agrees that during each successive calendar year it shall make an additional installment payment toward its pro rata share of the Project design and engineering costs, with such annual installment being no less than \$100,000, unless the remaining balance to be paid by the City is less than \$100,000, in which case the final payment shall only be the amount outstanding. These annual installments shall continue from year to year until such time as the City has tendered to the County its pro rata share of the documented and verifiable Project design and engineering costs. In the event the design and engineering of the Project is abandoned or the City's contribution exceeds its pro rata share of the total design and engineering costs, the County shall refund the balance of the City's contribution within thirty (30) days of the abandonment or completion of the design and engineering of the Project.

4. To the extent that the Project requires land disturbance in right of way or other property interests owned by the City, that the City shall provide access to such property,

to include both temporary and permanent construction easements, at no cost the County; and,

5. To the extent that the Project requires the relocation of utilities owned by the City, that the City agrees to relocate those utilities, in a reasonable time after receiving notice of the need to relocate, at no cost to the County.

6. To work in good faith with the County in advancing the Project, to include cooperation and assistance with, to include the joint submittal of, any permits, grant(s) or funding requests and/or regulatory approvals.

B. The County agrees to the following:

1. To competitively solicit and award the Project design and engineering contract;

2. That the City may be a party to and signatory on the County's Project design and engineering contract;

3. That the primary purpose for the City being a party to and signatory on the Project design and engineering contract is to memorialize the City's right to approve - in conjunction with the County - and provide input as to the alignment of that portion of McGinnis Ferry Road that serves as the jurisdictional boundary between the County and City, said approval will not be unreasonably withheld. The City agrees, however, that the primary - but not sole - consideration in establishing and approving the alignment is the minimization of Project costs;

4. Or, alternatively, in the event that the County utilizes Moreland Altobelli for the Project design and engineering work pursuant to the County's existing Program Management Contract with Moreland - and therefore dispense(s) with the need for a separate RFP/contracting process for the design and engineering work - then this Agreement shall serve as the City and County's mutual, enforceable covenant that the City shall have the right to approve - in conjunction with the County - and provide input as to the alignment of that portion of McGinnis Ferry Road that serves as the jurisdictional boundary between the County and City, said approval will not be unreasonably withheld. In the event that Project design and engineering work is undertaken pursuant to the authorization set forth in this paragraph, then immediately preceding paragraphs 1 - 3 shall be of no force and effect, except that the primary - but not sole - consideration in establishing and approving the alignment will remain the minimization of Project costs.

5. To share with the City all documentation and backup necessary to demonstrate the Project design and engineering costs.

ARTICLE 2

AUTHORIZATION TO ACT IN THE CITY

Once the City approves the design and engineering plans for the Project, the County shall have the requisite authorization under the GA. Constitution, Article 9, Section 2, Paragraph III (a)(4) to undertake any and all necessary activities within the jurisdictional boundaries of the City in furtherance of the Project, to include - but not be limited to - land acquisition, eminent domain, land disturbance, permitting, and all other related and necessary activities. Notwithstanding the foregoing, any property acquired by the County pursuant to this Article within City limits will - following such acquisition - be conveyed to the City with a deed restriction that the property may only be used for the purposes of the Project.

ARTICLE 3

REMEDY

A Party's sole remedy in the event of non-performance by the other Party shall be an action to compel specific performance. The prevailing party in any such action shall be entitled to reasonable attorney's fees and costs.

ARTICLE 4

GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Georgia, and proper venue for any actions arising out of this Agreement shall be in the Superior Court of Fulton or Forsyth County, such venue to be determined by the domicile of the defendant in the action.

ARTICLE 5

IMMIGRATION AND TITLE VI COMPLIANCE

The Parties hereto agree to comply, to the extent applicable, with all obligations of O.C.G.A. § 13-10-91, et seq. related to confirming the lawful status of any contractors or subcontractors commissioned to perform work on the Project, and further agree as follows:

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Parties agree that, during performance of this Agreement, each Party, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, each Party agrees to comply with all applicable implementing regulations and therefore shall include the provisions of this Article 4 in every contract and/or subcontract for services contemplated under this Agreement.

ARTICLE 6

MISCELLANEOUS

12.1 NON-WAIVER. Any Party's failure to seek redress for a violation or to insist upon strict performance of any Agreement provision will not prevent a subsequent act, which would originally have constituted a violation, from having the effect of an original violation.

12.2 COUNTERPARTS. This Agreement may be executed in any number of counterparts with the same effect as if all Parties hereto had all signed the same document. All counterparts will be construed together and will constitute one (1) Agreement.

12.3 GENDER AND NUMBER. Unless the context requires otherwise, the use of a masculine pronoun includes the feminine and the neuter, and vice versa, and the use of the singular includes the plural, and vice versa.

12.4 COMPLETE AGREEMENT. This Agreement constitutes the complete and exclusive statement of the agreement between the Parties. It supersedes all prior written and oral statements, including any prior representation, statement, condition or warranty. Except as expressly provided otherwise herein, this Agreement may not be amended without the written consent of all the Parties.

12.5 TIME OF ESSENCE. Time is of the essence of this Agreement.

12.6 NON-ASSIGNABILITY. Neither Party shall assign any of the obligations or benefits of this Agreement.

12.7 AUTHORITY TO CONTRACT. Each Party declares that it has obtained all necessary approvals of its governing authority to execute and bind the Party to the terms of this Agreement. Ratification of the Agreement by a majority of the governing authority shall be authority for the chairman or mayor (as applicable) to execute on behalf of the governing authority but shall not preclude execution by the full board or council (as applicable).

12.8 NO THIRD PARTY RIGHTS. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

IN WITNESS WHEREOF, the City and County have executed this Amendment through their duly authorized officers on the day and year first above written.

FORSYTH COUNTY, GEORGIA

ATTEST:

Chair
Forsyth County Board of Commissioners

Clerk **SEAL**
Forsyth County Board of Commissioners

Approved as to Form:

Forsyth County Attorney

JOHNS CREEK, GEORGIA

ATTEST:

Michael Bodker
Mayor

Joan Jones
Municipal Clerk (SEAL)

Approved as to Form:

Richard A. Carothers
City Attorney