

**AGREEMENT
BETWEEN
COBB COUNTY, GEORGIA
AND
THE CITY OF SMYRNA, GEORGIA
FOR THE
2022 COBB SPLOST RENEWAL
Joint City Projects**

This Cobb Framework Agreement (“CFA” or “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”). The COUNTY and the CITY are sometimes referred to herein individually as a (“Party”) and collectively as the (“Parties”).

WITNESSETH:

THAT WHEREAS, the citizens of Cobb County, including its six cities, approved the 2022 Cobb SPLOST Renewal program that, among the list of projects, includes \$18,000,000 in Joint City Projects for the six Cobb County cities; and

WHEREAS, the COUNTY entered into an Intergovernmental Agreement for the Use and Distribution of Proceeds from the 2022 SPLOST for Capital Outlay Projects with the six cities, including the CITY, on July 13, 2020 (“IGA”) attached hereto as **Exhibit A**; and

WHEREAS, pursuant to the terms of the IGA, each Cobb County city will receive \$3,000,000 over the life of the 2022 SPLOST Renewal program; and

WHEREAS, the CITY is ready to move forward with the Joint City projects identified in **Exhibit B** (hereinafter collectively referred to as the “PROJECTS” and individually as “PROJECT”), estimated to cost a total amount of \$3,000,000; and

WHEREAS, pursuant to the terms of the IGA, Section 6 B (iii), for joint projects carried out between the COUNTY and a municipality, where the COUNTY is the sponsoring agency, the COUNTY will retain that portion of the monthly SPLOST proceeds disbursement related to the joint project cost of the involved municipality’s agreed upon share of the Joint Project, as project costs are incurred; and

WHEREAS, pursuant to the terms of the IGA, Section 6 B (iii), for joint projects, if the municipality is the sponsoring agency, the COUNTY will disburse to the involved municipality that portion of the COUNTY’s share of the Joint Project at the same time as the monthly SPLOST proceeds disbursement, as project costs are incurred; and

WHEREAS, the COUNTY is the sponsoring agency responsible for the design and construction of the East West Connector Road Safety Improvements project and will retain that \$1,250,000 portion of the distribution related to the PROJECT; and

WHEREAS, the CITY will be responsible for the design and implementation of all components of the remaining PROJECTS identified in **Exhibit B**; 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 CITY shall provide for and manage all aspects of the Windy Hill Parkway Improvements and Conversion of Sports Lighting to LED PROJECTS (“City Sponsored PROJECTS”).

2. The COUNTY shall provide for and manage all aspects of the East West Connector Road Safety Improvements project.

3. The CITY shall accomplish or cause to be accomplished the PE activities for the City Sponsored PROJECTS in a timely manner and in conformance with GDOT's Standard Specifications for the Construction of Transportation Systems.

4. If right-of-way or easement acquisition is required to construct the City Sponsored PROJECTS, the CITY shall acquire the right-of-way or easement prior to construction. All costs associated with this activity will be funded by the CITY.

5. After review and approval of the final project plans and related documents by the CITY and, as applicable, any other state or federal agency, the CITY shall solicit bids for construction of each City Sponsored PROJECT according to the procurement policies of the CITY. The CITY will thereby initiate the public procurement of the PROJECT Contractor/Construction Services Consultant and the CITY shall review all bids received for the same. The CITY shall be responsible for the award of the City Sponsored PROJECT contract to a qualified contractor in accordance with its public procurement policy.

6. To fully fund the City Sponsored PROJECTS, the COUNTY shall, disburse \$1,750,000 to the CITY's 2022 SPLOST allocation within 60 days from the full execution of this Agreement.

7. The COUNTY's anticipated maximum contribution for the joint PROJECTS shall be \$3,000,000 total. If the actual costs are higher, both Parties shall come to an agreement for how to proceed, including supplementing this Agreement, if needed. The CITY reserves the right to re-allocate funds from one City Sponsored PROJECT to another of the two listed City Sponsored PROJECTS, as needed, provided that all PROJECTS are completed per the approved final project plans. 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 PROJECTS, the Parties reserve the right to either jointly or separately terminate this Agreement or together to modify or reduce the scope of the PROJECTS accordingly.

8. The Parties agree and acknowledge that some of their respective obligations as outlined and described herein may be fulfilled through services performed by third party consultants and independent contractors in accordance with COUNTY, CITY and, as applicable, GDOT and FHWA guidelines, directives, specifications, rules, and regulations. Each Party shall, as a result, 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 PROJECTS.

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

10. The term of this CFA shall commence on the date the last Party hereto executes it ("Effective Date") and shall terminate upon the earlier of: (i) December 1, 2028 (ii) the date of final payment for all of the PROJECTS by the COUNTY; (iii) the date on which the COUNTY and/or the CITY decide not to implement and construct the PROJECTS; or (iv) the date upon which the PROJECTS are otherwise terminated. The foregoing provision notwithstanding,

obligations that should naturally survive the termination or expiration of this CFA, as amended, shall so survive. 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 CFA.

11. This CFA, together with all exhibits and attachments hereto, 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 CFA and not contained herein shall be valid or binding.

12. All notices, demands and/or other communications required or permitted under this CFA 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: Director
Cobb County Department of Transportation
1890 County Services Parkway
Marietta, GA 30008

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

With Copies to: County Manager
Cobb County

100 Cherokee St.
Marietta, Ga. 30090

City Administrator
City of Smyrna
2800 King St.
Smyrna, Ga. 30080

13. 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.

14. 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.

15. 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.

16. 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 PROJECTS of any liability or of any obligation or duty to complete the work in a good, substantial and workmanlike manner.

17. 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.

18. 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.

19. 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.

20. 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.

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

22. 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.

23. The Parties hereto understand and acknowledge that the PROJECTS involve 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.

24. 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 any PROJECT right of way 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.

25. 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 any 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.

26. Notwithstanding any provision to the contrary herein, the costs and expenditures of either Party in connection with the PROJECTS 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.

27. 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: _____
Lisa N. Cupid, Chairwoman
Cobb County Board of Commissioners

Attest: _____
County Clerk

Date: _____

(COUNTY SEAL)

Approved as to form:

County Attorney's Office

CITY OF SMYRNA, GEORGIA

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

Attest: _____
City Clerk

Date: _____

(CITY SEAL)

Approved as to form:

City Attorney

EXHIBIT A

IGA for the Use and Distribution of Proceeds from the 2022 SPLOST for Capital Outlay Projects

(IGA Exhibits Incorporated by Reference Only)

EXHIBIT “B”

The PROJECTS are identified as the following:

CITY will design, manage and construct the PROJECTS at the following two locations:

- 1. Conversion of Sports Lighting to LED on all Sports Fields/Courts \$750,000
- 2. Windy Hill Parkway Improvements \$1,000,000

COUNTY will design, manage and construct the PROJECT at the following location;

- 3. East West Connector Road Safety Improvements \$1,250,000