

**MEMORANDUM OF AGREEMENT
BY AND BETWEEN
GEORGIA DEPARTMENT OF TRANSPORTATION
AND
DEKALB COUNTY
FOR
RIGHT OF WAY**

This Memorandum of Agreement is made and entered into this ____ day of _____, 2018, by and between the GEORGIA DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia (hereinafter called the "DEPARTMENT" or "GDOT"), and DeKalb County, Georgia, acting by and through its Mayor and City Council or Board of Commissioners (hereinafter called the "LOCAL GOVERNMENT").

WHEREAS, PI No. 0015646 CR 3271 (MERCER UNIVERSITY DRIVE) AT NORTH FORK PEACHTREE CREEK (herinafter called "PROJECT") has been added to the Statewide Transportation Improvement Plan; and

WHEREAS, the DEPARTMENT policy requires, and the LOCAL GOVERNMENT has agreed, that the LOCAL GOVERNMENT shall fund a portion of the DEPARTMENT expenses associated with Right of Way Phase Funding (hereinafter called "Right of Way Phase") for the PROJECT; and

WHEREAS, the estimated amount for the Right of Way Phase is four hundred ten thousand dollars (\$410,000) ("Preliminary Right of Way Phase Estimate"); and

WHEREAS, the LOCAL GOVERNMENT has agreed to pay fifty percent (50%) of the Preliminary Right of Way Phase Estimate in the amount of two hundred five thousand dollars (\$205,000) to the DEPARTMENT within thirty (30) days of notification of this fully executed Agreement; and

WHEREAS, the Constitution authorizes intergovernmental agreements whereby state and local entities may contract with one another "for joint services, for the provision of services, or for the joint or separate use of facilities or equipment; but such contracts must deal with activities, services or facilities which the parties are authorized by law to undertake or provide." Ga. Constitution Article IX, §III, ¶I(a).

NOW THEREFORE, in consideration of the mutual promises made and of the benefits to flow from one to the other, the DEPARTMENT and the LOCAL GOVERNMENT hereby agree each with the other as follows:

1. PAYMENT BY THE LOCAL GOVERNMENT TO THE DEPARTMENT

- a. Subject to the provisions of this section, the LOCAL GOVERNMENT will be responsible for providing payment of **fifty percent (50%)** of the Preliminary Right

of Way Phase Estimate, or **two hundred five thousand dollars (\$205,000)** to the DEPARTMENT within thirty (30) days of notification of this fully executed Agreement.

- b. All payments by the LOCAL GOVERNMENT to the DEPARTMENT shall be sent to the following address:

For payments made by check:
Georgia Department of Transportation
P.O. Box 117138
Atlanta, GA 30368-7138

For payments made by ACH:
Bank Routing (ABA) # 021052053
Account # 43125093

- c. If there is an unused balance after completion of all tasks and phases of the PROJECT, then pending a final audit by the DEPARTMENT, the remainder will be refunded to the LOCAL GOVERNMENT.
- d. The DEPARTMENT will prepare Specific Activity Agreements for funding applicable to other PROJECT activities, such as right of way, utilities and construction phases, when appropriate.
- e. Both the LOCAL GOVERNMENT and the DEPARTMENT hereby acknowledge that Time is of the Essence.

If, for any reason, the LOCAL GOVERNMENT does not make payment to the DEPARTMENT pursuant to Paragraph 1 above, the DEPARTMENT reserves the right, where applicable, to delay or cancel the PROJECT.

2. COMPLIANCE WITH APPLICABLE LAWS.

- a. The undersigned, on behalf of the LOCAL GOVERNMENT, certifies that the provisions of Section 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State employees and officials trading with the State have been complied with in full.
- b. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated relating to the "Drug Free Workplace Act" have been complied with in full, as stated in Appendix A of this Agreement.
- c. The LOCAL GOVERNMENT has read and understands the regulations for STATE AUDIT REQUIREMENT and will comply in full with said provisions of O.C.G.A. § 36-81-7.

- d. By execution of this Agreement, I, on behalf of the LOCAL GOVERNMENT, certify under penalty of law that the LOCAL GOVERNMENT is in compliance with the service delivery strategy law (O.C.G.A. Sec. 36-70-1 *et seq.*) and is not debarred from receiving financial assistance from the State of Georgia.
 - e. The LOCAL GOVERNMENT hereby agrees that it shall comply with all applicable requirements of the American with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101, *et seq.* and 49 U.S.C. 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; and regulations and amendments thereto.
 - f. The LOCAL GOVERNMENT hereby agrees that it shall comply with Official Code of Georgia Annotated Title 25, Section 9, Georgia Utility Facility Protection Act, CALL BEFORE YOU DIG 1-800-282-7411.
 - g. Pursuant to O.C.G.A. § 13-10-91, the LOCAL GOVERNMENT is and shall be at all times, in compliance with the Federal Work Authorization Program.
 - h. The LOCAL GOVERNMENT hereby agrees that it shall not discriminate on the basis of age, race, color, sex, national origin, religion or disability and that it shall comply, at a minimum, with the following Georgia laws: the Georgia Age Discrimination Act (O.C.G.A. § 34-1-2 *et seq.*); the Georgia Equal Employment for Persons with Disabilities Code (O.C.G.A. 34-6A-1 *et seq.*); and the Sex Discrimination in Employment (O.C.G.A. 34-5-1 *et seq.*). The LOCAL GOVERNMENT further agrees that it will comply with any and all state and federal laws not specifically stated herein addressing discrimination to the extent that such is applicable.
 - i. LOCAL GOVERNMENT acknowledges and agrees that failure to complete appropriate certifications or the submission of a false certification shall result in the termination of this Agreement.
3. It is mutually agreed between the parties hereto that this Agreement shall be deemed to have been executed in Fulton County, Georgia, and that all questions of interpretation and construction shall be governed by the laws of the State of Georgia.
 4. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.
 5. If any provision of this amendment is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
 6. Nothing contained herein shall be construed as conferring upon or giving to any person, other than the parties hereto, any rights or benefits under or by reason of this Agreement.

7. The above “Whereas” clauses are hereby incorporated by reference as though fully set forth herein.
8. This Agreement supersedes all prior negotiations, discussion, statements and agreements between the parties and constitutes the full, complete and entire agreement between the Parties with respect hereto; no member, officer, employee or agent of either party has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement will be binding on either Party hereto unless such modification or amendment will be properly authorized, in writing, properly signed by both Parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, the DEPARTMENT and the LOCAL GOVERNMENT have caused these presents to be executed under seal by their duly authorized representatives.

GEORGIA DEPARTMENT OF
TRANSPORTATION

DEKALB COUNTY, GEORGIA

BY: _____
Commissioner

BY: _____
Name
Title

ATTEST:

Treasurer

Signed, sealed and delivered this _____ day of
_____, 20__, in the presence of:

Witness

Notary Public

This Agreement approved by Local
Government, the _____ day of
_____, 20__.

Attest

Name and Title

FEIN: _____

P.I. 0015646

**APPENDIX A
CERTIFICATION OF LOCAL GOVERNMENT
DRUG-FREE WORKPLACE**

I hereby certify that I am a principal and duly authorized representative of _____
whose address is _____ and it is also certified that:

1. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full; and
2. A drug-free workplace will be provided for the LOCAL GOVERNMENT's employees during the performance of the contract; and
3. Each subcontractor hired by the LOCAL GOVERNMENT shall be required to ensure that the subcontractor's employees are provided a drug-free workplace. The LOCAL GOVERNMENT shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with _____, _____ certifies to the LOCAL GOVERNMENT that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated Section 50-24-3"; and
4. It is certified that the undersigned will not engage in unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract.

Date

Signature

APPENDIX B

CERTIFICATION OF COMPLIANCES

I hereby certify that I am a principal and duly authorized representative of _____ whose address is _____ and it is also certified that:

I. PROCUREMENT REQUIREMENTS

The below listed provisions of State Procurement requirements shall be complied with throughout the contract period:

- (a) Provisions of Chapters 2 and Chapters 4 of the Title 32 of the Official Code of Georgia Annotated. Specifically as to the County the provisions of O.C.G.A. § 32-4-40 *et seq.* and as to the Municipality the provisions of O.C.G.A. § 32-4-92 *et seq.*

II. STATE AUDIT REQUIREMENT

The provisions of Section 36-81-7 of the Official Code of Georgia Annotated, relating to the “Requirement of Audits” shall be complied with throughout the contract period in full, including but not limited to the following provisions:

- (a) Each unit of local government having a population in excess of 1,500 persons or expenditures of \$300,000.00 or more shall provide for and cause to be made an annual audit of the financial affairs and transactions of all funds and activities of the local government for each fiscal year of the local government.
- (b) The governing authority of each local unit of government not included above shall provide for and cause to be made the audit required not less often than once every two fiscal years.
- (c) The governing authority of each local unit of government having expenditures of less than \$300,000.00 in that government’s most recently ended fiscal year may elect to provide for and cause to be made, in lieu of the biennial audit, an annual report of agreed upon procedures for that fiscal year.
- (d) A copy of the report and any comments made by the state auditor shall be maintained as a public record for public inspection during the regular working hours at the principal office of the local government. Those units of local government not having a principal office shall provide a notification to the public as to the location of and times during which the public may inspect the report.
- (e) The audits of each local government shall be conducted in accordance with generally accepted government auditing standards.

III. SERVICE DELIVERY STRATEGY REQUIREMENT

The provisions of Section 36-70-20 *et seq.* of the Official Code of Georgia, relating to the “Coordinated And Comprehensive Planning And Service Delivery By Counties And Municipalities”, as amended, have been complied with throughout the contract period.

Date

Signature

Appendix C
Georgia Security and Immigration Compliance Act Affidavit

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

Table with 2 columns: Contractor's Name, Solicitation/Contract No./ Call No. or Project Description.

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, entity or corporation which is engaged in the physical performance of services on behalf of the Georgia Department of Transportation has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number (EEV/E-Verify Company Identification Number)

Date of Authorization

Name of Contractor

I hereby declare under penalty of perjury that the foregoing is true and correct

Printed Name (of Authorized Officer or Agent of Contractor)

Title (of Authorized Officer or Agent of Contractor)

Signature (of Authorized Officer or Agent)

Date Signed

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

DAY OF , 20

[NOTARY SEAL]

Notary Public

My Commission Expires: