COUNTY AGENDA REQUEST

Department:	Public Works	Presenter(s):	Public Works Director Phil Mallon
Meeting Date:	Thursday, November 13, 2014	Type of Request:	Consent

Wording for the Agenda:

Approval of staff's recommendation to approve the "Right-of-Way Mowing and Maintenance Agreement," between the Georgia Department of Transportation and Fayette County, Georgia, in order to perform certain services relating to mowing and maintenance within the Georgia Department of Transportation's right of way.

Background/History/Details:

Over the past two years, there has been a growing demand for improved maintenance of various State Route corridors within unincorporated Fayette County. Items of concern include mowing frequency, accumulation of trash and debris, and weed control.

If approved, this Agreement allows Fayette County to provide mowing, trimming, litter pick-up, sand and debris removal and weed control within the GDOT's right-of-way. The work is limited to two segments (SR 74 between Peachtree City and SR 85, and SR 54 between Peachtree City and Fayetteville) for a limited time (six months). The intent is for the services provided by Fayette County to be in addition to, not in lieu of, those provided by GDOT.

In addition to this pilot project, GDOT has been building-up the maintenance crew equipment and staff that services Fayette County and there has been good cooperation between the State and County on this issue over the past 10 months.

There is no direct cost to Fayette County for this pilot project except for a corresponding reduced level of mowing and maintenance on County Roads.

What action are you seeking from the Board of Commissioners?

Approval of staff's recommendation to approve the "Right-of-Way Mowing and Maintenance Agreement," between the Georgia Department of Transportation and Fayette County, Georgia, in order to perform certain services relating to mowing and maintenance within the Georgia Department of Transportation's right of way.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance		Reviewed by Legal	
Approved by Purchasing		County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

This agreement between the Georgia Department of Transportation and Fayette County stands as an testament to the County's efforts to provide for the proper maintenance and cleanliness of roads, whether state roads or county roads, throughout Fayette County. This pilot program is envisioned to expand to State Routes once it is fully operational.

Rev: September 13, 2010

RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT

By and Between

THE

GEORGIA DEPARTMENT OF TRANSPORTATION

AND

Fayette County

THIS AGREEMENT made and entered into this _____ day of _____, 20____ by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia, hereinafter alternately referred to as **"DEPARTMENT"** or **"LICENSOR"**, and the **Fayette County** hereinafter referred to as **"LICENSEE"**.

WHEREAS, the **DEPARTMENT** desires to enter into a public/private partnership to perform certain services relating to mowing and maintenance within **DEPARTMENT'S** right of way, hereinafter called the **"PROJECT"**, and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that, if such permission is granted to the **LICENSEE**, **LICENSEE** shall bear all costs and liability associated with the **PROJECT**; and

WHEREAS, the **LICENSEE** has represented to the **DEPARTMENT** that they are qualified and experienced to provide such services and the **DEPARTMENT** has relied upon such representations;

NOW, **THEREFORE**, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

ARTICLE I
SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The maintenance duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI – **MAINTENANCE WORK PLAN** of this Agreement, and further enumerated and described in Exhibit 'A' – Application and Permit for Special Encroachment with approved drawings or final working drawings for a Department-approved construction **PROJECT**. Exhibit 'A' is attached hereto and incorporated by reference as if fully set out herein. The **PROJECT** location shall be defined or delineated as part of Exhibit 'A'. The required Special Encroachment Permit and/or the construction **PROJECT** final working drawings are to be approved or issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI - **MAINTENANCE WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in Article VIII, herein.

ARTICLE II
EXECUTION OF CONTRACT AND AUTHORIZATION
TIME OF PERFORMANCE

Time is of the essence in this agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within thirty (30) days after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in Exhibit A or upon **PROJECT** construction completion).

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, edge, and maintain, as set forth in Article XI- **MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall not exceed fifty years from the date above first written unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

ARTICLE III
SUBSTANTIAL CHANGES

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

ARTICLE IV
ASSIGNMENT

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

ARTICLE V
CONTRACT DISPUTES

This Agreement shall be deemed to have been executed in __Fulton__ County, Georgia, without reference to its choice of law doctrine, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia. Any litigation arising out of this contract shall be commenced within the State of Georgia. The foregoing provisions shall not be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity which may be available to the Department.

ARTICLE VI
INSURANCE

Prior to beginning work, the **LICENSEE** shall obtain and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage for anyone that will be working on the right of way:

(a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.

(b) Public Liability Insurance in an amount of not less than one hundred thousand dollars ($100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars ($300,000) on an account of any one occurrence, or proof of self insurance.

(c) Property Damage Insurance in an amount of not less than fifty thousand dollars ($50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars ($100,000), or proof of self insurance.

(d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.

(e) Insurance shall be maintained in full force and effect during the life of the **PROJECT**.

The **LICENSEE** shall furnish upon request to the **DEPARTMENT**, certificates of insurance evidencing such coverage. These certificates **shall** also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.

ARTICLE VII
COMPENSATION

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any **and all** issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should th**e DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such

change shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the **DEPARTMENT** review and approval.

ARTICLE VIII
RESPONSIBILITY FOR CLAIMS AND LIABILITY
LICENSEE NOT AGENT OF DEPARTMENT

LICENSEE, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT** or of the State of Georgia.

ARTICLE IX
TERMINATION OF CONTRACT

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate the agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

A. The **LICENSEE,** at the discretion of the **DEPARTMENT**, removing the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the **LICENSEE** at no cost to the **DEPARTMENT**.
B. The **LICENSEE** restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.
C. The **LICENSEE** restoring the removed non-standard and decorative elements with standard **DEPARTMENT** elements that meet federal and state requirements.
D. The **LICENSEE** reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape related items, and other non-standard and decorative elements that are no longer to be maintained by the **LICENSEE**.
E. No reimbursal is required for termination of agreements for Mowing Only.

The **DEPARTMENT** and the **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in Article XI - **MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items "A", "B", "C", and "D" above, as applicable, and then terminate the agreement.

ARTICLE X
COMPLIANCE WITH APPLICABLE LAW

The undersigned certify that:

A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.

B. The provisions of Sections 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.

C. 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.

ARTICLE XI

MAINTENANCE WORK PLAN

Limits of Work:
Fayette County's services shall be limited to the median and shoulders of the following routes: a. SR 54 between Peachtree City and Fayetteville; and b. SR 74 South between Peachtree City and SR 85.

When possible and at a frequency determined by Fayette County, the County will provide additional maintenance services. The additional maintenance services include: mowing, trimming, litter pick-up, sand and debris removal from gutters, and weed control along concrete medians, curbs and gutters. These services are in addition to (not in lieu of) services provided by GDOT.

The Mowing Requirements consist of furnishing all labor, material, tools, equipment, and incidentals necessary to perform mowing, trimming, and litter removal operations within the limits of the right of way and easement areas in a safe, effective, and timely manner. For all maintenance activities, at a minimum, abide by the Federal Manual of Uniform Traffic Control Devices (MUTCD) standards, current edition, for temporary traffic control. Move equipment or materials on or across a traveled way in a manner as not to unduly interfere with traffic. Maintain a neat appearance and clear sight lines for pedestrian and vehicular traffic. All major maintenance repair activities and activities that may interfere with traffic or pedestrian flow within the right of way project limits, such as travel lane/walkway closures, require the LICENSEE notify the Department at least 48 hours prior to the activity to coordinate and gain Department approval.

Any herbicide product proposed to be used on the right of way shall be reviewed and approved by GDOT prior to use. Herbicide activities are only for weed control along concrete medians, curbs, and gutters.

- All Pesticide/Herbicide use shall be under the direct supervision of someone with the appropriate Commercial Category 27 (right of way use) license.
- When pesticides/herbicides are being applied the person applying shall have in their possession all labeling associated with the pesticide/herbicide and their license/certification.
- Post warning signs for pesticide/herbicide use as required by state code.

All major maintenance activities and activities that may interfere with traffic or pedestrian flow within the right of way project limits, such as travel lane/walkway closures, require the LICENSEE notify the Department at least 48 hours prior to the activity to coordinate and gain Department approval.

In six months from the date of the agreement, Fayette County will notify the Department in writing as to whether they want to continue or terminate the agreement for additional maintenance services.

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.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

GEORGIA DEPARTMENT OF TRANSPORTATION

_____
Commissioner or designee

ATTEST:

_____
Angela Whitworth, Treasurer

LICENSEE:

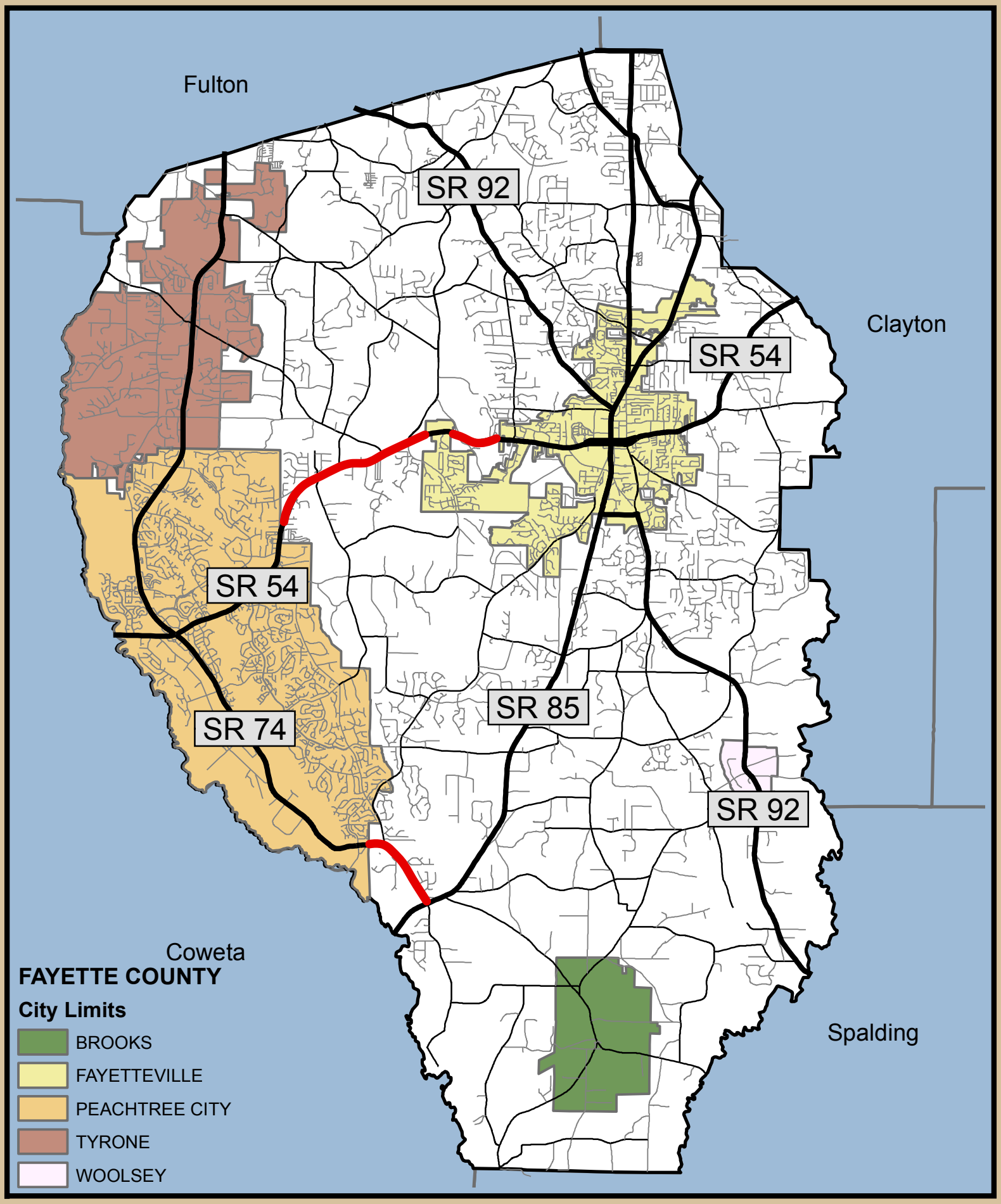
_____
(Title)

Sworn to before me this
_____day of _____, 20____.

_____
NOTARY PUBLIC
My commission expires _____, _____.

EXHIBIT ‘A’

(Attach the Application and Permit for Special Encroachment with approved drawings **or** the final working drawings for a Department-approved construction**)**



Fayette County
GDOT - Mowing & Maintenance Agreement
"Exhibit A"