

Updated Certifications  
Associated with Aug 2, 2004  
Amendments



## SERVICE DELIVERY STRATEGY UPDATE CERTIFICATIONS

### Instructions:

This two page form must, at a minimum, be signed by an authorized representative of the following governments: 1) the county; 2) the city serving as the county seat; 3) all cities having a 2000 population of over 9,000 residing within the county; and 4) no less than 50% of all other cities with a 2000 population of between 500 and 9,000 residing within the county. Cities with a 2000 population below 500 and local authorities providing services under the strategy are not required to sign this form, but are encouraged to do so.

### UPDATED SERVICE DELIVERY STRATEGY FOR Cobb COUNTY

We, the undersigned authorized representatives of the jurisdictions listed below, certify that:

1. We have reviewed our existing Service Delivery Strategy and have determined that:  
(Check only one box for question #1)

- ☐ A. Our Strategy continues to accurately reflect our preferred arrangements for providing local services throughout our county and no changes in our Strategy are needed at this time; or
- ☒ B. Our Strategy has been revised to reflect our preferred arrangements for providing local services.

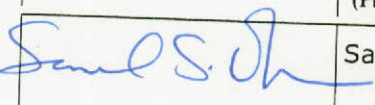
If Option A is selected, only this form, signed by the appropriate local government representatives must be provided to DCA.

If Option B is selected, this form, signed by the appropriate local government representatives, must be submitted to DCA along with:

- an updated "Summary of Service Arrangements" form (page 2) for each local service that has been revised/updated;
  - any supporting local agreements pertaining to each of these services that has been revised/updated; and
  - an updated service area map depicting the agreed upon service area for each provider if there is more than one service provider for each service that has been revised/updated within the county, and if the agreed upon service areas do not coincide with local political boundaries.
2. Each of our governing bodies (County Commission and City Councils) that are a party to this strategy have adopted resolutions agreeing to the Service Delivery arrangements identified in our strategy and have executed agreements for implementation of our service delivery strategy (O.C.G.A. 36-70-21);
3. Our service delivery strategy continues to promote the delivery of local government services in the most efficient, effective, and responsive manner for all residents, individuals and property owners throughout the county (O.C.G.A. 36-70-24(1));
4. Our service delivery strategy continues to provide that water or sewer fees charged to customers located outside the geographic boundaries of a service provider are reasonable and are not arbitrarily higher than the fees charged to customers located within the geographic boundaries of the service provider (O.C.G.A. 36-70-24 (2));
5. Our service delivery strategy continues to ensure that the cost of any services the county government provides (including those jointly funded by the county and one or more municipalities) primarily for the benefit of the unincorporated area of the county are borne by the unincorporated area residents, individuals, and property owners who receive such service (O.C.G.A. 36-70-24 (3));

6. Our Service Delivery Strategy continues to ensure that the officially adopted County and City land use plans of all local governments located in the County are compatible and nonconflicting (O.C.G.A. 36-70-24 (4)(A));
7. Our Service Delivery Strategy continues to ensure that the provision of extraterritorial water and sewer services by any jurisdiction is consistent with all County and City land use plans and ordinances (O.C.G.A. 36-70-24 (4)(B)); and
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9. DCA has been provided a copy of this certification and copies of all forms, maps and supporting agreements needed to accurately depict our agreed upon strategy (O.C.G.A. 36-70-27).

*If the County does not have an Annexation/Land Use dispute resolution process with each of its cities, list the cities where no agreed upon process exists:*

SIGNATURE:	NAME: (Please print or type)	TITLE:	JURISDICTION:	DATE:
	Sam Olens	County Commission Chairman	Cobb County	
	William B. Dunaway	Mayor	City of Marietta	
	A. Max Bacon	Mayor	City of Smyrna	
	Thomas Allegood	Mayor	City of Acworth	
	Leonard Church	Mayor	City of Kennesaw	
	Joe Jerkins	Mayor	City of Austell	
	Pat Vaughn	Mayor	City of Powder Springs	



**APPROVED**  
 PER MINUTES OF  
 COBB COUNTY  
 BOARD OF COMMISSIONERS  
7-27-04  
*che*





## City of Marietta Motion Signature

205 Lawrence Street  
Post Office Box 609  
Marietta, Georgia 30061

20040801

**Motion to approve the following Intergovernmental Agreement between the City of Marietta and Cobb County relating to HB489 Service Delivery Strategy Update Certifications with approval conditioned upon the final approval as by the City Manager and City Attorney.**

**Date: July 12, 2004**


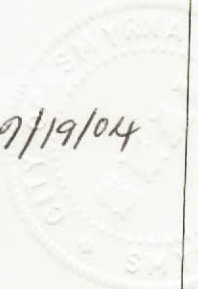

**William B. Dunaway, Mayor**

**Shelia R. Hill, City Clerk**



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<sup>1</sup>If the County does not have an Annexation/Land Use dispute resolution process with each of its cities, list the cities where no agreed upon process exists:

SIGNATURE:	NAME: (Please print or type)	TITLE:	JURISDICTION:	DATE:
	Sam Olens	County Commission Chairman	Cobb County	 7/19/04
	William B. Dunaway	Mayor	City of Marietta	
	A. Max Bacon	Mayor	City of Smyrna	
	Thomas Allegood	Mayor	City of Acworth	
	Leonard Church	Mayor	City of Kennesaw	
	Joe Jerkins	Mayor	City of Austell	
	Pat Vaughn	Mayor	City of Powder Springs	



**APPROVED**

PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS


7-27-04





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(Check only one box for question #1)

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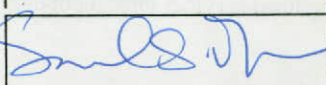
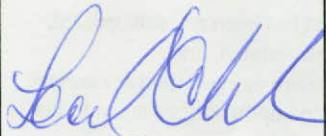


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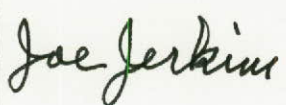
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*'If the County does not have an Annexation/Land Use dispute resolution process with each of its cities, list the cities where no agreed upon process exists: \_\_\_\_\_*

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 <p><b>APPROVED</b> PER MINUTES OF COBB COUNTY BOARD OF COMMISSIONERS <u>7-27-04</u> </p>				

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**APPROVED**  
PERMINUTES OF  
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7-27-04



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	Joe Jerkins	Mayor	City of Austell	
	Patricia Vaughn Pat Vaughn	Mayor	City of Powder Springs	7/21/04
<p><b>APPROVED</b> PER MINUTES OF COBB COUNTY BOARD OF COMMISSIONERS</p> <p><u>7-27-04</u> </p>				

## SERVICE DELIVERY STRATEGY REVISION

Reviewer

MG

Received Date

8/2/04

DCA Review Deadline

8/27/04

Review Assigned

8/2/04

Review Completed

8/13/04

Service Delivery Strategy for: CORB COUNTY

Submitted by: CORB COUNTY RDC: ARC

Revised Service: PROPERTY TAX MILLAGE RATE & WATER & SEWAGE

NOTES: NO TERMINATION DATE FOR STRATEGY



Georgia Department of Community Affairs  
Office of Research and Communications

**Municipal Population Counts by County: 2000**

Includes Portions of Municipalities by County

\* Denotes County Seat City

Jurisdiction	Population	Jurisdiction	Population	Jurisdiction	Population
Clarke		Grovetown	6,089	Dodge	
*Athens-Clarke**	101,489	Harlem	1,814	Chauncey	295
Bogart (part)	118			Chester	305
Winterville	1,068	Cook		*Eastman	5,440
Clay		*Adel	5,307	Milan (part)	434
Bluffton	118	Cecil	265	Rhine	422
*Fort Gaines	1,110	Lenox	889		
		Sparks	1,755	Dooly	
Clayton				Byromville	415
College Park (part)	1,572	Coweta		Dooling	163
Forest Park	21,447	Corinth (part)	13	Lilly	221
*Jonesboro	3,829	Grantville	1,309	Pinehurst	307
Lake City	2,886	Haralson (part)	144	Unadilla	2,772
Lovejoy	2,495	Moreland	393	*Vienna	2,973
Morrow	4,882	*Newnan	16,242		
Riverdale	12,478	Palmetto (part)	327	Dougherty	
		Senoia	1,738	*Albany	76,939
Clinch		Sharpsburg	316		
Argyle	151	Turin	165	Douglas	
Du Pont	139			Austell (part)	129
Fargo	380	Crawford		*Douglasville	20,065
*Homerville	2,803	*Knoxville		Villa Rica (part)	263
		Roberta	808		
Cobb				Early	
Acworth ✓	13,422	Crisp		Arlington (part)	441
Austell (part) ✓	5,230	Arabi	456	*Blakely	5,696
Kennesaw ✓	21,675	*Cordele	11,608	Damascus	277
*Marietta ✓	58,748			Jakin	157
Powder Springs ✓	12,481	Dade			
Smyrna ✓	40,999	*Trenton	1,942	Effingham	
				Guyton	917
Coffee		Dawson		Rincon	4,376
Ambrose	320	*Dawsonville	619	*Springfield	1,821
Broxton	1,428				
*Douglas	10,639	Decatur		Elbert	
Nicholls	1,008	Attapulgus	492	Bowman	898
		*Bainbridge	11,722	*Elberton	4,743
Colquitt		Brinson	225		
Berlin	595	Climax	297	Emanuel	
Doerun	828			Adrian (part)	267
Ellenton	336	DeKalb		Garfield	152
Funston	426	Atlanta (part)	29,775	Nunez	131
*Moultrie	14,387	Avondale Estates	2,609	Oak Park	366
Norman Park	849	Chamblee	9,552	Stillmore	730
Omega (part)	1	Clarkston	7,231	Summertown	140
Riverside	57	*Decatur	18,147	*Swainsboro	6,943
		Doraville	9,862	Twin City	1,752
Columbia		Lithonia	2,187		
*Appling		Pine Lake	621	Evans	
		Stone Mountain	7,145	Bellville	130

Cobb/Marietta  
Land Use/Annexation  
Dispute Resolution  
Process (with maps  
(Part of 8/2/04  
Amendment

## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 12<sup>th</sup> day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF MARIETTA, (hereinafter known as the "City").

### RECITALS

Whereas the City of Marietta and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Marietta and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Marietta and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Marietta and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

1.

The City of Marietta and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider such proposed changes to City and/or County Comprehensive Plans and Future Land Use Maps.
4. During the next three (3) months, each government shall make the changes that



have been agreed to between the governments.

- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
- C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
- D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
- E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
- F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

## 2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City will conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.

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<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.



B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:

- 1) that the County has no objection;
- 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
- 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.

Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.

C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 – 32}

D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute resolution process, stop the annexation, or object to land use change after the annexation.

E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal dispute resolution process if it has previously informed the City of no objection.

F. If the County responds that it has no objection if certain stipulations and conditions are attached to the request, and if the City agrees to implement the County's stipulations and conditions, or if other agreement is reached between the City and County, or if another

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<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.



method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.

- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.
- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>
- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.

<sup>6</sup> The initiation of **negotiation or** mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



- .K. If the City entertains a rezoning application for a property within 12 months of an annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.
- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in accordance with the mediated agreement.

If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence



submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.

The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon the annexation of all or parts of the property under review. The rezoning shall not become effective until 28 calendar days following the completion of the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on



the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.

- E. F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via

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<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.



resolution by:

the County governing authority;  
the City which serves as the County seat;  
the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,  
no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

11.

This agreement shall be governed by the laws of the State of Georgia.

12.

This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.

14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.

This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

CITY OF MARIETTA

By:

Samuel S. Olens  
Chairman, Board of Commissioners



By:

William B. Dunaway  
Mayor

By:

Carol Granger  
County Clerk

By:

Shelia R. Hill  
City Clerk

**APPROVED**  
PERMINUTESOF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04

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## City of Marietta Exhibit "A"

County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)			
Very Low Density Residential (VLDR)		R-1, R-2, R-3, R-4, RA-4, PRD-SF	Up to 3 DUA
Low Density Residential (LDR)	Low Density Residential (LDR)	R-1, R-2, R-3, R-4, RA-4, PRD-SF, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF	Up to 3 DUA for undeveloped properties shown within buffer on Exhibit "B" (western arc)  Up to 4 DUA (western arc)  Up to 4 DUA for undeveloped properties shown within buffer on Exhibit "B" (eastern arc)  Up to 5 DUA (eastern arc)
Medium Density Residential (MDR)	Medium Density Residential (MDR)	R-1, R-2, R-3, R-4, RA-4, PRD-SF, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF, OIT, LRO, MHP	Up to 5 DUA for undeveloped properties shown within buffer on Exhibit "C"  Up to 6 DUA  OIT — Appropriate when adjacent to an existing non-residential development  LRO — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan
High Density Residential (HDR)	High Density Residential (HDR)	R-1, R-2, R-3, R-4, RA-4, PRD-SF, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF, OIT, LRO, OI, MXD, MHP	Up to 12 DUA;  OIT — Appropriate when adjacent to an existing non-residential development  LRO — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan  OI — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan  MXD — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
Neighborhood Activity Center (NAC)	Neighborhood Activity Center (NAC)	R-1, R-2, R-3, R-4, PRD-SF, RA-4, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF, OIT, LRO, OI, NRC, CRC, MXD	OIT — Appropriate when adjacent to an existing non-residential development  CRC — Appropriate if located at the intersection of at least an arterial

County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Maximum Allowable Density/ Misc. Stipulations
			roadways, per County's Major Thoroughfare Plan  MXD — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 8-UPA for total project density per city method
Community Activity Center (CAC)	Community Activity Center (CAC)	R-1, R-2, R-3, R-4, PRD-SF, RA-4, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF, OIT, LRO, OI, NRC, CRC, OS, PCD, MXD	OS — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan  PCD — Appropriate with uses and intensities allowed in CRC district  MXD — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
Regional Activity Center (RAC)	Regional Activity Center (RAC)	R-1, R-2, R-3, R-4, RA-4, PRD-SF, RA-6, RA-8, RM-8, RM-10, RM-12, PRD-MF, OIT, LRO, OI, NRC, CRC, OS, RRC, PCD, MXD, OHR	
N/A	Central Business District (CBD)		CBD applies to "Historic Marietta" and central city areas only; not to be applied to outlying/fringe areas
Industrial Compatible (IC)	Industrial Compatible (IC)	OI, OS, LI, PID, NRC, CRC, MXD	PID appropriate as long as uses and intensities are similar to previously identified unobjectionable zoning districts
Industrial (IND)	Industrial (IND)	OI, NRC, CRC, OS, LI, HI, PID, MXD	MXD — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
Transportation/Communication/Utilities (TCU)	Transportation/Utilities (TU)		
Public Institutional	Community Service & Institution (CSI)		
Park/Recreation/Conservation	Openspace/Recreation (OR)		
N/A	Undeveloped/Vacant (U)		

Specific areas identified as "transitional" are as follows:

1. Notwithstanding anything to the contrary contained herein, those areas, including specific performance criteria, and zoning categories as listed in attached transitional areas I-4 and shown on transitional area maps I-4 shall be allowed an unobjectionable City Zoning District(s) by the County. County cannot formally object unless the specific performance criteria have not been implemented/addressed by city.



## CITY OF MARIETTA TRANSITION AREAS

### AREA 1 - SOUTHWEST MARIETTA AREA:

**That area described as south of South Marietta Parkway, west of Cobb Parkway, east of Powder Springs Street, north of Pat Mell Road, east of Austell Road including the area along Atlanta Street. This area is described as transitional due to its aging commercial and industrial properties, its aging and blighted residential developments, as well as impacts due to its location near Dobbins AFB. In order to promote new development in this area, additional flexibility should be given to proposed uses.**

**In order to promote redevelopment in this transitional area, under certain conditions the zoning classifications identified in the Community Activity Center (CAC) are appropriate and would be unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 3. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 4. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 5. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**

## CITY OF MARIETTA TRANSITION AREAS

### AREA 2 - I-75, SOUTH MARIETTA PARKWAY, POWERS FERRY ROAD AREA:

**That area described as southeast of South Marietta Parkway, west of Interstate 75, southwest of Powers Ferry Road and east of Meadowbrook Lane. This area is described as transitional due to the available vacant property at a prime location at the junction of three major roadways. In addition, the adjacent residential development is aging and blighted, impacts that area a result of its location near such heavily traveled roadways. In order to promote new development in this area, additional flexibility should be given to proposed uses.**

**In order to promote redevelopment in this transitional area, under certain conditions the zoning classifications identified in the Community Activity Center (CAC) are appropriate and would be unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 3. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 4. Shared access drives should be encouraged to reduce traffic flow interruption.**



- 5. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**

## City of Marietta Transition Areas

### **AREA 3 - NORTHEAST MARIETTA AREA (SANDY PLAINS/CANTON ROAD):**

The transition area known as Northeast Marietta contains all properties within the arc bounded by Canton Road and Sandy Plains Road out 1 mile from the current city limits of the City of Marietta. This transition area is designated because it is a mix of commercial and residential properties along Sandy Plains Road, of which many of the residential structures are becoming blighted due to age and lack of maintenance. The location of some industrial uses along Canton Road has further contributed to the instability of this area. However, this corridor has experienced some private investment in the form of new retail developments, as well as some new residential construction. Ensuring that new developments will maintain a high aesthetic quality, and will not negatively impact adjacent residential areas is a concern due to the transition of some relatively small residential properties to commercial uses. Redevelopment is necessary in this area, and therefore flexibility in land use decision making should exist.

**In order to provide flexibility and promote quality redevelopment in this transition area, the zoning classifications listed in the Neighborhood Activity Center (NAC) are appropriate and unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. Relatively low intensity retail and office uses should be encouraged.**
- 3. Office and retail uses should be limited to a maximum of three stories.**
- 4. Retail uses should be limited in total floor area to ensure neighborhood compatibility.**
- 5. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 6. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**



- 7. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 8. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**

## City of Marietta Transition Areas

### **AREA 4 - NORTH MARIETTA AREA (CANTON ROAD CORRIDOR):**

The transition area along the Canton Road Corridor, and known as the North Marietta area, contains all properties within 1 mile of the Canton Road corridor. This transition area is designated for redevelopment due to the unplanned mix of residential, commercial and industrial properties along Canton Road. Many of the residential structures are becoming blighted due to age and lack of maintenance, while others have been occupied by commercial or industrial uses without any improvements being made to the property or the structure. Canton Road is primarily a 3-lane commercial corridor that is inadequate for the types of uses that are located along it. Further, the local streets that intersect Canton Road are primarily narrow 2-lane streets that cannot accommodate the commercial and industrial traffic to which they are being exposed. The location of these unplanned uses and unimproved structures along Canton Road has further contributed to the instability of this area. The county is currently attempting to implement improvements via the Canton Road Corridor Market Study. Investment and redevelopment is necessary in this area, and therefore flexibility in land use decision-making should exist.

**In order to provide flexibility and promote redevelopment in this transition area, the zoning classifications listed in the Community Activity Center (CAC) are appropriate and unobjectionable; provided the proposed land uses are consistent with the Canton Road Corridor Market Study as espoused by Cobb County. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 3. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 4. Shared access drives should be encouraged to reduce traffic flow interruption.**



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- 5. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**

Cobb/Acworth  
Land Use/Annexation  
Dispute Resolution  
Process

(Part of Aug 2, 2004  
Amendment) - NO maps  
Attached



## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 29<sup>th</sup> day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF ACWORTH, (hereinafter known as the "City").

### RECITALS

Whereas the City of Acworth and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Acworth and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Acworth and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Acworth and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

#### 1.

The City of Acworth and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider such proposed changes to City and/or County Comprehensive Plans and Future Land Use Maps.
4. During the next three (3) months, each government shall make the changes that have

been agreed to between the governments.

- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
- C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
- D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
- E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
- F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City will conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.

<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.



- B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:
- 1) that the County has no objection;
  - 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
  - 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.
- Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.
- C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 – 32}
- D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute resolution process, stop the annexation, or object to land use change after the annexation.
- E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal dispute resolution process if it has previously informed the City of no objection.
- F. If the County responds that it has no objection if certain stipulations and conditions are attached to the request, and if the City agrees to implement the County's stipulations and

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<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.



conditions, or if other agreement is reached between the City and County, or if another method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.

- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.
- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>
- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.
- .K. If the City entertains a rezoning application for a property within 12 months of an

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.

<sup>6</sup> The initiation of negotiation ~~OR~~ mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.

- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in accordance with the mediated agreement.

If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.



The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon the annexation of all or parts of the property under review.

The rezoning shall not become effective until 28 calendar days following the completion of the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been



objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.

- E. F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via resolution by:

the County governing authority;

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<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.

the City which serves as the County seat;  
the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,  
no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

11.

This agreement shall be governed by the laws of the State of Georgia.

12.

This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.



14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.


This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

CITY OF ACWORTH

By:   
Samuel S. Olens  
Chairman, Board of Commissioners

By:   
Thomas W. Allegood  
Mayor

By:   
Carol Granger  
County Clerk

By: \_\_\_\_\_  
Christina V. Lynch  
City Clerk



**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

July 27, 2004

## City of Acworth Exhibit "A"

County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum – Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)	Single-Family Residential	RC	Up to 2.5 DUA, per the City method.  City will use county stream buffer requirements, as adopted March 2004.
Very Low Density Residential (VLDR)	Single-Family Residential	R-1, RC	Up to 2.5 DUA, per the City method.  City will use county stream buffer requirements, as adopted March 2004.
Low Density Residential (LDR)	Single-Family Residential	R-1, R-2, R-3, RM-6, RM-8, RC, OIT	Up to 3 DUA for undeveloped properties shown on Exhibit "B"  Up to 4 DUA, per the City method.  OIT – Appropriate when adjacent to an existing non-residential development  City will use county stream buffer requirements, as adopted March 2004.
Medium Density Residential (MDR)	Multi-Family Residential	R-2, R-3, R-5, RM-6, RM-8, OIT, RC	Up to 5 DUA  OIT – Appropriate when adjacent to an existing non-residential development  RC – up to 5 UPA for total project density per city method  City will use county stream buffer requirements, as adopted March 2004.
High Density Residential (HDR)	Multi-Family Residential	R-3, R-5, RM-6, RM-8, OIT, MU	Up to 12 DUA;  OIT – Appropriate when adjacent to an existing non-residential development  MU -- Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
Neighborhood Activity Center (NAC)	Commercial	C-1, C-2, OIT, LRO, MU	OIT – Appropriate when adjacent to an existing non-residential development
Community Activity Center (CAC)	Commercial	C-2, OIT, LRO, OP, MU	MU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method



County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum – Maximum Allowable Density/ Misc. Stipulations
Regional Activity Center (RAC)	Commercial	C-2, LRO, OP, MU	MU — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
N/A	Mixed-Use Commercial	MU	PSC appropriate if located at the intersection of arterial roadways, per County's Major Thoroughfare Plan
N/A	Mixed-Use Office	MU	MU appropriate with uses and intensities similar to previously identified unobjectionable zoning districts
N/A	Mixed-Use Single-Family	MU	MU appropriate with uses and intensities similar to previously identified unobjectionable zoning districts
N/A	Mixed-Use Multi-Family	MU	MU appropriate with uses and intensities similar to previously identified unobjectionable zoning districts
Industrial Compatible (IC)	N/A	LI, C-2, MU	<p>MU — Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method</p> <p>The County shall not object to the redevelopment /development of any property that has either a land use or zoning which allows for the continued or potential uses including: Mobile home park, flea market, industrial/ storage, motel, strip commercial, industrial and manufacturing.</p> <p>The City may consider the annexation and development of said properties under the C-2 (optimally .SFAR), MU classifications with uses and intensities similar to previously identified unobjectionable zoning districts, provided stipulations are met, as proscribed in the transitional area language below. If the city meets the stipulations proscribed in the transitional area language, the county shall not object.</p>
Industrial (IND)	Industrial	LI, LI-2, HI	
Transportation/Communication/Utilities (TCU)	Transportation/Communication/Utilities		
Public Institutional	Institutional		
Park/Recreation/Conservation	Parks/Greenspace		
N/A	Religious		
N/A	Cemetery		
N/A	Undeveloped/Vacant		



Specific areas identified as "transitional" are as follows:

## CITY OF ACWORTH TRANSITION AREAS

### AREA 1 – COBB PARKWAY/LAKE ALLATOONA NORTHWEST AREA:

**That area described as properties located along and near the northwest section of Cobb Parkway (from the intersection with Highway 92 (LL72 -at the south boundary), from Lake Allatoona (at the eastern boundary) to the Paulding and Bartow County lines (at the western and northern boundaries, respectively). This area is described as transitional due to its aging commercial and industrial properties, its aging and blighted residential developments (including an existing mobile home park-Fairway Villa and a camping trailer park), as well as impacts due to its location near Lake Allatoona. In order to promote new development in this area, additional flexibility should be given to proposed uses.**

**In order to promote redevelopment in this transitional area, under certain conditions the zoning classifications identified in the C-2 (Community Retail Commercial), MU (Mixed Use), RC (Residential Conservation, per standards above in the appropriate FLUM designations) are appropriate and would be unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 3. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 4. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 5. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**
- 6. City will use county stream buffer requirements, as adopted March 2004.**



## CITY OF ACWORTH TRANSITION AREAS

### AREA 2 – SOUTH MAIN STREET/OLD HIGHWAY 41 AREA:

**That area described as southwest of Old 41 (LL105), east of Fowler Rd., west of Blue Springs Road and north of Creekside Subdivision. This area is described as transitional due to the existing mobile home park development which is aging and blighted, impacts that area a result of its location near such heavily traveled roadways. In order to promote new development in this area, additional flexibility should be given to proposed uses.**

**In order to promote redevelopment in this transitional area, under certain conditions the zoning classifications identified in the C-2 (Community Retail Commercial), MU (Mixed Use), RM-8 (Residential multi-Family), RM-6 (Residential Multi-Family), and RC (Residential Conservation) are appropriate and would be unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**
- 3. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 4. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 5. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**
- 6. City will use county stream buffer requirements, as adopted March 2004.**



## City of ACWORTH Transition Areas

### **AREA 3 – OLD MCEVER AREA:**

The transition area known as Old McEver contains all properties along Old McEver Road that are not incorporated and intersecting/terminating at McEver Rd. McEver Rd. is also the north boundary. While Old McEver has remained primarily residential it is designated as Industrial Compatible on the Cobb FLUM.

This transition area is designated because it is a mix of industrial, public and residential properties along McEver Road, of which many of the residential structures are becoming blighted due to age and lack of maintenance. The overall neighboring McEver Rd. area experienced a transition of industrial uses to residential and public uses over the past ten years. The location of some industrial uses along McEver Road has further contributed to the instability of this area. This corridor has experienced massive redevelopment in the form of new residential 100+ unit subdivisions, as well as two new Cobb County schools (Acworth Elementary and New Acworth Middle). Ensuring that new developments will maintain a high aesthetic quality, and will not negatively impact adjacent residential areas is a concern due to the transition of some relatively small residential properties to industrial uses. Redevelopment is necessary in this area, and therefore flexibility in land use decision making should exist.

**In order to provide flexibility and promote quality redevelopment in this transition area, the zoning classifications listed in the RC (Residential Conservation), R-3 (Single Family Residential), OIT (Office Institutional Transitional), LI (Light Industrial) are appropriate and unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. Relatively low density residential uses should be encouraged.**
- 3. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 4. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**
- 5. Continued uses of existing (or county zoned) industrial properties shall remain; new industrial uses shall be subject to review and shall meet all City standards for buffering and other zoning standards.**
- 6. City will use county stream buffer requirements, as adopted March 2004.**



## City of ACWORTH Transition Areas

### **AREA 4 –MCEVER AREA:**

The transition area known as McEver contains all properties along McEver Road (north side) that are not incorporated and intersecting/terminating at Hickory Grove Rd. This transition area is designated because it is a mix of industrial (including a large existing concrete plant), Public and residential properties along McEver Road, of which many of the residential structures are becoming blighted due to age and lack of maintenance. The overall McEver Rd. area experienced a transition of industrial uses to residential and public uses over the past ten years. The location of some industrial uses along McEver Road has further contributed to the instability of this area.

This corridor has experienced massive redevelopment in the form of new 100+ unit residential developments, as well as two new Cobb County schools (Acworth Elementary and New Acworth Middle). Ensuring that new developments will maintain a high aesthetic quality, and will not negatively impact adjacent residential areas is a concern due to the transition of some relatively small residential properties to commercial uses. Redevelopment is necessary in this area, and therefore flexibility in land use decision making should exist.

**In order to provide flexibility and promote quality redevelopment in this transition area, the zoning classifications listed in the RC (Residential Conservation), R-3 (Single Family Residential), MU (Mixed Use), OIT (Office Institutional Transitional), C-2 (Community Retail Commercial), LI (Light Industrial), and HI (Heavy Industrial) are appropriate and unobjectionable. The following conditions should be addressed for any proposed developments to ensure compatibility with existing uses and to minimize potential negative impacts on stable residential areas:**

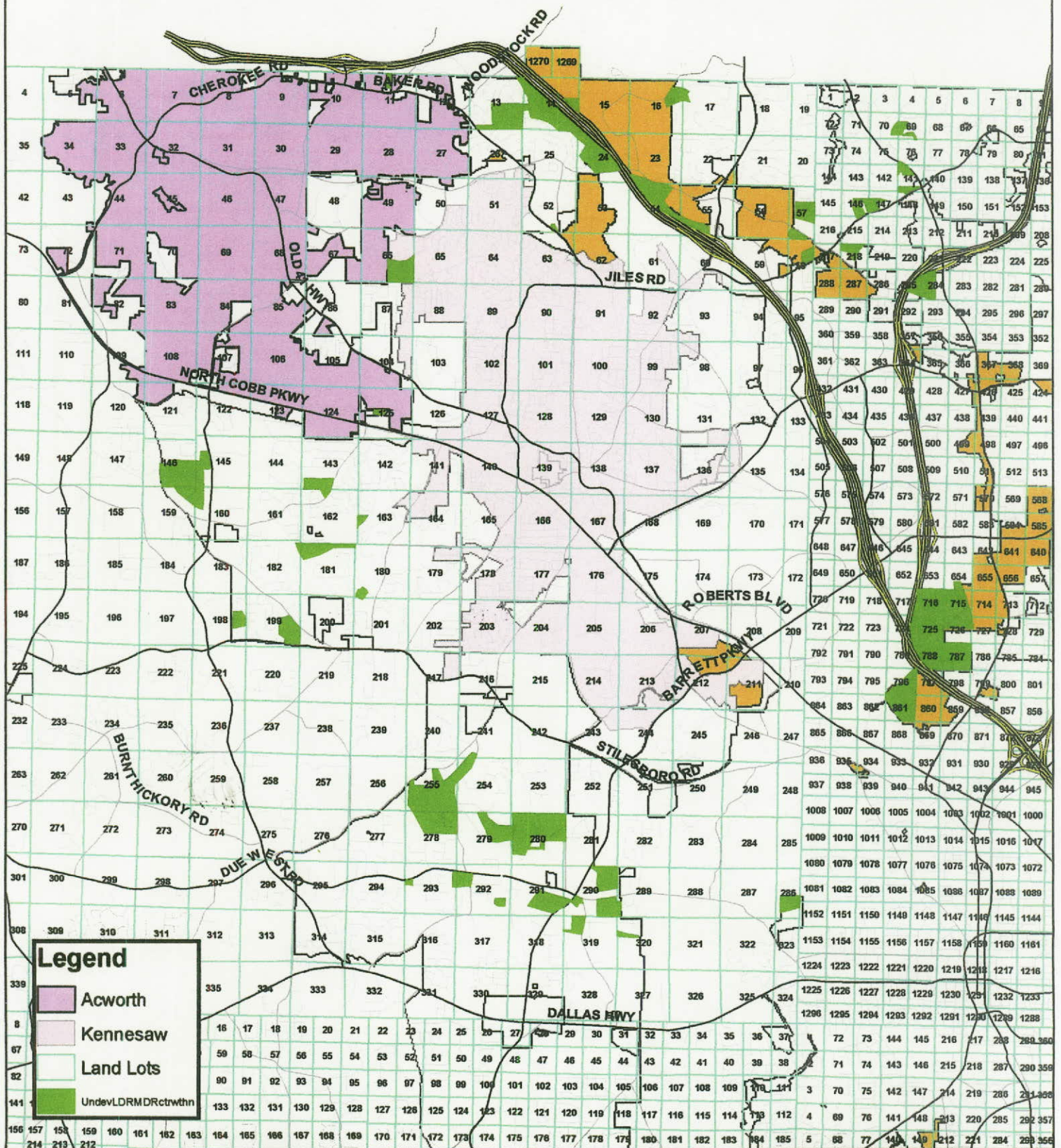
- 1. All uses should be adequately buffered to protect the stability of adjacent residential neighborhoods.**
- 2. Relatively low intensity retail and office uses should be encouraged.**
- 3. Office and retail uses should be limited to a maximum of three stories.**
- 4. Retail uses should be limited in total floor area to ensure neighborhood compatibility.**
- 5. A transition in building scale and land use type should be provided between higher intensity uses and adjacent residential areas.**

- 6. Nodal development should be encouraged and sited at the street intersections with an arterial or collector roadway.**
- 7. Shared access drives should be encouraged to reduce traffic flow interruption.**
- 8. Exterior facades visible from a street right-of-way should be constructed primarily with brick, stone, rock or hard-coat stucco.**
- 9. Continued uses of existing (or County zoned) industrial properties shall remain; new industrial uses shall be subject to review and shall meet all City standards for buffering and other zoning standards.**
- 10. City will use county stream buffer requirements, as adopted March 2004.**



# LDR, MDR Undeveloped Land ACWORTH

Exhibit "B"



Cobb Co / Smyrna  
Land Use / Amenity  
Dispute Resolution  
Process - as part of  
8/2/04 Amendment  
(No maps attached)



## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 19<sup>th</sup> day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF Smyrna, (hereinafter known as the "City").

### RECITALS

Whereas the City of Smyrna and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Smyrna and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Smyrna and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Smyrna and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

1.

The City of Smyrna and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider such proposed changes to City and/or County Comprehensive Plans and Future Land Use Maps.

4. During the next three (3) months, each government shall make the changes that have been agreed to between the governments.

- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
- C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
- D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
- E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
- F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

## 2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City will

<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.



conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.

- B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:

- 1) that the County has no objection;
- 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
- 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.

Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.

- C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 - 32}
- D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute resolution process, stop the annexation, or object to land use change after the annexation.
- E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal dispute resolution process if it has previously informed the City of no objection.
- F. If the County responds that it has no objection if certain stipulations and conditions are

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<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.



attached to the request, and if the City agrees to implement the County's stipulations and conditions, or if other agreement is reached between the City and County, or if another method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.

- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.
- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>
- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.

<sup>6</sup> The initiation of **negotiation or** mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.

- .K. If the City entertains a rezoning application for a property within 12 months of an annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.
- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

### 3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in accordance with the mediated agreement.

If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the



citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.

The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon the annexation of all or parts of the property under review.  
The rezoning shall not become effective until 28 calendar days following the completion of the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb



County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.
- E. F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

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<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.

6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via resolution by:

the County governing authority;  
the City which serves as the County seat;  
the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,  
no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

11.

This agreement shall be governed by the laws of the State of Georgia.

12.



This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.

14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.

This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

Smyrna  
CITY OF \_\_\_\_\_

By: \_\_\_\_\_

Samuel S. Olens  
Chairman, Board of Commissioners



By: \_\_\_\_\_

A. Max Bacon  
Mayor

By: \_\_\_\_\_

Carol Granger  
County Clerk

By: \_\_\_\_\_

Susan D. Hiott  
City Clerk

**APPROVED**  
PERMINUTESOF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04  
cle

# City of Smyrna Exhibit "A"

County Future Land Use Recommendation		City Future Land Use Recommendation	Unobjectionable City Zoning District		Minimum – Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)					
Very Low Density Residential (VLDR)					
Low Density Residential (LDR)		Low Density Residential (LDR)	R-30, R-20, R-15, R-12		Up to 3 DUA for undeveloped properties shown on Exhibit "B"
Medium Density Residential (MDR)		Medium Density Residential (MDR)	R-30, R-20, R-15, R-12, RAD, RD, RD-4, FC		Up to 5 DUA FC — Appropriate when adjacent to an existing non-residential development
High Density Residential (HDR)		High Density Residential (HDR)	R-15, R-12, RAD, RMC-8, RM-10, RM-12, RD-4, TD, RHR, LC, OI, FC		Up to 5 DUA FC — Appropriate when adjacent to an existing non-residential development OI — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan
N/A		Traditional Neighborhood Development & Planned Community Development			
Neighborhood Activity Center (NAC)		Neighborhood Commercial (NC)	FC, OI, NS, LC, CBD, RAD, R-12, RM-10, RM-12, MXD (when adopted)		Up to 8 DUA FC — Appropriate when adjacent to an existing non-residential development OI — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan CBD — Appropriate only to allow mixed-use development with uses and intensities similar to previously identified unobjectionable zoning districts; up to 8 UPA for total project density
Community Activity Center (CAC)		Community-Oriented Commercial (CC)	OI, NS, GC, LC, CBD, RAD, R-12, RM-10, RM-12, MXD (when adopted)		Up to 12 DUA OI — Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan CBD — Appropriate only to allow mixed-use development with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density
Regional Activity Center (RAC)		N/A	R-12, RM-10, RM-12, TD, RHR, OI, GC, TS, CBD, MXD (when adopted)		Up to 12 DUA CBD — Appropriate only to allow mixed-use development with uses and intensities similar to previously identified unobjectionable zoning

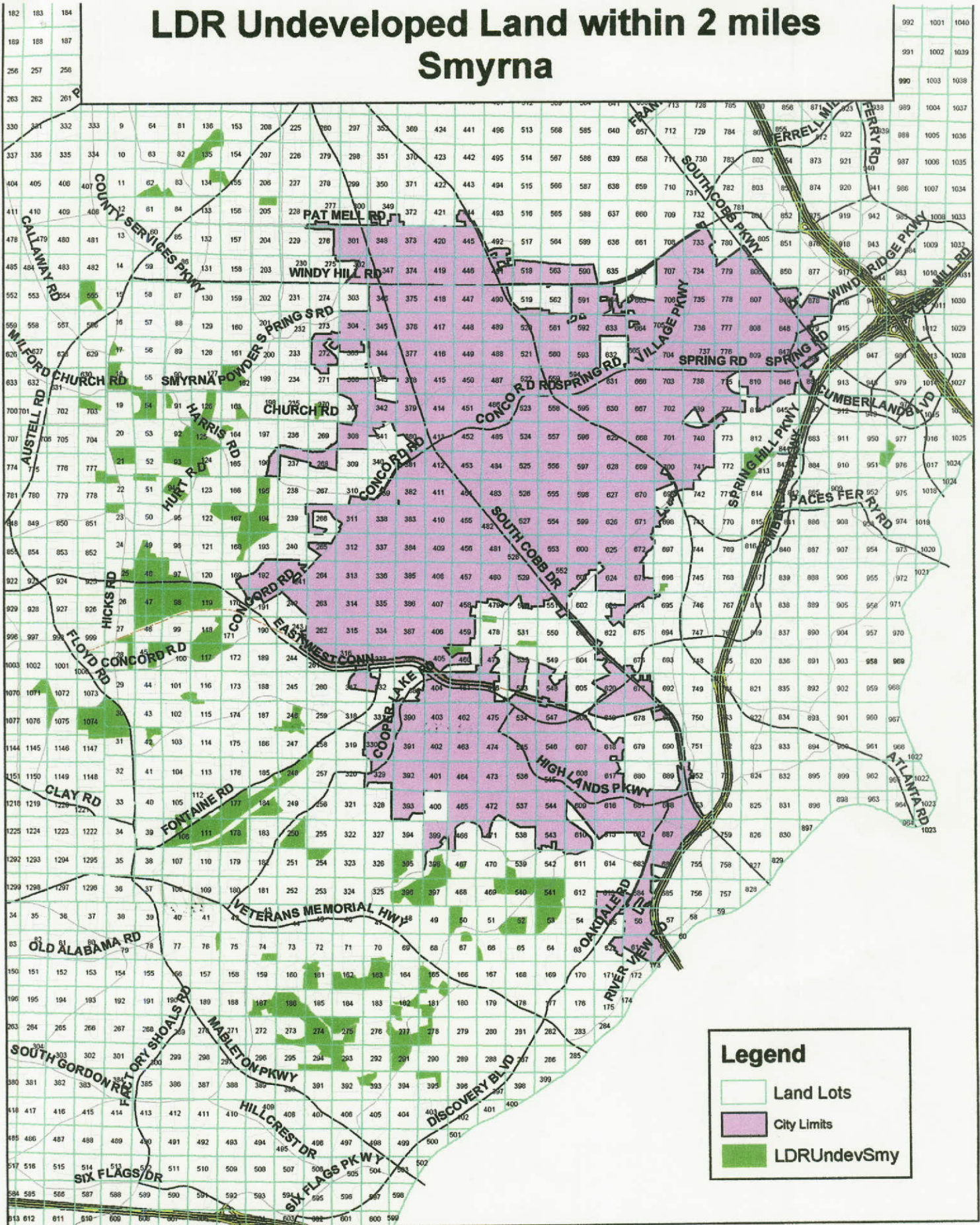


County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum – Maximum Allowable Density/ Misc. Stipulations
N/A	Office & Private Institutional	OI	districts; up to 12 UPA for total project density
Industrial Compatible (IC)	N/A	GC, OD, LI	
Industrial (IND)	Industrial & Warehousing	GC, OD, LI	
Transportation/Communication/Utilities (TCU)	Transportation/Utilities (TU)		
N/A	Roads/Rail/ROW		
Public Institutional	Schools & Public Institutional (SPI)		
Park/Recreation/Conservation	Parks/Natural Area/Recreation (PNR)		
N/A	Undeveloped/Vacant		

Please note: Unless otherwise stated, the CBD zoning designation applies to "Historic Smyrna" and general central city areas only; not to be applied to outlying/fringe areas.



# LDR Undeveloped Land within 2 miles Smyrna





Cobb Co / Powder  
Springs

Land Use Annexation

Dispute Resolution

Process - As part  
of 8/2/04 Amendments  
(No maps attached)

State of Georgia  
County of Cobb

## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 29th day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF Powder Springs, (hereinafter known as the "City").

### RECITALS

Whereas the City of Powder Springs and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Powder Springs and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Powder Springs and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Powder Springs and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

1.

The City of Powder Springs and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider such proposed changes to City and/or County Comprehensive Plans and Future



Land Use Maps.

4. During the next three (3) months, each government shall make the changes that have been agreed to between the governments.
- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
  - C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
  - D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
  - E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
  - F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must

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<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City will conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.

- B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:
- 1) that the County has no objection;
  - 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
  - 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.

Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.

- C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 – 32}
- D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute resolution process, stop the annexation, or object to land use change after the annexation.

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<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.

<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.



- E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal dispute resolution process if it has previously informed the City of no objection.
- F. If the County responds that it has no objection if certain stipulations and conditions are attached to the request, and if the City agrees to implement the County's stipulations and conditions, or if other agreement is reached between the City and County, or if another method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.
- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>
- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.
- .K. If the City entertains a rezoning application for a property within 12 months of an annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.
- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in accordance with the mediated agreement.

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<sup>6</sup> The initiation of **negotiation or** mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.

The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon the annexation of all or parts of the property under review.

The rezoning shall not become effective until 28 calendar days following the completion of



the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.
- E. F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within

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<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.



islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via resolution by:

- the County governing authority;
- the City which serves as the County seat;
- the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,
- no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this

Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

11.

This agreement shall be governed by the laws of the State of Georgia.

12.

This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.

14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.

This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said



mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

CITY OF Powder Springs

By: Samuel S. Olens

Samuel S. Olens  
Chairman, Board of Commissioners



By: Patricia C. Vaughn

Mayor

By: Carol Granger

Carol Granger  
County Clerk

By: Betty Brady

City Clerk

**APPROVED**  
PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04

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# City of Powder Springs

## Exhibit "A"

County Future Land Use Recommendation		City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum -- Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)	N/A			
Very Low Density Residential (VLDR)	Very Low Density Residential (VLDR)		R-30, R-20, R-15	0-2 DUA  R-15 – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts for cluster subdivisions only, conserving at least 20% of total site area; up to 2.3 UPA for total project density per city method  MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts for cluster subdivisions only, conserving at least 20% of total site area; up to 2.3 UPA for total project density per city method
Low Density Residential (LDR)	Low Density Residential (LDR)		R-30, R-20, R-15	1-3 DUA  MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 2.3 UPA for total project density per city method
Medium Density Residential (MDR)	Medium Density Residential (MDR)		R-30, R-20, R-15, MDR-SFD, MDR-SFA, MDR-MF, MXU	3-5 DUA  MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 5 UPA for total project density per city method
High Density Residential (HDR)	High Density Residential (HDR)		R-30, R-20, R-15, MDR-SFD, MDR-SFA, MDR-MF, MXU, LRO	Up to 12 DUA;  MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 12 UPA for total project density per city method
N/A	Downtown Activity Center		CBD	CBD applies to "Historic Powder Springs" and central city areas only; not to be applied to outlying/fringe areas
Neighborhood Activity Center (NAC)	Neighborhood Activity Center (NAC)		MXU, NRC-O, NRC-R, LRO	MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to 8 UPA for total project density per city method
Community Activity Center (CAC)	Community Activity Center (CAC)		MXU, CRC-O, CRC-R, LRO, BP	MXU – Appropriate with uses and intensities similar to previously identified unobjectionable zoning districts; up to



County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum -- Maximum Allowable Density/ Misc. Stipulations
			12 UPA for total project density per city method  CRC – Appropriate if located at the intersection of at least an arterial and collector roadway, per County's Major Thoroughfare Plan
Regional Activity Center (RAC)	N/A		
Industrial Compatible	Industrial Compatible	BP, LI	
Industrial (IND)	Industrial & Warehousing	BP, LI, HI	
Transportation/Communication/Utilities (TCU)	Transportation/Communication/Utilities (TCU)		
Public Institutional (PI)	Public Institutional (PI)	R-30, R-20, R-15	For contiguity with city zoning maps
Park/Recreation/Conservation (PRC)	Open space/Recreation (OSR)		
N/A	Undeveloped/Vacant		
N/A	Agriculture/Forestry		

Cobb Co / Austell  
Land Use Annexation  
Dispute Resolution  
Process - AS part  
of 8/2/04 Amendment  
(NO MAPS ATTACHED)



Part of 8/2/04  
Amendment

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State of Georgia  
County of Cobb

## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 29<sup>th</sup> day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF Austell, (hereinafter known as the "City").

### RECITALS

Whereas the City of Austell and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Austell and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Austell and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Austell and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

1.

The City of Austell and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider such proposed changes to City and/or County Comprehensive Plans and Future Land Use Maps.

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4. During the next three (3) months, each government shall make the changes that have been agreed to between the governments.
- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
- C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
- D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
- E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
- F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

## 2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City

<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.



will conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.

- B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:

- 1) that the County has no objection;
- 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
- 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.

Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.

- C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 - 32}
- D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute resolution process, stop the annexation, or object to land use change after the annexation.
- E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal

<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.

dispute resolution process if it has previously informed the City of no objection.

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- F. If the County responds that it has no objection if certain stipulations and conditions are attached to the request, and if the City agrees to implement the County's stipulations and conditions, or if other agreement is reached between the City and County, or if another method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.
- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.
- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.

<sup>6</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.

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- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.
- K. If the City entertains a rezoning application for a property within 12 months of an annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.
- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

### 3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in accordance with the mediated agreement.

If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel

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and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.

The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon the annexation of all or parts of the property under review. The rezoning shall not become effective until 28 calendar days following the completion of the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney



fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.
- E. F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

#### 4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

#### 5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and

<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.

stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

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6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via resolution by:

- the County governing authority;
- the City which serves as the County seat;
- the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,
- no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

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staff agreed to may 2004.DOC



11.

This agreement shall be governed by the laws of the State of Georgia.

12.

This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.

14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.

This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

CITY OF AustellBy: 

Samuel S. Olens  
Chairman, Board of Commissioners

By: 

Mayor

By: 

Carol Granger

By: 

City clerk

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**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04

che

# City of Austell Exhibit "A"

County Future Land Use Recommendation		City Future Land Use Recommendation		Unobjectionable City Zoning District		Minimum - Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)	N/A		RR		0-1 DUA	
Very Low Density Residential (VLDR)	N/A		RR, R-80, R-40, R-30, R-20		0-2 DUA	
Low Density Residential (LDR)		Low Density Residential	RR, R-80, R-40, R-30, R-20, R-15, PUD		1-2.5 DUA PUD — up to 2.5 UPA for total project density per city method	
Medium Density Residential (MDR)		Medium Density Residential	R-20, R-15, R-10, PUD, RD, RA-6		2.5-5 DUA PUD — up to 4 UPA for total project density per city method RD — up to 5 UPA for total project density per city method	
High Density Residential (HDR)		High Density Residential	R-10, PUD, RD, RA-6, RM-8, FST, RM-12, MHP		5-12 DUA;	
Neighborhood Activity Center (NAC)		Commercial or Neighborhood Activity Center	R-10, PUD, RD, RA-6, RM-8, FST, RM-12, OI, OS, NS, PSC		PSC appropriate if located at the intersection of arterial roadways, per County's Major Thoroughfare Plan	
Community Activity Center (CAC)		Commercial or Community Activity Center	R-10, PUD, RD, RA-6, RM-8, FST, RM-12, OI, OS, NS, PSC, GC		OS appropriate if located at the intersection of at least an arterial and collector roadway; PSC appropriate if located at the intersection of arterial roadways, per County's Major Thoroughfare Plan MXD appropriate with uses and intensities similar to previously identified unobjectionable zoning districts	
Regional Activity Center (RAC)		Commercial or Regional Activity Center	PUD, RD, RA-6, RM-8, FST, RM-12, OI, OS, NS, PSC, GC			
N/A		Central Business District (CBD)	N/A			CBD applies to "historic Austell" and downtown areas only; not to be applied to outlying/fringe areas
Industrial Compatible (IC)		Industrial Compatible	LI			
Industrial (IND)		Industrial	LI, HI			
Transportation/Communication/Utilities (TCU)		Transportation/Communication/Utilities				
Public Institutional		Community Service & Institutional				
Park/Recreation/Conservation		Park/Greenspace				
N/A		Undeveloped/Vacant				



Cobb Co/Vennesaw  
Land use Amendment  
Dispute Resolution  
Process - part of  
8/2/04 Amendments  
(NO maps attached)

Part of 8/2/04  
Amendment

State of Georgia  
County of Cobb

## INTERGOVERNMENTAL AGREEMENT

This AGREEMENT is made and entered into on this 29<sup>th</sup> day of July, 2004, by and between COBB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter the "County"), and the CITY OF Kennesaw, (hereinafter known as the "City").

### RECITALS

Whereas the City of Kennesaw and Cobb County have reviewed the requirements of HB 489 in dealing with a resolution process of land use classification disputes; and

Whereas the City of Kennesaw and Cobb County desire to work together and review their respective Future Land Use Map and Comprehensive Plan with the goal of reducing land use inconsistencies at jurisdictional boundaries over the next 12 months, and

Whereas the City of Kennesaw and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. Section 36-70-24(4);

Now, therefore be it resolved that the City of Kennesaw and Cobb County have agreed to the following process in the fulfillment of the requirements of HB 489:

1.

The City of Kennesaw and Cobb County agree to review their respective Future Land Use Map and Comprehensive Plan to identify areas where conflicts may exist at respective jurisdictional boundaries.

A. The following is the approximate schedule for completion of the review:

1. During the first three (3) months from effective date of agreement, each government shall prepare a map showing future land use inconsistencies between each jurisdiction's adopted Future Land Use Map and Comprehensive Plan.
2. During the following three (3) months, each government shall prepare Future Land Use Map changes or text changes to the City's or County's adopted Comprehensive Plans to reconcile or reduce any inconsistencies, with said report to be formally submitted by the end of said time period.
3. During the following three (3) months, each government shall discuss and consider



such proposed changes to City and/or County Comprehensive Plans and Future Land Use Maps.

4. During the next three (3) months, each government shall make the changes that have been agreed to between the governments.
- B. It is the consensus of said governments that no inconsistent land uses exist at the end of the aforementioned twelve (12) month period. Said governments acknowledge however that some conflicts may remain.
  - C. If the twelve (12) months have passed and the City and the County have been unable to resolve serious land use conflicts, the governments may consider alternative dispute resolution, which may include mediation, or they may extend the process for additional twelve (12) month periods by mutual agreement. If mediation is desired by both governments, a third party mediator will be agreed upon by Cobb County and the City, and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The cost of the mediation will be shared equally by the County and the City, unless otherwise agreed. The County and City shall agree to preselect up to five (5) potential mediators.
  - D. Notwithstanding the above, if a City or the County is already in the process of revising its Comprehensive Plan or Future Land Use Map, the City or County will respond on a quicker schedule to accommodate the other government.
  - E. For purposes of this Agreement, following the initial twelve (12) month period, each January, City and County planning staffs/administrators will hold a retreat to review all land use plans and jointly propose (non-binding) recommended changes. The cost of the retreat shall be shared on per person cost basis (county responsible for its persons attending, city responsible for its persons attending). In February of said year, elected officials of the City and Cobb County shall meet to review the effects of this Agreement and discuss "mutually acceptable" amendments.
  - F. Any negotiated agreements would not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the respective City at a regularly scheduled meeting.

2.

The following shall apply to any rezoning that is considered at the time the property is annexed by the City<sup>1</sup> or for a 12 month period following the effective date of the annexation:

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<sup>1</sup> Said provision shall not apply to annexations and rezoning which have been received and accepted by the City prior to \_\_\_\_\_, which may still be in progress on or after \_\_\_\_\_.

- A. Within seven (7) calendar days of the filing of the application for zoning, the City must notify the County Clerk's Office<sup>2</sup> of the proposed annexation/rezoning by certified mail and hand delivery. The City shall provide: 1) a copy of the completed application form and any and all attachments filled out by the applicant and 2) the date upon which the City will conduct the required public hearing(s). An impact statement shall be provided to the County by hand delivery no later than five (5) business days after receipt of the initial notice.
- B. Within seven (7) calendar days of the County Clerk's receipt of the notice of the zoning from the City, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>3</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), outlining one of the following options:
- 1) that the County has no objection;
  - 2) that the County has no objection to the proposed use if certain stipulations are attached thereto; or
  - 3) that the County intends to raise an objection to the proposed zoning or rezoning (may also be referred to herein as land use) and shall specify the basis for the objection.

Said response by the County must thereafter be adopted within twenty-one (21) days at a Board of Commissioners Meeting.

- C. Within ten (10) calendar days of the County's notifying the City of its intent to object to the requested zoning, the County Governing Authority will prepare and forward by certified mail and hand delivery to the Office of the Mayor of said City<sup>4</sup> a statement signed by a majority of the Board of Commissioners, with copies to the City Manager/Administrator and Chief Planning and Zoning Official (if such position {s} exist), that documents in writing the nature of the objection and specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the City may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration. {36-36-11 (b)(1) lines 29 – 32}
- D. If the County responds that it has no objection to the City's proposed land use or zoning classification, or otherwise fails to timely respond, the City is free to proceed with the annexation and rezoning and the County loses any right to object or to invoke the dispute

<sup>2</sup> For purposes of this Agreement, notice to the County Clerk's Office shall be notice to the County and/or Governing Authority.

<sup>3</sup> Cities, at their option, may choose notice to the City Manager or other office.

<sup>4</sup> Cities, at their option, may choose notice to the City Manager or other office.



resolution process, stop the annexation, or object to land use change after the annexation.

- E. Any objection made by the County that does not fully meet the criteria under Section 2(B) and 2(C) shall not be valid or invoke the provisions of O.C.G.A. Sections 36-70-20 et. seq. and 36-36-1 et. seq., thus permitting the City to annex and rezone the property as if no objection had been made. Further, once an objection is made, the basis of the objection shall not be expanded. Moreover, the County may not initiate the formal dispute resolution process if it has previously informed the City of no objection.
- F. If the County responds that it has no objection if certain stipulations and conditions are attached to the request, and if the City agrees to implement the County's stipulations and conditions, or if other agreement is reached between the City and County, or if another method pursuant to this Agreement is obtained, the County's objection shall be considered resolved.
- G. If the County notifies the City that it has an objection, and if the City concurs therewith, the City may proceed with the annexation on the express condition that the applicant must retain for 12 months following the effective date of the annexation the pre-existing land use or the land use allowed within the County's objection, unless other agreement is reached between the City and the County, and the County's objection shall be considered resolved.
- H. If the City disagrees with the objection or requested stipulations and conditions, the City may seek a declaratory judgement in court or initiate informal negotiation to devise mitigating measures to address the County's specific objections to the proposed zoning or rezoning [to be concluded within twenty-one (21) days of such notice]. Further, if the City does not respond to the County within (5) days of receiving the County's objection/stipulations, the County may initiate informal negotiation to devise mitigating measures to address the County's concerns [to be concluded within twenty-one (21) days of such notice].<sup>5</sup> Commencing with the date of receipt by the City of the County's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.

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<sup>5</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least three (3) members of the Board of Commissioners within: 1) five (5) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



- I. If the informal negotiation between the County and the City does not produce an agreement on the objection and mitigating measures within the 21 calendar day period, either the governing authority of the County or the governing authority of the City may insist upon appointment of a mediator within seven (7) calendar days at the end of the 21 day informal mediation period to assist in resolving the dispute.<sup>6</sup>
- J. The annexation and rezoning shall not become effective until the County's land use classification objection is resolved pursuant to the dispute resolution process described herein, other agreement of the governments, a final legal ruling obtained, the lawsuit is dismissed, or 28 calendar days following completion of the process outlined above as consistent with O.C.G.A. Section 36-36-11 or as otherwise provided by Law.
- K. If the City entertains a rezoning application for a property within 12 months of an annexation, the procedures regarding notice outlined above and provisions regarding dispute resolution and mediation shall be invoked herein.
- L. Even though not contemplated by House Bills 1603 and 489, if an application or request to rezone property is received by the County within one-half (½) mile of a City's jurisdictional boundary, the City may file a land use classification objection and pursue all options available under this Agreement. For purpose of this paragraph, as outlined in §§ 2A through 2I, 3 and 4, the County shall be treated as if it were the City and the City shall be treated as if it were the County [except the only issue shall be rezoning and not annexation].

3.

The formal dispute resolution process outlined above will be conducted as follows. The parties eligible to participate in the mediation process shall include representatives of the subject City, Cobb County, and the annexation/rezoning applicant.

- A. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator and shall be selected from a DCA or State Bar Association of Georgia approved list of mediators or other individual mutually agreeable to the County and City. The applicant will be advised of the mediator selected and will be an active party at the mediation. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If both the City and the County insist on mediation, the expenses of the mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the County and City agree on alternatives to resolve the objections, the City may proceed in

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<sup>6</sup> The initiation of negotiation or mediation, to be effective, must be signed by at least a majority of the members of the City Council or at least three (3) members of the Board of Commissioners within: 1) seven (7) days of the City's response disagreeing with the County's objection or conditions, or 2) within five (5) days after the City's lack of a timely response.



accordance with the mediated agreement.

If the objections are not resolved by the end of the 28 day period, the City or the County may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. If the citizen review panel is used, it shall be an independent body comprised of one resident of the City appointed by the City governing authority, one resident of the county appointed by the County governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the City and County appointees to the citizen review panel. No elected or appointed officials or employees, contractors or vendors of a City or County may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizens review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 day calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50 of the Official Code of Georgia. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the County and the City concerning the objections and proposed mitigating measures and shall issue its own recommendations.

The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.

- B. Any negotiated agreements will not become official unless accepted and approved by the Cobb County Board of Commissioners and the City Council of the subject City at a regularly scheduled meeting.
- C. During the pendency of this formal dispute resolution process, no development permits shall be issued until the formal dispute resolution process has been concluded, other agreement reached, or a final legal ruling obtained. During the pendency of this formal dispute resolution process, the City may proceed with notice, hearings and other requirements for zoning or rezoning in accordance with the City's zoning ordinance.
- D. Following receipt of the recommendations of the citizen review panel, the city may 1) Zone or rezone all or parts of the property under review; 2) Zone or rezone all or parts of the property under review with mitigating measures; 3) Deny the zoning or rezoning of all or parts of the property under review; or 4) Any combination of the foregoing. Where an initial zoning is proposed concurrent with annexation, the City may also approve, deny or abandon



the annexation of all or parts of the property under review.  
The rezoning shall not become effective until 28 calendar days following the completion of the process stated above, if invoked,

At any time during the process set forth in this agreement, the County or the City may file a petition in Superior Court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to O.C.G.A. 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to O.C.G.A. 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures. Unless the Court rules otherwise, if the County prevails in Court, the City's prior action shall be annulled, absent further agreement of the parties or upon terms as determined by the Court. Unless the Court rules otherwise, if the City prevails in Court, the objection by the County shall be deemed waived, and the annexation/rezoning shall proceed. Both Cobb County and the subject City agree to diligently request and participate in expedited discovery, hearing(s), trial and appeal [if filed].

- E. If the annexation, zoning or rezoning is denied or abandoned based in whole or in part on the County's objections, the County shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property, which had been objected to by the county pursuant to this agreement for a one-year period after the denial or abandonment.
- F. The County and City may preselect up to five (5) potential mediators, to be approved by the Board of Commissioners and by the Council of the particular City involved and neither party shall object to the selection of any one of the five (5) to conduct the mediation once the process in a particular rezoning has started. However, either the County or the City may unilaterally withdraw their approval of any preselected mediator prior to the beginning of the process of any particular zoning or rezoning.

4.

The County shall make no objection to zonings or rezonings associated with annexations or zonings or rezonings that occur within 12 months of an annexation other than as defined within this agreement. In an attempt to further define an objectionable land use classification objection, the County could not object to: 1) the scenarios listed on Exhibit "A"<sup>7</sup> attached hereto, 2) any zoning or

<sup>7</sup> Exhibit "A" references the County Future Land Use recommendations in place as of the date this Agreement. Any changes to a more restrictive category on the future land use map would not modify the future land use map for purposes of this agreement.



rezoning which would be a down zoning, 3) areas or portions of areas that are annexed within islands as defined in O.C.G.A. § 36-36-90.

During the term of this agreement, should the County ever be granted the right to approve or be required to consent to annexations, the county shall not object to any annexation request where the zoning or rezoning complies with the procedures set forth herein. Further, upon request of the City, the County shall approve or take such other action as required by law to grant its consent to said annexation and approve such annexation request at its next regularly scheduled meeting.

5.

Cobb County and the City hereby agree that there are differences in ordinances, development standards and terminology, which are unique to each jurisdiction. Differences in future land use categories and intensities may be rectified through site-specific conditions and stipulations. In addition, each City and the County agree that they will seek to address as many of the major differences as possible by identifying those areas with inconsistent land use designations, amending their respective Future Land Use Plans as referenced in Section 1, or through the use of agreed-upon buffers and site specific conditions for areas where differences are not time resolved. The governments recognize that there will remain some differences between City and County ordinances, as both are distinct and independent bodies.

6.

This Agreement shall be reviewed and updated as mutually agreed between the parties as part of the Service Delivery Strategy. This dispute resolution process shall be adopted via resolution by:

- the County governing authority;
- the City which serves as the County seat;
- the governing authority of the City located within the county which has a population of 9,000 or greater within the County; and,
- no less than half of the remaining cities which have a population of at least 500 persons within the county.

7.

This Agreement shall not prohibit any aggrieved person, entity, or government from pursuing other remedies as provided by Georgia and United States law.

8.

In the event that HB 489 (O.C.G.A. § 36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. § 36-

36-1 et. seq. and 36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court, this Agreement at the option of any party hereto, may be declared null and void. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

9.

Notwithstanding the above, an unintentional failure to comply with the provisions of this Agreement shall not be grounds to set aside or challenge an annexation or zoning to someone not a party to this agreement. Any challenge to any noncompliance in this agreement must be brought to the attention of the annexing or rezoning party prior to the annexation or rezoning taking place for a party to this agreement to set aside or challenge an annexation or rezoning in court, and any court action must be filed within 30 days of the action challenged.

10.

Any reference to days, not specifically referenced as business days shall be calendar days.

11.

This agreement shall be governed by the laws of the State of Georgia.

12.

This Agreement shall have the same effective date as the service delivery strategy agreement.

13.

Should state law change regarding the time provided for notice so that terms of this agreement do not comply with state law, unless the parties agree otherwise, the agreement shall automatically be modified to reflect the minimum requirements of state law regarding notice.

14.

This initial term of this Agreement shall be ten (10) years. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans. Notice of termination prior to the end of such ten (10) year period shall be given by:

the County; or

Any of the six cities within Cobb County.



This Agreement shall automatically renew for successive ten (10) year periods, absent notice of such non-renewal by certified mail at least sixty (60) days prior to the date of expiration, by the same means as outlined above. Upon such notice, any party may request mediation, said mediation not to exceed thirty (30) days.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

CITY OF Kennesaw

By: Samuel S. Olens

Samuel S. Olens  
Chairman, Board of Commissioners



By: Paul G. Hall

Mayor

By: Carol D. Granger

Carol Granger  
County Clerk

By: Susan Rackley

Interim asst City Clerk  
City Clerk

**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04

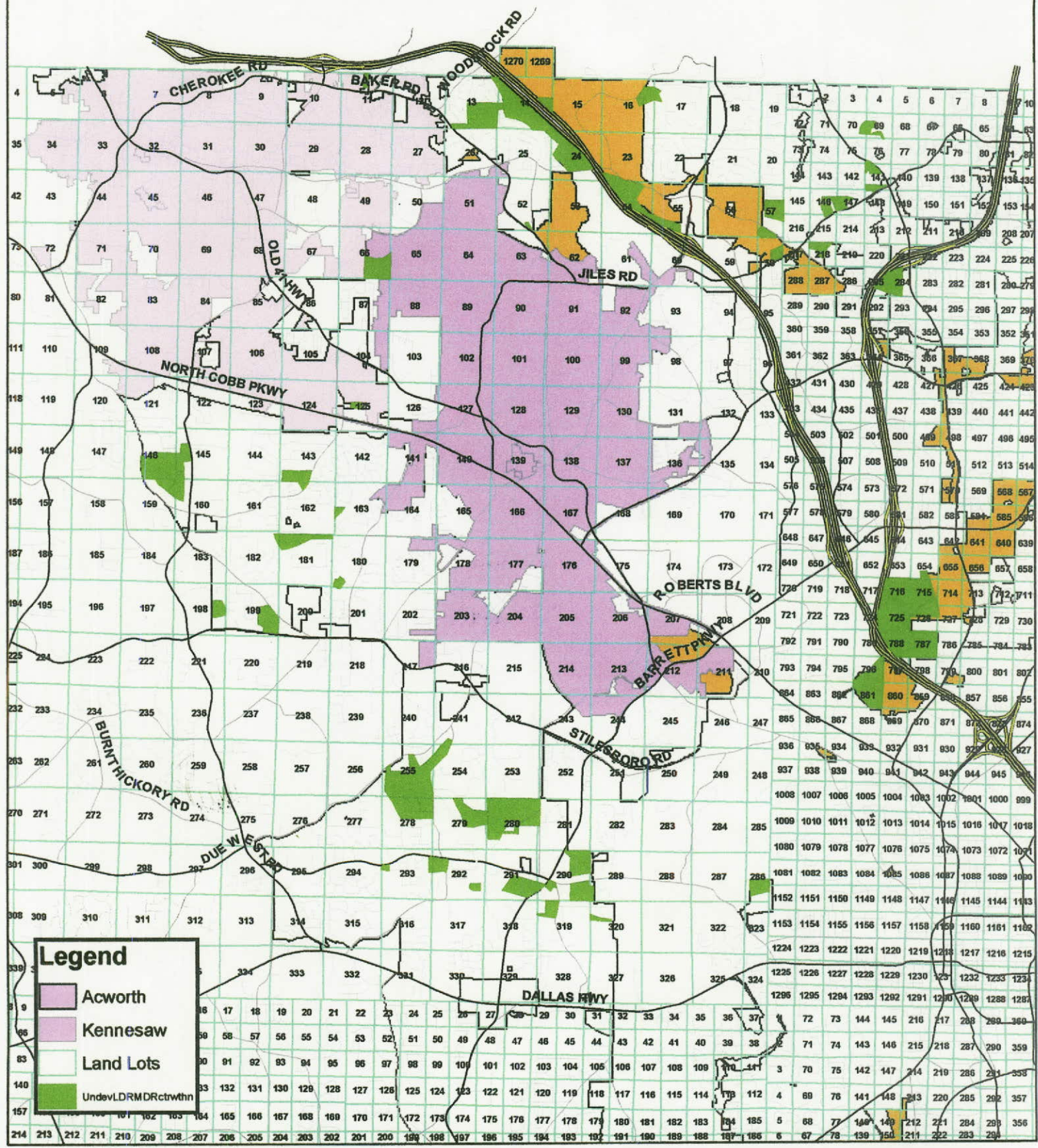
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## City of Kennesaw Exhibit "A"

County Future Land Use Recommendation	City Future Land Use Recommendation	Unobjectionable City Zoning District	Minimum – Maximum Allowable Density/ Misc. Stipulations
Rural Residential (RR)	N/A	RR	0-1 DUA
Very Low Density Residential (VLDR)	N/A	RR, R-80, R-40, R-30, R-20	Up to 2.5 DUA
Low Density Residential (LDR)	Low Density Residential/ Medium Density Residential	RR, R-80, R-40, R-30, R-20, R-15, PUD-R	Up to 3 DUA for undeveloped properties shown on Exhibit "B" Up to 4 DUA
Medium Density Residential (MDR)	Low Density Residential /Medium Density Residential	R-20, R-15, R-12, R-10, PUD-R, RD, RA-4, RM-8	Up to 5 DUA for undeveloped properties shown on Exhibit "B" Up to 6 DUA
High Density Residential (HDR)	High Density Residential	R-10, PUD-R, RD, RA-4, RM-8, FST, RM-12, MHP	Up to 12 DUA;
N/A	Planned Unit Development		
Neighborhood Activity Center (NAC)	Commercial or Neighborhood Activity Center	LRO, OI, NS, NRC, PSC	PSC appropriate if located at the intersection of arterial roadways, per County's Major Thoroughfare Plan
Community Activity Center (CAC)	Commercial or Community Activity Center	CRC, GC, HGB, UVC, PVC	PSC appropriate if located at the intersection of arterial roadways, per County's Major Thoroughfare Plan  UVC and PVC appropriate with uses and intensities, up to 12 DUA, similar to previously identified unobjectionable zoning districts
Regional Activity Center (RAC)	Commercial or Regional Activity Center	GC, HGB, UVC, PVC, RRC	UVC and PVC appropriate with uses and intensities, up to 12 DUA, similar to previously identified unobjectionable zoning districts
N/A	Downtown Activity Center (DAC)	CBD, HPV	DAC applies to "historic Kennesaw" and downtown areas only; not to be applied to outlying/fringe areas
Industrial Compatible (IC)	Industrial Compatible	LI	
Industrial (IND)	Industrial	LI, HI	
Transportation/Communication/Utilities (TCU)	Transportation/Communication/Utilities		
Public Institutional	Public Institutional		
Park/Recreation/Conservation	Park/Recreation/Conservation		
N/A	Undeveloped/Vacant		



# LDR, MDR Undeveloped Land Kennesaw





PAGE 3 ATTACHMENT:

Replaced by separate  
dispute resolution  
processes with each  
City on Aug 2, 2004  
AS PART of 8/2/04 Amendment

In the case of any annexation that includes a proposed rezoning, the respective cities will notify Cobb County within five (5) days of validating and accepting the request. Within seven (7) days of receipt, Cobb County will review the petition for compliance with the County's Comprehensive Plan and provide comments to the city regarding one of the following options:

- 1) that the County has no objection,
- 2) that the County has no objection to the proposed use if certain stipulations/conditions are attached thereto; or
- 3) that the County objects to the requested land use and the specific reasons(s) for the objection.

If the county has a bona fide land use classification objection, the two entities agree to engage in a formal dispute resolution process. The formal dispute resolution process may consist of two steps: neutral third party mediation and/or litigation (which may include court-ordered mediation).

The above statements are intended to be only a summary and are not intended to cover exact detail of the agreement. Specific details may be found in the land use agreements between the parties.



STATE OF GEORGIA  
COUNTY OF COBB

**INTERGOVERNMENTAL AGREEMENT**  
**REGARDING MILLAGE RATE WITHIN MUNICIPALITIES**  
**IN COBB COUNTY, GEORGIA**

This agreement entered into on this 12<sup>TH</sup> day of July, 2004 by and between Cobb County, Georgia, a political subdivision of the State of Georgia (hereinafter the "County") and the undersigned Cities (hereinafter known as "Cities").

RECITALS

WHEREAS, the Cities and Cobb County have reviewed the requirements of O.C.G.A. §36-70-20 et seq., dealing with the delivery of services and

WHEREAS, the Cities and Cobb County intend to minimize inefficiencies resulting from duplication of services between local governments and to provide a mechanism to resolve disputes over local government service delivery, funding equity and land use, and

WHEREAS, the Cities and Cobb County have devised this agreement in fulfillment of the requirements of O.C.G.A. §36-70-20 et. seq.;

WHEREAS, this agreement shall constitute the implementation of the service delivery strategy of the Cities and Cobb County.

WHEREAS, the Cities executing this Agreement are the following Cities: Acworth, Austell, Kennesaw, Marietta, Powder Springs and Smyrna.

NOW THEREFORE, be it resolved that the Cities and Cobb County have agreed to the following document as follows:

ARTICLE I

Section 1.1. Definitions. In addition to words and terms defined elsewhere herein, the following words and terms are hereby adopted and shall have meanings specified below, unless the context or use indicates another or different meaning or intent:

"City" means all municipalities in Cobb County, Georgia.

"City Resolution" means that certain resolution adopted by the Mayor and Council of each City set out hereafter approving and adopting this Intergovernmental Agreement.

STATE OF GEORGIA  
COUNTY OF COBB

**INTERGOVERNMENTAL AGREEMENT**  
**REGARDING MILLAGE RATE WITHIN MUNICIPALITIES**  
**IN COBB COUNTY, GEORIGIA**

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"City" means all municipalities in Cobb County, Georgia.

"City Resolution" means that certain resolution adopted by the Mayor and Council of each City set out hereafter approving and adopting this Intergovernmental Agreement.



"County" means Cobb County, Georgia.

"County Resolution" means that certain resolution adopted by the Board of Commissioners of Cobb County approving this Intergovernmental Agreement and authorizing the execution, delivery and performance of this Agreement, subject to the terms and conditions set forth therein.

"Georgia Constitution" means the Constitution of the State of Georgia of 1983, as amended.

"State" means the State of Georgia.

"Taxation Power of County and Municipal Governments" means the power to tax as granted in Article IX, Section IV, Paragraph I of the Constitution of Georgia of 1983, as amended.

1.

Cobb County, agrees in consideration of the covenants and conditions contained herein to conduct and adopt a ten (10) year roll back of taxes and millage within the municipalities contained in Cobb County, Georgia necessary to create a two million five hundred thousand dollar (\$2,500,000.00) roll back per year commencing (October 1, 2004) and continuing for a period of ten (10) years thereafter. The roll back set forth herein shall be in lieu of a cash payment which otherwise would be due and payable as agreed between the parties hereto as required by O.C.G.A. §36-70-20.

The first millage reduction shall take place when taxes are due and collectible in October (or month that collection actually occurs, if different) of 2005 and shall continue annually thereafter. Said specific millage shall be adjusted annually to reflect the 2,500,000.00.

2.

The annual roll back granted herein by Cobb County to the cities set forth hereafter shall be based upon the combined total of the taxable digest of each city and shall not be based upon population. \$2.5 million shall be divided by the combined total after state and county exemptions to determine the county millage reduction.

3.

This agreement shall commence effective January 1, 2004 but shall be based on the taxable digest of each city as of December 31, 2003. Any property annexed by any municipality after December 31, 2003 shall not be subject to the roll back except as set forth

herein. Any property annexed after December 31, 2003 shall not be eligible or included in the rollback for two (2) calendar years after it has been annexed. Should a millage rollback be found to be unconstitutional, then a payment of cash shall be made directly to each city in lieu of a rollback. In such case, the amount of cash paid to each city shall be the amount that the rollback in each city would have generated.

4.

Per the 2004 Tax Digest the total Gross digest of each city is:

City	2004 Gross Digest	% of Digest
Acworth	\$504,293,499	8.17%
Austell	\$192,763,753	3.12%
Kennesaw	\$888,198,178	14.40%
Marietta	\$2,466,599,885	40.00%
Powder Springs	\$362,414,485	5.87%
Smyrna	1,754,523,349	28.44%
Total	\$6,168,793,149.00	100.00

Within ten (10) days of the signing of this agreement, the County shall issue a cash payment to each city in the amount of X [percentage allocation as shown above x \$650,000] with a second cash payment November 1, 2004 in the amount of Y [percentage allocation as shown above x \$350,000].

5.

All parties to this agreement acknowledge that the county and all six cities are permitted by Article IX, Section III, Paragraph I of the Constitution of the State of Georgia to contract for a period not exceeding fifty years for joint services, for the provision of services and for the matter set forth herein.

6.

The county and all cities warrant and represent that each has the power to enter into this agreement and perform all obligations contained herein and has, by proper action, duly authorized the execution, delivery and performance of this agreement.

7.

Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed, construed and interpreted according to the laws of the State.

8.

Entire Agreement. This Agreement expresses the entire understanding and all agreements between the parties hereto with respect to the matters set forth herein.

9.



Severability. If any provision of this Agreement shall be held or deemed to be or shall, in fact be inoperative or unenforceable under any particular circumstances, because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this

Agreement shall not affect the remaining portions of this Agreement or any part thereof.

10.

Survival of Warranties. All agreements, covenants, certifications, representations and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transactions contemplated hereby shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

11.

Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

12.

Amendments in Writing. This Agreement may be amended, supplemented or otherwise modified solely by a document in writing duly executed and delivered by the County and the City. No waiver, release or similar modification of this Agreement shall be established by conduct, custom, or course of dealing, but solely by a document in writing duly executed and delivered by a duly authorized official of the County.

13.

Limitation of Rights. Nothing in this Agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy or claim under this Agreement.

14.

This document is executed by the above-referenced local governments. The signatories to this agreement represent that the signatures hereto constitute compliance with O.C.G.A. §30-7-20. et. seq., and in particular constitute compliance with O.C.G.A.

§36-70-21 and O.C.G.A. §36-70-24 in that this plan constitutes a service delivery strategy of the above-referenced local governments. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans.

15.

In the event that HB 489 (O.C.G.A. §36-70-20 et. seq.) and/or HB 1603 [O.C.G.A. §36-36-1 et. seq. and/or §36-66-4 et. seq.] is repealed, significantly modified or declared unconstitutional or void by any Cobb County trial court or appellate court such that a rollback cannot be accomplished or a payment may not be made in lieu thereof, this Agreement at the option of any party hereto, may be declared null and void by giving 60 days certified notice. Nothing contained herein shall prohibit any party to this Agreement from challenging the provisions of any law applicable to this Agreement.

WHEREFORE, the parties have read and understood the terms of this Agreement, and do hereby agree to such terms by execution of their signatures below.

COBB COUNTY, GEORGIA

Date: July 29, 2004

By: Samuel S. Olen  
SAMUEL S. OLENS  
Chairman, Board of Commissioners

By: Carol D. Granger  
CAROL GRANGER, County Clerk



CITY OF MARIETTA

Date: July 28, 2004

By: William B. Dunaway  
WILLIAM B. DUNAWAY, Mayor

By: Shelia R. Hill  
SHELIA R. HILL, City Clerk

CITY OF ACWORTH

Date: \_\_\_\_\_

By: \_\_\_\_\_  
THOMAS ALLEGOOD, Mayor

By: \_\_\_\_\_  
City Clerk

CITY OF POWDER SPRINGS

Date: \_\_\_\_\_

By: \_\_\_\_\_  
PAT VAUGHN, Mayor

By: \_\_\_\_\_  
BETTY L. BRADY, City Clerk

**APPROVED**  
PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04  
cle



**CITY OF AUSTELL**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
JOE JERKINS, Mayor

By: \_\_\_\_\_  
CAROLYN DUNCAN, City Clerk

**CITY OF SMYRNA**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
A. MAX BACON, Mayor

By: \_\_\_\_\_  
SUSAN HIOTT, City Clerk

**CITY OF KENNESAW**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
LEONARD CHURCH, Mayor

By: \_\_\_\_\_  
City Clerk

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**COBB COUNTY, GEORGIA**

Date: July 27, 2004

By: [Signature]

Chairman, Board of Commissioners

By: [Signature]

, County Clerk



**CITY OF MARIETTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

**CITY OF ACWORTH**

Date: 7-20-04

By: Thomas W. Allegor

, Mayor

By: Christina Vignel

, City Clerk

**CITY OF POWDER SPRINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

**CITY OF AUSTELL**

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

**CITY OF SMYRNA**

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

**APPROVED**

PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

July 27, 2004



This document is executed by the above-referenced local governments. The signatories to this agreement represent that the signatures hereto constitute compliance with O.C.G.A. §30-7-20. et. seq., and in particular constitute compliance with O.C.G.A. §36-70-21 and O.C.G.A. §36-70-24 in that this plan constitutes a service delivery strategy of the above-referenced local governments. All parties acknowledge that it will not be necessary to renegotiate or reexamine this agreement when all parties revise their respective comprehensive plans.

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**COBB COUNTY, GEORGIA**

Date: July 27, 2004

By: [Signature]  
Chairman, Board of Commissioners

By: [Signature]  
County Clerk



**CITY OF MARIETTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**CITY OF ACWORTH**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**CITY OF POWDER SPRINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**APPROVED**  
PER MINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04  
[Signature]

## CITY OF AUSTELL

Date:

Date: July 29, 2004

By:

By: Joe Jerkins Mayor

Mayor

By:

By: Carol Kincan, Mayor  
Carol Kincan, City Clerk

, City Clerk

## CITY OF SMYRNA

Date:

By:

, Mayor

By:

By: \_\_\_\_\_, City Clerk

## CITY OF KENNESAW

Date: \_\_\_\_\_

By:

, Mayor

By:

By: \_\_\_\_\_, City Clerk



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COBB COUNTY, GEORGIA

CITY OF MARIETTA

Date: July 29, 2004

Date: \_\_\_\_\_

By: [Signature]

By: \_\_\_\_\_

, Mayor

Chairman, Board of Commissioners

By: [Signature]

By: \_\_\_\_\_

, City Clerk

, County Clerk

CITY OF ACWORTH

CITY OF POWDER SPRINGS

Date: \_\_\_\_\_

Date: July 21, 2004

By: \_\_\_\_\_

By: Patricia C. Vaughn

, Mayor

, Mayor

By: \_\_\_\_\_

By: Betty Brady

, City Clerk

, City Clerk

**APPROVED**  
PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04

cle

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**COBB COUNTY, GEORGIA**

Date: July 29, 2004  
By: [Signature]

Chairman, Board of Commissioners

By: [Signature], County Clerk

**CITY OF MARIETTA**

Date: \_\_\_\_\_

By: \_\_\_\_\_, Mayor

By: \_\_\_\_\_, City Clerk

**CITY OF ACWORTH**

Date: \_\_\_\_\_

By: \_\_\_\_\_, Mayor

By: \_\_\_\_\_, City Clerk

**CITY OF POWDER SPRINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_, Mayor

By: \_\_\_\_\_, City Clerk

**APPROVED**  
PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04





CITY OF AUSTELL

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_, Mayor  
\_\_\_\_\_, City Clerk

CITY OF SMYRNA

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_, Mayor  
\_\_\_\_\_, City Clerk

CITY OF KENNESAW

Date: 7/29/2004

By: [Signature]  
\_\_\_\_\_, Mayor

By: Susan Rackley  
Interim Asst City Clerk



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COBB COUNTY, GEORGIA

Date: July 29, 2004

By: [Signature]

Chairman, Board of Commissioners



CITY OF MARIETTA

, Mayor

By: [Signature]

, County Clerk

By: \_\_\_\_\_

, City Clerk

CITY OF ACWORTH

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

CITY OF POWDER SPRINGS

Date: \_\_\_\_\_

By: \_\_\_\_\_

, Mayor

By: \_\_\_\_\_

, City Clerk

**APPROVED**  
PERMINUTES OF  
COBB COUNTY  
BOARD OF COMMISSIONERS

7-27-04



CITY OF AUSTELL

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_, Mayor  
\_\_\_\_\_, City Clerk

CITY OF KENNESAW

Date: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_, Mayor  
\_\_\_\_\_, City Clerk

CITY OF SMYRNA

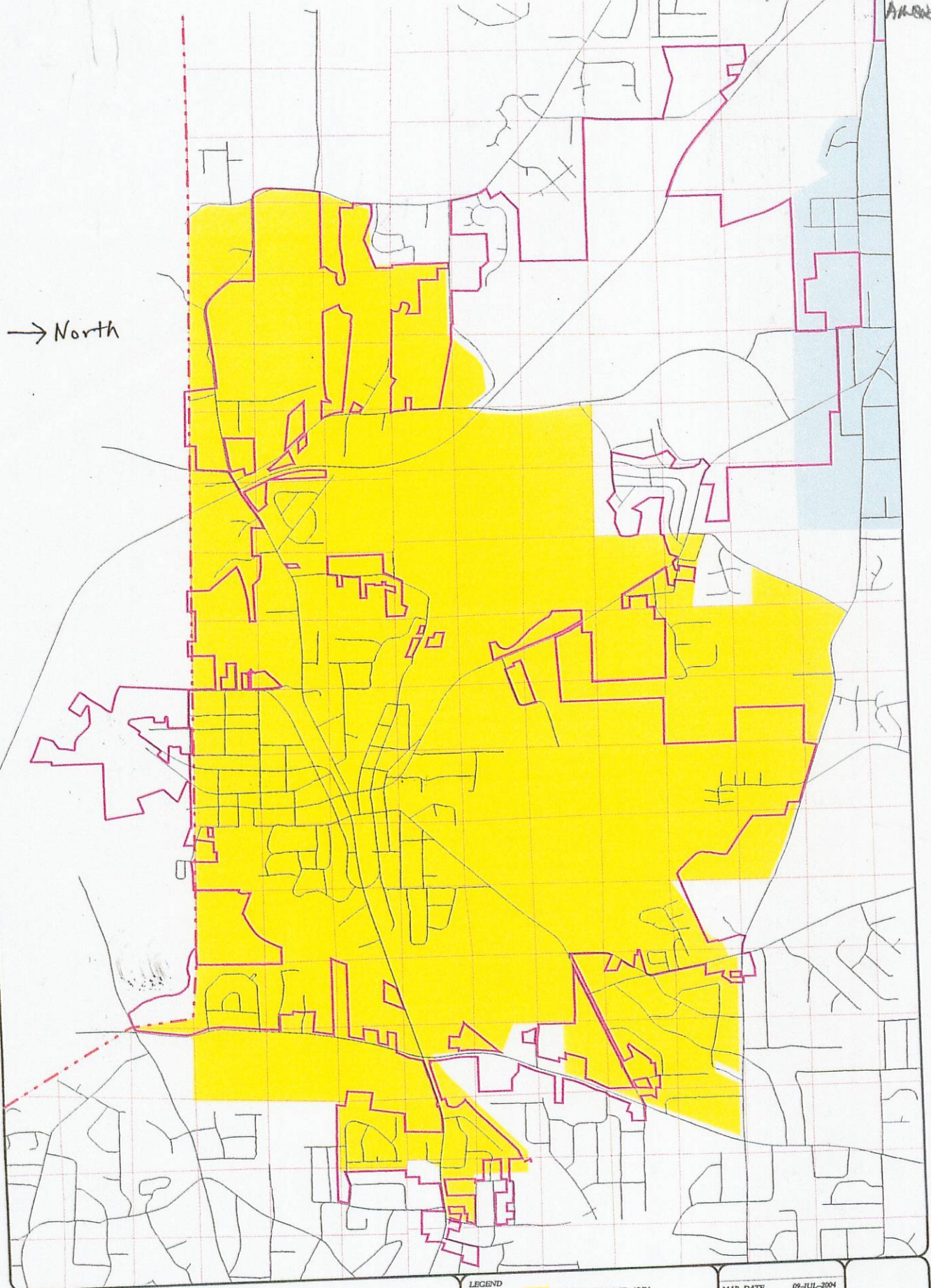
Date: July 19, 2004

By: \_\_\_\_\_

By: A. Max Bacon, Mayor  
Susan D. Hiott, City Clerk

8/2/04  
 Revised Water & Sewer Service  
 AREA MAP - AS part of Aug 2, 2004  
 Amendment

→ North



→ N



CITY OF AUSTELL  
 BOUNDARY

Water & Sewer  
 MG 8/5/04

LEGEND

- AUSTELL SERVICE AREA
- AUSTELL CITY LIMITS
- POWDER SPRINGS SERVICE AREA

MAP DATE 09-JUL-2004  
 PREPARED BY  
 SCALE



## Wastewater Treatment Services

### Cobb County

Treatment and collection are the two major components of a wastewater system. Wastewater treatment for the entire county is the responsibility of the CCWS. Collection is handled by the Water System and by the Cities of Marietta, Smyrna, ~~Kennesaw~~, Powder Springs, and Austell. The attached map shows the generalized service areas. ~~A summary reference chart of these service agreements is attached.~~ Other intergovernmental agreements address the System Development Fee, Industrial Pretreatment and High Strength programs. ~~A summary reference chart is attached.~~ The flows from these municipalities, as well as a small portion of Fulton County in the Sandy Springs area, are received by the CCWS interceptor system for transport to treatment facilities. In addition, flows from several Fulton County pumping stations (Morgan Falls, Marsh Creek, Game Creek, and Long Island) are tributary to the Chattahoochee interceptor. Wastewater is also collected from limited portions of Cherokee and Douglas counties, and the City of Atlanta (near U.S. Highway 41 and Interstate 75). The CCWS also performs grease trap inspections and industrial waste monitoring for the entire county. The CCWS has approximately 142,000 146, 400 sewer service customers in unincorporated Cobb County and in the City of Acworth ~~other cities~~.

Cobb County currently maintains approximately 2,200 miles of sewer lines and 35 pump stations. Four wastewater treatment plants are located in Cobb County and are owned and operated by the Water System. The attached maps show treatment plant and drainage basin locations and sub basin locations. The Noonday Wastewater Treatment Plant, located in North Cobb, was permitted in 1996 for 12 million gallons per day (MGD); the Northwest Cobb Wastewater Treatment Plant has a capacity of 8 mgd (6 mgd can be discharged to Lake Allatoona, 2 mgd can be sprayed onto Cobbstone Golf Course); the R. L. Sutton Wastewater Treatment Plant, located in Southeast Cobb, has a capacity of 40 mgd; the South Cobb Wastewater Treatment Plant will have a 1998 capacity of 40 mgd. The CCWS sprays treated wastewater from the Northwest Cobb Treatment Plant onto the county-owned golf course constructed at Lake Acworth.

The CCWS plans to make the following upgrades by the year 2015: South Cobb - 50 mgd; Northwest - 12 mgd; Sutton - 65 mgd; Noonday - 24 mgd. A copy of the CCWS's capital improvement program is included in the appendix. It is important to note the Northwest Plant's upgraded 2015 capacity of 12 mgd, of which 6 mgd may ultimately be discharged into Lake Allatoona. The CCWS has been informed by the Georgia EPD that the 6 mgd into Lake Allatoona is the maximum permissible amount. The remaining 6 mgd could be permitted to spray irrigation.

Only three small areas of Cobb lack access to central sewage treatment: the far northwestern, northeastern, and southwestern corners. By 2010, 95% of the county will have sewer service. The attached map shows areas of the county in which it will be difficult to install sewers because of topography or soil conditions. Some of these areas may never need sewer service since the larger lots could handle septic tanks.

Unless otherwise specified by the individual water and sewer boundary agreements existing between Cobb County and its municipalities; or as may be dictated by other legal instruments/agreements, any extraterritorial water and sewer service extensions shall be agreed upon by both parties and consistent with the respective comprehensive plans.

### City of Austell

The Austell Water Department pays Cobb County for sewer disposal. This service is funded by user fees and the Water Fund.

### City of Kennesaw

~~The City of Kennesaw currently purchases wastewater treatment from Cobb County. The City has no Water Boundary Agreement with the County and does not foresee entering one in the future. The City services approximately 1/2 of its citizens and maintains the infrastructure for this~~

recovery system. The recovery system is serviced by a department supervisor and a crew of ten who split their time, as needed, between the water and sewer service. The Water Department charges fees for the recovery and sewage treatment and these fees totally support this Enterprise Department. Currently the City charges less per unit of treated water than does the County. Coordination between City and County departments occurs but does not constitute any overlap of authority. The City of Kennesaw purchases wastewater treatment from Cobb County. The City and Cobb County are negotiating the purchase of the City's Water and Sewer System by the County and anticipate public hearings to consider and approve the sale of such system.

#### City of Marietta

The City of Marietta contracts for purchase of wastewater treatment from the Cobb County Water System. Marietta provides sewer and wastewater collection services in Marietta and in a portion of unincorporated Cobb. For wastewater collected within its wastewater/sewer system the Marietta service area is the existing boundary lines except that Marietta may extend outside that boundary to serve a property in the city which is in the county service area that the county declines to serve.

#### City of Powder Springs

Powder Springs provides this service within a defined service area. User fees fund the service.

#### City of Smyrna

Smyrna provides this service per the 2004 agreement. User fees fund the service.



## Water Distribution Services

### Cobb County

The Cobb County Water System (CCWS) distributes potable water in the unincorporated portions of the county and in ~~the City of Aeworth via the purchase agreement in 1987~~ portions of the majority of the cities within Cobb County. The CCWS has approximately 142,000 146,400 customers (~~roughly 450,000~~ persons). It maintains some 2,470 miles of water lines and 13,370 fire hydrants. The CCWS service area includes a normal operating pressure zone and three high pressure zones. The normal operating pressure zone consists of the areas in the CCWS service area with ground elevations below 1,150 feet. Because of variations in ground elevation, the operating pressure in the normal zone varies between 40 and 200 psi. Approximately 95% of the CCWS service area is in this normal pressure zone.

The Cobb County-Marietta Water authority maintains one high pressure zone, the Blackjack Mountain High Service Area (Groover Tank). The CCWS has recently obtained the Sweat Mountain High Service Area from the Authority, and has completed construction for the Lost Mountain High Service Area. For the Sweat Mountain High Service Area, water service is provided to a ground elevation of 1,447 feet. In the Blackjack Mountain High Service Area, water service is provided up to an elevation of 1,257 feet. In the Lost Mountain High Service Area, water service is provided up to an elevation of 1,400 feet. Booster pumps are used to lift water from the normal operating pressure zone to the storage tanks for Sweat Mountain, Lost Mountain and Blackjack Mountain.

The Cities of Marietta, Smyrna, Kennesaw, Powder Springs, and Austell distribute water within their water and sewer service area boundaries. The attached map shows these generalized service areas. ~~A summary reference chart of these service agreements is attached.~~ The City of Kennesaw and Cobb County are, however, negotiating the purchase of the City of Kennesaw's Water and Sewer system by the County and anticipate public hearings to consider and approve the sale of such system. The CCWS distribution system is used to transmit water to these municipal systems. The flow between each system is measured at master meters, which are located at the service boundaries. The CCWS maintains these meters. In some instances the boundaries extend beyond the corporate limits; in other cases the county water system serves areas within city limits. These unique instances could represent a duplication of services. In 1991, a Report of the Analysis and Computer Modeling of Cobb County's Water Distribution System was prepared by Metcalf & Eddy, Inc. (ME). The CCWS is currently preparing an update to this analysis.

Unless otherwise specified by the individual water and sewer boundary agreements existing between Cobb County and its municipalities; or as may be dictated by other legal instruments/agreements, any extraterritorial water and sewer service extensions shall be agreed upon by both parties and consistent with the respective comprehensive plans.

Replaced by Aug 2, 2009  
Amended  
SERVICE DELIVERY STRATEGY  
SUMMARY OF SERVICE DELIVERY ARRANGEMENTS  
PAGE 3

City of Austell

The Austell Water Department purchases water from the Cobb/Marietta Water Authority. This department consists of two (2) maintenance workers, two (2) meter readers and a billing clerk. The city maintains its own water and sewer lines. This service is funded from user fees and the General Fund.

City of Kennesaw

Kennesaw distributes drinking water purchased from Cobb-Marietta Water Authority & Cobb Water System. The city serves approximately 3,500 customers. This service is funded by fees for service. The City of Kennesaw and Cobb County are negotiating the purchase of the City's Water and Sewer system by the County and anticipate public hearings to consider and approve the sale of such system

City of Marietta

Service Provided: Marietta Water provides water distribution and meter reading services to customers inside and outside the City of Marietta. Marietta provides water distribution service in a portion of unincorporated Cobb. The Marietta water distribution area is the existing boundary lines except that Marietta may extend outside that boundary to serve a property in the city which is in the county service area that the county declines to serve. Map of Service Area: Water distribution service is provided to almost all areas of the City of Marietta. In addition, water is distributed to customers outside the city limits. (See attached Marietta Water Boundary Map)

Funding Provided: Funding is provided through the Board of Lights and Water (BLW) Enterprise Fund.

City of Powder Springs

Powder Springs provides this service within a defined service area. User fees fund the service.

City of Smyrna

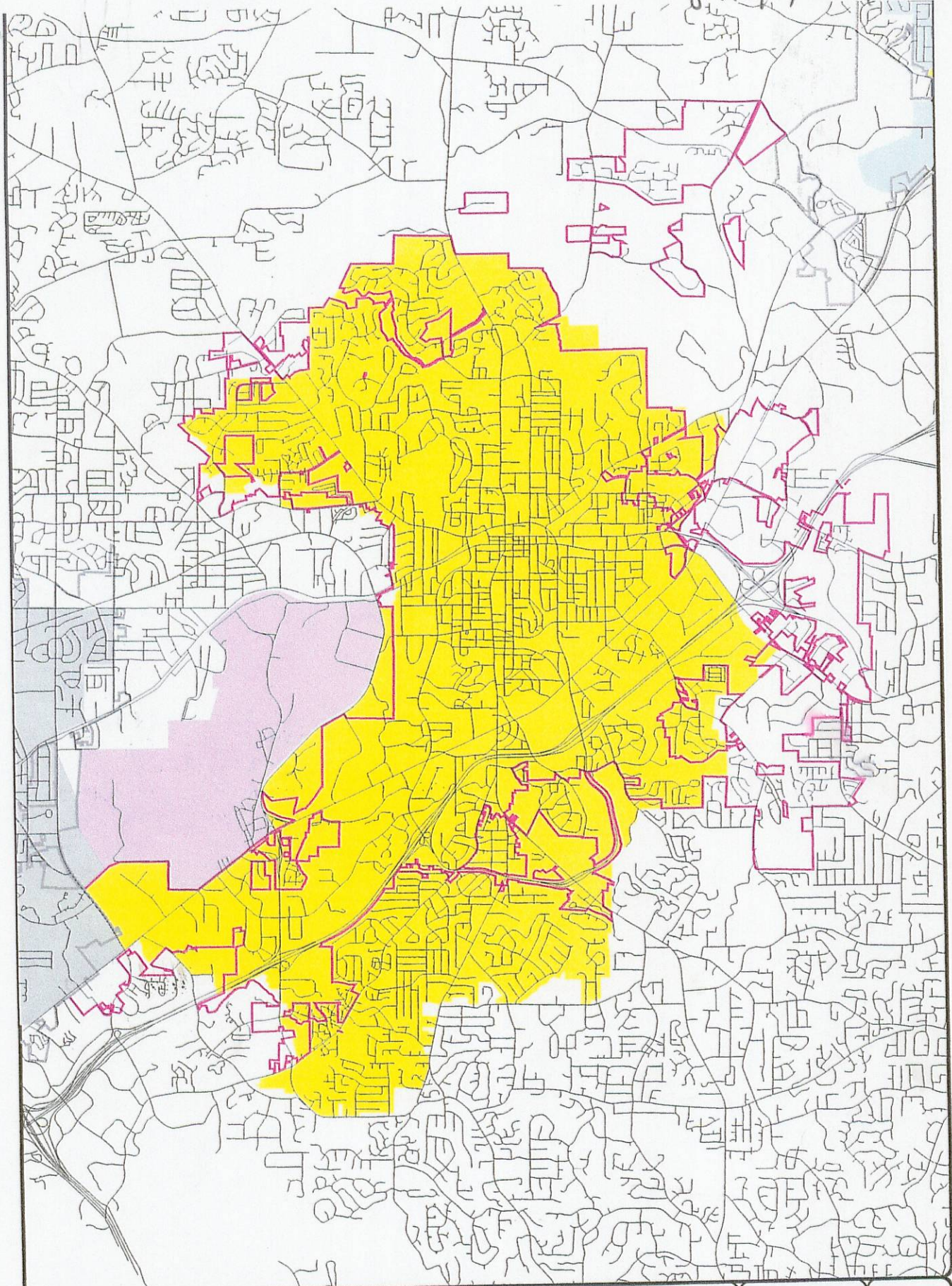
Smyrna provides this service per the 2004 agreement. User fees fund the service.

The City of Smyrna obtains their water supply from the Cobb-Marietta Water Authority. The City of Smyrna Water System is metered at this point. The city distributes their water supply by way of distribution piping varying from 2" piping through 12" piping. Customer water supplies are made from the distribution piping by way of service taps. Customer service taps end at the right-of-way with a meter set. Water piping beyond the meter set is the customer's responsibility. The City of Smyrna stocks all parts and material to repair or maintain its water system including meters and back-flow preventors.

The City of Smyrna Water System is not confined to our municipal boundaries nor are our municipal boundaries confined to the Smyrna Water System. The City of Smyrna Water System defines the limits of our sanitary sewer distribution system.



Revised Water & Sewer Service Area Map - AS part of Aug 2, 2004 Amendment 8/2/04



**CITY OF MARIETTA  
SERVICE BOUNDARY**  
*Water & Sewer*

*MC 8/2/04*

- MARIETTA SERVICE AREA
- DOBBINS SERVICE AREA
- SMYRNA SERVICE AREA
- KENNESAW SERVICE AREA
- MARIETTA CITY LIMITS

MAP DATE 09-JUL-2004  
PREPARED BY  
SCALE



8/2/04

Revised Water & Sewer  
Service Area Map - AS PART  
of Aug 2, 2004 Amendment.

→ North

→ N



**CITY OF POWDER  
SPRINGS BOUNDARY**  
*Water & Sewer*

*M.G. 8/5/04*

LEGEND

- Powder Springs  
CITY SERVICE AREA
- Powder Springs  
CITY LIMITS
- Anstell  
CITY LIMITS

MAP DATE 09-JUL-2004  
PREPARED BY  
SCALE



Note: Smyrna's Agreed upon water  
and sewer service area was not  
Revised AS part of Aug 2, 2008 Amendment. And  
AS of 8/2/04  
this map  
Remains  
in effect.

## W/S Service Boundary - Smyrna

