

ENCROACHMENT AND INDEMNIFICATION AGREEMENT

THIS ENCROACHMENT AND INDEMNIFICATION AGREEMENT (hereinafter “Agreement”), made this _____ day of _____ 2023, by **H2SMARTPOINT, LLC**, a Georgia limited liability company, dba **SMARTPOINT.IO** (“SmartPoint”), and **FORSYTH COUNTY**, a political subdivision of the State of Georgia (the “County”). SmartPoint and the County may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

WITNESSETH:

WHEREAS, SmartPoint and the County are coordinating to initiate a technology corridor program that involves the installation of certain smart technologies within the County’s right-of-way (the “Project”); and

WHEREAS, as a part of the Project, SmartPoint plans to install and operate initially up to seven (7) digital kiosk devices (the “Devices”) within the approximate locations identified in Exhibit “A,” attached hereto and incorporated herein by reference; and

WHEREAS, the County is willing to allow SmartPoint to install and operate the Devices in the locations identified in Exhibit A, under terms and conditions yet to be finalized between the Parties (“Smart Corridor Program Agreement”); and

WHEREAS, the County agrees to permit access to the County’s right-of-way to accommodate SmartPoint’s construction, operation, and maintenance of the Devices and to permit said Devices to remain in the Encroachment Area pursuant to the terms of the Smart Corridor Program Agreement; and

WHEREAS, the Parties agree that the Devices will be located completely within the County’s right-of-way (the “Encroachment Area”) and not within any abutting private property parcels; and

WHEREAS, the scope of this Agreement shall be limited to the facilitation of access to such County right-of-way areas to allow SmartPoint and its contractors access to survey the approved installation areas and develop detailed installation construction plans; and

WHEREAS, the final installation construction plans, as approved between the Parties, will become a part of the forthcoming Smart Corridor Program Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good

and adequate consideration, the sufficiency of which is acknowledged, it is hereby agreed between the Parties as follows:

1. **Recitals Incorporated.** The representations and affirmations in the Preamble of this Agreement are made a substantive and material part hereof and are incorporated herein by reference.

2. **Access Granted.** SmartPoint shall have the right to access the approved installation areas generally referenced in the attached Exhibit A (the Encroachment Area) to survey such areas, to include locating existing utilities and other existing encroachments within the Encroachment Area, and develop plans related to the construction, installation, operation and maintenance of the Devices within the Encroachment Area. Access shall be subject to any applicable general requirements of the County related to access and work within the County's right-of-way. All costs to survey and develop such plans shall be borne solely and exclusively by SmartPoint.

3. **Coordination with County Personnel.** The precise location and installation positioning of each Device (i.e., the final plans) shall be developed by SmartPoint in coordination with representatives of the County's Department of Engineering.

4. **Safety Considerations Control.** Should the County's Director of Engineering determine, in good faith, that installation of a particular Device at a location generally identified in Exhibit A is not appropriate due to line of sight or any other traffic-related safety issue, then such Device shall not be installed in such location.

5. **Subsequent Agreements.** Prior to installation of any Device on County right of way, SmartPoint and the County will prepare and enter into an agreement specifically related to the Project (i.e., the Smart Corridor Program Agreement), which will include, but not be limited to, terms and conditions of the Project, timelines, security, privacy considerations, data management, monetization, insurance, and indemnification.

6. **Insurance.** SmartPoint shall secure, at SmartPoint's sole cost, a commercially reasonable policy of general liability insurance, naming Forsyth County and its employees, officers, and agents, as additional insureds, providing "all risk" indemnity protection for personal injuries and property damage related to its encroachment into the County's right-of-way for the purposes stated herein.

7 **Indemnity.** In addition to the policy of insurance set forth above, SmartPoint otherwise agrees to defend, indemnify and hold harmless the County, including its elected and

appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from SmartPoint or its contractor's access into Encroachment Area. SmartPoint further agrees to be responsible for any maintenance or repairs to any water line, sewer line, power line, gas line, or other utility installed in the Encroachment Area under or around the proposed installation locations which may be damaged or disturbed by SmartPoint or its contractor's access into the Encroachment Area. This obligation to indemnify, defend, and hold harmless the Indemnified Parties shall survive this agreement until such time as SmartPoint has removed the Devices , and shall extend to each of the Devices contemplated by this Agreement. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party.

8. **Modifications must be in Writing.** No modification of this Agreement shall be binding, except via modification using the same formalities as were used during the original approval.

9. **Assignment of Agreement.** This Agreement may not be assigned or otherwise transferred by without the express prior written consent of the County. Notwithstanding, SmartPoint may assign its rights and duties hereunder without consent in case of an Exit Event (as defined below). Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assignees (whether by operation of law, merger, change of control or otherwise) of the Parties. In this Agreement, "Exit Event" shall mean consolidation, merger or reorganization of a Party with or into, or a sale of all or substantially all of such Party's assets or of its issued and outstanding share capital to, any other entity or person, in which the shareholders of such Party as of immediately prior to the consummation of such transaction do not hold a majority of the shares of the surviving entity immediately thereafter.

10. **Notices.** All notices, consents, requests, demands, or other communications to or upon the respective party shall be in writing and shall be effective for all purposes upon receipt, including, but not limited to (i) personal delivery, (ii) delivery by messenger, express, air, or similar courier, or (3) delivery by United States first class certified or registered mail, postage prepaid and addressed as follows:

COUNTY:

Forsyth County
Attn: David McKee, County Manager
110 E. Main Street
Suite 210
Cumming, Georgia 30040

SMARTPOINT:

H2SmartPoint, LLC, dba SmartPoint.IO
Attn: _____
8865 Willowbrae Lane
Roswell, Georgia 30076

WITH A COPY TO:

County Attorney
Jarrard & Davis, LLP
222 Webb Street
Cumming, Georgia 30040

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

H2SMARTPOINT, LLC

Signed, sealed, and delivered
this ____ day of ____, 2023
in the presence of:

By: _____(SEAL)
Print Name: _____
Title: _____

Notary Public
My Commission Expires: _____

[NOTARIAL SEAL]

FORSYTH COUNTY, GEORGIA

By: _____
Alfred John, Chairman

Attest:

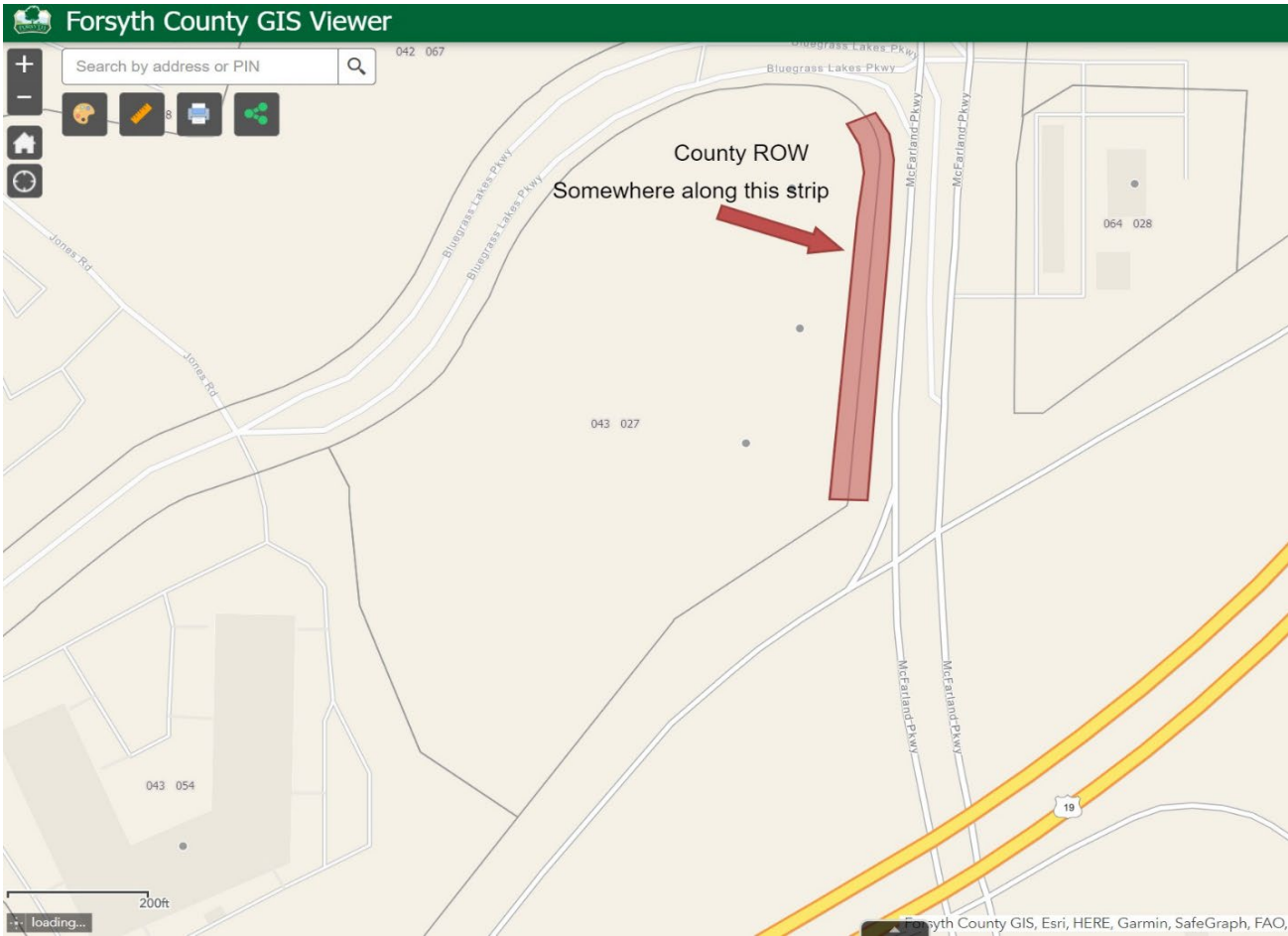
By: _____
Rhonda Hansard, County Clerk

[Affix County Seal]

EXHIBIT A

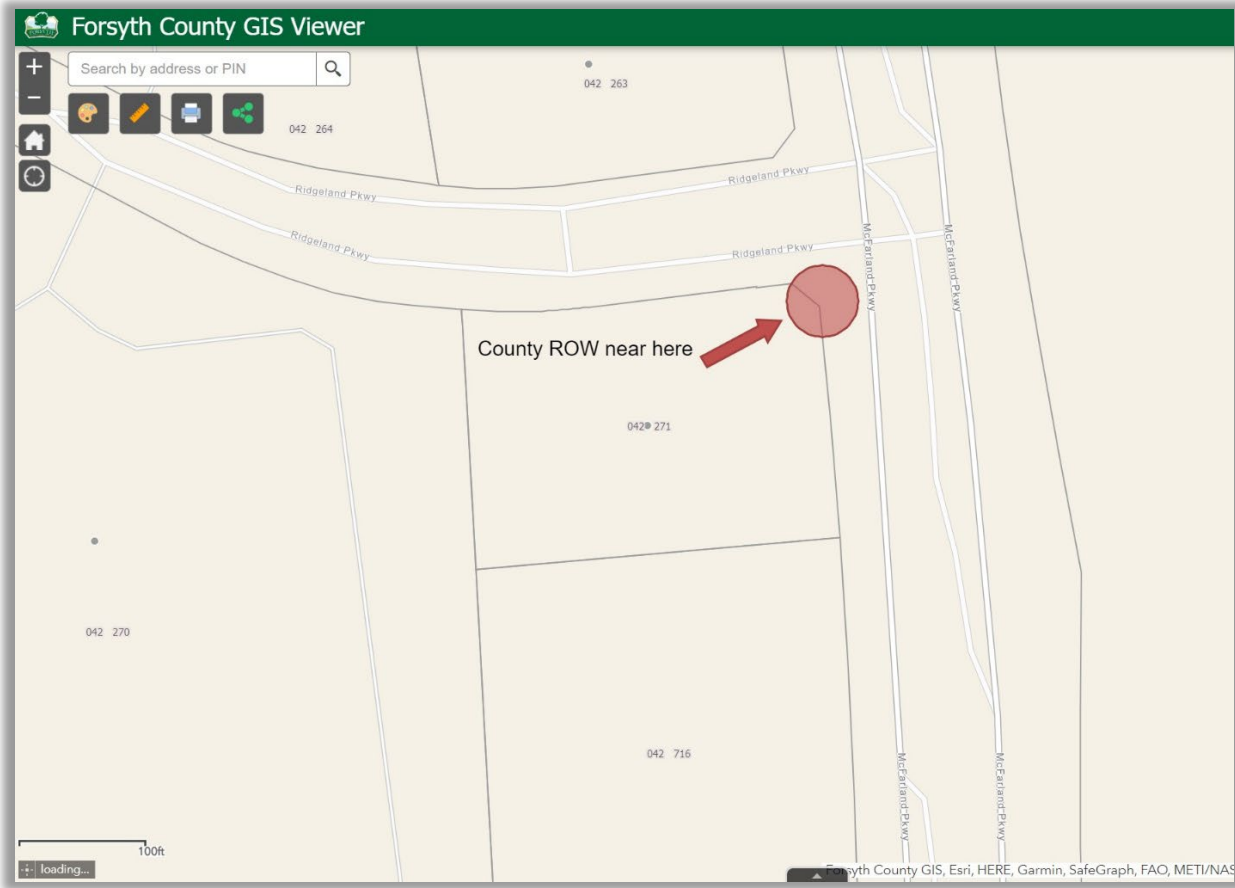
On Forsyth County Rights-Of-Way somewhere along the strip of land in the map below close to McFarland Parkway and the on-ramp to Highway 400

Parcel ID 043 027



(Continued on the next page.)

On Forsyth County Rights-Of-Way on or about the corner of McFarland Parkway and Ridgeland Parkway
Parcel ID 042 271



(Continued on the next page.)

On Forsyth County Rights-Of-Way on or about...

The southwest corner of Ronald Reagan Blvd and McFarland Parkway (the corner closest to CT Cantina at Halcyon)

Parcel ID 043 084

The northeast corner of Ronald Reagan Blvd and McFarland Parkway (the corner closest to the Arby's)

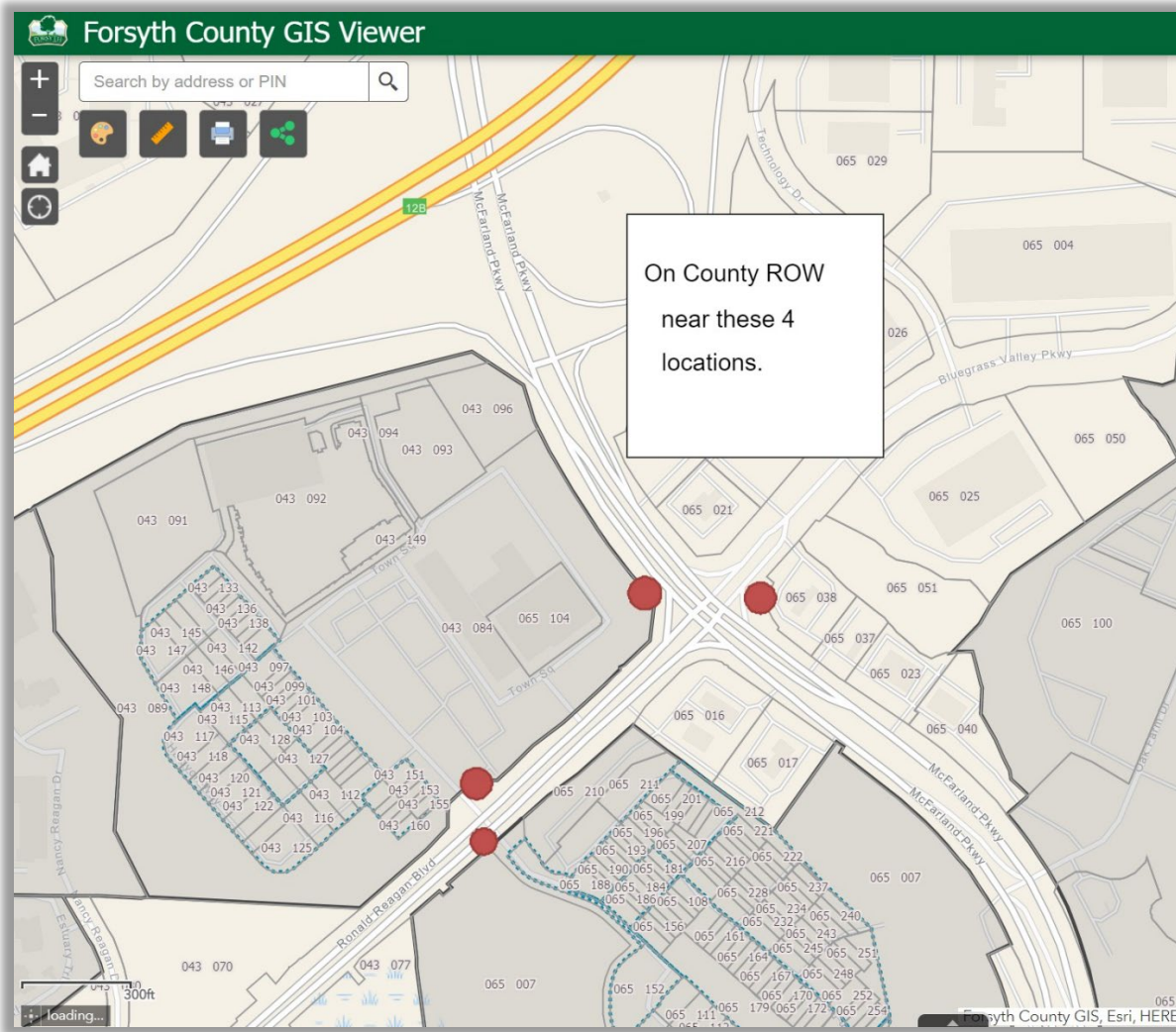
Parcel ID 065 038

The northwest corner of Ronald Reagan Blvd and Halcyon Way (lower entrance/exit to Halcyon business district)

Parcel ID 043 084

The southeast corner of Ronald Reagan Blvd and Halcyon Garden Drive

Parcel ID 065 007



(Continued on the next page.)

On Forsyth County Rights-Of-Way on or about the northeast corner of McGinnis Ferry and Windward Concourse
Parcel ID 044 017

