



Strategic Counsel, Clear Solutions

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VIA FIRST CLASS MAIL & ELECTRONIC MAIL ([REDACTED])

The Johns Creek City Council
City of Johns Creek, Georgia (the "**City**")
11360 Lakefield Drive
Johns Creek, Georgia 30097
Attn: Ms. Angela Couch, Esq.

Dear Ms. Couch & City Council Members:

My client and I received the presumably official responses from the City to my previous letter dated July 21, 2025 ("**First Letter**").¹ In these short responses, both Ms. Greer and Ms. Couch stated that the "*demands*" in the First Letter would run afoul of the Gratuities Clause. In addition, Ms. Couch described the First Letter as "*unworkable*." And that's it. That's the extent of the City's response and analysis to this almost three-decade issue regarding the disrepute and neglect of this unanimously acknowledged historic, cultural, and educational landmark.

The First Letter is 50 pages long; 13 pages addressing the City's unconscionable attempt to offload its responsibility for the Macedonia Cemetery onto the completely unfunded Descendants Group. The City's responses did not address its history of clear failures and dubious conduct with regard to the Cemetery. Nor did the responses provide any analysis for the stated positions or offer alternative solutions. Instead, the City chose to be curt and dismissive. While certainly concerning and discourteous, more troubling is that the City's position is completely and demonstrably incorrect. The Gratuities Clause does not bar anything in the First Letter's "*demands*" nor is it applicable to this matter at all.

I. GRATUITES CLAUSE

The Georgia Constitution, Article III, Section VI, Paragraph VI, known as the "**Gratuities Clause**", prohibits the General Assembly and, by extension, local governments like the City of Johns Creek, from granting any donation or gratuity or forgiving any debt or

¹ All capitalized terms not defined in this Letter shall have the meaning ascribed to such in the First Letter

obligation.² Its primary purpose is to prevent the misuse of public funds by ensuring that taxpayer money is not given away without a corresponding benefit to the public. The Georgia Supreme Court has adopted the ordinary definition of "gratuity" as "*something given freely or without recompense; a gift.*" Thus, there is no gratuity when the state receives substantial benefits in exchange.³ The Georgia Supreme Court further indicated that a grant or conveyance "*in aid of a public purpose from which great public benefit is expected*" is not a gratuity, "**even if it is not technically a consideration in a contractual sense.**"⁴ Therefore, the "*substantial benefit*" test is not limited to direct financial return; it can encompass the fulfillment of a public function, the improvement of public property, or the avoidance of public costs and liabilities.

In this instance, the payments to the Descendants Group would **both** (i) provide explicit substantial benefits to the affected municipalities; and (ii) perform statutorily created public functions.

II. REASONS PAYMENTS TO DESCENDANTS GROUP IS NOT A "GRATUITY"

A. Payments to Descendants Group: a "Substantial Benefit" to Johns Creek & Fulton County. The Georgia General Assembly has declared that the historical, cultural, and aesthetic heritage of the state is "*among its most valued and important assets*" and that *preserving this heritage is "essential to the promotion of the health, prosperity, and general welfare of the people."* This overarching policy is codified in statutes such as the Georgia Historic Preservation Act (O.C.G.A. § 44-10-21). These legislative findings recognize the public benefit and general welfare advanced by efforts to preserve historically significant sites which undoubtedly include the Macedonia Cemetery. Please refer to the First Letter and its resources for specific authority delineating the Macedonia Cemetery as a site with significant "historical, cultural, and aesthetic heritage" of the State of Georgia.

B. Payments to Descendants Group in Return for Public Function. O.C.G.A. § 36-72-3 specifically empowers counties and municipalities to "*preserve and protect any abandoned cemetery or any burial ground*" within their boundaries, regardless of who owns the land or whether the legally responsible party is able to care for it. This authority includes: (i) expenditure of public funds for preservation and protection and (ii) maintenance activities, such as fencing, cleaning, installing markers, and ongoing upkeep. "Abandoned cemetery" means in pertinent part "*a cemetery which shows signs of neglect including, without limitation, the unchecked growth of vegetation, repeated and unchecked acts of vandalism, or the disintegration of grave markers or boundaries...*" The

²Grand Lodge, I.O.O.F. v. City of Thomasville, 226 Ga. 4, 172 S.E.2d 612 (1970)

³Garden Club of Georgia, Inc. v. Shackelford, 266 Ga. 64 (1995)

⁴Garden Club of Georgia v. Shackelford, 274 Ga. 653 (2002)

legislative intent for this statute states “[i]t is the intent of the General Assembly that the provisions of this chapter be construed to require respectful treatment of human remains in accord with the equal and innate dignity of every human being and consistent with the identifiable ethnic, cultural, and religious affiliation of the deceased individual as indicated by the method of burial or other historical evidence or reliable information.”⁵ The definition of “abandoned cemetery” clearly includes the Macedonia Cemetery and the statutory language specifically states that caring for abandoned cemeteries is not only permitted, but legislatively recognized as a public function and a government responsibility.

C. Analysis of Georgia Supreme Court Decisions⁶. Referenced Georgia Supreme Court decisions provide irrefutable basis that the Georgia Assembly may determine that which is a “substantial benefit” to the State and thus that municipal funding is allowed and proper. Compare the two cases titled *Garden Club of Georgia, Inc. v. Shackelford*; one was decided in 1995 and the other in 2002. In the 1995 case, the Court ruled against a private entity's use of public property for billboard visibility, finding it an unconstitutional gratuity because the state received no substantial benefit in return. However, in the 2002 case, the court upheld a new statute that permitted the same action because the General Assembly explicitly defined the public's access to information (lodging, food, etc.) as a benefit. This confirms that the General Assembly's decree establishing a public benefit provides a constitutional basis for city-funded projects to private entities. In this matter, the General Assembly, in two entirely separate manners described in Sections A. & B. above, provided a decree that directly authorizes use of public funds for projects like the Macedonia Cemetery which provides clear exemption from the Gratuities Clause. It is difficult to reconcile a position that prioritizes billboard visibility over the profound historical, cultural, and educational benefits provided by the Macedonia Cemetery when the Georgia Assembly has stated projects like the Macedonia Cemetery are “among its most valued and important assets” and “essential to the promotion of the health, prosperity, and general welfare of the people.”

D. Payments to Descendants Group are not Gratuity but a Quid Pro Quo for Services Performed. The City currently holds ownership of the Macedonia Cemetery and all associated responsibilities for its care and preservation. These responsibilities are not only through ownership but specific legal obligations rooted in the 1998 Order and later proclamations, including the City's own vote to assume maintenance in 2017. By transferring ownership of the Cemetery to the Descendants Group, the City is attempting to offload all of the considerable financial and operational burdens associated with its upkeep, restoration, and security, which it has plainly failed to perform for years. The

⁵ O.C.G.A. § 36-72-1(b)

⁶ Compare *Garden Club of Georgia, Inc. v. Shackelford*, 266 Ga. 64 (1995) against *Garden Club of Georgia v. Shackelford*, 274 Ga. 653 (2002)

payments requested by the Descendants Group are compensation for the nonprofit to take on these immense responsibilities and risks that legally fall on the City. The attempt to frame the payments as a "*gratuity*" in its plain meaning is simply inaccurate. The payments are to a third party to perform statutorily created public functions on behalf of a municipality that has consistently demonstrated and admitted its "*inability to fulfill these preservation obligations*." The City receives the substantial benefit of having a sacred and historically significant site properly cared for and avoids the significant costs and liabilities of a public duty it has been demonstrably unwilling to perform. Note the portion of the Georgia Supreme Court interpretation that states a service performed for consideration is not a gratuity "*even if it is not technically a consideration in a contractual sense*."

The City has three distinct, mutually exclusive reasons to comprehend that any payments to the Descendants Group regarding the Macedonia Cemetery would not violate the Gratuities Clause. The City receives substantial benefits from the arrangement, the Descendants Group would be performing public functions, and it can certainly be viewed that the Descendants Group is being engaged to perform the responsibilities for the City, responsibilities that the City has stated it could not perform. Perhaps after a thorough review of the City's budget and actual use of funds over the past few years, we could show similar payments with arguably more tenuous grounds than those clearly established that apply to the Macedonia Cemetery.

III. CITY'S INVESTMENT IN CULTURAL & HISTORICAL ASSETS FOR PUBLIC BENEFIT

The City's argument that funding the Descendants Group would constitute a gratuity is a position that stands in direct contradiction to its own spending priorities and long-term capital plans. The City has a well-documented and consistent practice of using public funds for the express purpose of supporting cultural, historical, and recreational assets that provide a clear and substantial public benefit. A review of the FY2025 and FY2024 budgets reveals the following examples of this commitment.

A. Direct Funding to Nonprofit Organizations: The City provided \$25,000 to One Johns Creek, a nonprofit organization just like the Descendants Group, for presumably a purpose that provides the City a "substantial benefit."⁷

B. Parks and Recreation Projects: The City regularly allocates significant funds to park-related initiatives. The City is spending (i) \$850,000 to replace existing baseball quad lights at Ocee Park with LED fixtures, (ii) \$300,000 to construct an "*overflow parking lot*" at Cauley Creek Park to support a recreational facility, and (iii) \$450,000 for other "*Park*

⁷ See "One Johns Creek" in the 2024 City Budget on page 69.

Refreshes." These are "gratuitous" upgrades to existing amenities, certainly not core services or urgent items.

C. Support for the Arts:

- The FY2025 Capital Improvement Plan outlines a future "Arts Facility" with a total estimated cost of **\$30,000,000**, recognizing that such a venue is "essential" to the City's cultural landscape. This is a powerful acknowledgment that cultural projects, which are not core municipal services, are a public priority worthy of tens of millions of dollars in public funds.
- The City also dedicates funds to the tune of **\$30,000.00** to "Support of Local Arts" through grant-like contributions.⁸

D. Funding for Community Events: The Recreation and Parks Department budget allocates funding for numerous special events, including an Arts Festival and an International Festival. While these are not services directly provided by the City government, they represent public benefits the City facilitates through its budget.

E. Historic Preservation: The City has already made investments in historical sites, such as the Autrey Mill Nature Preserve. Budgets from previous years detail projects like the "Farm Museum Renovation" and "Relocation of Smokehouse," which show a direct use of public funds for preserving historical buildings and sites.

IV. THE "UNWORKABLE" CLAIM IS INCONSISTENT WITH THE CITY'S FINANCIAL REALITIES

City representatives, both officially and informally to members of the Descendants Group, have characterized requests for City funding as "*unworkable*." Informally, a City representative told my client that "*the money is just not there*." I find that position to be a disingenuous and inaccurate characterization of the City's financial standing. This claim ignores not only the City's long-standing, unfulfilled obligations but also its healthy budget and established spending practices.

A. Funds Have Already Been Earmarked and Allocated The most immediate and "workable" solution is the transfer of funds already set aside for the Macedonia Cemetery. As noted in my First Letter, the City's Fiscal Year 2022 budget allocated \$100,000 for cemetery improvements. The remaining balance of these earmarked funds, approximately **\$57,516**, has not been used. This is not new money the City must find; it

⁸ See "Local Arts Grant" in the 2024 City Budget on page 23.

is a pre-existing commitment waiting to be applied to its intended purpose. Providing these funds to the Descendants Group would simply fulfill a past promise and offload a neglected responsibility to an attentive and focused party. I do wonder, however, what the City was planning to do with the remaining funds if my client signed the "*Purchase Agreement*" presented in May.

B. The Funding Requested is Miniscule in the Context of the City's Budget. The requested payments, especially when compared to the City's other capital and operational expenditures, are a minuscule investment. The Macedonia Cemetery, through the City's own words and proclamations, is an asset with profound historical and cultural significance. Yet LED lights, overflow parking, and "Park Refreshes" are deemed vastly more important. I won't even mention the "*mass planting of daffodils*" with an initial cost of \$10,000.00.⁹ The City's actions, not its lip service, are the germane factor to judge its priorities. The City could have addressed all the issues with the Macedonia Cemetery during the City's ownership. It is difficult to conclude that the City values the Macedonia Cemetery, my client, their ancestors, or the history and culture each represent when the evidence clearly establishes the contrary. The City's decision to deny funding for the Cemetery, while simultaneously investing in other discretionary projects over the years, reflects a legally and morally inconsistent position.

V. AUGUST 11th CITY COUNCIL WORK SESSION: SURPLUS & ALLOCATIONS

I reviewed the City Council Work Session recording from August 11, 2025 ("**Work Session**") to listen to any discussion related to the Macedonia Cemetery and the First Letter. I was disappointed to learn that the Cemetery was not mentioned. Instead, I witnessed dialogue that fundamentally changed my perception of this matter. The City disclosed that it currently holds a budgetary surplus and, based on the figures presented, allocating **just 4%** of that surplus would fully satisfy the funding outlined in the First Letter.

A. \$4,800,000.00 "Cash" Surplus. A discussion regarding the City's "*surplus*" commenced just about 41 minutes into the Work Session. It is difficult to reconcile the existence of any surplus with the statement made by a City representative to my client's board member that "*the money is just not there.*" At timestamp 41:32¹⁰ of the Work Session, an attendee categorically stated that the City has a "*cash*" surplus of **\$4,800,00.00** (the "**Surplus**"). The same person stated that the Surplus is not subject to a downward adjustment based on upcoming calculations. Let me take a moment here to ensure all readers are on the same page. During the Work Session, in which all germane City officials were present, it was stated, in no uncertain terms, and was surprising to no

⁹ See "Daffodil Planting" in the 2024 City Budget on page 70

¹⁰ I later re-reviewed and learned that Surplus was initially stated between timestamp 13:55 and 14:32

one in attendance, that the City of Johns Creek has a liquid surplus of **Four Million Eight Hundred Thousand Dollars (\$4,800,000)** but the Macedonia Cemetery is currently in a severely neglected state with demonstrable and admitted unfulfilled commitments. This, however, is not the most shocking revelation from the Work Session.

B. A Pattern of Multimillion Dollar Surpluses. At 16:54-17:02 of the Work Session, Mayor Bradberry makes a statement that is particularly striking in the context of this matter: *"what has been consistent is that we (the City) have multimillion dollar surpluses at the end of every fiscal year."* The Mayor confirmed that the City of Johns Creek has maintained multimillion-dollar surpluses year after year; not just in 2025, but consistently over multiple fiscal years. This means that throughout the period when the Macedonia Cemetery has suffered from neglect, vandalism, and deterioration, from 2017 (when the City officially "recognized" maintenance responsibilities) through present day, the City has possessed multimillion-dollar surpluses that could have been used to not only fulfill the historical obligations to the Cemetery but to perform basic upkeep functions. Every year that graves were left unmarked, every year that security was inadequate, every year that promised archaeological testing was delayed and inadequately performed, the City had the financial resources to address these issues but consciously chose not to.

C. Allocating the Surplus. Following the Surplus revelation, the discussion transitioned to *"allocating" an "end-of-year surplus."*¹¹ According to a speaker, the City Council has wide discretion on applying the Surplus. Apparently, it can be used in any manner the City Council deems fit, including applying it for projects before finalizing the FY2026 budget. I can recommend a failing City project that could use just a small percentage of the Surplus to provide funding and support to remedy decades of failed promises and neglect.

D. The Mathematics of Moral Choice. The funding requested in the First Letter totals approximately **\$200,000** over a ten-year period. This represents just over **4%** of the City's current surplus. To put this in perspective, the City can afford to spend **\$850,000** on replacing, not installing, baseball field LED lights and **\$450,000** in *"Park Refreshes"* in a singular year (not to mention the daffodils) yet claims that honoring a nearly three-decade commitment to a historic cemetery containing enslaved ancestors is *"unworkable."* The Macedonia Cemetery's total needs could have been addressed multiple times over with surplus funds from any single fiscal year. This mathematical reality transforms the City's neglect from mere oversight to what can only be characterized as deliberate indifference. The City has not lacked the means to honor its commitments; it

¹¹ See the Work Session video or transcript from 41:32 (after the declaration of the Surplus) through approximately 44:30.

has lacked the will. This fact reveals a moral calculation that prioritizes recreational amenities and aesthetic landscaping over historical justice and human dignity.

VI. FINAL THOUGHTS

The evidence presented in this letter reveals a pattern of conduct that extends far beyond simple budgetary disagreements or legal technicalities. It exposes a fundamental disconnect between the City's public pledges to historical preservation and its private budget priorities. The City has proclaimed the Macedonia Cemetery's significance as a historic, cultural, and educational landmark, yet when presented with a clear opportunity to honor that acknowledgment through concrete action, it retreats behind legally incorrect interpretations and demonstrably inaccurate claims of financial impracticality. The Gratuities Clause is inapplicable. The requested payments fall squarely within established exceptions for public benefits and statutory functions. The City's claim that funding is "*unworkable*" is directly refuted through the Surplus and allocating funds for significantly more expensive yet far less historically significant projects.

This matter transcends legal arguments about municipal finance or statutory interpretation. At its core, this is about whether the City of Johns Creek will honor its obligations and the responsibilities it inherited from Fulton County. It is about whether the City's commitment to historical preservation extends to all segments of its heritage or only to those that align with more palatable narratives. Council members can choose to perpetuate nearly three decades of neglect and broken promises, or they can demonstrate genuine leadership by allocating a tiny fraction of their substantial surplus to fulfill long-overdue obligations. The choice is not complicated by legal constraints. The choice is not complicated by financial limitations. The choice is simple. The ancestors interred at Macedonia Cemetery have waited long enough. Their descendants have been patient long enough.

The upcoming decisions regarding allocation of the Surplus and the FY2026 budget will reveal whether the City of Johns Creek (i) stands with honoring its commitments and that of its predecessor, (ii) truly values the Macedonia Cemetery and its place in historic preservation, and (iii) recognizes historical justice. The Descendants Group remains ready to proceed with the dignified preservation of this sacred site. The question that remains is whether the City will join in this effort as a true partner or whether it will continue to be an unwarranted obstacle.

The time for empty words and hollow excuses has passed.

I request and expect a plan or substantive feedback five days prior to the next City Council meeting, which I believe to be September 9, 2025, so that I can organize and prepare "Public Commenters" for such meeting.

Sincerely,

A handwritten signature in blue ink, appearing to read 'KPM', with a long horizontal flourish extending to the right.

Kyle P. Magee Esq., for the Firm

cc: Descendants of Macedonia Church
and Cemetery of Johns Creek, Georgia, Inc.