

INTERGOVERNMENTAL AGREEMENT
BY AND AMONG THE CITIES OF
DUNWOODY, GEORGIA AND
SANDY SPRINGS, GEORGIA
FOR THE PAVING ON DUNWOODY CLUB DRIVE

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”), is entered into by and among the cities of Dunwoody and Sandy Springs, Georgia (collectively referred to herein as the “Participating Cities”), as of the 27th day of September, 2010.

WHEREAS, the boundary line between the Participating Cities is acknowledged to be the centerline of Dunwoody Club Drive between Spalding Drive and Happy Hollow Road; and

WHEREAS, the Participating Cities are interested in collaborating to resurface this section of Dunwoody Club Drive; and

WHEREAS, the City of Sandy Springs has applied for and received up to \$141,030 in Local Assistance Road Program (LARP) funding from the Georgia Department of Transportation to resurface Dunwoody Club Drive from east of the intersection of Spalding Drive to a point 2.69 miles east of the intersection; and

WHEREAS, the total cost by competitive bid for the project is \$387,858.31, with the cost of Dunwoody’s share of the project after LARP reimbursement estimated to be \$123,414.15.

WHEREAS, Dunwoody Club Drive is included in the 5-year paving plan for both Participating Cities; and

WHEREAS, it is more cost effective and practical for the entire road to be paved in its entirety; and

WHEREAS, Art. 9, § 3, ¶ 1 of the Constitution of the State of Georgia provides that municipalities of the State of Georgia may contract with each other for any period not exceeding fifty (50) years for the provision of services or for the joint or separate use of facilities or equipment; and

WHEREAS, each of the Participating Cities desires to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of all jurisdictions; and

WHEREAS, each of the Participating Cities has authorized the execution of this Agreement through appropriate resolutions adopted by their governing bodies;

NOW, THEREFORE, in consideration of the following mutual obligations, the Participating Cities hereby agree as follows:

ARTICLE 1

PURPOSE AND INTENT

The purpose of this Agreement is to establish the intent of the Participating Cities jointly to resurface Dunwoody Club Drive from Spalding Drive to Happy Hollow Road (the Project).

ARTICLE 2

WORK

The work will consist of milling 1.5 inches of asphalt and placing 1.5 inches of 9.5 mm Superpave asphalt, patching as needed, striping and all required traffic control. All work shall be completed in accordance with Georgia Department of Transportation Standard Specifications (current edition).

ARTICLE 3

SPONSOR

Because contracting for paving will require a formal advertisement and bid process and because the City of Sandy Springs will be the LARP fund recipient, it is in the mutual interest of the Participating Cities to designate the City of Sandy Springs as the project sponsor. The sponsor shall coordinate the bid process to ensure compliance with any applicable purchasing policies, resolutions and/or ordinances of each of the Participating Cities. The sponsor shall receive bids from qualified contractors in accordance with established and published bid requirements and shall present acceptable (as determined by the Sponsor) bids for review and approval of the winning bidder. The sponsor will be responsible for contract administration and project management. The sponsor shall include the designated City of Dunwoody representative on all project correspondence.

ARTICLE 4

FUNDING

- (a) The LARP funding and the cost for the project will be shared equally by the Participating Cities. The City of Dunwoody will submit payment within 30 days of completion of the work.
- (b) The Contract shall require that the winning bidder complete the project to the satisfaction of each respective City. If any Participating City is not satisfied, such City shall have the right to dispute its portion of the payment to the winning bidder, and such right of each Participating City shall be included in the Contract.

ARTICLE 5

TERM OF AGREEMENT

This Agreement shall commence upon execution by all parties to this Agreement and shall continue in effect until final completion of the project but not for a period of more than twelve (12) months.

ARTICLE 6

NON-ASSIGNABILITY

None of the Participating Cities shall assign any of the obligations or benefits of this Agreement without the mutual written consent by resolutions of the councils of all Participating Cities.

ARTICLE 7

ENTIRE AGREEMENT

The Participating Cities acknowledge, each one to each of the others, that the terms of this Agreement constitute the entire understanding and agreement of the Participating Cities regarding the subject matter of the Agreement.

ARTICLE 8

AMENDMENT

This Agreement may be modified at any time upon mutual written consent by resolutions of the councils of all Participating Cities.

ARTICLE 9

SEVERABILITY

If a court of competent jurisdiction renders any provision of this Agreement (or any portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion were not part of this Agreement.

ARTICLE 10

BINDING EFFECT

This Agreement shall inure to the benefit of, and be binding upon, the respective Participating Cities' successors, heirs and assigns.

ARTICLE 11

CONFLICT RESOLUTION

The City of Dunwoody has the right to have stop work upon providing Notice to the City of Sandy Springs if the Project is not being performed, in Dunwoody's sole discretion, to any standard specified by the City of Dunwoody. In such an event, if work is stopped, the Public Works Directors of the Participating Cities will resolve the conflict within 36 hours. If no agreement can be reached within the specified time period, the District 7 Engineer for the Department of Transportation shall be authorized to adjudicate the dispute. The adjudication process setfor herein shall not bar any Participating City to elect any other remedy allowed by law.

ARTICLE 11

INDEMNIFICATION

It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City of Dunwoody defend, indemnify and hold harmless the City of Sandy Springs and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City of Dunwoody or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City of Dunwoody, its employees, officers and agents. The City of Dunwoody shall promptly notify the City of Sandy Springs of each claim, cooperate with the City of Sandy Springs in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City of Sandy Springs' participation.

It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City of Sandy Springs defend, indemnify and hold harmless the City of Dunwoody and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City of Sandy Springs or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City of Sandy Springs, its employees, officers and agents. The City of Sandy Springs shall promptly notify the City of Dunwoody of each claim, cooperate with the City of Dunwoody in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City of Dunwoody's participation.

The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.

ARTICLE 12

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.

ARTICLE 13

GOVERNING LAW AND VENUE

This Agreement shall be governed by the laws of the State of Georgia and proper venue for any actions arising out of this Agreement shall be Fulton or DeKalb County Superior Court.

ARTICLE 14

NOTICE

Notice may be given by a participating City or its attorney, or its Agent herein named, and shall be given by mail or by hand delivery to the following addresses:

If to the City of Dunwoody: Warren Hutmacher, City Manager
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30346

With a Copy to:

Brian Anderson, City Attorney
41 Perimeter Center East
Suite 250
Dunwoody, Georgia 30346

If to the City of Sandy Springs: John McDonough, City Manager
7840 Roswell Road
Building 500
Sandy Springs, Georgia 30350

With a Copy to:

Wendell K. Willard, City Attorney
Two Ravinia Drive
Suite 1360
Dunwoody, Georgia 30346

All notices are effective upon receipt. Any Participating City may change an address by giving written notice of said change of address to the other Participating Cities.

IN WITNESS WHEREOF, the Participating Cities have executed this Agreement through their duly authorized officers on the day and year first above written.

CITY OF DUNWOODY, GEORGIA

Ken Wright, Mayor

Approved as to form:

Brian Anderson, City Attorney

CITY OF SANDY SPRINGS, GEORGIA

Eva Galambos, Mayor

Approved as to form:

Wendell K. Willard, City Attorney

ATTEST:

City Clerk

(SEAL)

Warren Hutmacher, City Manager

ATTEST:

City Clerk

(SEAL)

John McDonough, City Manager