



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: August 13, 2018

Subject: **APPROVAL OF INTERGOVERNMENTAL AGREEMENT WITH PEACHTREE CORNERS FOR DUNWOODY CLUB SIDEWALK CONSTRUCTION**

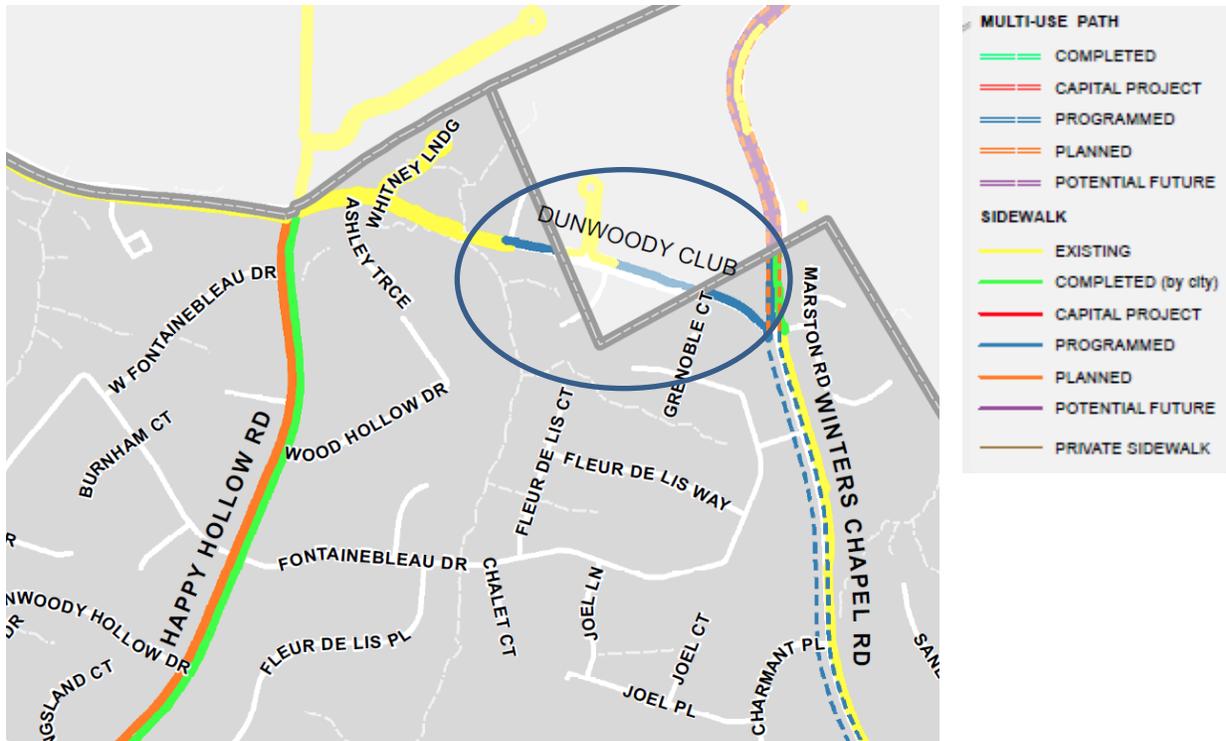
BACKGROUND

Dunwoody has planned to fill the sidewalk gap on the north side of Dunwoody Club Drive between Winters Chapel Road and the Whitney Landing Subdivision. This segment is approximately 1,675 feet long with a 750-foot section in the middle located within Peachtree Corners (see attached map). The attached Intergovernmental Agreement (IGA) between Dunwoody and Peachtree Corners provides Dunwoody to manage the construction contract and for Peachtree Corners to reimburse Dunwoody for the cost of the work in Peachtree Corners. The Peachtree Corners Public Works Department has reviewed the proposed plans and construction cost estimate and will recommend approval to the Peachtree Corners City Council.

RECOMMENDED ACTION

Staff recommends approval of an Intergovernmental Agreement for construction of sidewalk on the north side of Dunwoody Club Drive between Winters Chapel Road and Whitney Landing.

Sidewalk Project Location Map



INTERGOVERNMENTAL AGREEMENT
 BY AND AMONG THE CITIES OF
 DUNWOODY, GEORGIA AND
 PEACHTREE CORNERS, GEORGIA
 FOR A SIDEWALK IMPROVEMENTS ALONG DUNWOODY CLUB DRIVE BETWEEN
 WINTERS CHAPEL ROAD AND JUST WEST OF DUNWOODY CLUB CREEK DRIVE

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”), is entered into by and among the cities of Dunwoody and Peachtree Corners, Georgia (collectively referred to herein as the “Participating Cities”), as of the _____ day of _____, 2018.

WHEREAS, the Participating Cities desire to work together to fill a gap in the existing sidewalk network on the north side of Dunwoody Club Drive that spans across the border between the two Participating City; and

WHEREAS, it would be most cost effective for the Participating Cities to employ a single contractor to construct the new sidewalk; and

WHEREAS, construction management will be required for this project; 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 perform sidewalk improvements along Dunwoody Club Drive between Winters Chapel Road and just west of Dunwoody Club Creek Drive (the project).

ARTICLE 2

WORK

The work along Dunwoody Club Drive will consist of filling the gap of sidewalk, removing extra pavement, and regrading to shoulder to meet current standards.

All work shall be completed in accordance with Georgia Department of Transportation Standard Specifications (current edition) and to the satisfactory of both Cities.

ARTICLE 3

SPONSOR

Dunwoody will be the contracting agency (Sponsor). The sponsor will be responsible for contract administration and project management. Representatives from both participating cities shall be included on all project correspondence related to the work.

ARTICLE 4

FUNDING

A cost estimate was completed by Georgia Development Partners (GDP) for this project totaling \$368,443.28. The City of Peachtree Corners will be accountable for approximately \$177,467.65. The City of Dunwoody will pay the contractor directly and the City of Peachtree Corners shall reimburse the City of Dunwoody the exact construction cost based on installed quantities upon commencement of the work by the contractor.

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

Both participating cities have the right to stop work upon providing Notice if the Project is not being performed to any standard specified by the participating cities. 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 set for 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 Peachtree Corners 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 Peachtree Corners of each claim, cooperate with the City of Peachtree Corners in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City of Peachtree Corners' 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 Peachtree Corners 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 Peachtree Corners 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 Peachtree Corners, its employees, officers and agents. The City of Peachtree Corners 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 Gwinnett 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: Eric Linton, City Manager
4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
- With a Copy to: William F. Riley, City Attorney
4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
- If to the City of Peachtree Corners: Brian Johnson, City Manager
310 Technology Parkway
Peachtree Corners, Georgia 30092
- With Copy to: David Howell, Assistant City Attorney
315 Washington Avenue
Marietta, GA 30060

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

Denis L. Shortal, Mayor

Approved as to form:

William F. Riley, City Attorney

ATTEST:

City Clerk

(SEAL)

Eric Linton, City Manager

CITY OF PEACHTREE CORNERS, GEORGIA

Mike Mason, Mayor

Approved as to form:

David Howell, Assistant City Attorney

ATTEST:

City Clerk

(SEAL)

Brian Johnson, City Manager