



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: November 14, 2022

Subject: **Project Agreement with the Perimeter Community Improvement District for Phase One of the Ashford Dunwoody Trail Project**

ACTION

Authorize the Mayor, City Manager, or designee to execute a project agreement with the Perimeter Community Improvement District for Phase One of the Ashford Dunwoody Trail project.

SUMMARY

The Ashford Dunwoody Road Trail project is a collaboration between the city and the Perimeter Community Improvement District (PCID). The attached project agreement sets forth the terms and conditions under which the city and PCID will implement Phase One of the trail. Specifically, the agreement documents the previously agreed upon \$377,311 funding contribution by the PCID to the right of way acquisition and caps the PCID's contribution to the construction at \$781,812. The city will administer all aspects of the project with the exception of the landscaping which will be performed by the PCID's contractor.

DETAILS

The PCID's Commuter Trail Master Plan recommends a bicycle path and enhanced sidewalks on Ashford Dunwoody Road between Hammond Drive and Mount Vernon Road. This project has been incorporated into the city's transportation plan and has been split into phases for funding purposes. Sections of the sidewalk and bike path have recently been completed as part of new developments at the north end of the Perimeter Mall frontage near Perimeter Center West and along the frontage of the new shopping center between Meadow Lane and Ashwood Parkway. The city's Phase 1 construction will complete the path in front of Perimeter Mall.

The planned improvements consists of a two way, raised cycle track separated from the roadway by a wide landscape buffer. A new wider sidewalk will replace the existing sidewalk and will be separated from the cycle track by a landscaped buffer. Most of the existing trees will be retained and new oak trees will be planted to replace the oak trees that require removal for the project. Decorative elements of the project include brick seat walls at intersection corners, benches, new lighting, landscaping and a bus shelter.

RECOMMENDED ACTION

Authorize the Mayor, City Manager, or designee to the Ashford Dunwoody Trail, Phase One project agreement with the Perimeter Community Improvement District.

**AGREEMENT BY AND BETWEEN
THE CITY OF DUNWOODY AND
THE CENTRAL PERIMETER COMMUNITY IMPROVEMENT DISTRICT FOR THE ASHFORD
DUNWOODY TRAIL PROJECT, PHASE ONE**

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the City of Dunwoody, Georgia (the "City"), a municipal corporation organized and existing under the laws of the State of Georgia, and the Central Perimeter Community Improvement District (the "CID"), a community improvement district organized and existing under the laws of the State of Georgia and located in the City of Dunwoody (the City and the CID each a "Party" and, collectively, "Parties").

WITNESSETH:

WHEREAS, the CID is a community improvement district authorized under 1987 Ga. Laws 5460 and approved by Resolution adopted September 5, 2001; and

WHEREAS, the CID was created to, among other things, address and improve transportation in the CID area; and

WHEREAS, the City has determined that facilitating and expediting the implementation of transportation improvement projects in the City with the CID will enhance air quality, reduce highway and street congestion, promote public safety, enhance economic development, and generally improve the quality of life in the City and surrounding area; and

WHEREAS, the CID is uniquely positioned to fund, facilitate, and expedite the implementation of transportation improvement projects impacting the City identified by the City and the CID; and

WHEREAS, the City and the CID desire to enter into this Agreement to set forth the terms and conditions pursuant to which the City and CID will implement the Ashford Dunwoody Trail Phase One bicycle and pedestrian improvement project (the "Project") and the CID will fund a portion of the Project as set forth in Exhibit B, and as further described herein.

NOW, THEREFORE, in consideration of the mutual promises and benefits hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1.
THE PROJECT**

The entire Project consists of the design, right-of-way acquisition, and construction of a multi-use trail and pedestrian side path along the west side of Ashford Dunwoody Road, from Perimeter West Parkway to Hammond Drive, along with associated streetscape and landscape features. The Project is described below and depicted on Exhibit A. This Agreement sets forth the terms and conditions pursuant to which the CID and the City will implement the Project. The entire Project shall comply with applicable federal and state laws and regulations and all City ordinances, rules, and regulations.

A. Project. The Project includes the construction of a 12-foot wide multi-use trail and a 6-foot wide pedestrian walkway from the existing trail, just south of Perimeter West Parkway, in front of the Perimeter Mall property, to Hammond Drive. In addition to the bicycle and pedestrian facilities, the Project includes hardscape and landscape features for public amenities along the trail and sidewalk.

A map showing the general proposed path of the Project and delineating the Project is attached hereto as Exhibit A. The contemplated cost and funding for the entire Project is attached hereto as Exhibit B.

B. Phases of Project Work. The Parties hereby acknowledge and agree that the Project shall be divided into three (3) phases, as follows: (1) Preliminary Engineering; (2) Right-of-Way Acquisition; and (3) Construction. The Preliminary Engineering phase shall include, but not be limited to, preliminary concept development, land surveying, development of Right-of-Way plans, and development of construction plans and bid documents. The Right-of-Way Acquisition phase shall be when the City acquires any rights of way required to construct the Project as designed during the Preliminary Engineering phase. Finally, the Construction phase of the Project shall be comprised of the construction work required to physically construct the Project as designed and engineered.

C. Roles and Responsibilities of the Parties. The Project shall be managed by the City in compliance with the terms and conditions of this Agreement. The CID shall be responsible for the Preliminary Engineering phase, along with payment for funds of the Project as delineated and set forth in Exhibit B hereto, as well as delivering final landscaping per the plans and specifications for the Project. The City's responsibilities shall include right-of-way acquisition, construction management, construction inspection, material testing, as well as procurement of the construction contractor through the City's bidding process for local government funded projects. All such contractors hired for the Project are collectively referred to throughout as "Contractor(s)." The City shall also be responsible for obtaining any permits as may be necessary and appropriate to complete the Project in an expedited manner. Any Project work affecting utilities shall further be coordinated by the City. The City shall inspect and approve any work performed for the Project pursuant to this Agreement.

D. Project Funding. The Estimated Project Cost is described in Exhibit B attached hereto. Detailed cost estimates will be provided by the City to the CID as they are updated and work progresses. The Parties acknowledge and agree that, for purposes of implementing the Project, the City will be responsible for paying and will pay the costs of the Project related to Right of Way Acquisition and Construction costs. The CID will be responsible for reimbursing the City as follows: upon completion of the Right of Way Acquisition activities, an amount not to exceed \$377,311; and upon completion of the Construction activities, an amount not to exceed \$781,812. Subject to the foregoing, the Project costs for which the City shall be entitled to reimbursement pursuant to this Agreement shall be limited to the actual costs incurred and paid by the City for (i) the value of the property acquired by it in the Right-of-Way Acquisition phase, and (ii) costs of construction required for the Project during the Construction phase. The Parties further acknowledge and agree that, for purposes of implementing the Project, the CID will be responsible for paying and will pay the costs of landscaping, as set forth in Exhibit B. Upon completion of the Landscaping activities, the City shall reimburse the CID for half of the actual costs incurred and paid by the CID for such activities.

If the costs for the Project are expected to exceed the Project Cost Estimates set forth in Exhibit B, the City shall obtain written approval of the same from the CID before incurring any costs

that would cause the Project Cost Estimates set forth in Exhibit B to be exceeded. For example, and without limitation, if the City's actual costs to be paid as compensation to property owners for obtaining rights-of-way will exceed the budget set forth in Exhibit B, the City shall obtain the CID's written approval prior to incurring such costs or making such payments. The CID agrees to timely review of said requests. The CID and the City further agree to use best efforts to mitigate any costs that would exceed the Project Cost Estimates. If the City makes such payment or approves such work that would cause the Project Cost Estimates to be exceeded before obtaining the CID's written approval, the City will be solely responsible for any and all costs incurred in excess of the budget set forth in Exhibit B.

2. TERM; TERMINATION

A. Term. This Agreement shall commence on the date hereof and shall remain in effect until terminated as described in this Section 2 or until completion of the Project.

B. Termination. Either Party may terminate this Agreement, in whole or in part, due to: failure of the other Party to fulfill its obligations under this Agreement in any respect (and such failure is not cured within thirty (30) days of notice of the same); or because of a failure to obtain funding for any budget of the Project. In the event of termination for default of the CID, the CID shall be responsible for all costs associated with any obligations or commitments made by the City in respect to the Project, which may include obligations that extend beyond the termination date. In the event of termination for default of the City, the City shall be responsible for any costs it incurs after the date of such termination, and the CID shall not be responsible for reimbursing any such costs.

Subject to any right to cure, a Party may terminate this Agreement by delivering to the other Party, with at least thirty (30) days' notice, a Notice of Termination specifying the nature, extent, and effective date of termination. Such Notice of Termination shall be sent as provided in Section 8.

3. CONTRACTORS

The City shall ensure its contracts with the Contractor(s) abide by all applicable local, state, and federal laws, rules, and regulations. These contracts shall provide for costs of the work not to exceed the sum(s) approved as described in Section 1(D) hereof.

The City shall also ensure its contracts with Contractor(s) state: (1) that each such contract is between the City and the Contractor, and that the CID has no obligations to the Contractor; and (2) that the Contractor shall indemnify, defend, and hold harmless the CID and the City for any damages and/or injuries resulting from acts of the Contractor(s) or anyone under their control. The CID shall not have privity of contract with the Contractor(s), and the City shall hold harmless the CID for any claims arising from the contracts between the City and the Contractor(s) to the extent allowed by applicable law.

4. INVOICES; PAYMENT

The City shall be responsible for paying Contractor(s) for their work on the Project, with the right to reimbursement from the CID as described herein. The City shall require that Contractor(s)'s invoices be itemized on a percentage-completed basis as described in the Project scope and

schedule of work to show the date of service and description of service in sufficient detail and specificity to allow the Parties to determine precisely what work and services each payment covers. The CID will provide reimbursement to the City as provided in Section 1(D) above.

5. ADDITIONAL SCOPE OF WORK; CHANGES IN PROJECT COSTS

Throughout the course of the Project, if the City becomes aware of a situation that will cause any approved budget, as described in Section 1(D) hereof, to be exceeded, or if the City identifies the need for additional work for the Project beyond the scope of this Agreement or that any cost for Project work will exceed any approved budget for the Project for which payment is desired, the City shall immediately notify the CID in writing, and shall not proceed with such work or incur additional cost until the City receives written approval from the CID as set forth in this Section. The written notice shall explain the additional work and how such additional work is considered outside the basic scope of work of this Agreement, and shall state the proposed cost for any such additional work. Such notice shall also set forth an explanation for any additional costs that will cause any approved budget to be exceeded, along with the amount of such costs. The CID must approve by amendment to this Agreement any such additional work or costs in writing prior to such work being performed or costs being incurred. The CID shall not be responsible for the costs of any work performed under this Section 5 that has not first been approved by it in writing. Except as may otherwise be provided for in this Agreement, nothing in this Section shall obligate the CID to pay for work that it did not approve in writing in advance of such work being performed, nor shall the CID be obligated to approve an amendment to this Agreement for any work it does not approve.

6. OWNERSHIP OF DATA AND DOCUMENTS

All Project documents, including, but not limited to, drawings, estimates, specifications, and data, are and remain the property of the City. The City is exclusively responsible for the supervision, control, and use of Project documents referenced herein, and shall take reasonable precautions to prevent unauthorized use or distribution, subject to all applicable laws of the State of Georgia.

7. CONTRACTOR INSURANCE REQUIREMENTS

The City shall ensure that each Contractor(s) maintains, for the duration of its respective work on the Project, insurance in the following minimum limits:

A. Liability Insurance

1. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance in compliance with the applicable Workers' Compensation Act(s) of the state(s) wherein the work is to be performed or where jurisdiction could apply in amounts required by statutes. Employer's Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury or disease.
2. Commercial General Liability Insurance, including contractual liability insurance, product and completed operations, personal and advertising injury, and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000

each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form.

3. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage if automobiles are to be used in the delivery of or in the completion of services and work or driven onto the City's property. Insurance shall include all owned, non-owned, and hired vehicle liability.

4. Umbrella Insurance with limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in the amount of not less than \$2,000,000.

B. Other Insurance Provisions

The aforementioned insurance policies shall contain or be endorsed to contain, the following provisions:

1. A provision that coverage afforded under such policies shall not expire, be canceled, or altered without at least thirty (30) days' prior written notice to the City and the CID.

2. Commercial General Liability, Automobile Liability, and Umbrella Liability insurance policies shall include an appropriate endorsement making the City, the CID, and each of their boards, officials, directors, officers, employees, agents, and volunteers additional Insureds under such policies.

3. All of the insurance herein specified shall be written on a form acceptable to the City and the CID and shall be A.M. Best Company rated AX or greater.

A copy of these endorsements shall be provided to the City and the CID.

C. Certificates of Insurance

Certificates of insurance showing that such coverage is in force shall be provided by Contractor(s) to both the City and the CID.

**8.
NOTICES**

Any notices required under this Agreement shall be sent via certified mail, with an original by first class mail, and a copy via e-mail, to the following:

If to the City: City Manager

City of Dunwoody
With a copy to: City Attorney

If to the CID: Executive Director

Central Perimeter Community Improvement District
1100 Abernathy Road, N.E.
500 Northpark, Lobby Suite 15
Sandy Springs, Georgia 30328

With a copy to: Chairman

Central Perimeter Community Improvement District
1100 Abernathy Road, N.E.
500 Northpark, Lobby Suite 15
Sandy Springs, Georgia 30328

All notices sent to the above names and addresses shall be binding unless such name or address has been changed in writing and provided to the other Party.

**9.
BINDING AGREEMENT; ASSIGNMENT**

The City and the CID each bind itself and its successors, administrators, and assigns to the other Party to this Agreement and to the successors, administrators, and assigns of such other Party in respect to all covenants of this Agreement. Except as stated above, neither this Agreement nor the rights granted by it shall be assigned or transferred by either Party under any circumstances unless approved in advance in writing by the other Party. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in abrogation of this prohibition is void. Nothing herein shall be construed as creating any personal liability on the part of any elected officials, officers, directors, employees, or agents of the Parties, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the Parties to this Agreement.

**10.
LIMITATION OF LIABILITY**

Each Party's liability to the other Party arising out of or relating to this Agreement under any legal theory will be limited to direct damages. In no event will either Party be liable to the other Party for special, consequential, indirect, incidental, punitive, or exemplary damages, including, without limitation, lost profits, lost business, or lost opportunities, even if such Party has previously been advised of the possibility of such damages. The City of Dunwoody reserves all immunities under Georgia law.

11.
GOVERNING LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

12.
VENUE

This Agreement shall be deemed to have been made and performed in the City of Dunwoody, Georgia. For the purposes of venue, all suits or cause of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

13.
MODIFICATIONS; AMENDMENTS

This Agreement may not be amended or otherwise modified except by a writing signed by both Parties. More particularly, no amendment or modification of this Agreement shall be enforceable unless approved by action of the City Council and the CID Board of Directors.

14.
RELATIONSHIP

The Parties in the performance of this Agreement shall be acting in their own separate capacity and not as an agent, employee, partner, joint venture, or associate of the other. The officers, employees, agents, and representatives of each Party shall not be deemed or construed to be the officers, employees, agents, representatives, or partners of the other Party for any reason whatsoever.

15.
NON-DISCRIMINATION

During performance of this Agreement, neither Party shall discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status, or any other status or classification protected by applicable federal, state, and local laws. This practice shall apply to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

Each Party shall undertake equal employment opportunity efforts to ensure that applicants and employees are treated without regard to their race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status, or any other status or classification protected by applicable federal, state, and local laws. Each Party's equal employment opportunity efforts shall include, but not be limited to, all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensation, and training.

Each Party shall, in all solicitations or advertisements for employees placed by, or on behalf of, such Party, state that all qualified applicants will receive consideration for employment without

regard to their race, color, religion, sex, sexual orientation, gender, national origin, age, disability, or military or veteran status, or any other status or classification protected by applicable federal, state, and local laws.

Each Party shall cause the foregoing provisions to be inserted in all contracts and subcontracts for any work covered by the Agreement so that such provisions will be binding upon each Contractor(s) and subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

16.
ENTIRE AGREEMENT

This Agreement constitutes the sole agreement between the Parties for work and services to be performed on the Project. No representation, oral or written, not incorporated herein shall be binding on the Parties.

17.
AUTHORITY

Each Party warrants and represents that it is authorized to execute and enter into this Agreement.

18.
HEADINGS

The headings contained herein are for the convenience of the Parties only and shall not be interpreted to limit or affect in any way the meaning of the provisions contained in this Agreement.

19.
SEVERABILITY

If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of the Agreement shall continue to be valid and enforceable.

20.
WAIVER

No waiver by either Party of any term or provision of this Agreement or any default hereunder shall affect such Party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

21.
EFFECTIVE DATE

The effective date of this Agreement shall be the date first written above.

**22.
NO PRIVITY WITH OTHERS**

Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the CID and any person or entity other than the City.

**23.
COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the Parties. A signed copy of this Agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes. Each Party agrees that this Agreement may be electronically signed, and that any electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in four (4) counterparts, each to be considered as an original, by their authorized representatives, the day and date hereinabove written.

**CENTRAL PERIMETER COMMUNITY
IMPROVEMENT DISTRICT**

(SEAL)

By: _____
Name:

Title: Chairman

Date: _____

ATTEST:

Secretary

By:

By: _____
Name: Ann Hanlon

Title: Executive Director

Date: _____

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

CITY OF DUNWOODY

(SEAL)

By: _____

Date: _____

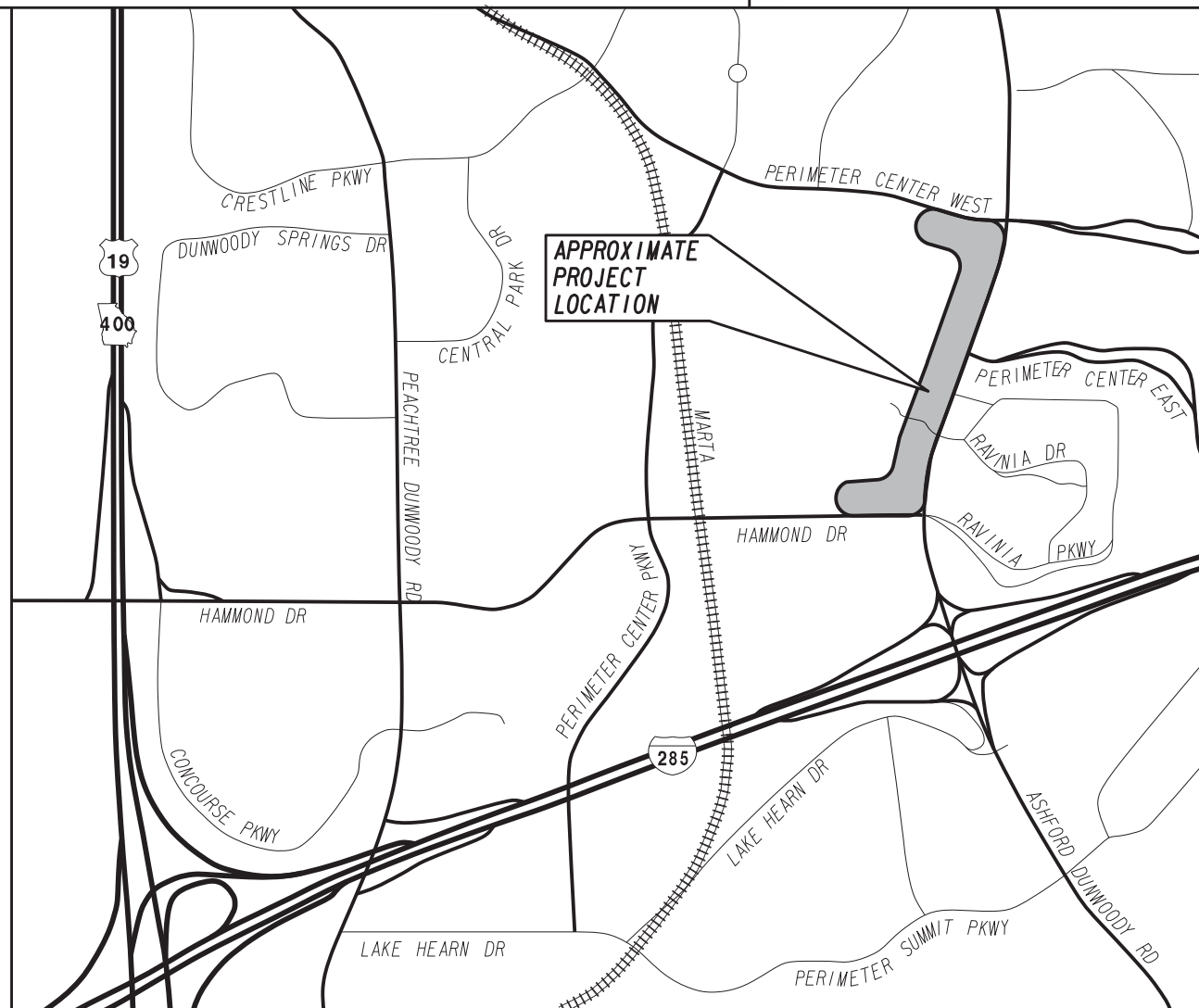
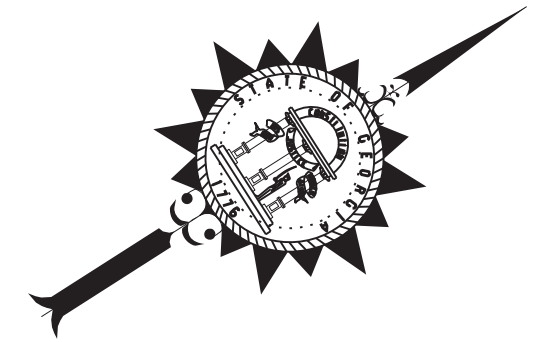
ATTEST:

City Attorney

EXHIBIT A

DEPARTMENT OF TRANSPORTATION CITY OF DUNWOODY DEPARTMENT OF PUBLIC WORKS

PLAN OF PROPOSED PERIMETER COMMUTER TRAIL: ASHFORD DUNWOODY RD FROM HAMMOND DR TO PERIMETER CENTER WEST



LOCATION SKETCH

DESIGN DATA:
 TRAFFIC A.D.T.: 51,038 (2019)
 TRAFFIC A.D.T.: 52,064 (2039)
 TRAFFIC D.H.V.: 1,736
 DIRECTIONAL DIST: 52%
 24 HR. TRUCKS %: 1.7%
 SPEED DESIGN (CYCLE TRACK): 18 MPH

LOCATION & DESIGN APPROVAL DATE: N/A
FUNCTIONAL CLASS:
 URBAN MINOR ARTERIAL
 THIS PROJECT IS 100% IN DEKALB COUNTY AND IS 100% IN CONG. DIST. NO. 6.
PROJECT DESIGNATION: EXEMPT

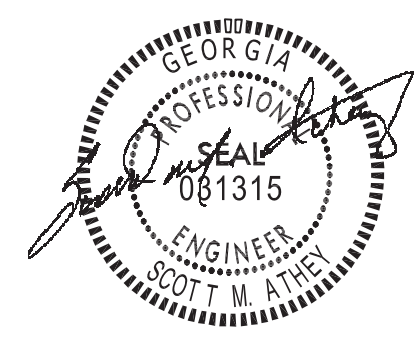
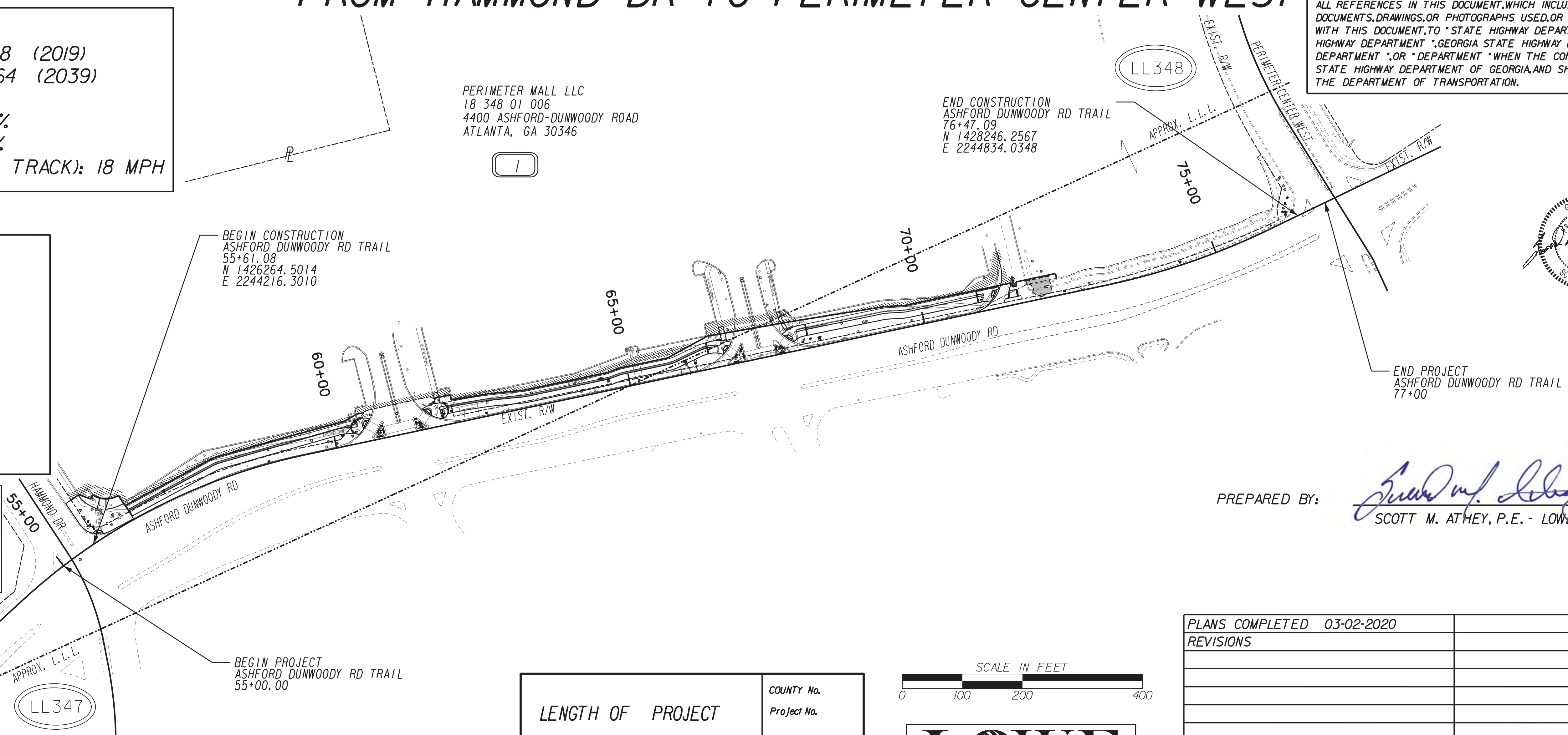
THIS PROJECT HAS BEEN PREPARED USING THE HORIZONTAL GEORGIA COORDINATE SYSTEM OF 1984 (NAD 1983/94 WEST ZONE, AND THE NORTH AMERICAN VERTICAL DATUM (NAVD) OF 1988.

THE DATA, TOGETHER WITH ALL OTHER INFORMATION SHOWN ON THESE PLANS OR IN ANYWAY INDICATED THEREBY, WHETHER BY DRAWINGS OR NOTES, OR IN ANY OTHER MANNER, ARE BASED UPON FIELD INVESTIGATIONS AND ARE BELIEVED TO BE INDICATIVE OF ACTUAL CONDITIONS. HOWEVER, THE SAME ARE SHOWN AS INFORMATION ONLY, ARE NOT GUARANTEED, AND DO NOT BIND THE DEPARTMENT OF TRANSPORTATION IN ANY WAY. THE ATTENTION OF BIDDER IS SPECIFICALLY DIRECTED TO SUBSECTIONS 102.04, 102.05, AND 104.03 OF THE SPECIFICATIONS.

PERIMETER MALL LLC
 18 348 01 006
 4400 ASHFORD-DUNWOODY ROAD
 ATLANTA, GA 30346

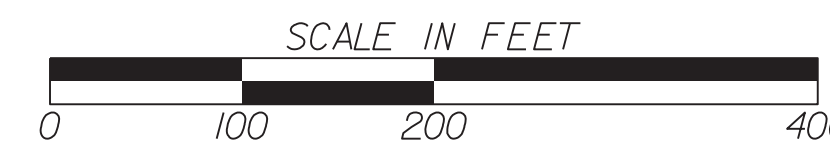
END CONSTRUCTION
 ASHFORD DUNWOODY RD TRAIL
 76+47.09
 N 1428246.2567
 E 2244834.0348

NOTE:
 ALL REFERENCES IN THIS DOCUMENT, WHICH INCLUDES ALL PAPERS, WRITINGS, DOCUMENTS, DRAWINGS, OR PHOTOGRAPHS USED, OR TO BE USED IN CONNECTION WITH THIS DOCUMENT, TO "STATE HIGHWAY DEPARTMENT OF GEORGIA," "STATE HIGHWAY DEPARTMENT," "GEORGIA STATE HIGHWAY DEPARTMENT," "HIGHWAY DEPARTMENT," OR "DEPARTMENT" WHEN THE CONTEXT THEREOF MEANS THE STATE HIGHWAY DEPARTMENT OF GEORGIA, AND SHALL BE DEEMED TO MEAN THE DEPARTMENT OF TRANSPORTATION.



PREPARED BY: *Scott M. Athey*
 SCOTT M. ATHEY, P.E. - LOWE ENGINEERS, L.L.C.

LENGTH OF PROJECT	COUNTY No.
	Project No.
	MILES
NET LENGTH OF ROADWAY	0.331
NET LENGTH OF BRIDGES	0.000
NET LENGTH OF PROJECT	0.331
NET LENGTH OF EXCEPTIONS	0.000
GROSS LENGTH OF PROJECT	0.331



PLANS COMPLETED	03-02-2020
REVISIONS	

DRAWING No.
01-0001

EXHIBIT B**CONTEMPLATED COST AND FUNDING FOR THE ENTIRE PROJECT**

	Line Item Description	CID	City of Dunwoody	Total Estimated Project Cost
1.	Right of Way and associated activities	\$377,311	\$110,770	\$488,081
2.	Construction activities	\$781,812	\$657,489	\$1,439,301
3.	Landscaping	\$72,250	\$72,250	\$144,500
	TOTAL	\$1,231,373	\$840,509	\$2,071,882

Right of Way and associated activities and Construction activities are to be managed by the City. Estimated amount to be reimbursed upon completion of these activities from the CID to the City is \$1,159,123.

Landscaping is to be managed by the CID. Estimated amount to be reimbursed upon completion of Landscaping from the City to the CID is \$72,250.