

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: May 11, 2015

Subject: **Approval of an Agreement with Doraville to Install a Mid-Block Crosswalk on Tilly Mill Road**

ITEM DESCRIPTION

Approval of an Intergovernmental Agreement (IGA) with the City of Doraville to install a mid-block crosswalk across Tilly Mill Road at Stonington Drive.

BACKGROUND

The City Council has previously expressed a desire to provide a pedestrian crossing on Tilly Mill Road in the vicinity of Binghamton Drive. Observations of pedestrian traffic between Andover Drive and Stonington Drive have documented the number of pedestrians walking along Tilly Mill Road and crossing Tilly Mill Road. The number of pedestrians observed walking along Tilly Mill Road over a 14-hour period ranged from 26 near Lost Mine Trail to 56 near Laurelwood Road. There were 13 crossings between Laurelwood Road and Stonington Drive with 10 of those crossings occurring at Stonington Drive. The highest number of crossings during a one hour period was 3 and most crossings appeared to coincide with the arrival of a MARTA bus.

Based on the observed pedestrian activity in the area, Stonington Drive was determined to be the most effective location for a crosswalk. Because Tilly Mill Road is wider at this location it is proposed to add a concrete island to narrow the crossing and supplement the standard crosswalk pavement marking with two rapid flashing beacons like those recently installed on North Peachtree Road at Chesnut Elementary School. The estimated cost for the installation is \$40,000.

Although the residences on the west side of Tilly Mill Road are in Dunwoody, the right of way is within the Doraville city limits. Therefore an intergovernmental agreement (IGA) is required in order for Dunwoody to install the crosswalk improvements. The original IGA stipulated that Dunwoody would install and maintain the crosswalk in exchange for use of Doraville's police canine unit, which is already provided to Dunwoody on an as needed basis. After lengthy negotiations on the language of the IGA, it has become evident that Doraville is agreeable to continue offering canine assistance to Dunwoody but does not want to formalize this arrangement through adoption of an IGA. The attached IGA contains the language that is agreeable to Doraville.

At its April 27th meeting the city council expressed a desire to approve the IGA and to include funding for the crosswalk in a future budget amendment.

**INTERGOVERNMENTAL AGREEMENT
FOR CONSTRUCTION OF CROSSWALK
between
THE CITY OF DORAVILLE, GEORGIA AND
THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is entered into by and between the City of Doraville, Georgia (“Doraville”) and the City of Dunwoody, Georgia (“Dunwoody”).

WHEREAS, the cities of Doraville and Dunwoody are dutifully constituted municipalities with adjoining borders on several sides of their geographical boundaries; and

WHEREAS, the Cities of Dunwoody and Doraville mutually desire to construct a crosswalk on Tilly Mill Road at its intersection with Stonington Road, which is on the border between the cities but which crosswalk would be constructed inside the geographical boundaries of Doraville and would serve the public needs of the citizens of both Dunwoody and Doraville; and

WHEREAS, Dunwoody desires to construct said crosswalk inside the borders of Doraville; and

WHEREAS, Article IX, Section III, Paragraph 1(a) of the Georgia Constitution authorizes, among other things, any municipality to contract, for a period not exceeding fifty years, with another municipality for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the cities of Dunwoody and Doraville are authorized to enter into this Intergovernmental Agreement by the Constitution of the State of Georgia.

NOW THEREFORE, in consideration of the following mutual obligations, Doraville and Dunwoody agree as follows:

ARTICLE I - OBLIGATIONS of DUNWOODY

1.1 Dunwoody shall, through its Public Works Department, construct a crosswalk project at the intersection of Tilly Mill Road and Stonington Road, which road right-of-way belongs to Doraville, substantially in accordance with specifications for said crosswalk as attached hereto and incorporated herein as **Exhibit A** and as described in Paragraph 1.2 below (the “Crosswalk Project”). The cities acknowledge that the cost of said construction is estimated to be between \$30,000 and \$35,000, for which Dunwoody will be solely responsible.

1.2 The general scope of work for the Crosswalk Project will be installation of a concrete sidewalk, rapid flashing beacons, ADA-compliant curb ramps and crosswalk pavement marking. The Crosswalk Project shall be completed on or before _____, 201__.

1.3 Throughout the term of this Agreement, Dunwoody shall be responsible for the maintenance of the Crosswalk Project, unless otherwise agreed to by Doraville and Dunwoody in writing, which maintenance will include annually refreshing the crosswalk pavement marking.

ARTICLE II – OBLIGATIONS OF DORAVILLE

2.1 Doraville shall waive any and all permit fees, land disturbance fees, and other fees that otherwise might be charged by Doraville associated with the construction of the Crosswalk Project.

ARTICLE III – TERM OF AGREEMENT

3.1 The initial term of this Agreement is for a period of two (2) years, commencing _____, 201_ at 0000 hours and concluding at 2400 hours on _____, 201_. At the end of any term of this Agreement, the term of this Agreement shall automatically renew for an additional term of two (2) years unless sooner terminated by either party as provided below. Notwithstanding any provision of this Agreement to the contrary, the maximum term of this Agreement (inclusive of the initial term and all renewal terms) shall be fifty (50) years, concluding at 2400 hours on _____, 206_. This Agreement may be terminated by either party, but effective only after the initial two (2) year term, by giving 30 days' written notice to the other party of its intent to terminate this Agreement. Beginning on the date of termination of this Agreement and continuing thereafter, Doraville shall have the responsibility to maintain the Crosswalk Project, including the pavement markings.

ARTICLE IV – INDEPENDENT PERSONNEL

4.1 It is the intent of this Agreement that the personnel of Dunwoody Public Works Department, or its contracted vendors, providing services to Doraville pursuant to this Agreement continue to be full employees or contractors of Dunwoody and shall not be considered employees or agents of Doraville for the purposes of any liability and/or salary and benefits for any period of time of construction or maintenance of the Crosswalk Project that is the subject of this Agreement.

ARTICLE V - NOTICES

5.1 All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notices. Notices shall be addressed to the parties at the following addresses:

If to Doraville:

Donna Pittman, Mayor
3725 Park Avenue
Doraville, Georgia 30040
404-451-8745, Office number
Facsimile number: _____

With a copy to:

City Attorney
3725 Park Avenue
Doraville, Georgia 30040

If to Dunwoody:

City of Dunwoody, Attn: City Manager
 41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30360
 Office number: 678-382-6700
 Facsimile number: _____

With a copy to:

City Attorney
 41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30360

ARTICLE VI - ASSIGNMENT

6.1 Neither party shall assign any of the obligations or benefits of this Agreement.

ARTICLE VII – INDEMNIFICATION

7.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. To the extent permitted by law, and only to the extent permitted by law, Dunwoody shall defend, indemnify and hold harmless Doraville and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which Doraville 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 Dunwoody, its employees, officers and agents. Doraville shall promptly notify Dunwoody of each claim, cooperate with Dunwoody in the defense and resolution of each claim and not settle or otherwise dispose of the claim without Dunwoody's participation.

7.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. To the extent permitted by law, and only to the extent permitted by law, Doraville shall defend, indemnify and hold harmless Dunwoody and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which 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 Doraville, its employees, officers, and agents. Dunwoody shall promptly notify Doraville of each claim, cooperate with Doraville in the defense and resolution of each claim and not settle or otherwise dispose of the claim without Doraville's participation.

ARTICLE VIII – MISCELLANEOUS PROVISIONS

8.1 The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of this Agreement. This Agreement supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon Doraville or Dunwoody. All parties must sign any amendments to this Agreement.

8.2 If a court of competent jurisdiction renders any provision of this Agreement (or 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 of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

8.3 This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

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

8.5 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.

IN WITNESS WHEREOF, Doraville and Dunwoody have executed this Agreement through their duly authorized officers.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

CITY OF DORAVILLE, GEORGIA

By: _____ (SEAL)

Donna Pittman
Mayor

Municipal Clerk

APPROVED AS TO FORM:

Cecil G. McLendon, Jr.
City Attorney

SIGNATURES CONTINUE ON THE FOLLOWING PAGE

CITY OF DUNWOODY, GEORGIA

By: _____(SEAL)
Michael G. Davis
Mayor

Municipal Clerk

APPROVED AS TO FORM:

City Attorney

