

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: February 27, 2017

Subject: **Approval of an Intergovernmental Agreement with DeKalb County for Infrastructure Projects**

ITEM DESCRIPTION

Approval of an Intergovernmental Agreement (IGA) with DeKalb County to allow for concurrent contracting and joint management of county water and sewer projects and city infrastructure projects.

BACKGROUND

In 2014 the city and county entered into an IGA to allow the city to include water line replacement in its construction contracts for three transportation projects with the county providing funding and oversight for the water line portion of the project. There are now additional projects where the city and county would benefit from coordinating efforts to further improve the infrastructure of both entities. Consequently a new IGA has been developed with terms very similar to the original IGA but with the added flexibility that it can be applied to any infrastructure project. The new IGA also adds the ability for the city to contract for water and sewer design with county approval and reimbursement.

RECOMMENDED ACTION

Staff recommends adopting the resolution that authorizes an intergovernmental agreement between the City of Dunwoody and DeKalb County for coordination of infrastructure projects.

A RESOLUTION TO APPROVE AND AUTHORIZE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DUNWOODY AND DEKALB COUNTY FOR INFRASTRUCTURE PROJECTS

WHEREAS, the Mayor and City Council are the governing authority of the City of Dunwoody and are charged with the protection of the health, safety and welfare of the citizens of Dunwoody; and

WHEREAS, the County provides water treatment and distribution and wastewater collection and treatment services to residents of Dunwoody, and owns the corresponding water distribution mains and lines and the wastewater collection mains and lines within the geographical boundaries of the City; and

WHEREAS, the County and City desire to work cooperatively to effectuate water and wastewater infrastructure improvement projects by the County to coincide with the City's intent to make improvements to the City's road network; and

WHEREAS, the City and County desire to enter into an Intergovernmental Agreement, as attached hereto and incorporated herein by reference, to allow the concurrent bidding and award of project and joint management of projects per the terms of the Intergovernmental Agreement in order to accomplish the desired mutual goals; and

WHEREAS, the attached Intergovernmental Agreement has been reviewed by the City Attorney.

NOW THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Dunwoody and it is resolved by the authority of said City Council, that by passage of this Resolution the City of Dunwoody Mayor and City Council authorize an Intergovernmental Agreement (IGA) with DeKalb County, as attached hereto and incorporated herein, for Infrastructure Projects. The Mayor and Council direct the City Manager to send a certified copy of this Resolution to DeKalb County.

SO RESOLVED AND EFFECTIVE, this ___ day of _____, 2017.

Approved:

Denis L. Shortal, Mayor

Attest:

Sharon Lowery, City Clerk (Seal)

**INTERGOVERNMENTAL AGREEMENT (IGA)
FOR COUNTY AND CITY INFRASTRUCTURE PROJECTS BETWEEN
DEKALB COUNTY, GEORGIA AND
THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia ("County") and the City of Dunwoody, Georgia ("City").

WHEREAS, the County provides water treatment and distribution and wastewater collection and treatment services to residents of Dunwoody, and owns the corresponding water distribution mains and lines and the wastewater collection mains and lines within the geographical boundaries of the City; and

WHEREAS, the County and City desire to work cooperatively to effectuate water and wastewater infrastructure improvement projects by the County to coincide with the City's intent to make improvements to the City's road network; and

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement to allow the concurrent bidding and award of projects and joint management of projects per the terms of this Intergovernmental Agreement in order to accomplish the desired mutual goals; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and the City agree as follows:

Section 1. The City will coordinate planned road improvement and pavement resurfacing projects with the DeKalb County Department of Watershed Management (DWM)'s plans for upgrades or replacement of certain water distribution and/or wastewater collection mains inside the boundaries of the City of Dunwoody. In instances where the City and County's priorities and project timing coincide, the County shall, with the approval of the Governing Authority, provide funding for the design, construction management and construction of the water distribution and/or wastewater collection mains.

Section 2. Upon completion of the water distribution and/or wastewater collection main replacements, rehabilitations or extensions detailed in Section 1, the City of Dunwoody will immediately mill and resurface with asphalt along the corresponding roadways where the infrastructure replacement has been accomplished.

Section 3. The City and County agree that the City shall be responsible for construction bidding for said joint projects. Prior to any bid document being released, City and County DWM shall coordinate on creating a Scope of Work for the project, with each party creating the Scope of Work for the portion of the project for which it would be financially responsible. The bids shall be put together by the City and shall provide details including oversight and cost, and include this Intergovernmental Agreement as an exhibit and require contractor's additional adherence to all applicable provisions herein. The Department of Watershed Management shall approve the technical specifications and Scope of Work within the bid documents prior to the City's publication and release of the bid. The City will, in accordance with the requirements of all applicable Federal, State, and local laws and both the County and City's Purchasing Policies and/or ordinances, award the winning bid and enter into a Contract with the winning bidder for the performance of the work, that will include adherence to the applicable terms of this IGA. However, prior to entering a contract, the County shall provide the City

with written authorization to accept the winning bid or in the alternative, at the County's sole discretion, it may reject all the bids. The County Board of Commissioners shall approve the award of the contract to the successful bidder.

Section 4. For some City transportation improvement projects involving the redesign of the existing roadway it may be advantageous to the City and County for the engineer under contract with the City to also provide the design for improvements to the water distribution and/or wastewater collection systems. In these instances, the County shall, with the approval of the Governing Authority, if required, provide funding for design of the water distribution or wastewater collection system improvements. The County shall approve the Scope of Work and funding prior to issuance of a contract and shall review and approve the water or wastewater system design plans prior to bidding.

Section 5. The bid, and resulting contract, executed between the City and the winning bidder, shall provide for the project as follows:

The bid shall provide for construction of the water distribution main or wastewater collection main replacement, rehabilitation or extension as described above. The County shall pay the cost of design and construction of the water distribution and/or wastewater main replacement portion of the project and shall bear the full oversight responsibility for this portion of the project. Said County responsibility shall be clearly delineated and stated in the bid, shall include the authority to issue a stop work order, at its sole discretion, and the County shall perform said responsibilities on behalf of the City. The bid shall require that the contractor itemize the City and County costs separately and the County shall, upon completion of the work, pay to the City the portion of the cost of the project itemized as design and construction or replacement of the water/wastewater infrastructure.

The City shall pay the cost of road improvements and resurfacing and will bear the full oversight responsibility for said portion of the project.

Section 6. The term of this Agreement shall begin upon execution of this IGA and shall continue for one year, with an annual automatic renewal, for a total period not to exceed twenty years. This Agreement may be terminated by either party with at least thirty (30) days written notice to the other party. Such termination shall not affect already procured and approved joint projects.

Section 7. All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. All notices sent to the addresses listed below shall be binding unless said address is changed in writing no less than fourteen (14) days before such notice is sent. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Executive Assistant
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030
 (404) 371-4751, Facsimile Number

With a copy to: County Attorney
 1300 Commerce Drive, 5th Floor
 Decatur, Georgia 30030

(404) 371-3024, Facsimile Number

If to the City: City Manager
 City of Dunwoody
 41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346
 (678) 382-6701, Facsimile Number

With a copy to: City Attorney
 City of Dunwoody
 41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346
 (678) 382-6701, Facsimile Number

Section 8. This Agreement may be extended beyond the term delineated herein by mutual written consent of both parties so long as such extension is approved by official action of the City Council and approved by official action of the County governing authority, as indicated in Section 10 below.

Section 9. Neither party shall assign any of the obligations or benefits of this Agreement.

Section 10. This Agreement constitutes the sole contract between the City and the County. The terms, conditions, and requirements of this Agreement may not be modified, except by Amendment. No verbal agreement or conversation with any officer, agent, or employee of either the County or the City, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained. No representations, oral or written, shall be binding on the parties unless expressly incorporated herein. No Amendment shall be enforceable unless approved by official action of the City and County as provided by law or in this Agreement.

Section 11. 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. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Agreement shall survive and be applied, and any invalid or unenforceable portion shall be construed or reformed to preserve as such of the original words, terms, purpose and intent as shall be permitted by law.

Section 12. This Agreement shall inure to the benefit of, and be binding upon the respective parties' successors.

#10.

Section 13. 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, DeKalb County and the City of Dunwoody have executed this Agreement through their duly authorized officers.

DEKALB COUNTY, GEORGIA

By: _____
Michael Thurmond
Chief Executive Officer DeKalb County, Georgia

(SEAL)

ATTEST:

BARBARA H. SANDERS, CCC
Clerk to the Board of Commissioners and Chief
Executive Officer
DeKalb County, Georgia

APPROVED AS TO FORM:

Viviane H. Ernstes Deputy
County Attorney DeKalb
County, Georgia

APPROVED AS TO SUBSTANCE:

Scott A. Towler
Director of Watershed Management

[SIGNATURES CONTINUED ON THE NEXT PAGE]

CITY OF DUNWOODY, GEORGIA

Denis L. Shortal, Mayor

ATTEST:

Sharon Lowry
City Clerk
City of Dunwoody, Georgia

APPROVED AS TO FORM:

Leonid Felgin
Assistant City Attorney
City of Dunwoody