



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: April 29, 2024

Subject: **Approval of an Intergovernmental Agreement with the City of Peachtree Corners for Phase II of the Winters Chapel Path Project**

ACTION

Authorize the Mayor, City Manager, or designee to execute an intergovernmental agreement with the City of Peachtree Corners for Phase II of the Winters Chapel Path Project.

SUMMARY

Phase Two of the Winters Chapel Path Project extends between Charmant Place and Peeler Road with about 30% of the project crossing into Peachtree Corners before reentering Dunwoody near Peeler Road. Since most of the project is within its border, Dunwoody has taken the project lead and is the project sponsor from a federal funding perspective. The enclosed Intergovernmental Agreement (IGA) has been developed to formalize the two cities' participation in the project development and cost.

Generally, the IGA states that Dunwoody will be responsible for project oversight and the design costs. Each city will be responsible for all right-of-way and easement costs for parcels within its city limits. Construction cost will be prorated based on the length of the project within each city with Dunwoody paying 70% and Peachtree Corners paying 30% after any federal funds are deducted from the construction cost. Each city will be responsible for maintenance of the portion of the project within its city boundary after construction is completed.

DETAILS

The Winters Chapel Path project was first identified in the Winters Chapel Road Area Study adopted by Dunwoody and Peachtree Corners in 2015. The project is also identified in the Dunwoody Trail Master Plan as P17. In 2023, Dunwoody completed Phase I of the path on the west side of Winters Chapel between Dunwoody Club Drive and Charmant Place. Phase II will continue the path on the west side of the road southward from Charmant Place into Peachtree Corners and then back into Dunwoody ending at Peeler Road. The design phase of the project will follow the federal requirements for plan development with construction projected for 2028.

RECOMMENDED ACTION

Authorize the Mayor, City Manager, or designee to execute an intergovernmental agreement with the City of Peachtree Corners for Phase Two of the Winters Chapel Path Project.

INTERGOVERNMENTAL AGREEMENT
 BY AND AMONG THE CITIES OF
 DUNWOODY, GEORGIA AND
 PEACHTREE CORNERS, GEORGIA
 TO CONSTRUCT A SHARED USE PATH ON WINTERS CHAPEL ROAD
 BETWEEN CHARMANT PLACE AND PEELER ROAD

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 _____, 2024.

WHEREAS, the Winters Chapel Road Area Study, adopted by the Participating Cities in 2015, recommends a shared-use path on the west side of Winters Chapel Road between Spalding Drive and Peeler Road; and

WHEREAS, Dunwoody completed the first segment of the path between Dunwoody Club Drive and Charmant Place in 2023; and

WHEREAS, the proposed path segment between Charmant Place and Peeler Road (referred to herein as Winters Chapel Path Phase 2) begins in Dunwoody for 1,500 feet before entering Peachtree Corners for 800 feet and then reentering Dunwoody for 350 feet near Peeler Road; and

WHEREAS, Dunwoody, with support from Peachtree Corners, applied for and received \$1,500,000 in the regional Transportation Improvement Program (TIP) to construct Phase 2 of the Winters Chapel Path; 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 desire 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 to join resources and efforts to complete Winters Chapel Path Phase 2 between Charmant Place and Peeler Road (the Project).

ARTICLE 2

WORK

The Participating Cities hereby acknowledge and agree that the Project shall be divided into three 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 Participating Cities acquire right-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.

ARTICLE 3

SPONSOR

Dunwoody shall be the contracting agency (Sponsor) and shall be responsible for coordination with consultants, contractors, and the Georgia Department of Transportation as the subrecipient of federal funds for the project. Representatives from both participating cities shall be included on all project correspondence related to the work.

ARTICLE 4

RESPONSABILITIES AND FUNDING

- (a) Prior to the commencement of each Project phase, the Participating Cities shall establish a mutually agreed upon Project budget that shall itemize and set forth the financial commitment of each city. Throughout the course of the Project, if a situation arises that will cause the established budget to be exceeded, Project work shall not proceed without the Participating Cities' mutual written agreement.
- (b) Dunwoody shall pay all costs related to the Preliminary Engineering phase. For Project work to be performed within Peachtree Corners' corporate limits, Dunwoody shall submit plans to Peachtree Corners for review. Project plans will be prepared under the guidance of the appropriate design professional and in accordance with applicable AASHTO and GDOT design policies unless otherwise mutually agreed.

- (c) Costs for the Right-of-Way Acquisition phase shall be based on the location of the right-of-way to be acquired. Dunwoody shall be responsible for all costs related to right-of-way acquisitions within its corporate limits and Peachtree Corners shall be responsible for all costs related to right-of-way acquisitions within its corporate limits. For clarity, each city shall provide its own legal support for acquisitions within its boundary.
- (d) Costs for the Construction phase, including construction management, quality control testing, and utility related costs shall be prorated based on the Project length within each city. The total construction costs will be reduced by the \$1,500,000 regional TIP contribution and the remaining costs (the "Reduced Project Costs") shall be paid 70% by Dunwoody and 30% by Peachtree Corners.
- (e) After the Project work commences within Peachtree Corners' corporate limits, Dunwoody shall invoice Peachtree Corners for 30% of the Reduced Project Costs. The invoice shall include sufficient information and/or backup documentation to ensure the invoiced amount conforms with the mutually agreed upon Project budget. Peachtree Corners shall pay Dunwoody the invoiced amount within thirty (30) days of receipt.
- (f) Dunwoody shall have Peachtree Corners added as an additional insured to all liability policies it requires or obtains related to the Project and shall ensure that its agents, contractors, and consultants shall maintain adequate insurance and will be sufficiently bonded for the duration of the Project.
- (g) Neither city shall be required to indemnify or hold harmless the other city and each city agrees to assume and defend itself individually at its own cost against any suit, action or other legal proceeding arising out of this Project.
- (h) Following completion and acceptance of the Project, Dunwoody shall be responsible for the maintenance and repair of Project improvements within its corporate limits and Peachtree Corners shall be responsible for the maintenance and repair of Project improvements within its corporate limits. If the Participating Cities later wish to further specify respective maintenance responsibilities, they will do so under separate and written Mowing and Maintenance Agreement.

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.

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. The adjudication process set forth herein shall not bar any Participating City to elect any other remedy allowed by law.

ARTICLE 11

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 12

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 DeKalb County Superior Court.

ARTICLE 13

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: Kenneth R. Bernard, Jr., 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 a Copy to: David. E. Rhodes, City Attorney
310 Technology Parkway
Peachtree Corners, Georgia 30092

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

ATTEST:

Lynn P. Deutsch, Mayor

City Clerk

Approved as to form:

(SEAL)

Kenneth R. Bernard, Jr., City Attorney

Eric Linton, City Manager

CITY OF PEACHTREE CORNERS, GEORGIA

ATTEST:

Mike Mason, Mayor

City Clerk

Approved as to form:

(SEAL)

David E. Rhodes, City Attorney

Brian Johnson, City Manager