



DATE: *October 3, 2019*
TO: Mayor and City Council
FROM: *[Signature]* Assistant City Manager
SUBJECT: Memorandum of Understanding
Georgia Department of Transportation
Sugar Hill Greenway

RECOMMENDED ACTION

Approve and authorize the Mayor to sign the Memorandum of Understanding with the Georgia Department of Transportation for the construction, operation and maintenance of the Sugar Hill Greenway on state rights-of-way, subject to final legal review.

Georgia Department of Transportation (GDOT), during the review of the request to permit the construction and operation of the greenway trail on the old outer perimeter right-of-way (ROW), is requiring a separate Memorandum of Understanding (MOU) to proceed with the review and approval of the permit. The attached document details the required conditions under which the state will allow the city to use the ROW for the purpose of this project.

Attachment
Easement
Exhibit

**Memorandum of Understanding
Between
Georgia Department of Transportation
And
City of Sugar Hill**

This Memorandum of Understanding (“MOU”) is entered into this ____ day of _____, 2019 (“Effective Date”), by and between the Georgia Department of Transportation (“GDOT”) and the City of Sugar Hill (“CITY”) (GDOT and CITY are sometimes referred to herein individually as a “Party”, and collectively as the “Parties”).

WHEREAS, the CITY desires to design, construct, operate and maintain a Greenway on GDOT Right-of-Way located between Whitehead Road and Peachtree Industrial Boulevard in Gwinnett County, Georgia, as more particularly describe herein (“ENCROACHMENT AREA”); and

WHEREAS, GDOT has agreed to allow the CITY the limited use of its property for the purposes of designing, constructing, operating and maintaining a temporary Greenway located on the ENCROACHMENT AREA (“PROJECT”) subject to the terms and conditions of the Special Encroachment Permit to be issued by GDOT and subject to the terms and conditions set forth in this MOU.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties hereby agree to the following Agreement:

1. ENCROACHMENT AREA

- 1.1 The ENCROACHMENT AREA consists of the parcel land shown in Exhibit A and is incorporated as if fully set forth herein.
- 1.2 Any area not owed by GDOT which the CITY intends to use as part of the design, construction, operation or maintenance of the PROJECT is not made the subject of this MOU or the Special Encroachment Permit and is not included in the definition of ENCROACHMENT AREA.
- 1.3 All uses by the CITY of the ENCROACHMENT AREA are subject to the terms and conditions set forth below in Section 3, PERMITTED USE OF ENCROACHMENT AREA and the Special Encroachment Permit to be issued by GDOT.

2. RESPONSIBILITIES OF THE PARTIES

- 2.1 The design, construction, operation and maintenance of the PROJECT are entirely the responsibility of the CITY and will be done so at its sole cost and expense.
- 2.2 The CITY is responsible for the coordination and preparation of any required preliminary engineering activities, including environmental analysis and documents, and engineering design in compliance with federal and state regulations. The CITY is responsible for construction bidding administration and will oversee construction of the PROJECT. The City will ensure that its agents, contractors and consultants maintain adequate insurance and are sufficiently bonded.

- 2.3 Upon issuance of the Special Encroachment Permit, the CITY will be responsible for all maintenance and landscaping of the ENCROACHMENT AREA associated with the PROJECT at its sole cost and expense and will be responsible for all maintenance of permitted uses as set forth below in Section 3, PERMITTED USE OF ENCROACHMENT AREA, at its sole costs and expense. The Parties will also enter into a Mowing and Maintenance Agreement to further specify the maintenance responsibilities of the Party.
- 2.4 GDOT shall maintain all rights of access, operations and use to the ENCROACHMENT AREA. At all times, the CITY shall take all necessary steps to not interfere with GDOT operations and use of the ENCROACHMENT AREA or any of materials, supplies, equipment or buildings currently located on the ENCROACHMENT AREA or which may be placed on the ENCROACHMENT AREA at a later date.
- 2.5 At all times, the CITY shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to, employees performing its work and other persons, including without limitation the general public, who may be affected thereby. Except in the instance where GDOT deems there to be a public safety hazard or an immediate harm to the roadway facilities or other GDOT property, GDOT will notify and direct the CITY in writing to correct any failure(s) to comply with the responsibilities contained in this MOU or in the Special Encroachment Permit. If, within five (5) days after such notice, the CITY does not correct such failure(s) to comply with this MOU or the Special Encroachment Permit, GDOT may terminate this MOU and/or the Special Encroachment Permit. In the instance where GDOT deems there to be a public safety hazard or an immediate harm to the roadway facilities or other GDOT property, GDOT may in its sole discretion automatically terminate this MOU and the Special Encroachment Permit.

3. PERMITTED USE OF ENCROACHMENT AREA

- 3.1 Only those limited uses listed herein will be permitted on the ENCROACHMENT AREA. Any activities or improvements not listed herein are strictly prohibited and may result at the sole discretion of GDOT in the automatic termination of this MOU and the Special Encroachment.
- 3.2 At any time during the term of this MOU and the Special Permit, GDOT may determine that a use that was once permitted is no longer permitted, and may thereafter order by written notice that the CITY immediately stop the non-permitted activity.
- 3.3 The following activities/improvements are permitted:
- Benches
 - Trash Receptacles
 - Wayfinding Signage
 - 911 Call Boxes
 - Dog Curbing Stations
 - Natural Areas
 - Sidewalks
 - Outdoor Seating Areas

- Bike Racks
- Multiuse Trail

4. ENCROACHMENT EXPIRATION

4.1 The proposed PROJECT is subject to the execution of a Special Encroachment Permit between GDOT and the CITY. The allowance of design, construction, operation or maintenance of the Greenway in the ENCROACHMENT AREA is temporary. Because the Greenway is a temporary recreational use of land that will cease once completion of the highway or transportation project resumes, including but not limited to the widening Whitehead Road and Peachtree Industrial Parkway or other roads or other transportation uses, it is not protected under the provision of Section 4(f), [4(f) of the Department of Transportation Act of 1966 and now codified in 49 U.S.C. §303 and 23 U.S.C. §138]. Should GDOT widen Whitehead Road or Peachtree Industrial Boulevard or other roads or require removal of the trail for any other purpose, GDOT will not be responsible for replacing the Greenway.

4.2 Additionally, GDOT will allow the Greenway within its Right-of-Way for a time period of twenty (20) years, or until the Right-of-Way is required for GDOT purposes, whichever comes first. If Greenway removal is required, GDOT will provide the CITY a minimum of One Hundred Twenty (120) days notice. At that time, it will be the responsibility of the CITY to close the Greenway to the public with barricades at the entrance(s) and install orange barrier fence(s) between the Greenway and public roads. If Greenway removal is not required within twenty (20) years of construction, this MOU and the Special Encroachment Permit will be considered expired. At that time, a new permit application from the CITY to GDOT will be required to maintain the Greenway access on the ENCROACHMENT AREA as well as a new memorandum of understanding between the parties.

5. TERM

5.1 This MOU shall become effective upon the Effective Date and shall continue in effect until the proposed Greenway is permanently removed, or twenty (20) years from construction of the trail, whichever comes first.

6. MISCELLANEOUS

6.1 Assignment. Except as herein provided, the Parties hereto will not transfer or assign all or any of their rights, titles or interests hereunder or delegate any of their duties or obligations hereunder without the prior written consent of the other Party, which consent will not be unreasonably withheld.

6.2 Non-Waiver. No failure of either Party to exercise any right or power given to such Party under this Agreement, or to insist upon strict compliance by the other Party with the provisions of this Agreement, and no custom or practice of either Party at variance with the terms and conditions of this Agreement, will constitute a waiver of either Party's right to demand exact and strict compliance by the other Party with the terms and conditions of this Agreement.

6.3 Continuity. Each of the provisions of this Agreement will be binding upon and inure to the benefit and detriment of the Parties and the successors and assigns of each Party.

- 6.4 Time of the Essence. All time limits stated herein are of the essence of this Agreement.
- 6.5 Preamble, Recitals and Exhibits. The Preamble, Recitals and Exhibits hereto are a part of this Agreement and are incorporated herein by reference.
- 6.6 Severability. If any one or more of the provisions contained herein are for any reason held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 6.7 Captions. The brief headings or titles preceding each provision hereof are for purposes of identification and convenience only and should be completely disregarded in construing this Agreement.
- 6.8 Georgia Agreement. This Agreement will be governed, construed under, performed and enforced in accordance with the laws of the State of Georgia. Any dispute arising from this contractual relationship shall be governed by the laws of the State of Georgia, and shall be decided solely and exclusively by the Superior Court of Fulton County, Georgia to the extent that such venue is permitted by law.
- 6.9 Counterparts. This Agreement is executed in two (2) counterparts which are separately numbered but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.
- 6.10 Interpretation. 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.
- 6.11 Execution. Each of the individuals executing this Agreement represents that they are authorized to execute this Agreement on behalf of their respective entities.
- 6.12 No Third Party Beneficiaries. Nothing contained herein shall be construed as conferring upon or giving to any person, other than the Parties hereto, any rights or benefits under or by reason of this Agreement.
- 6.13 Entire Agreement. This Agreement supersedes all prior negotiations, discussion, statements and agreements between the Parties and constitutes the full, complete and entire agreement between the Parties with respect hereto; no member, officer, employee or agent of either Party has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement will be binding on either Party hereto unless such modification or amendment will be properly authorized,

in writing, properly signed by both Parties and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, said Parties have hereunto set their hands and affixed their seals this _____ day of _____, 2019.

GEORGIA DEPARTMENT OF TRANSPORTATION	CITY OF SUGAR HILL
By: _____ (Seal) Russell R. McMurry, P.E. Commissioner	By: _____ (Seal) MAYOR STEVE EDWARDS
	Signed, sealed and delivered This ____ day of _____, 2019, in the presence of:
Attest:	_____
_____	Witness
Angela O. Whitworth Treasurer	_____
	Notary Public
	ATTEST:

	Municipal Clerk
	APPROVED AS TO FORM:

	City Attorney
	FEIN
	:

