



GENERAL STAFF MEMO

TO: Honorable Mayor and City Council Members
FROM: Sara Leaders, PE, Public Works Director
DATE: Submitted on December 23, 2024, for the January 6, 2025, Regular City Council Meeting

AGENDA ITEM: Approval of an Intergovernmental Agreement between the City of Roswell and the City of Milton Regarding a Cross-Jurisdictional Road Improvement Project for Ebenezer Road Resurfacing.

Executive Summary:

Ebenezer Road runs along the southwestern side of the City of Milton and crosses the city limit boundary with the City of Roswell multiple times. The total length of Ebenezer Road within City of Milton right-of-way that will be resurfaced is approximately 1,065 feet.

The City of Roswell is competitively procuring the services of a paving contractor to repave various city streets and has offered to direct their contractor to repave the sections of Ebenezer Road that are within City of Milton right-of-way, in exchange for the City of Milton's compensation for the additional cost of this work. Staff recommends approval based upon the benefit provided to the overall travelling public in completing the resurfacing work all at once.

Funding and Fiscal Impact:

The Intergovernmental Agreement provides for City of Milton to fund the portion of roadway resurfacing work on Ebenezer Road outside of the City of Roswell. The estimated cost of the work is \$160,000. Due to compensation under Roswell's resurfacing contract being made on a unit-price basis, Roswell will invoice Milton based on the actual number of units provided not to exceed \$160,000.

Legal Review:

Jeff Strickland – Jarrard & Davis, December 9, 2024

Concurrent Review:

Steven Krokoff, City Manager

Attachment(s):

Intergovernmental Agreement

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**STATE OF GEORGIA
COUNTY OF FULTON**

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
ROSWELL AND THE CITY OF MILTON REGARDING A
CROSS-JURISDICTIONAL ROAD IMPROVEMENT PROJECT**

(Ebenezer Road)

THIS AGREEMENT, effective as of _____, 20____, is by and between the CITY OF ROSWELL, a Georgia municipal corporation (“Roswell”), and the CITY OF MILTON, a Georgia municipal corporation (“Milton”). Individually, Roswell and Milton may be referred to herein as a “Party,” and, collectively, as the “Parties.”

WHEREAS, pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, the Roswell and the Milton are authorized to contract with each other for a period not exceeding 50 years for the provision of services, or for the joint or separate use of facilities or equipment, so long as such contracts deal with activities, services, or facilities which both Roswell and Milton are authorized by law to undertake or provide; and

WHEREAS, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, Roswell and Milton are authorized, jointly and severally, to exercise powers and provide services related to street and road construction maintenance, including curbs, sidewalks, street lights, and devices to control the flow of traffic on streets and roads constructed by counties and municipalities or any combination thereof; and

WHEREAS, pursuant to Article IX, Section II, Paragraph III of the Constitution of the State of Georgia, Roswell is prohibited from exercising these powers or providing any such service inside the boundaries of Milton except by contract with Milton; and

WHEREAS, pursuant to O.C.G.A. § 32-4-92, the powers of a municipality with respect to its municipal street system include the provision of maintenance thereof on any public road located within its limits; and

WHEREAS, in accordance with the applicable state law requirements, Roswell is conducting a competitive bid solicitation which will result in an agreement between Roswell and a paving company (the “Contractor”), which agreement scope will include repaving work to be completed on various city streets, including a portion of Ebenezer Road lying in Milton’s jurisdiction (the “Project”); and

WHEREAS, Milton has agreed to pay the costs associated with the repaving work to be performed by the Contractor on Ebenezer Road; and

WHEREAS, the Parties agree that coordination of construction efforts for cross-jurisdictional road improvement projects, including the Project herein, provides cost savings and efficiencies that are in the best interest of the citizens of both Roswell and Milton.

NOW THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgment and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree to the above recitals and as follows:

1. **Agreement.**

- a. **Roswell's Duty to Manage the Project.** The Parties agree that the Roswell shall assume primary responsibility for management of the Project, including completion of the Work (described below), and its public road construction/maintenance agreement with a paving company (the "Contractor").
- b. **General Description of the Work.** The work to be performed pursuant to this Agreement consists of repaving sections of Ebenezer Road (the "Work"). The approximate length of the Work is 1,065 feet. Roswell shall complete the Work using the services of the Contractor, pursuant to the contract attached hereto as Exhibit "A". The Work shall include milling, patching and topping.
- c. **Timing.** The Work shall take place at a time mutually convenient for the parties, between March and December 2025.
- d. **Compensation.** Milton agrees to reimburse Roswell for the total cost of the Work, up to an amount of \$160,000.00 (the "Maximum Contract Price"). The reimbursable cost of the Work shall be limited to amounts reasonably paid by Roswell to the Contractor for completing the Work, and any other out-of-pocket costs to Roswell that are directly attributable to the Work (prorated equitably with other work under the repaving contract, if appropriate), but such costs shall not include Roswell staff time and overhead in supervising the Work, or attorneys' fees in forming this Agreement. Roswell represents that its estimated cost of the Work is \$290,000.00 but the parties acknowledge that the Contractor's contract calls for compensation to be made on a unit-price basis, with actual compensation based on the actual number of units provided. If at any time either party knows or has reason to know that the cost of the Work will exceed the Maximum Contract Price, it shall promptly notify the other party, and representatives of the parties shall confer in good faith to determine a resolution. Except for any reasonably disputed amounts (which shall be paid promptly upon resolution of the dispute), Milton shall pay all amounts due under this IGA within thirty (30) days of request.
- e. **Milton's Right and Duty to Review the Work.** Milton shall have the right and duty to review the Work and to advise Roswell of any observed discrepancies or potential problems so that these can be timely addressed with the Contractor. Milton may, but shall not be required to, test or inspect the Work for compliance with applicable technical standards. Milton acknowledges that its remedies against the Contractor for defective Work may be limited to those remedies available to

Roswell in its contract with the Contractor to the extent such remedies can be enforced by Roswell. Milton shall respond in a timely manner to any issue that may arise during the Work that requires its input. The Parties shall make reasonable and good-faith efforts to coordinate their oversight of the Work and proactively address any issues that may arise.

- f. **Disputes with the Contractor.** Roswell shall address with the Contractor any issues or concerns raised by Milton concerning the Work and, subject to the limitations below, shall make good faith efforts to enforce the contract with the Contractor for the benefit of Milton. Except as separately agreed between the Parties, Roswell shall not be required to write any demand letter or file any lawsuit against the Contractor or take any other similar formal legal action arising out of the Work.
 - g. **Change Orders.** Roswell will discuss any proposed change orders that operate to increase the cost of the Project for those portions of the Work to be performed within Milton's jurisdiction with Milton in advance of approving such change orders with the Contractor. Upon the Milton's approval of any such proposed change order, Milton agrees to timely pay all costs associated therewith in accordance with the payment requirements of the construction services agreement between Roswell and the Contractor.
 - h. **Contractor Insurance and Contract Provisions.** Roswell shall make good faith efforts to execute an amendment to its contract with the Contractor to: (1) name Milton as an additional insured on any liability policies covering the Work; and, (2) name Milton as an intended third-party beneficiary of such contract.
- 2. **Agreement Term.** This Agreement shall commence upon execution by the Parties and shall expire upon completion of all duties and obligations provided herein, provided that the term of the Agreement shall not exceed fifty (50) years.
 - 3. **Termination for Convenience.** Either Party may terminate this Agreement for convenience by providing written notice of termination to the other Party. If Milton terminates this Agreement for convenience: (a) Roswell shall promptly (but in any event, not later than fourteen (14) calendar days following receipt of a termination notice from Milton) terminate the Work in its contract with the Contractor; and (b) Milton shall reimburse Roswell for all reimbursable costs incurred through the date of termination of Roswell-Contractor contract.
 - 4. **Assignment or Transfer.** The rights, privileges and obligations under this Agreement shall not be assigned or transferred by either Party without the prior written consent of the other party.

5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control.
6. **Public Procurement Requirements.** Each Party agrees that it will comply with all public road work procurement requirements under any applicable state or federal law related to any construction, improvements, or services contemplated by this Agreement.
7. **E-Verify and Title VI.** Each Party agrees that it will comply with all E-Verify and Title VI requirements and execute any documents reasonably required related to such compliance. Further, each Party agrees that any contracts let for the Project and/or the Work shall contain all required E-Verify and Title VI requirements under applicable law.
8. **Cooperation.** Each Party shall, at the request of the other, make, execute and deliver or obtain and deliver all instruments and documents and shall do or cause to be done all such other things which either Party may reasonably require to effectuate the provisions and intention of this Agreement.
9. **Authority to Execute.** Each of the individuals executing this Agreement on behalf of his or her respective Party agrees and represents that he or she is authorized to do so and further agrees and represents that this Agreement has been duly passed upon by the required governmental agency or board in accordance with all applicable laws and spread upon the minutes thereof.
10. **Force Majeure.** In case by reason of force majeure, any Party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement, then if such Party shall give notice and full particulars of such force majeure in writing to the other Party within a reasonable time after occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period. Such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure," as employed herein, shall mean (a) any cause beyond the Party's reasonable control; (b) any act(s) of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) strikes, lockout(s) or other labor disputes or industrial disturbance(s); (e) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, pandemic/epidemic, invasion or act(s) of a public enemy; (f) order(s) of any kind of the Government of the United States or the State of Georgia or any civil or military authority; and (g) natural disaster, catastrophe, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, or explosions, or breakage or accidents outside the Party's control which prevent performance under this Agreement.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes and replaces any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of all Parties with appropriate authorization.
12. **Waiver.** No failure by either Party to enforce any right or power granted under this Agreement, or to insist upon strict compliance, and no custom or practice of either Party at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect a Party's right to demand exact and strict compliance with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.
13. **Severability.** Should any provision of this Agreement or application thereof to any person or circumstance be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the full extent permitted by law.
14. **Agreement Jointly Drafted by the Parties.** Each Party represents that it has reviewed and become familiar with this Agreement and has notified the other Party of any discrepancies, conflicts or errors herein. The Parties agree that, if any ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.
15. **Records.** Each Party shall maintain records relating to matters covered by this Agreement as required by law and by any additional requirements in this Agreement. Such records shall be maintained for at least a period of three (3) years following the termination or expiration of this Agreement.
16. **Notices.** All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective on being deposited or placed in the United States mail, postage prepaid and registered or certified with return receipt requested to the addresses appearing below, or when delivered by hand to the addresses indicated below:

If to Milton:

City of Milton, Georgia
2006 Heritage Walk
Milton, GA 30004
ATTN: City Manager

If to Roswell:

City of Roswell, Georgia
38 Hill Street
Roswell, GA 30075
ATTN: City Administrator

IN WITNESS WHEREOF, the Parties hereto, acting by and through their duly authorized officials and officers pursuant to appropriate ordinances and resolutions hereinbefore duly and properly adopted by each, have caused this Agreement to be executed in duplicate counterparts and the official seals of each Party properly affixed, each delivering to the other one of said duplicate counterparts, the day and year first above written.

CITY OF MILTON, GEORGIA

CITY OF ROSWELL, GEORGIA

By: _____
Peyton Jamison, Mayor

By: _____
Kurt M. Wilson, Mayor

Attest: _____
City Clerk

Attest: _____
City Clerk

(city seal)

(city seal)

Approved as to Form:

Approved as to Form:

City Attorney

City Attorney

EXHIBIT A

**City of Roswell****Mayor and Council****AGENDA ITEM REPORT****ID # - 8388**

MEETING DATE: December 9, 2024

DEPARTMENT: Transportation

ITEM TYPE: Intergovernmental Agreement

Approval for the Mayor and/or City Administrator to authorize execution of an Intergovernmental Agreement and Waiver of Conflict with the City of Milton to resurface Ebenezer Road

Item Summary:

The 2025 Citywide resurfacing anticipated to be approved later this year will include Ebenezer Road to be resurfaced. Ebenezer Road contains sections within the City of Roswell public right-of-way and the City of Milton public right-of-way. City of Roswell staff and City of Milton staff are in support of resurfacing the entire roadway of Ebenezer Road, which would result in a better product for both cities. A cost estimate in the amount of \$141,428.50 has been developed for the roadway sections that are located within the City of Milton right-of-way and an Intergovernmental Agreement has been drafted for a maximum amount of \$160,000.00. Actual compensation will be made on a unit-price basis based on actual work completed and jointly monitored by staff from both cities.

The portions of Ebenezer Road within Roswell are currently estimated to cost \$290,000.00 which would be funded by Roswell's approved resurfacing program. The majority of Ebenezer Road is within Roswell so our share of materials required is higher. This approach ensures each City is paying for their fair share for the improvement.

Roswell Department of Transportation staff is recommending execution of the Intergovernmental Agreement and Waiver of Conflict in order to proceed with the work.

Committee or Staff Recommendation:

On November 26, 2024 the Community Development and Transportation Committee recommended placing this Item on the December 9, 2024 Mayor and Council Agenda.

Financial Impact:

The Intergovernmental Agreement will provide 100% of the funding required to repave the sections of Ebenezer Road within the City of Milton's right-of-way estimated at \$141,428.50 to a maximum of \$160,000.00.

Upon approval of agreement, a Budget Amendment will set up revenue and expense in the amount up to \$160,000 in Project 90001 (City Wide Resurfacing Project).

Recommended Motion:

Approval for the Mayor and/or City Administrator to authorize execution of an Intergovernmental

Agenda Item (ID # 8388)

Agreement and Waiver of Conflict with the City of Milton to resurface Ebenezer Road.

Presented by:

Jeff Littlefield, P.E., Director of Transportation

City of Roswell
Committees of Council
AGENDA ITEM REPORT

ID # - 9580

MEETING DATE: December 10, 2024

DEPARTMENT: Transportation

ITEM TYPE: Agenda Vote

Consideration to accept the FY2025 Road Resurfacing List

Action Required:

Agenda Vote

Description:

The City of Roswell's budget includes \$3,000,000.00 set aside for Citywide Road Resurfacing and Reconstruction.

Staff is providing a list of the roads to resurface given the \$3,000,000 currently available.

Staff recommends using the approved funds to resurface as many roads from the list as funding will allow.

Financial Impact:

Funding is available for \$3,000,000.00 in the FY2025 Citywide Road Resurfacing and Reconstruction budget in Org - 35042200, Object - 541415 and Project - 90001.

Comments:

See Attached

2025 Resurfacing List

12/10/2024

City Wide

Name	Map/LL	From	To	Length (LF)	Area (SY)	PCI
Alpine Drive	17/449	Alpharetta Street	Cul-De-Sac	2890	8511	52
Axton Court	14/758	Roxburgh Drive	Cul-De-Sac	231	1017	63
Babcock Court	5/1165	Brook Circle	Cul-De-Sac	128	788	51
Bluffview Trace	24/577	Northcliff Trace	Cul-De-Sac	875	3235	59
Brandon Ridge Drive	12/429	Pullman Trail	Oakfield Lane	995	3482	14
Brook Circle	5/1165	Cul-De-Sac (East)	Cul-De-Sac (West)	970	3703	12
By Water Trail	21/273	Willeo Road	Traffic Circle	2040	5667	34
Cliffchase Close	24/577	Bluffview Trace	Cul-De-Sac	420	1971	31
Clifftop Court	24/577	Cliffchase Close	Cul-De-Sac	95	1068	59
Club Springs Drive	19/762	Roxburgh Drive	Terrace Lake Pointe	1440	4000	20
Driftwood Court	17/449	Alpine Drive	Cul-De-Sac	885	3263	16
Ebenezer Road	2/1073	City Limits (W end W of SA Road)	Dead End	1985	5073	5
Ebenezer Road	29/1072	City Limits (W - E of SA Road)	Hayden Hall Subdivision	1660	4242	10
Ebenezer Road	29/1090	Hayden Hall Subdivision	City Limits East (@ Cox Road)	790	2434	7
Great Oaks Lane	11/393	Crossville Road	Cul-De-Sac	950	3443	22
Hardscrabble Road	10/188	Woodstock Road	King Road	4130	14549	26
Junction Point	11/409	Junction Track	Cul-De-Sac	515	2235	56
Junction Track	11/409	Station Parkway	Pullman Trail	3440	10219	60
Lum Crowe Road	1/1082	Start of Pavement (Cox Road)	City Limits	2715	4223	50
Lum Crowe Road	1/1082	Cox Road	1555 ft from Cox Rd	1555	3872	25
Lum Crowe Road	1/1079	1555 feet from Cox Road	Cul-De-Sac	2820	8013	40
Lum Crowe Road	1/1082	Start of Pavement	Cox Road	250	472	10
Mistwater Close	24/620	Northcliff Trace	Cul-De-Sac	990	3554	56
Nesbit Entry Drive	25/766	Scott Road	Cul-De-Sac	670	3424	17
Nesbit Ridge Court	25/766	Nesbit Ridge Drive	Cul-De-Sac	100	726	28
Nesbit Ridge Drive	25/766	Nesbit Entry Drive	Cul-De-Sac	390	1371	29
Northcliff Trace	24/573	Riverside Road	Northcliff Trace	5910	16417	34
Oakfield Lane	17/449	Alpine Drive	Cul-De-Sac	2220	7039	45
Oakhaven Drive	3/1294	Mountain Park Road	Dead End	11950	33194	33

Attachment: 2025 Resurfacing Road List (FY2025 Road Resurfacing List)

<i>Park East Drive</i>	<i>11/390</i>	<i>Crabapple Road</i>	<i>Cul-De-Sac</i>	<i>682</i>	<i>2682</i>	<i>56</i>
<i>Pullman Trail</i>	<i>11/409</i>	<i>Junction Track</i>	<i>Cul-De-Sac</i>	<i>1766</i>	<i>5693</i>	<i>46</i>
<i>Rome Drive</i>	<i>11/394</i>	<i>Crabapple Road</i>	<i>Cul-De-Sac</i>	<i>1162</i>	<i>3934</i>	<i>30</i>
<i>Roswell Green Lane</i>	<i>11/394</i>	<i>Crabapple Road</i>	<i>Cul-De-Sac</i>	<i>1050</i>	<i>3721</i>	<i>56</i>
<i>Roxburgh Lane</i>	<i>19/759</i>	<i>Roxburgh Drive</i>	<i>Cul-De-Sac</i>	<i>1590</i>	<i>4921</i>	<i>56</i>
<i>Station Parkway</i>	<i>11/409</i>	<i>Crabapple Road</i>	<i>Junction Track</i>	<i>700</i>	<i>1944</i>	<i>54</i>
<i>Stoneglen Close</i>	<i>24/619</i>	<i>Northcliff Trace</i>	<i>Cul-De-Sac</i>	<i>935</i>	<i>3401</i>	<i>49</i>
<i>Stonemist Court</i>	<i>24/621</i>	<i>Stonemist Trace</i>	<i>Cul-De-Sac</i>	<i>400</i>	<i>1915</i>	<i>44</i>
<i>Stonemist Trace</i>	<i>24/620</i>	<i>Northcliff Trace</i>	<i>Cul-De-Sac</i>	<i>1300</i>	<i>4415</i>	<i>51</i>

LMIG

Name	Map/LL	From	To	Length (LF)	Area (SY)
<i>Crabapple Road</i>	<i>11/393</i>	<i>Crossville Road</i>	<i>Hembree Road</i>	<i>5050</i>	<i>23170</i>
<i>Crabapple Road</i>	<i>11/396</i>	<i>Hembree Road</i>	<i>Etris Road</i>	<i>5665</i>	<i>22867</i>
<i>Crabapple Road</i>	<i>5/400</i>	<i>Etris Road</i>	<i>Rucker Road</i>	<i>1200</i>	<i>4500</i>
<i>Crabapple Road</i>	<i>11/396</i>	<i>Rucker Road</i>	<i>City Limits (Houze Road)</i>	<i>1200</i>	<i>5000</i>
<i>Rucker Road</i>	<i>5/1283</i>	<i>Crabapple Road</i>	<i>Houze Road</i>	<i>930</i>	<i>7307</i>