

**Action Requested/Required:**

- ☒ Vote/Action Requested
☐ Discussion or Presentation Only
☐ Public Hearing
Report Date: _____
Hearing Date: _____
Voting Date: _____

Department: Administration **Presenter(s) & Title:** Nathan Ingram
Assistant City Manager

Agenda Item Title:

Discussion of and Possible Action Regarding Request by Northside Hospital Cherokee to Enter Into a Road Impact Fee Development Agreement for Construction of a New Traffic Intersection at the Hospital

Summary:

Northside Hospital Cherokee (NHC) is constructing a second entrance to the hospital campus along Northside Cherokee Boulevard south of the current entrance. During Council's July 2024 meetings, the City approved to a 1/3 participation in the project at a total cost not to exceed (\$196,529) and to allow Northside the use of Impact Fee credits for their portion. At that time, City Management informed Council that Northside Hospital would bring forth a new development agreement to memorialize this proposed reimbursement of Northside's 1/3 cost with Road Impact Fee credits. A copy of this agreement is attached.

Budget Implications:

Budgeted? ☐ Yes ☐ No ☒ N/A

Total Cost of Project: \$ 196,529.00 Check if Estimated ☐

Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☐ Other: Road Impact Fees

Staff Recommendations:

Consideration for: Motion to approve a Development Agreement between the City of Canton and Northside Hospital Inc. in order to provide Northside Hospital Inc., impact fee credits in connection with Northside's funding of their portion of the intersection project.

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? ☒ Yes ☐ No

Attachments:

Development Agreement

After recording, please return to:
BakerHostetler
1170 Peachtree Street
Suite 2400
Atlanta, GA 30309-7676
Attention: Stephen Floyd, Esq

DEVELOPMENT AGREEMENT
**(Northside Cherokee Boulevard – Intersection Improvements for
Secondary Hospital Entrance)**

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is made this ____ day of _____, 2024 (the “**Acceptance Date**”), by and between **NORTHSIDE HOSPITAL, INC.**, a Georgia non-profit corporation (“**Northside**”) and **THE CITY OF CANTON, GEORGIA**, a municipal corporation chartered under the laws of the State of Georgia (the “**City**”). Northside and the City shall sometimes be referred to herein collectively as the “**Parties**” and each of them, a “**Party**.”

WITNESSETH:

WHEREAS, (i) Northside (as successor-by-merger to Northside Hospital – Cherokee, Inc.), (ii) Keystone Properties of Cherokee County, LLC and CP Investment Partners, LLC (collectively, “**Landon**”), and (iii) the City previously entered into that certain Development Agreement (Commerce Boulevard) dated November 20, 2008 and recorded at Deed Book 10470, Page 471 of the Cherokee County, Georgia records, as amended by that certain First Amendment to Development Agreement (Commerce Boulevard) dated April 3, 2012 and recorded at Deed Book 11792, Page 70 of the Cherokee County, Georgia records (the “**Original Development Agreement**”) with respect to the construction of Northside Cherokee Boulevard (f/k/a Commerce Boulevard);

WHEREAS, Northside, the City and Cherokee County, a political subdivision of the State of Georgia (the “**County**”) have agreed that Northside would construct certain intersection improvements and related improvements at the intersection of Northside Cherokee Boulevard and the to-be constructed secondary entrance to the Northside Hospital Cherokee campus located at

450 Northside Cherokee Boulevard, Canton, Georgia 30115, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Project**”);

WHEREAS, the City and the County have each committed to fund a portion of the Project costs;

WHEREAS, Northside has agreed to fund a portion of the Project costs, subject to reimbursement pursuant to the terms of this Agreement;

WHEREAS, at the City Council meeting on July 18, 2024, the City Council voted to reimburse Northside for a portion of the Project costs funded by Northside; and

WHEREAS, Northside and the City are entering into this Agreement pursuant to City of Canton Code of Ordinances Chapter 110, Article VI, Sections 110-185(d) and 110-187(b) in order to provide to Northside impact fee credits and other reimbursements in connection with Northside’s funding of a portion of the Project costs.

NOW THEREFORE, for and in consideration of the foregoing recitals and the mutual agreements herein contained, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are all hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

ACKNOWLEDGEMENTS

1.01 Recitals. The Parties acknowledge and agree that the foregoing recitals are hereby incorporated herein.

1.02 Project Work. The Parties acknowledge and agree that all aspects of the design, development and construction of the Project shall be implemented by Northside. The Parties further agree that all costs and expenses of the Project shall be initially paid by Northside, subject to the Project funding obligations set forth in Article II and Article III below.

1.03 Agreement with Northside. The Parties acknowledge and agree that in exchange for Northside’s agreement to complete the Project and initially fund the Project costs as aforesaid, the City has agreed to certain agreements and accommodations for the benefit of Northside, all as set forth in this Agreement.

ARTICLE II

PROJECT COST ALLOCATION AND FUNDING

2.01 Project Cost Allocation. The Parties acknowledge and agree that the total cost of the Project is \$588,528.99 (the “**Cost**”), and the costs of the Project shall be shared by the County, the

City, and Northside as follows:

- County – \$196,176.33 (the “**County’s Contribution**”)
- City – \$196,176.33 (the “**City’s Contribution**”)
- Northside – \$196,176.33 (“**Northside’s Reimbursable Contribution**”)

2.02 Initial Project Funding. Northside shall initially fund the entirety of the Project Costs, subject to the terms and conditions of this Agreement and certain other agreements between the County and Northside. Following substantial completion of the Project, the City shall reimburse Northside in cash for the City’s Contribution within thirty (30) days of receipt of a written invoice from Northside. Following substantial completion of the Project, the County shall reimburse Northside in cash for the County’s Contribution pursuant to the terms of a separate written agreement between Northside and the County. The reimbursement of Northside’s Reimbursable Contribution shall be subject to the terms and conditions of Article III below.

ARTICLE III

REIMBURSEMENT OF NORTHSIDE’S REIMBURSABLE CONTRIBUTION

3.01 Reimbursement of Northside’s Reimbursable Contribution. Following completion of the Project, Northside’s Reimbursable Contribution shall be reimbursed to Northside by the City through the following sources and which are in a manner substantially similar to the terms as described in Original Development Agreement:

a) Impact Fee Credits. First, through “Impact Fee Credits” to be applied against any impact fees assessed by the City against Northside and/or its affiliates. “Impact Fee Credits” are defined to mean a credit equal to 100% of the amount of impact fees that Northside otherwise would be obligated to pay to the City from time to time with respect to the current or future development of any property within the City of Canton. Northside’s Reimbursable Contribution will be reduced by the amount of Impact Fee Credits issued to Northside pursuant to this Agreement when such credits are issued. Second, if the Impact Fee Credits issued in any year are insufficient to repay Northside for Northside’s Reimbursable Contribution, or impact fees are not then currently payable by Northside, then Northside’s Reimbursable Contribution will also be reimbursed from the sources described in (b) below.

b) Impact Fees. Pursuant to the City’s impact fee ordinance, the amount of impact fees received and allocated by the City to road infrastructure development is determined pursuant to the City’s annual Capital Improvements Element and 5-Year Short Term Work Program of the Comprehensive Land Use Plan (the “**Plan**”). If, as provided in (a) above, impact fee credits issued during any year are insufficient to repay Northside’s Reimbursable Contribution, or if impact fees are not currently payable by Northside, then road impact fees collected by the City from third parties and allocated to road infrastructure development of the Project pursuant to the Plan, as calculated below, shall also be paid by the City to Northside until Northside’s Reimbursable Contribution has been paid in full.

The payments due to Northside each year shall be calculated as follows:

A multiplier shall be determined by dividing the Cost of the Project into the total Estimated Project Costs of all of the Road Projects (as shown on the Schedule of Road Improvements portion of the Plan). The multiplier is then applied to the total road impact fees collected by the City in that year. The result is the pro rata portion of the collected road impact fees allocated to the Project for that year, resulting in the amount which is payable by the City to Northside for that year pursuant to this Section 3.01(b).

The City will apply the above formula to the total road impact fees collected for the fiscal year ending on September 30 each year. The resulting amount payable to Northside shall be paid on or before October 31 each year, to be applied by Northside to Northside's Reimbursable Contribution. The aggregate of such payments, when taken together with all other payments made by the City to Northside in payment of Northside's Reimbursable Contribution pursuant to this Agreement, shall not exceed the Northside's Reimbursable Contribution in the aggregate.

3.02 Priority of Application. The Parties acknowledge that they, along with certain other parties, previously entered into the Original Development Agreement and that the Parties also entered into that certain Development Agreement (Commerce Boulevard- Phase 2) dated June 7, 2012 by and between Northside and the City (the "**Phase 2 Development Agreement**"; the Original Development Agreement and the Phase 2 Development Agreement are hereinafter collectively referred to as the "**Existing Development Agreements**"). The Parties agree that all funds available for reimbursement to Northside pursuant to the Existing Development Agreements shall be applied first to the reimbursement obligations under the Existing Development Agreements until all amounts to be reimbursed thereunder have been satisfied in full, and second to Northside's Reimbursable Contribution to be reimbursed to Northside hereunder, until Northside's Reimbursable Contribution has been repaid and satisfied in full.

ARTICLE IV **GENERAL PROVISIONS**

4.01 Notices. All notices, requests, demands or other communications hereunder shall be in writing and deemed given: (i) when delivered personally, (ii) when sent by confirmed electronic mail or facsimile transmission, (iii) on the day after said communication is sent via overnight courier, or (iv) on the third day after said communication is deposited in the U.S. mail, by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Northside: Northside Hospital, Inc
Center Pointe-Building One
1100 Johnson Ferry Road, Suite 400
Atlanta, Georgia 30342
Attention: Real Estate/Property Management

with a copy to: Northside Hospital, Inc
Center Pointe-Building One
1100 Johnson Ferry Road, Suite 400
Atlanta, Georgia 30342
Attention: Don Hausfeld
Email: dhausfeld@thelandongroup.com

with a copy to: Baker & Hostetler LLP
1170 Peachtree Street, Suite 2400
Atlanta, Georgia 30309
Attention: Stephen Floyd, Esq.

If to the City: The City of Canton
110 Academy Street
Canton, Georgia 30114
Attention: Billy Peppers, City Manager

with a copy to: Dyer Rusbridge Argo, P.C.
687 Marietta Hwy.
Canton, Georgia 30114
Attention: Robert M. Dyer, Esq.

or to such other address as the parties may from time to time designate by notice in writing to the other parties.

4.02 Binding Agreement. This Agreement shall bind and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns only; the parties hereto do not otherwise intend to benefit any person or entity not a party to this Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matters set forth herein and may not be amended or modified except in a writing signed by all of the parties hereto.

4.03 Counterparts. This Agreement may be executed in multiple counterparts each of which shall be deemed an original but all of which when taken together shall constitute one instrument.

4.04 No Joint Venture. The provisions of this Agreement are not intended to create, nor shall they in any way be interpreted to create, a joint venture, a partnership, or any other similar relationship between the parties. It is the intention of the parties hereto that no rights or benefits be created or accrue to any party other than the City and Northside.

4.05 Attorneys Fees. In the event that any party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, and a judgment or award shall determine the successful party in such action, such party shall be entitled to receive from the losing party in such action a reasonable sum as attorneys' fees and court costs, to be fixed by the courts in such action.

4.06 Captions. The captions heading the various sections of this Agreement are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective sections.

4.07 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal on the day and year first above written.

NORTHSIDE:

Signed, sealed and delivered
in the presence of:

NORTHSIDE HOSPITAL, INC., a Georgia
non-profit corporation

Witness

By:_____

Name: Scott Wade

Notary Public

Title: Vice President of Managed Care,
Planning, and Real Estate

My Commission Expires:

[NOTARY SEAL]

Signatures continue on next page

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My Commission Expires:

[NOTARY SEAL]

THE CITY:

THE CITY OF CANTON, GEORGIA, a
municipal corporation chartered under the laws
of the State of Georgia:

By:_____

Name:_____

Title:_____

[CORPORATE SEAL]

Project Description

