



CITY OF DUNWOODY

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MEMORANDUM

To: Honorable Mayor and City Council
From: Michael Smith, Director of Public Works
Date: April 29, 2009
Subject: Intergovernmental Agreement to use MARTA-ARC Offset Funds for the Dunwoody Village Streetscape Project

ITEM DESCRIPTION

An agreement that will allow the city to be reimbursed by MARTA for costs related to the Dunwoody Village Parkway streetscape project.

BACKGROUND

There is \$275,000 in MARTA offset funds allocated in the Atlanta Regional Commission's Transportation Improvement Program (TIP) for the Dunwoody Village Parkway project. Executing the attached agreement will allow Dunwoody to be reimbursed with these funds for design, right of way and construction costs associated with the project.

RECOMMENDED ACTION

Approve the Intergovernmental Agreement.

**ARC-MARTA OFFSET FUNDS
INTERGOVERNMENTAL AGREEMENT**

THIS INTERGOVERNMENTAL AGREEMENT, (hereinafter referred to as "Agreement") entered into as of the _____ day of _____, 2010, by and between the CITY OF DUNWOODY, (hereinafter referred to as the "CITY") and the METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY, (hereinafter referred to as "MARTA" OR "the Authority").

WITNESSETH THAT:

WHEREAS, by virtue of action taken by the Atlanta Regional Commission (ARC) whereby certain federal funds were transferred to the Authority and, in exchange, the Authority committed to fund qualifying projects contained in the Transportation Improvement Plan (TIP) from the Authority's capital budget; and

WHEREAS, the City's share of funding from the Authority for qualifying projects in the TIP is \$275,000; and

WHEREAS, the City has identified the project defined herein ("the Project") for funding from the City's share of funding in the amount of \$725,000;

WHEREAS, the parties desire to define the responsibilities for the design, construction, implementation and payment of costs for the Project as set forth herein;

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. **Project Defined.** The Project is defined as the Dunwoody Village Streetscape Project located at Dunwoody Village Parkway, as is more fully shown in the attached Exhibit A (drawing, diagram, etc.).
2. **Duties of City.** The City shall be responsible for all work and services required for the successful completion of the Project, including but not limited to: (a) the design of the Project, (b) the procurement of goods and services related to the construction of the Project, (c) the management of the Project and all contractors performing work thereon, (d) the inspection and final acceptance of the Project, and (e) all other acts and obligations consistent with the successful completion of the Project.
3. **Time of Performance.** Work and services shall be undertaken and pursued in such sequence as to assure their expeditious completion. All work and services required hereunder shall be completed on or before _____. All invoices to be submitted hereunder for reimbursement shall be submitted within 60 days of completion of work.

4. Reimbursement. The City shall be reimbursed for the costs of the Project as set forth in Exhibit B, which is attached hereto and made a part hereof.

5. Formal Communication/Designated Agents. Formal communications regarding this Agreement shall include, but not necessarily be limited to, correspondence, progress reports and fiscal reports. The City or its designee shall furnish progress and fiscal reports to the Authority periodically, as requested by the Authority. All formal communication regarding this Agreement shall be in writing and addressed to the Designated Agents of the parties.

Paul Grether is designated as the authorized agent of the Authority for purposes of this Agreement only, except for executing amendments hereto. All correspondence shall be direct to him at MARTA, 2424 Piedmont Road, N.E., Atlanta, GA 30324-3330.

Michael Smith is designated as the authorized agent of the City for purposes of this Agreement only, except for executing amendments hereto. All correspondence shall be direct to him at 41 Perimeter Center East Suite 250 Dunwoody, GA 30346.

6. Review and Coordination. To ensure adequate assessment of the Project and proper coordination among the parties, the Authority shall be kept fully informed of the progress of the work and services to be performed hereunder. The City may be required to meet with designated representatives of the Authority from time to time, as reasonably requested, to review the work and services performed.

7. Maintenance of Records. The City shall maintain all books, documents, papers, accounting records and other evidence pertaining to the Project in accordance with generally accepted accounting principles applicable to the City and shall make such material available at all reasonable times during the term of this Agreement for inspection by the Authority or its external auditors. The City shall include the provisions of this paragraph in any contract executed in connection with this Project.

8. Conflict of Interest. No officer, member or employee of the Authority, and no public official of any local government which is affected in any way by the Project, who exercises any function or responsibilities in the review or approval of the Project or any component part thereof, shall participate in any decision relating to this Agreement which affects his or her personal interests or the interest of any corporation, partnership or association in which he or she is directly interested; nor shall any such officer, member or employee of the Authority, or public official of any local government affected by the Project, have a direct interest in this Agreement or the proceeds arising therefrom.

9. Status of Parties as Independent Contractors. Nothing contained in this Agreement shall be construed to constitute the City or any of its employees, servants, agents or subcontractors as a partner, employee, servant, or agent of the Authority, nor shall either party to this Agreement have any authority to bind the other in any respect, it being intended that each shall remain an independent contractor.

10. Assignability. Neither party shall assign or transfer all or any portion of its interest in this Agreement without the prior written approval of the other party.

11. Amendments. Either party may request changes in this Agreement. Except for termination for cause by the Authority, such changes, including any increase or decrease in the amount of the City's reimbursement for the cost of the Project, shall be incorporated in written amendments to this Agreement.

12. Termination for Mutual Convenience. Either party may terminate this Agreement in whole or in part when both parties agree that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall, through formal Agreement amendment, agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The City shall not incur new obligations from the date of termination. The Authority shall allow full credit to the City for non-cancelable obligations, properly incurred by the City prior to termination.

13. Termination of the Agreement for Cause. If through any cause, the City shall fail to fulfill in a timely and proper manner its obligation under this Agreement, or if the City has or shall violate any of the covenants, agreements, representations or stipulations of this Agreement, the Authority shall thereupon have the right to terminate this Agreement by giving written notice to the City of such termination and specifying the effective date thereof, at least ten business days before the effective date of such termination. The City shall be entitled to receive just and equitable compensation for costs incurred in the performance of the scope of service up to and including the effective date of termination as authorized in Attachment "B". Notwithstanding the foregoing, to the extent provided by law, the City shall not be relieved of liability to the Authority for damages sustained by the Authority by virtue of any breach of this Agreement by the City, and the Authority may withhold any payments to the City for the purpose of set-off for damages caused by the City's breach, until such time as the exact amount of damages to the Authority from the City is determined.

14. Applicable Law. This Agreement shall be deemed to have been executed and performed in the State of Georgia, and all questions of interpretation and construction shall be construed by the laws of such State.

IN WITNESS WHEREOF, the City and the Authority have executed this Agreement as of the day first above written.

**METROPOLITAN ATLANTA
RAPID TRANSIT AUTHORITY**

CITY of DUNWOODY, GEORGIA

By: _____
BEVERLY A. SCOTT, Ph.D.
General Manager /CEO

By: _____
KEN WRIGHT
Mayor

**APPROVED AS TO
SUBSTANCE:**

APPROVED AS TO FORM:

MIRIAM D. LANCASTER
Chief of Corporate Law
MARTA

City Attorney
Dunwoody, Georgia

Exhibit A

PROJECT

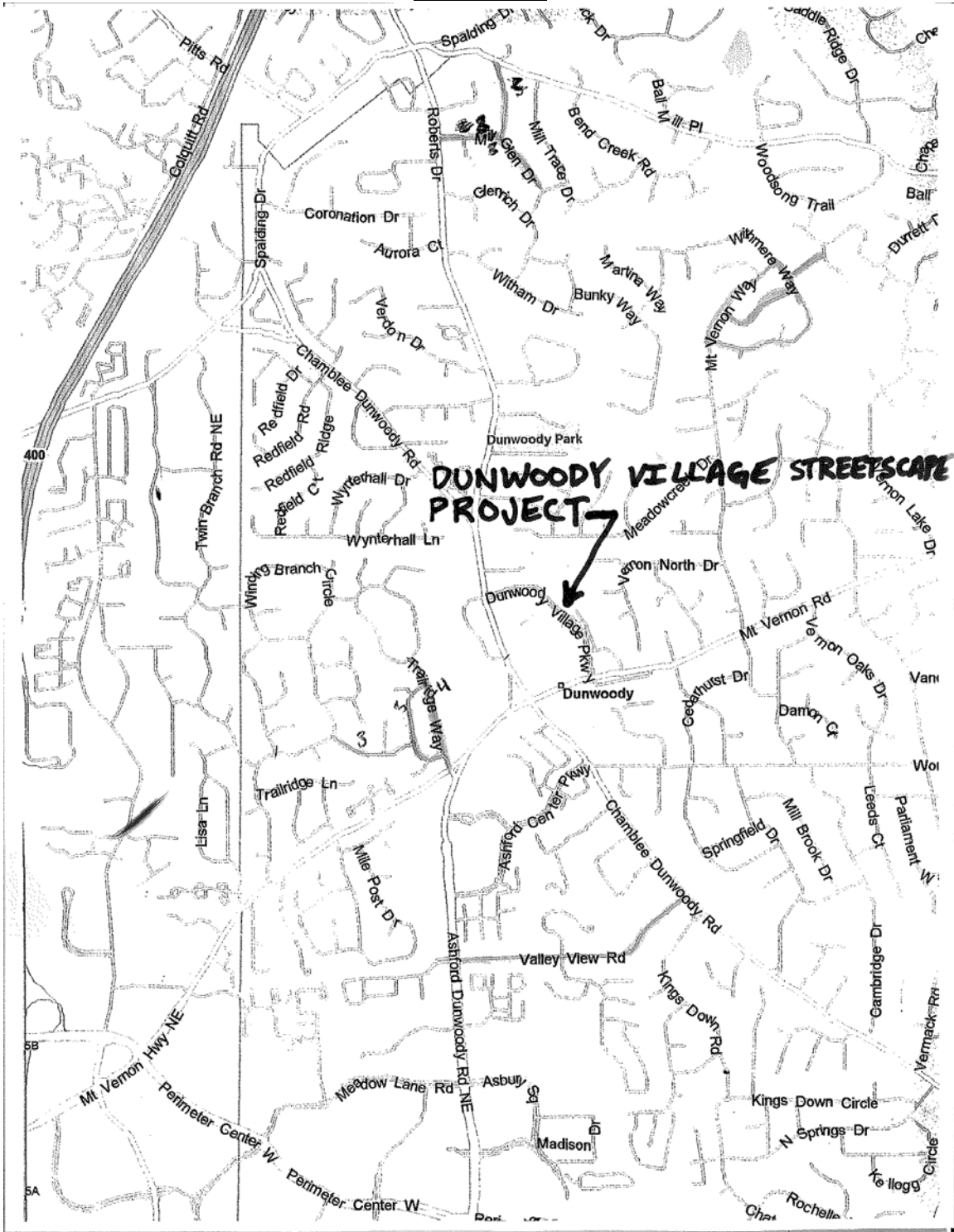


Exhibit B

COMPENSATION AND METHOD OF PAYMENT

I. **Compensation:** The total cost of the Project as described in Exhibit A is \$1,000,000. Compensation to the City shall not exceed the actual eligible costs incurred up to the total cost of the Project. In no event will the City's total reimbursement to be paid under this Agreement exceed the sum of \$275,000.

A breakdown of the reimbursement is shown in "Exhibit B-1", Project Budget which is attached to and made a part of this Agreement for financial reporting, monitoring and audit purposes. Changes in the Project Budget shall be made in accord with Paragraph 11 in the main body of the Agreement.

II. **Method of Payment:** The method of payment shall be as follows:

A. **Periodic Reimbursement.** The City shall be entitled to receive periodic reimbursement on the following basis. As of the last day of each month during the existence of this Agreement, the City shall submit to the Authority an invoice for reimbursement documenting actual costs incurred during the invoice period. As used herein, actual costs incurred shall include only eligible costs authorized in the Project Budget.

Upon the basis of its audit and review of such invoice, the Authority will, at the request of the City, make payments to the City as the work progresses but not more often than once a month. Invoices shall be numbered consecutively and submitted each month until the Project is completed.

B. **Final Payment.** Final payment shall only be made upon determination by the Authority that all requirements hereunder have been completed, including any audit requirements. Upon such determination and upon submittal of a final invoice, the Authority shall pay the final reimbursement due to the City.

The City's final invoice must be received by MARTA no later than 60 days after the Project completion date specified in Paragraph 3 of the Agreement (or as subsequently amended).

**EXHIBIT B-1
DUNWOODY VILLAGE STREETSCAPE
PROJECT BUDGET**

Description	Funding
Design, Right-of-Way Acquisition and Construction <i>MARTA Offset Funds</i>	\$275,000
Design, Right-of-Way Acquisition and Construction <i>City of Dunwoody Funds</i>	\$225,000
Construction <i>GDOT Transportation Enhancement Funds</i>	\$500,000
Project Total	\$1,000,000