



**CITY OF DUNWOODY**  
41 Perimeter Center East, Suite 250  
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www.dunwoodyga.gov

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## MEMORANDUM

**To:** Mayor and City Council

**From:** Chris Pike, Finance Director

**Date:** January 25, 2010

**Subject:** **Second Read and Adoption of Ordinance Authorizing the Execution of the 2010 Tax Anticipation Note**

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### **ITEM DESCRIPTION**

Approval of Ordinance Authorizing the Execution of the 2010 Tax Anticipation Note

### **BACKGROUND**

The Budget Policy (Section I.B) states the City may enter into short-term borrowing arrangements should a need arise. During the initial budget years of the City's existence, mismatches will occur between the cash flow needs and receipts; causing deficiencies during the year. To properly plan for these cyclical needs, the City has planned on issuing Tax Anticipation Notes (TAN's) each year. A TAN must be paid off in full by the end of each calendar year. Based on projections using the budgeted revenues and expenditures, staff estimated a high borrowing level of around \$2.9 million. An authorized TAN of \$3.6 million represents the maximum amount that can be borrowed and allows for a "cushion" of extra resources above the anticipated level of borrowing.

### **EVALUATION**

Staff reviewed and evaluated the proposals from two banks (Bank of America and SunTrust.) SunTrust offered a rate of LIBOR (currently 0.233%) plus 1.235%. SunTrust also offered a TAN with a "drawing" provision that allows the City to only receive loan proceeds as they are needed throughout the year. This option will save the City interest expense. **Because the interest costs are anticipated to be below \$50,000, a formal RFP was not required.**

### **RECOMMENDED ACTION**

It is respectfully requested that Council approve to: (1) accept Staff's recommendation and (2) authorize the Mayor, City Manager, and Legal Counsel to execute the necessary documents following satisfactory review by Staff and legal counsel.

**ORDINANCE 2010-01-03**

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**AN ORDINANCE AUTHORIZING, AMONG OTHER THINGS,  
THE ISSUANCE AND SALE OF A TAX ANTICIPATION NOTE  
IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$3,600,000**

WHEREAS, the City of Dunwoody, Georgia (the "City") has been duly created and is validly existing as a municipal corporation of the State of Georgia; and

WHEREAS, the Mayor and Council of the City are charged with the duties of contracting debts and managing the affairs of the City (the "Governing Body"); and

WHEREAS, the City is authorized by Article IX, Section V, Paragraph V of the Constitution of the State of Georgia and Section 36-80-2 of the Official Code of Georgia Annotated, to incur a temporary loan in order to pay current expenses during any calendar year; and

WHEREAS, the Governing Body has determined that it is in the best interest of the City to incur a temporary loan in order to pay current expenses for calendar year 2010 in anticipation of the receipt of taxes levied or to be levied for its general fund (the "General Fund"); and

WHEREAS, the City proposes to issue its Tax Anticipation Note in the aggregate principal amount of not to exceed \$3,600,000.00 ("TAN" or "Note") to pay the current expenses of the City.

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City and it is hereby resolved by authority of the same, as follows:

Section 1. Findings. The Governing Body hereby finds and determines the following: (a) the aggregate principal amount of the TAN authorized herein does not exceed 75% of the total gross income from taxes which have been collected by the City in calendar year 2009; (b) the TAN authorized herein shall be paid in full on or before December 31, 2010; (c) no temporary loan or other contract, note, warrant or other obligation for current expenses incurred in calendar year 2009 or any prior calendar year remains unpaid as of the date hereof; (d) the City to date has made no other temporary loans or other contracts, notes, warrants or obligations for current expenses; (e) the aggregate principal amount of the TAN herein authorized, together with other contracts, notes, warrants or obligations of the City incurred since January 1, 2010 for expenses in calendar year 2010, does not exceed the total anticipated tax revenues of the City for calendar year 2010; (f) the money authorized to be borrowed will become part of the general revenues of the City and deposited into the General Fund; and (g) a need exists for the City to

borrow not to exceed \$3,600,000.00 to pay current expenses of the City in calendar year 2010 prior to the receipt of sufficient revenues from taxes levied or to be levied for 2010.

Section 2. Authorization of Note. There is hereby authorized to be issued tax anticipation notes in the aggregate principal face amount of not to exceed \$3,600,000.00 which shall be designated "City of Dunwoody, Georgia Tax Anticipation Note, Series 2010."

The Note shall be issued as a fully registered Note numbered R-1; shall be dated as of the date of delivery thereof; shall be in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof not exceeding the principal amount of the Note. The Note shall be dated as of the date of delivery thereof to the Purchaser (as defined herein); shall mature on December 31, 2010. Interest shall be paid quarterly from the date of delivery until December 31, 2010, at a rate of the Purchaser's 30-day LIBOR rate plus 1.235%, adjusted monthly on the first business day of each month. Outstanding principal and accrued interest to be paid on December 31, 2010.

The Note shall be executed by the manual signature of the Mayor and by the manual signature of the City Clerk (the "Clerk"), and the corporate seal of the City shall be impressed or imprinted thereon. In case any officer whose signature shall be affixed to the Note or who shall have sealed the Note shall cease to be such officer before the Note so signed and sealed shall have been actually delivered, the Note, nevertheless, shall be a valid Note of the City and may be delivered as such notwithstanding the fact that such officer or officers may have ceased to be such officer or officers of the City when the Note shall be actually delivered.

The Note may be subject to redemption prior to the stated maturity.

The Governing Body hereby approves the commitment letter submitted by SunTrust Bank (the "Purchaser") dated November 2, 2009, attached hereto as Exhibit 1 to purchase the Note from the City.

Both the principal of and interest on the Note shall be payable in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts. Initially, the City shall be the registrar and paying agent (the "Registrar/Paying Agent") for the Note. If a Registrar/Paying Agent shall be utilized other than the City, it must be a bank, trust company, depository or transfer agent located either within or without the State of Georgia.

Section 4. Approval of Form of Note. The Note as initially issued shall be issued in substantially the form attached hereto as Exhibit 2 with such changes, insertions or omissions as may be approved by the Mayor, and the execution and delivery of the Note shall be conclusive evidence of such approval.

Section 5. Tax Revenues Used to Repay Note. The City agrees to use for payment of the Note and the interest thereon a sufficient portion of the revenues received by the City from taxes levied or to be levied for calendar year 2010 for the General Fund and other funds available for such purpose.

Section 6. Authentication of Note. Only such Note as shall have endorsed thereon a certificate of authentication substantially in the form set forth below duly executed by the Registrar/Paying Agent shall be deemed to be validly issued hereunder. No Note shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been executed by the Registrar/Paying Agent, and such executed certificate of the Registrar/Paying Agent upon any such Note shall be conclusive evidence that such Note has been authenticated and delivered hereunder. Said certificate of authentication on any Note shall be deemed to have been executed by the Registrar/Paying Agent, but it shall not be necessary that the same authorized signatory sign the certificate of authentication on the Note.

Section 7. Transfer and Exchange of Note. The Registrar/Paying Agent shall cause to be kept books for the registration of transfer of the Note. The Note may be registered as transferred on the books of registration by the registered owner thereof in person or by his duly authorized attorney, upon surrender thereof, together with a written instrument of transfer executed by the owner or his duly authorized attorney. Upon surrender for registration of transfer of any Note to the office of the Registrar/Paying Agent, the City shall execute, and the Registrar/Paying Agent shall authenticate and deliver in the name of the transferee or transferees, a new Note of the same aggregate principal amount and tenor and of any authorized denomination or denominations, numbered consecutively in order of issuance according to the records of the Registrar/Paying Agent.

The Note may be exchanged at the office of the Registrar/Paying Agent for a Note of the same aggregate principal amount and tenor and of any authorized denomination or denominations. The City shall execute, and the Registrar/Paying Agent shall authenticate and deliver, the Note, which the owner of the Note making such exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such transfer of registration or exchange of the Note shall be without charge to the owner of such Note, but any tax or other governmental charge, required to be paid with respect to the same, shall be paid by the owner of the Note requesting such transfer or exchange as a condition precedent to the exercise of such privilege.

Any Note surrendered upon any transfer provided for in this resolution shall be promptly cancelled by the Registrar/Paying Agent and shall not be reissued. Upon request of the City a certificate evidencing such cancellation shall be furnished by the Registrar/Paying Agent to the City.

Section 8. Registered Owners. The person in whose name any Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal or interest shall be made only to or upon the order of the registered owner thereof or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Note to the extent of the sum or sums so paid.

Section 9. Mutilated or Destroyed Note. In case any Note shall become mutilated or be destroyed or lost, the City may cause to be executed, authenticated and delivered

a new Note of like date and tenor in exchange or substitution for any such Note upon, in the case of a mutilated Note, surrender of such Note, or in the case of a destroyed or lost Note, the owners filing with the City, the Registrar/Paying Agent evidence satisfactory to them that such Note was destroyed or lost and providing indemnity satisfactory to them. If any such Note shall have matured, instead of issuing a new Note, the City may pay the same.

Section 10. General Authority. From and after the date of adoption of this resolution, the Mayor and the officers of the City are hereby authorized to do such acts and things, and to execute and deliver all such certificates or agreements as may be necessary or desirable in connection with the issuance of the Note. All actions of the Governing Body, officers or agents of the City taken in connection therewith prior to the date hereof are hereby ratified and confirmed.

Section 11. Bank Qualification Designation. The Note is hereby designated as a qualified tax exempt obligation for purposes of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code"); and the City hereby certifies that the City, together with its subordinate entities (as defined in the Code), has not issued nor does it intend to issue more than \$10,000,000 of qualified tax-exempt obligations (other than private activity bonds as defined in Section 141 of the Code) during the calendar year in which the Note is issued.

Section 12. Arbitrage Covenant. The City anticipates that no rebate of any investment earnings to the Department of Treasury of the United States will be required by Section 148(f) of the Internal Revenue Code of 1986, as amended, at any time while the TAN is outstanding. However, in the event such rebate is required, the City hereby covenants to pay or cause to be paid to the United States any and all amounts required to be paid to the United States pursuant to said Section 148(f).

Section 13. Bond Counsel. The law firm of Schiff Hardin LLP is hereby designated as bond counsel for the issuance of the TAN by the City.

Section 14. Payees. If Purchaser designates a payee on the Note other than the Purchaser, the Note shall be made payable to such designated payee.

Section 15. Effective Date. This resolution shall be in full force and effect immediately upon its adoption, and any and all resolutions or parts of resolutions in conflict with this resolution shall be, and they are, to the extent of such conflict, hereby repealed.

Adopted and approved by the Governing Body of the City on January 25<sup>th</sup>, 2010.

CITY OF DUNWOODY, GEORGIA

By: \_\_\_\_\_  
Ken Wright, Mayor

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

Approved as to form:

\_\_\_\_\_  
Brian Anderson, City Attorney

(SEAL)



Dan B. Farrar, Jr.  
First Vice President

SunTrust Bank, Atlanta  
P. O. Box 4418  
Mail Code 0030  
Atlanta, Georgia 30302  
Tel 404.588.8319  
Fax 404.230.5550  
dan.farrar@suntrust.com

November 2, 2009

Mr. Christopher Pike, CPA  
Finance Director  
City of Dunwoody  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346

Dear Chris:

This letter replaces my letter to you dated October 15, 2009.

SunTrust is pleased to provide the following commitment to the City of Dunwoody ("City"):

- Amount:** \$4,000,000 Tax Anticipation Note (TAN)  
The total amount of the TAN may be drawn at one time or disbursed over time as needed under a line of credit.
- Purpose:** Proceeds would be used to fund operating expenses upon receipt of anticipated revenues.
- Repayment/Term:** Facility would become effective January 1, 2010; interest payable quarterly; outstanding principal and accrued interest paid out by December 31, 2010.
- Interest Rate:** Bank's 30-Day LIBOR rate plus 1.235%, to be adjusted monthly on the first day of each month.
- Expenses:** The City would pay any of the Bank's out-of-pocket expenses, including, but not limited to, any reasonable legal fees.

**Required Documents:**

1. Tax Anticipation Note
2. Tax and Non-Arbitrage Certificate of the Issuer
3. Computation of Cumulative Cash Flow Deficits
4. Form 8038-G Information Return for Tax-Exempt Governmental Obligations
5. City Council Resolution authorizing the City to enter into the borrowing and indicating who is authorized to do so on behalf of the City

6. Opinion of the City's legal counsel that this borrowing, including the stated aggregate principal amount, is a legal transaction and a "Qualified Tax-Exempt Obligation" pursuant to the Internal Revenue Code, and that the various loan documents are enforceable against the City but for standard bankruptcy exceptions
7. Any additional documentation deemed necessary by the Bank.

**Representation**

**And Warranties:** Only those which are normal and customary for this type transaction.

**Reporting**

- Requirements:**
1. Monthly cash flow statements due on a calendar quarterly basis within 30 days of each calendar quarter.
  2. Any additional information deemed necessary by the Bank.

This commitment to extend credit to the City of Dunwoody is contingent upon the repayment of the City's existing \$6,000,000 credit commitment no later than December 31, 2009.

We appreciate the opportunity to continue to service the City's credit needs with this commitment. Please do not hesitate to contact me if you have any questions.

Sincerely,

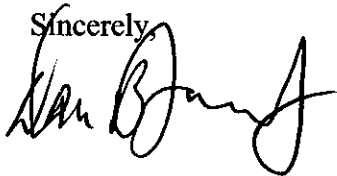
A handwritten signature in black ink, appearing to read "Dan Brown". The signature is written in a cursive, flowing style.



EXHIBIT 2

FORM OF NOTE

UNITED STATES OF AMERICA

STATE OF GEORGIA

CITY OF DUNWOODY, GEORGIA  
TAX ANTICIPATION NOTE,  
SERIES 2010

Number R-1

Maturity Date: December 31, 2010

Date of Original issue: \_\_\_\_\_

Principal Amount: \$ \_\_\_\_\_

CUSIP:

Registered Owner:

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KNOW ALL MEN BY THESE PRESENTS: CITY OF DUNWOODY, GEORGIA, a municipal corporation of the State of Georgia (the "City"), for value received, hereby promises to pay the principal amount set forth above in immediately available funds, on the maturity date set forth above, to SunTrust Bank, or its assignee, at such location as SunTrust Bank, or its assignee, shall direct in writing. The City also promises to pay interest on the unpaid principal amount at a rate equal to SunTrust Bank's 30-day LIBOR rate plus 1.235%, to be adjusted monthly on the first day of each month, in immediately available funds, quarterly from the date set forth above and any accrued interest on the maturity date set forth above, to the registered owner hereof.

Both principal hereof and interest hereon are payable in lawful money of the United States of America. At the option of the City, this Note may be redeemed or prepaid by the City subject to redemption or prepayment without premium prior to maturity upon any business day. Upon such election to prepay this Note, the City shall provide at least 15 days written notice to the registered owner at their address on file by overnight mail.

This Note is authorized by a resolution (the "Resolution") duly adopted by the Mayor and Council (the "Governing Body") of the City on January 25, 2010, in accordance with Article IX, Section V, Paragraph V of the Constitution of the State of Georgia and Section 36-80-2 of the Official Code of Georgia Annotated for the purpose of making a temporary loan to pay current expenses of the City in calendar year 2010.

This Note is issued in anticipation of the receipt of taxes levied or to be levied for the general fund in calendar year 2010. The principal amount of this Note, together with all other temporary loans, notes, warrants or similar obligations, does not exceed 75% of the total revenues from taxes collected by the City in calendar year 2009 and does not exceed, together with other contracts, notes, warrants and obligations of the City for calendar year 2010 payable from the General Fund, the total anticipated revenues from taxes of the City for calendar year 2010.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and laws of the State of Georgia to be done precedent to or as a condition to the issuance of this Note have been properly done, have happened and have been performed in the manner required by the Constitution and laws of the State of Georgia; that the tax levies in anticipation of which this Note is issued are or will be valid and legal levies; that the City will use a sufficient amount of the proceeds of such tax levies and other available funds for the payment of this Note and the interest hereon; and that this Note, together with all other indebtedness of the City, is within every debt or other limit provided by the Constitution and laws of the State of Georgia.

All capitalized terms used but not defined herein shall have the meanings assigned to them in the Resolution.

IN WITNESS WHEREOF, the City acting by and through its Governing Body, has caused this Note to be executed in its corporate name by the manual signature of the Mayor, and attested by the manual signature of the Clerk and the corporate seal of the City to be impressed or imprinted hereon, all as of the date of original issue as shown above.

CITY OF DUNWOODY, GEORGIA

(SEAL)

By: \_\_\_\_\_  
Ken Wright, Mayor

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

CERTIFICATE OF AUTHENTICATION

This is the Note described in the within mentioned authorizing resolution of the Mayor and Council of the City of Dunwoody, Georgia adopted on January 25, 2010, and is hereby authenticated.

CITY CLERK OF THE CITY OF DUNWOODY,  
GEORGIA

By: \_\_\_\_\_  
Sharon Lowery, City Clerk

Date of Authentication: \_\_\_\_\_, 2010

\* \* \* \* \*

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

\_\_\_\_\_  
(Name and Address of Transferee)

the within Note and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer the within Note on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

_____ Signature Guaranteed	_____ (Authorized Officer)
_____ (Bank, Trust Company or Firm)	Notice: The signature to the assignment must correspond with the name of the registered holder as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatever.