

MEMORANDUM

To: Mayor and City Council

From: Michael Smith, Public Works Director

Date: December 09, 2013

Subject: **Approval of ARC-MARTA Offset Funds Intergovernmental Agreement for the Main Street Project**

ITEM DESCRIPTION

Approval of an Intergovernmental Agreement (IGA) with MARTA for ARC-MARTA Offset Funds allocated to the Main Street Project on Dunwoody Village Parkway

BACKGROUND

In 2009 the Atlanta Regional Commission (ARC) in conjunction with MARTA allocated \$275,000 of capital funding to streetscape improvements on Dunwoody Village Parkway. Subsequently the City Council entered into an intergovernmental agreement (IGA) with MARTA in order to receive those funds. To date the City has been reimbursed \$83,000 for project expenses leaving a balance of \$192,000. The original IGA referenced an end date that has since passed. MARTA is requiring a new IGA (attached) in order for the City to receive the remainder of the funding.

RECOMMENDED ACTION

Staff recommends approval of the IGA with MARTA in order to receive the remaining \$192,000 of funding.

ARC-MARTA OFFSET FUNDS SECOND INTERGOVERNMENTAL
AGREEMENT
BETWEEN THE CITY OF DUNWOODY AND
METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY

This INTERGOVERNMENTAL AGREEMENT, (hereinafter referred to as "Agreement") made and entered into this _____ day of _____ 2013 by and between CITY OF DUNWOODY, GEORGIA ("the City") and METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY ("MARTA"), hereinafter referred to jointly as "the Parties", witnesseth,

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 \$275,000;

WHEREAS, the parties entered into an intergovernmental agreement on the 29th of April, 2010 defining the responsibilities for the design, construction, implementation and payment of costs for the Project; and

WHEREAS, the April 29th, 2010 intergovernmental agreement terminated prior to the completion of the Project;

NOW THEREFORE, in consideration of the promises and the mutual covenants and agreements hereinafter contained, the Parties desire to provide for the completion of the Project described in the April 29th, 2010 intergovernmental agreement 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; Cd) 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 31st of December, 2015. 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.

Connie Siddeeq-Johnson 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 her 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 Parties have caused this Intergovernmental Agreement to be executed by their duly authorized officers.

METROPOLITAN ATLANTA
RAPID TRANSIT AUTHORITY

CITY OF DUNWOODY

By: _____
Keith T. Parker
General Manager/CEO

By: _____
Mayor

Approved as to Form:

Counsel, Metropolitan Atlanta
Rapid Transit Authority

City Attorney