

A RESOLUTION

BY: COUNCILMEMBER DEBI STARNES

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LOCAL GOVERNMENT PROJECT AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR THE FUNDING OF A TRANSPORTATION IMPROVEMENT PROGRAM FOR THE SIMPSON-WEST PEACHTREE PEDESTRIAN RAIL CONNECTIONS; AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH THE DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT FOR PURPOSES OF IMPLEMENTING A TRANSPORTATION IMPROVEMENT PROGRAM FOR THE SIMPSON-WEST PEACHTREE PEDESTRIAN RAIL CONNECTIONS AND THE PEACHTREE PEDESTRIAN CROSSINGS PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (hereinafter referred to as the "City") desires to obtain the maximum benefit from funding made available under the region's Regional Transportation Plan (RTP), the Transportation Improvement Program (TIP), and/or the State Transportation Program (STIP) programming process; and

WHEREAS, a specific program of funding has been identified by the Georgia Department of Transportation as Project STP-0004-00(464) Peachtree Street Pedestrian Crossings and STP-0006-00(978) Simpson-West Peachtree Pedestrian Rail Connections (hereinafter referred to collectively as the "Project"); and

WHEREAS, Georgia Department of Transportation (GDOT), the Atlanta Regional Commission and the Downtown Atlanta Community Improvement District (hereinafter referred to as "Downtown Atlanta CID") have prepared a funding plan for the Project through which capital funding will be provided through the Livable Centers Initiative program to assist in the implementation of said Project; and

WHEREAS, the Project is approved as eligible for fund if the City can provide 20% in matching funds to GDOT; and

WHEREAS, matching funds for the Project may only be available for a limited period of time before the matching funds in question may be subject to program changes and allocation to other programs; and

WHEREAS, the City has previously entered into a Local Government Project Agreement with GDOT in order to allow the City to utilize the funding programmed for the Peachtree Pedestrian Crossings Project and the City wishes to enter into a Local Government Project Agreement with GDOT in order to allow the City to utilize the funding programmed for the Simpson-West Peachtree Rail Connections project, but currently lacks the funding to allocate the amount necessary to meet the 20% local government match for both projects; and

WHEREAS, the Downtown Atlanta CID has committed to the City that it is willing to enter into a contract with the City to provide funding to the City in an amount equal to the 20% local government match required of the City so that the City can enter into a Local Government Project Agreement with GDOT in order to allow the City to utilize the funds presently programmed to the Project; and

WHEREAS, the City wishes to accept the grant from the Downtown Atlanta CID in an amount equal to the 20% local government match required of the City to fund the City's commitment under the Local Government Project Agreement with GDOT in order to allow the City to utilize the funds presently programmed to the Project.



NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL of the City of Atlanta as follows:

SECTION 1: That the Mayor is hereby authorized to execute on behalf of the City a Local Government Project Agreement ("LGPA") with GDOT, substantially in the form attached as Exhibit "A", which will allow the City to provide the local match funding for the certain transportation improvement projects, which has been identified by GDOT as Project STP-0006-00(978) Simpson-West Peachtree Pedestrian Rail Connections in order to obtain from the GDOT the matching federal funds for the construction of the project, provided however that after signing the LGPA, the City's local match is funded by grants from third parties and no City funds are committed to the project. The City, at its sole discretion, may direct Quality of Life Bond funding to the Project, but is under no obligation to do so by virtue of this Resolution.

SECTION 2: That the Mayor is hereby authorized to execute on behalf of the City an agreement with the Downtown Atlanta CID which will specify the terms on which the Downtown Atlanta CID will provide and the City will accept a grant equal to the amount of the 20% local government matching funds for the purpose of funding the City's local match obligation for a portion of Projects STP-0004-00(464) Peachtree Street Pedestrian Crossings and STP-0006-00(978) Simpson-West Peachtree Pedestrian Rail Connections, substantially in the form as attached Exhibits "B" and "C", provided however that any terms which bind the City to repayment of all or any part of the grant from the Downtown Atlanta CID must be approved by further action of this Council. After the signing of the agreement, no further action of the Council is necessary before the grant is accepted or the terms of the agreement are acted upon or fulfilled by the City or the Downtown Atlanta CID.

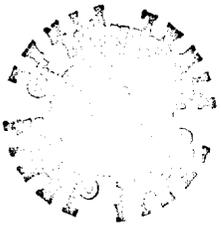
SECTION 3: The City Attorney be and hereby is directed to negotiate and prepare the agreements necessary to effect the intent of this resolution provided that such agreements are in compliance with the conditions set forth herein.

A true copy,

Rhonda Daughlin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

NOV 01, 2004
NOV 05, 2004



AGREEMENT
BETWEEN
DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
AND THE
CITY OF ATLANTA
FOR
TRANSPORTATION FACILITY IMPROVEMENTS

This AGREEMENT is made and entered into this _____ day of _____, 2004, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia, hereinafter called the "DEPARTMENT", and the City of Atlanta, acting by and through its Mayor and City Council, hereinafter called the "SPONSOR".

WHEREAS, the SPONSOR has represented to the DEPARTMENT a desire to improve the transportation facility described in **Exhibit A**, attached and incorporated herein by reference and hereinafter referred to as the "PROJECT"; and

WHEREAS, the SPONSOR has represented to the DEPARTMENT a desire to participate in certain activities of the PROJECT as set forth in this AGREEMENT, and the DEPARTMENT has relied upon such representations; and

WHEREAS, the DEPARTMENT has expressed a willingness to participate in certain activities of the PROJECT as set forth in this AGREEMENT.



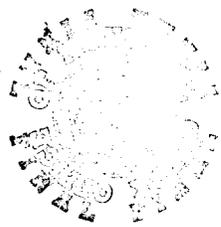
WHEREAS, the DEPARTMENT has expressed a willingness to participate in certain activities of the PROJECT as set forth in this AGREEMENT.

NOW THEREFORE, in consideration of the mutual promises made and of the benefits to flow from one to the other, the DEPARTMENT and the SPONSOR hereby agree each with the other as follows:

1. The SPONSOR shall contribute to the PROJECT by funding all or certain portions of the PROJECT costs for the preconstruction engineering (design) activities as per Exhibit "A", utility relocations, right of way acquisitions as per a future Right of Way Agreement and construction as per a future Construction Agreement. Expenditures incurred by the SPONSOR and eligible for reimbursement by the DEPARTMENT shall not be considered reimbursable to the SPONSOR until execution of this agreement and written notice to proceed for each phase.

2. The DEPARTMENT shall contribute to the PROJECT by funding all or certain portions of the PROJECT costs for the preconstruction engineering (design) activities as per Exhibit "A", right of way acquisitions as per a future agreement or construction as per a future construction agreement.

3. It is understood and agreed by the DEPARTMENT and the SPONSOR that the funding portion as identified in Exhibit "A" of this agreement only applies to the Preconstruction Engineering Activities. Additional agreements will be required to be executed by the DEPARTMENT and the SPONSOR for the funding portion of subsequent phases.



4. The SPONSOR shall be responsible for all costs for the continual maintenance and the continual operations of any and all sidewalks and the grass strip between the curb and gutter and the sidewalk within the PROJECT limits.

5. The SPONSOR shall Certify that they have read and understands the regulations for "CERTIFICATION OF COMPLIANCES WITH FEDERAL PROCUREMENT REQUIREMENTS, STATE AUDIT REQUIREMENTS, AND FEDERAL AUDIT REQUIREMENTS" as stated in attachment A of this Agreement and will comply in full with said provisions.

6. When applicable engineering invoicing can only be submitted following submittal and acceptance of project milestones. Project milestones are defined as approval of the Concept Report, Completion and verification of the Database Preparation, approval of the Environmental Document, submittal of Preliminary Plans for PFPR, approval of Right of Way plans, and submittal of Final Plans for letting.

7. The SPONSOR shall accomplish all of the design activities for the PROJECT. The design activities shall be accomplished in accordance with the DEPARTMENT's Plan Development Process, the applicable guidelines of the American Association of State Highway and Transportation Officials, hereinafter referred to as "AASHTO", the DEPARTMENT's Standard Specifications Construction of Transportation Systems, the DEPARTMENT's Plan Presentation Guide, PROJECT schedules, and applicable guidelines of the DEPARTMENT. The SPONSOR's responsibility for design shall include, but is not limited to the following items:



a. Prepare the PROJECT concept report in accordance with the format used by the DEPARTMENT. The concept for the PROJECT shall be developed to accommodate the future traffic volumes as generated by the SPONSOR as provided for in paragraph 7b and approved by the DEPARTMENT. The concept report shall be approved by the DEPARTMENT prior to the SPONSOR beginning further development of the PROJECT plans. It is recognized by the parties that the approved concept may be modified by the SPONSOR as required by the DEPARTMENT and reapproved by the DEPARTMENT during the course of design due to public input, environmental requirements, or right of way considerations.

b. Develop the PROJECT's base year (year facility is expected to be open to traffic) and design year (base year plus 20 years) traffic volumes. This shall include average daily traffic (ADT) and morning (am) and evening (pm) peak hour volumes. The traffic shall show all through and turning movement volumes at intersections for the ADT and peak hour volumes and shall indicate the percentage of trucks expected on the facility.

c. Validate (check and update) the approved PROJECT concept and prepare a PROJECT Design Book for approval by the DEPARTMENT prior to the beginning of preliminary plans.

d. Prepare environmental studies, documentation, and reports for the PROJECT that show the PROJECT is in compliance with the provisions of the National Environmental Protection Act and Georgia Environmental Protection Act, as appropriate to the PROJECT funding. This shall include any and all archaeological, historical, ecological, air, noise, underground storage tanks (UST), and hazardous waste site studies required as well as any environmental



reevaluations required. The SPONSOR shall submit to the DEPARTMENT all environmental documents and reports for review and approval by the DEPARTMENT and the FHWA.

e. Prepare all public hearing and public information displays and conduct all required public hearings and public information meetings in accordance with DEPARTMENT practice.

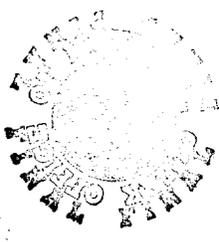
f. Perform all surveys, mapping, soil investigation studies and pavement evaluations needed for design of the PROJECT.

g. Perform all work required to obtain project permits, including, but not limited to, US Army Corps of Engineers 404 and Federal Emergency Management Agency (FEMA) approvals. These efforts shall be coordinated with the DEPARTMENT.

h. Prepare the PROJECT's drainage design including erosion control plans and the development of the hydraulic studies for the Federal Emergency Management Agency Floodways and acquisition of all necessary permits associated with the drainage design.

i. Prepare traffic studies, preliminary construction plans including a cost estimate for the Preliminary Field Plan Review, preliminary and final utility plans, preliminary and final right of way plans, staking of the required right of way, and final construction plans including a cost estimate for the Final Field Plan Review, erosion control plans, lighting plans, traffic handling plans, and construction sequence plans and specifications including special provisions for the PROJECT.

j. Provide certification, by a Georgia Registered Professional Engineer, that the construction plans have been prepared under the guidance of the



professional engineer and are in accordance with AASHTO and DEPARTMENT guidelines.

k. Failure of the SPONSOR to follow the DEPARTMENT's Plan Development Process will jeopardize the use of Federal funds in some or all of the categories outlined in this AGREEMENT, and it shall be the responsibility of the SPONSOR to make up the loss of that funding.

8. All Primary Consultant firms hired by the SPONSOR to provide services on the PROJECT shall be prequalified with the DEPARTMENT in the appropriate area-classes. The DEPARTMENT shall, on request, furnish the SPONSOR with a list of prequalified consultant firms in the appropriate area-classes.

9. The PROJECT construction and right of way plans shall be prepared in English units.

10. All drafting and design work performed on the project shall be done utilizing Microstation and CAICE software respectively, and shall be organized as per the Department's guidelines on electronic file management.

11. The DEPARTMENT shall review and has approval authority for all aspects of the PROJECT provided however this review and approval does not relieve the SPONSOR of its responsibilities under the terms of this agreement. The DEPARTMENT will work with the FHWA to obtain all needed approvals with information furnished by the SPONSOR.



12. The SPONSOR shall be responsible for the design of all bridge(s) and preparation of any required hydraulic and hydrological studies within the limits of this PROJECT in accordance with the DEPARTMENT's policies and guidelines. The SPONSOR shall perform all necessary survey efforts in order to complete the design of the bridge(s) and prepare any required hydraulic and hydrological studies. The final bridge plans shall be incorporated into this PROJECT as a part of this AGREEMENT.

13. The SPONSOR shall follow the DEPARTMENT's procedures for identification of existing and proposed utility facilities on the PROJECT. These procedures, in part, require all requests for existing, proposed, or relocated facilities to flow through the DEPARTMENT's Project Liaison and the District Utilities Engineer.

14. The SPONSOR shall address all railroad concerns, comments, and requirements to the satisfaction of the DEPARTMENT.

15. Upon the SPONSOR's determination of the rights of way required for the PROJECT and the approval of the right of way plans by the DEPARTMENT, the necessary rights of way for the PROJECT shall be acquired by the SPONSOR. Right of way acquisition shall be in accordance with the law and the rules and regulations of the FHWA including, but not limited to, Title 23, United States Code; 23 CFR 710, et. seq., and 49 CFR Part 24, and the rules and regulations of the DEPARTMENT and in accordance with the Contract for the Acquisition of Right of Way to be prepared by the DEPARTMENT and executed between the SPONSOR and the DEPARTMENT prior to the commencement of any right of way activities. Failure of the SPONSOR to follow these requirements may result in the loss of Federal funding for the PROJECT and it

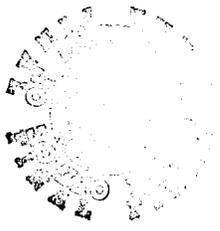


will be the responsibility of the SPONSOR to make up the loss of that funding. All required right of way shall be obtained and cleared of obstructions, including underground storage tanks, prior to advertising the PROJECT for bids. The SPONSOR shall further be responsible for making all changes to the approved right of way plans, as deemed necessary by the DEPARTMENT, for whatever reason, as needed to purchase the right of way or to match actual conditions encountered.

16. Upon completion and approval of the PROJECT plans, certification that all needed rights of way have been obtained and cleared of obstructions, and certification that all needed permits for the PROJECT have been obtained by the SPONSOR, the PROJECT shall be let for construction. The SPONSOR, unless shown otherwise on EXHIBIT A, shall be solely responsible for securing and awarding the construction contract for the PROJECT.

17. The SPONSOR shall review and make recommendations concerning all shop drawings prior to submission to the DEPARTMENT. The DEPARTMENT shall have final authority concerning all shop drawings.

18. The SPONSOR agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this AGREEMENT shall become the property of the DEPARTMENT if required. This data shall be organized, indexed, bound, and delivered to the DEPARTMENT no later than the advertisement of the PROJECT for letting. The DEPARTMENT shall have the right to use this material without restriction or limitation and without compensation to the SPONSOR.



19. The SPONSOR shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by or on behalf of the SPONSOR pursuant to this AGREEMENT. The SPONSOR shall correct or revise, or cause to be corrected or revised, any errors or deficiencies in the designs, drawings, specifications, and other services furnished for this PROJECT. Failure by the SPONSOR to address the errors or deficiencies within 30 days shall cause the SPONSOR to assume all responsibility for construction delays caused by the errors and deficiencies. All revisions shall be coordinated with the DEPARTMENT prior to issuance. The SPONSOR shall also be responsible for any claim, damage, loss or expense, to the extent allowed by law, that is attributable to errors, omissions, or negligent acts related to the designs, drawings, specifications, and other services furnished by or on behalf of the SPONSOR pursuant to this AGREEMENT.

20. Both the SPONSOR and the DEPARTMENT hereby acknowledge that time is of the essence and both parties shall adhere to the priorities established in the approved Transportation Improvement Program/State Transportation Improvement Program (TIP/STIP) or earlier. Furthermore, all parties shall adhere to the detailed project schedule, as approved by the DEPARTMENT. In the completion of respective commitments contained herein, if a change in the schedule is needed, the DEPARTMENT shall have final authority. If, for any reason, the SPONSOR does not produce acceptable deliverables at the milestone dates defined in the current TIP/STIP, or in the approved schedule, the DEPARTMENT reserves the right to delay the



project's implementation until funds can be re-identified for construction or right of way, as applicable.

21. This AGREEMENT is made and entered into in FULTON COUNTY, GEORGIA, and shall be governed and construed under the laws of the State of Georgia. The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

DEPARTMENT OF TRANSPORTATION
RECOMMENDED:

CITY OF ATLANTA

State Transportation Planning Administrator

BY: _____ (SEAL)
Shirley Franklin, Mayor

Director, Transportation Planning,
Data, and Intermodal Development

Signed, sealed and delivered
this ___ day of _____, 20___,
in the presence of:

Chief Engineer

NOTARY PUBLIC

This Agreement approved by the
CITY OF ATLANTA at a meeting
held on the _____ day of
_____, 20___.

BY: _____
Commissioner

Municipal Clerk (Seal)

ATTEST:

RECOMMENDED:

Treasurer

Commissioner, Department of Planning
& Community Development

APPROVED AS TO LEGAL FORM:

Chief Financial Officer

Office of Legal Services

APPROVED AS TO FORM:

City Attorney

FEIN: _____

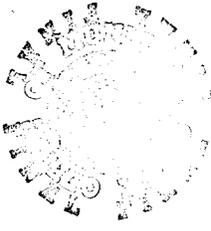
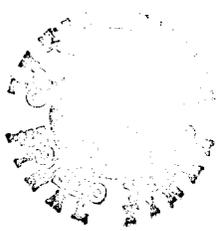


EXHIBIT "A"
0006978 – Fulton County

Project	Description	Project Type	Authorized PE Amount	Maximum Allowable Reimbursable to SPONSOR by GDOT for PE* (80% of the Authorized Amount)	Responsible Parties (Subject to change pending future agreements)		
					R/W Acquisition	Utilities Relocation	Construction Letting
STP-0006-00 (978) P.I. #0006978	Simpson-West Peachtree Pedestrian Rail Connector	Q23 LCI Ped.	\$270,000	\$216,000	City	City	City

* NOTE: LOCALS WILL ONLY BE REIMBURSED 80% OF THE INVOICED AMOUNT UP TO BUT NOT TO EXCEED THE MAXIMUM ALLOWABLE GDOT REIMBURSIBLE AMOUNT.



ATTACHMENT A

CERTIFICATION OF COMPLIANCES

I hereby certify that I am a principle and duly authorized representative of _____
whose address is _____ and it is also certified that:

I. PROCUREMENT REQUIREMENTS

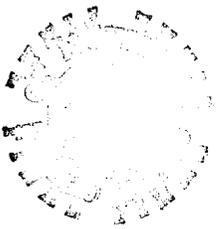
The below listed provisions of Federal Procurement requirements shall be complied with throughout the contract period:

- (a) 49 CFR Part 18 Section 36
Uniform Administrative Requirements for Grants and Cooperative
Agreements to State and Local Governments – Procurement
- (b) 23 CFR 635 Subpart A – Contract Procedures

II. STATE AUDIT REQUIREMENT

The provisions of Section 36-81-7 of the Official Code of Georgia Annotated, relating to the “Requirement of Audits” shall be complied with throughout the contract period in full such that:

- (a) Each unit of local government having a population in excess of 1,500 persons or expenditures of \$ 175,000.00 or more shall provide for and cause to be made an annual audit of the financial affairs and transactions of all funds and activities of the local government for each fiscal year of the local government.
- (b) The governing authority of each local unit of government not included above shall provide for and cause to be made the audit required not less often than once every two fiscal years.
- (c) The governing authority of each local unit of government having expenditures of less than \$ 175,000.00 in that government’s most recently ended fiscal year may elect to provide for and cause to be made, in lieu of the biennial audit, an annual report of agreed upon procedures for that fiscal year.
- (d) A copy of the report and any comments made by the state auditor shall be maintained as a public record for public inspection during the regular working hours at the principal office of the local government. Those units of local government not having a principal office shall provide a notification to the public as to the location of and times during which the public may inspect the report.



- (e) The audits of each local government shall be conducted in accordance with generally accepted government auditing standards.

III. FEDERAL AUDIT REQUIREMENT

The provisions of OMB Circular A-133 issued pursuant to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156 shall be complied with throughout the contract period in full such that:

- (a) Non-Federal entities that expend \$ 300,000 or more in a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the provisions of OMB Circular A-133.
- (b) Non-Federal entities that expend less than \$ 300,000 a year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
- (c) Except for the provisions for biennial audits provided in paragraphs (1) and (2) below, audits required shall be performed annually. Any biennial audit shall cover both years within the biennial period.
 - (1) A State or local government that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits biennially. This requirement must still be in effect for the biennial period under audit.
 - (2) Any non-profit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits biennially.
- (d) The audit shall be conducted in accordance with Generally Accepted Government Auditing Standards.

Date

Signature



STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 2004 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia (“City”), and DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT, a community improvement district created and existing pursuant to the constitutional and the statutory authority of the State of Georgia (“Downtown Atlanta CID”).

WITNESSETH

WHEREAS, the City of Atlanta desires to obtain the maximum benefit from funding made available under the region’s Regional Transportation Plan (“RTP”), the Transportation Improvement Program (“TIP”) and/or the State Transportation Improvement Program (“STIP”); and

WHEREAS, a specific program has been identified by the Georgia Department of Transportation as Project STP-0004-00(464) Peachtree Street Pedestrian Crossings (the “Project”); and

WHEREAS, the Project is approved as eligible for federal and state funds if the City can provide 20 % in local government matching funds to the Georgia Department of Transportation; and

WHEREAS, Article IX, Section VII of the Constitution of the State of Georgia authorizes municipalities to create community improvement districts and pursuant to the “Atlanta Community Improvement District Act”, enacted by the Georgia General Assembly as House Bill 544, the City of Atlanta created Downtown Atlanta CID pursuant to the constitutional and statutory authority cited herein (City Council Resolution No. _95-R-1374); and

WHEREAS, the Resolution of the City of Atlanta provided that Downtown Atlanta CID provide such governmental services as the construction and maintenance of local, collector and arterial streets as shown on the City’s street classification map or as otherwise included in the City’s street classification map or as otherwise included in the City’s most recently adopted Comprehensive Development Plan, including curbs, sidewalks, street lights and devices to control the flow of traffic on local, collector and arterial streets; and

WHEREAS, Downtown Atlanta CID is authorized to contract with the City pursuant to the constitutional and statutory authority above referenced; and

WHEREAS, the City has entered into agreements (Project Agreement) with the State of Georgia, Department of Transportation (the “Department”) for project management, preliminary engineering (design) activities, and construction and the acquisition of right of way (Contract for Acquisition of Right of Way) of certain improvements referred to as Project STP-0004-00(464)



Peachtree Street Pedestrian Crossings which is identified in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to collectively as the "Project"; and

WHEREAS, the City and Downtown Atlanta CID have represented to the Department a desire to participate in certain activities of the Project as set forth in this Agreement and as set forth in the Project Agreement, the Contract for Acquisition of Right of Way and the Intergovernmental Agreement Relating to Land Transportation Projects; and

WHEREAS, the Department has expressed a willingness to participate in certain activities of the Project as set forth in the Project Agreement, the Contract for Acquisition of Right of Way and the Intergovernmental Agreement Relating to Land Transportation Projects; and

WHEREAS, Downtown Atlanta CID has or is willing, under the terms set forth in this agreement, to provide funding to or on behalf of the City in an amount equal to the 20% local government match required of the City in order to allow the City to utilize the funding presently programmed to the Project; and

WHEREAS, the City wishes, under the terms set forth herein, to accept the grant in an amount equal to the 20% local government match from Downtown Atlanta CID to fund the City's commitment under the Local Government Project Agreement with the Department in order to allow the City to utilize the funds programmed to the Project at present or in the future.

WHEREAS, the City and Downtown Atlanta CID believe that a public partnership to complete the project set forth in this Agreement offers unique opportunities to significantly improve mobility in the Downtown Atlanta area; and

WHEREAS, the City desires the continued involvement of Downtown Atlanta CID in the development in the area comprising the Project and Downtown Atlanta CID desires to work with the City to supervise certain design, engineering, and right of way acquisition work associated with the Project; and

WHEREAS, Resolution, _____ adopted by the City Council on _____, 2004 and approved by the Mayor on _____, 2004 and made a part hereof by reference, authorized the Mayor to enter into this agreement with Downtown Atlanta CID under the terms specified herein; and

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta and Downtown Atlanta CID hereby agree that, as a condition for funding the City's local match, Downtown Atlanta CID will be responsible for and perform the obligations which the City has agreed to perform pursuant to the Project Agreement which is attached as



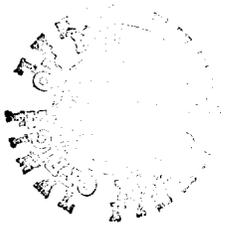
Exhibit A.. Downtown Atlanta CID may act as the City's agent and enter into agreements with a project manager, engineer and one or more professional or technical consultants (hereinafter "Persons") to perform the obligations set forth in the Project Agreement so long as the process used to enter into such agreements and the terms of such agreements are consistent with and permitted by the Project Agreement and/or other applicable law. This Agreement does not assign, sublet or transfer any or all of the City's interest in the Project Agreement.

2.

THE EFFECT OF THE PROJECT AGREEMENT

Downtown Atlanta CID stipulates that it is aware of and has fully reviewed the Project Agreement entered into between the City and the Department and attached as Exhibit A.. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of Downtown Atlanta CID to the City than the obligations of the City to the Department, as set forth in the Project Agreement, the terms of the Project Agreement shall be considered as further clarifying and explaining the obligations of Downtown Atlanta CID in this Agreement unless it is specially stated that such variation in obligations is permitted. Downtown Atlanta CID agrees that, to the extent possible, the obligations of Downtown Atlanta CID to perform under this Agreement should be construed to be equal to the obligations of the City to perform under the Project Agreement. However, the City's obligations under Paragraph 3 of the Project Agreement regarding roadway, interchange and pedestrian lighting shall remain the obligations of the City and shall not be the responsibility of Downtown Atlanta CID.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of Downtown Atlanta CID or any other Person after termination of the Project Agreement by the Department.
- b. Should the Department terminate the Project Agreement prior to the completion of the work, Downtown Atlanta CID agrees that any of the streets or sidewalks, which are uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of the streets and sidewalks of the City prior to the beginning of construction.
- c. The City agrees that should the Department terminate the Project Agreement prior to the completion of the work, that Downtown Atlanta CID shall receive the reimbursement to which the City would be entitled under the terms of the Project Agreement, provided that such funds are not required to restore the street and sidewalks of the City to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic.



3.

TIME OF PERFORMANCE

Downtown Atlanta CID shall commence the performance of its obligations pursuant to the terms of the Project Agreement no later than thirty (30) calendar days after execution of this Agreement by each of the parties. The work to be performed by Downtown Atlanta CID shall be completed before December 31, 2007. Provided however that Downtown Atlanta CID may request that the City seek an extension of the time for completion of the Project Agreement and that if the extension of the operation Project Agreement is granted, such extension shall apply to this Agreement. The City agrees to request an extension of the Project Agreement from the Department within five business days after receipt of a written request for extension from Downtown Atlanta CID. In addition, Downtown Atlanta CID may request that the scope of any phase or part of the Project be allocated or divided or that the order of letting the Project be adjusted and the City agrees to seek Department approval of such request, and if granted the request shall apply to this Agreement. The City agrees to submit said requests within five business days after receipt of a written request from Downtown Atlanta CID.

4.

PROFESSIONAL RESPONSIBILITY

Downtown Atlanta CID shall assume all responsibility undertaken by the City in the Project Agreement with respect to the professional quality, technical accuracy and the coordination of all designs, drawings, and specifications and other services furnished by or on behalf or required of the City pursuant to the Project Agreement.

- a. Downtown Atlanta CID shall correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in the Project Agreement and furnished for the Project by Downtown Atlanta CID on behalf of the City under this Agreement, for which the City has received notice from the Department, within such time that the City shall not be in breach of its obligations to the Department under the Project Agreement. The City shall give such written notice to Downtown Atlanta CID no later than the third business day after receipt of notice from the Department. Downtown Atlanta CID is aware that the City is obligated to address any errors or deficiencies in the work as specified in the Project Agreement and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for Downtown Atlanta CID to be required to make such revisions and corrections. All plans shall be prepared in English units.
- b. Downtown Atlanta CID shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts errors or omissions related to the designs, drawings, specifications, construction and/or other services



required to be furnished by or on behalf of the City pursuant to the Project Agreement, in the event that such claim, damage, loss or expense arises from obligations which Downtown Atlanta CID has specifically undertaken in this Agreement.

- c. Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, Downtown Atlanta CID agrees that authorized representatives of the Department and the Federal Highway Administration ("FHWA") and the City may at all reasonable time review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, Downtown Atlanta CID or any other Person.
- d. Downtown Atlanta CID agrees to incorporate into its work activities any reasonable review recommendation of the Department or the City, provided that the City's review recommendations are made prior to the Department's final approval of the design documents. The City shall be given written notice of each submission to the Department and provided with sufficient information to determine if the plans to be submitted to the Department have been reviewed by the City prior to submission to the Department for final approval.
- e. Downtown Atlanta CID agrees that all agreements with any Person shall cause all such Persons to be bound to the same terms and conditions and standards of performance as this Agreement. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Downtown Atlanta CID under this Agreement. No contract or sub-contract under this Agreement shall be assigned
- f. All the services required hereunder will be performed under the direct supervision of Downtown Atlanta CID with the exception of the construction and related activities undertaken by the Department as provided by the terms of the Project Agreement. All Persons engaged in any work by Downtown Atlanta CID to work on the Project shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- g. Downtown Atlanta CID agrees that the specifications required by the Department in transportation infrastructure improvements are generally known and that the vast majority of the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work under the terms of the Project Agreement even if such terms are not specifically set forth herein or in the Scope of Work.
- h. The City will make available in a timely manner all records and documents required by Downtown Atlanta CID to fulfill the Scope of Work.



- i. Any data transferred to Downtown Atlanta CID by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Downtown Atlanta CID may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.

- j. Downtown Atlanta CID waives for itself, its successors, and its assigns and any Person employed by it in any capacity, all rights to any claim to damages whatsoever arising out of the use of the City's data for the Project, and/or the provision of this data to Downtown Atlanta CID and/or the transfer of this data to Downtown Atlanta CID shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.

- k. Downtown Atlanta CID agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this Agreement or developed in connection with the Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, Downtown Atlanta CID warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Downtown Atlanta CID waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to this Project ("Project Data").

5.

FUNDING OF THE PROJECT

Downtown Atlanta CID and the City hereby acknowledge and agree that the Project Agreement contains a Budget Estimate which specifies that the total estimated costs for the Project are as depicted on Exhibit A. Downtown Atlanta CID and the City further acknowledge and agree that the Project Agreement states that funds of the Department, funds apportioned to the Department by the Federal Highway Administration, capital funding as provided by the terms of the Intergovernmental Agreement Relating to Land Transportation Projects or a combination of funds from said sources or regional funds shall be subject to the terms of the Project Agreement.

- 
- a. Downtown Atlanta CID acknowledges and agrees that the Project budget includes any and all claims by it against the City under this Agreement and/or in the conduct of the entire scope of work for the Project.
 - b. Downtown Atlanta CID agrees that it shall contribute to the Project by funding all or certain portions of the project costs for the preconstruction engineering (design) activities as per Exhibit "A" to the Project Agreement, utility relocations, right of way acquisitions as per a future Right of Way Agreement and Construction per a future Construction Agreement and agrees that the City is not required or expected to provide any funds for any part of the cost of the Project. The City agrees to cooperate with all reasonable applications for budget adjustments which Downtown Atlanta CID may request that the City forward to GDOT.
 - c. Downtown Atlanta CID acknowledges and agrees that Resolution _____ does not authorize the City to commit funds to this Project. However, the City and Downtown Atlanta CID acknowledge that the City may, at its sole discretion, contribute Quality of Life Matching Funds to the Project. All costs of the Project in excess of available federal funds, capital funding, regional funds and funds which may be contributed through Quality of Life Matching Funds are solely the responsibility of Downtown Atlanta CID.
 - d. In the event of termination of the Project by the Department, the obligations of Downtown Atlanta CID are governed by Paragraph 2, subpart b of this Agreement.

6.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project. Downtown Atlanta CID acknowledges and agrees that Project must meet any requirements of the City in addition to any requirements of the Department and FHWA. Downtown Atlanta CID shall submit all plans for any work on the Project to the Commissioner of Public Works for the City's comments, which shall be provided in writing within ten (10) business days, unless extended by the City for reasonable grounds and with prior written notification. Downtown Atlanta CID may at the time of submission of plans to the Commissioner of Public Works, submit a copy to the Department. Within two (2) business days of receipt, Downtown Atlanta CID shall forward the City's comments with Downtown Atlanta CID's submittals to the Department. Downtown Atlanta CID shall review any previously approved plans with the City for confirmation of the City's approval.

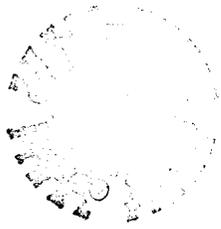


7.

PROCUREMENT OF CONTRACTS

In the event Downtown Atlanta CID in the performance of this Agreement should need to enter into a construction contract, Downtown Atlanta CID, acting as the City's agent, is authorized to contract with others for construction services, provided that such construction contracts are procured in accordance with this Agreement, the Project Agreement, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of construction contracts, does not relieve Downtown Atlanta CID from its obligation to follow all requirements relating to procurement of contracts which are set forth in the Project Agreement or incorporated by reference in the Project Agreement. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Downtown Atlanta CID prior to the execution of this Agreement for engineering, design or right of way acquisition services. In addition said procurement requirements shall not be applicable to Downtown Atlanta CID regarding construction agreements entered by the Department relative to the performance of the Project Agreement.

- a. Any construction contract paid from funds related to the Project in excess of \$20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by Downtown Atlanta CID or by federal funds.
- b. Downtown Atlanta CID acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.
- c. Downtown Atlanta CID acknowledges and agrees that the construction bid documents must comply with federal requirements and, ten (10) business days prior to the advertisement for bids, will provide completed construction plans, bid documents, and specifications to the Department's Project Manager for approval. Bid packages shall be prepared by Downtown Atlanta CID in consultation with the City's Purchasing Agent (who shall undertake its best efforts to approve the bid package within five (5) business days of the approval by the Department), and approval of the construction plans by all necessary departments of the City. After approval by the Department's Project Manager and the City's Purchasing Agent, bid packages shall be made available for purchase by interested bidders at the location customarily employed by the City of Atlanta Bureau of Purchasing and Real Estate for such purposes.
- d. Downtown Atlanta CID acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of



the City's Purchasing Agent. Downtown Atlanta CID will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Downtown Atlanta CID, the City shall provide language for the advertisement within ten (10) business days of submission to the Purchasing Agent unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.

- e. If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act
- f. Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- g. Bid bonds equal to five (5) percent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.
- h. Downtown Atlanta CID acknowledges and agrees that negotiations with bidders are prohibited. If all bids are in excess of any cost estimate set forth in the Project Agreement, Downtown Atlanta CID acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Downtown Atlanta CID acknowledges and agrees that it will either revise the plans and estimate, re-advertise and re-bid for the contract or accept the lowest responsive bid and accept responsibility for the cost difference.
- i. Downtown Atlanta CID and the City acknowledge and agree that the Department requires a bidder to be pre-qualified before submitting a bid in excess of five hundred thousand dollars (\$500,000) and that if the bid involves major structures such as bridges and retaining walls, the contractor must be pre-qualified regardless of bid amount. If a single sub-contract is in excess of two hundred and fifty thousand dollars (\$250,000), the sub-contractor must be registered with the Department. It shall be the responsibility of Downtown Atlanta CID to deal directly with the Department to resolve all questions involving the pre-qualification of bidders, the determination of whether a bid involves major structures, or the registration of bidders.
- j. Downtown Atlanta CID acknowledges and agrees that no advertisements will be placed until such time as the Department has issued a notice to bid to the City authorizing the bidding of the Project.



- k. Downtown Atlanta CID and the Department of Procurement will evaluate the bids. Downtown Atlanta CID shall be responsible for having the bids reviewed by the Department, including without limitation, those parts of the bids with respect to DBE compliance. After approval by the Department of the decision to award, or the Department's decision to decline to review the decision to award, Downtown Atlanta CID shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Downtown Atlanta CID shall be responsible for assuring execution of the contract and issuance of the notice to proceed.
- l. Downtown Atlanta CID acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq* and the City shall maintain one original and one copy of all bids.

8.

EQUAL BUSINESS OPPORTUNITY (EBO)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Downtown Atlanta CID acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. Downtown Atlanta CID acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Downtown Atlanta CID further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Downtown Atlanta CID agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

Downtown Atlanta CID acknowledges and agrees that the Department has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. Downtown Atlanta CID acknowledges and agrees that it will follow all applicable DBE requirements set by the Department and will be responsible for the submission of all reports required by the Department.

The level of minority and female enterprise participation required by the Department through its annual aggregate 12% Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by the Department to be in effect for the purposes of the Project Agreement.



9.

INSURANCE AND BONDING

In the event Downtown Atlanta CID in the performance of this Agreement should need to enter into a construction contract, the following insurance and bonding provisions shall be applicable:

a. Insurance.

(1) During the entire term of this Agreement, Downtown Atlanta CID agrees to cause all Persons to maintain insurance required by the Project Agreement, and where applicable to obtain such insurance on its own behalf.

(2) Downtown Atlanta CID acknowledges and agrees that the minimum levels of insurance applicable to the Project are as follows: A. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia; B. Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to any one person and in an amount of not less than \$300,000 on account of any one occurrence and C. Property Damage Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000 and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to any one person, shall be increased to \$500,000 per occurrence. Said insurance shall be maintained in full force and effect during the term of the Agreement and until final completion of the Project.

(3) The City shall be named as an additional insured in each policy related to the Project.

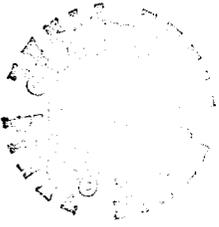
(4) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.

(5) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Downtown Atlanta CID agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.

(6) Downtown Atlanta CID agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance.

b. Bonding-Construction contracts.

(1) At the time of the execution of any construction contract to be paid from funds allocated by this Agreement, Downtown Atlanta CID agrees to



cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.

(2) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.

(3) All performance bonds and payment bonds required under the Project Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any construction contract with any Person.

(4) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.

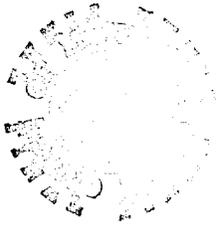
(5) Downtown Atlanta CID agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond.

(6) Downtown Atlanta CID agrees to specifically provide in all construction contracts or agreements that the specific obligations set forth in this paragraph shall be binding on all Persons.

10.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, the City, the Department and FHWA shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City, the Department and FHWA are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. Downtown Atlanta CID shall provide in all contract or agreements relating to the Project that the right of entry and inspection given, by Downtown Atlanta CID in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a contract with Downtown Atlanta CID. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Downtown Atlanta CID or of any sub-contractors, which reasonably relate to this Agreement.



11.

PAYMENT OF INVOICES

- a. Downtown Atlanta CID agrees and understands that the Project Agreement states that GDOT will only disburse funds to the City and that the terms of Resolution _____ which authorized this Agreement do not allow the City to disburse any of its own funds for any of the work on the Project.
- b. The City shall submit to the Department a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").

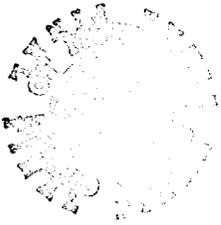
(1) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to the Department, is the sole responsibility of Downtown Atlanta CID. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th of every month or the next business day thereafter in the event that the 30th falls on Saturday, Sunday or a legal holiday.

(2) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to the Department, but the City, without the approval of Downtown Atlanta CID, shall have the right to add comments or other material. Downtown Atlanta CID agrees that only the City may submit the Monthly Report to the Department. At the same time the Monthly Report is submitted to the Department, the City shall provide a copy to Downtown Atlanta CID.

- c. Downtown Atlanta CID agrees and understands that the Department will only pay to the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City

(1) The City agrees to receive proposed vouchers prepared by Downtown Atlanta CID and when the City is satisfied that the work is within the terms and conditions of the Project Agreement certify the voucher and transmit it to the Department, provided that the City shall not submit more than one voucher to the Department for any calendar month. At the same time a voucher is submitted to the Department, the City shall provide a copy to Downtown Atlanta CID.

(2) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by Downtown Atlanta CID within five (5) business days of the receipt of a proposed voucher. The City agrees to notify Downtown Atlanta CID of any part of the proposed voucher that will not be



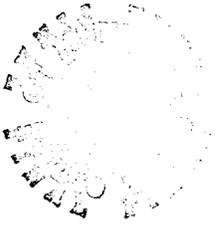
certified and to undertake discussions as to what steps Downtown Atlanta CID must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.

(3) After its five (5) day review period, the City agrees to submit to the Department, on the next business day, all parts of the voucher which it is willing to certify. Downtown Atlanta CID agrees that only the City may submit vouchers to the Department.

(4) The preparation and presentation to the City of the documents which will comprise a voucher is the sole responsibility of Downtown Atlanta CID.

(5) Upon the receipt of payment from the Department for the work submitted in a certified voucher, the City agrees to remit such funds to Downtown Atlanta CID as soon as the transfer of the funds can be arranged, but in no case, no later than the second business day after receipt.

- d. Downtown Atlanta CID acknowledges and agrees that the Department will only make a final payment to the City if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the Department for work done, materials furnished, costs incurred or other matters arising from the Project Agreement. Downtown Atlanta CID further acknowledges and agrees that the Project Agreement states that the acceptance of the final payment by the City shall release the Department from any and all further claims of whatever nature, whether known or unknown, for and account of the Project Agreement and for any and all work done, and labor and materials furnished, in connection with the Project Agreement. Downtown Atlanta CID acknowledges and agrees that the City will only request the final payment from the Department on the condition that Downtown Atlanta CID shall release the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and/or the Project Agreement and for any and all work done, and labor and materials furnished, in connection with this Agreement and/or the Project Agreement.
- e. Downtown Atlanta CID acknowledges and agrees that the Department will only make a final payment to the City if the City will allow the examination and verification of the costs of the Project by the Department's representative's review of books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project as maintained by Downtown Atlanta CID. Such records shall be made available to the Department and any reviewing agency designated by the Department during the Project and for a period of three years from the date of final payment. If the Department's examination of the cost records result in unallowable expenses, Downtown Atlanta CID understands and agrees that they shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of the



Department, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to the Department.

12.

INDEMNIFICATION

Downtown Atlanta CID acknowledges that the Project Agreement between the Department and the City which provides for the construction of those improvements described in the Project Agreement obligates the City to the Department in several respects and Downtown Atlanta CID agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the Project Agreement except where the City specifically assumes an obligation or responsibility under this Agreement. Downtown Atlanta CID further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which Downtown Atlanta CID has agreed to assume including any subsequent obligations or responsibilities which may be imposed on the City by the Department under the Project Agreement. The language of this general assumption of obligation and responsibility and general indemnity shall not be construed to waive or supersede any previous language of this Agreement which more specifically describes any other assumption of responsibility or obligation or indemnification, but shall be construed to supplement those specific assumptions of responsibilities and obligations or indemnifications. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the Project Agreement under which Downtown Atlanta CID has assumed any responsibility or obligation and includes as a part of the indemnity, an Agreement by Downtown Atlanta CID to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the Project Agreement, regardless whether such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the Project Agreement, construction delays, personal injury, injuries to property or any other type of claim expense or cost.

- a. Downtown Atlanta CID acknowledges and agrees that this general indemnity includes the possibility that federal funds may be disapproved for reasons not relating to actual construction of the Project, including without limitation, the procurement process, the requirements related to record keeping, and the final audit of the Project
- b. Downtown Atlanta CID acknowledges and agrees that this general indemnity provided by this Agreement shall survive its termination.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, David E Scott, the Commissioner of the Department of Public Works, or any successor, whose address for the purpose of this Agreement shall be:

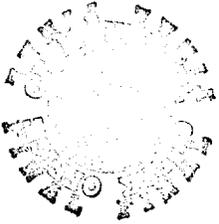
David E. Scott
 Commissioner of Public Works
 Atlanta City Hall
 55 Trinity Avenue, S.W, Suite 4700,
 Atlanta, GA, 30335
 404-330-6240

with a copy to: James Shelby
 Interim Commissioner of Planning and Community Development
 Atlanta City Hall
 55 Trinity Avenue, S.W, Suite 1450
 Atlanta, GA, 30335
 404-330-6070

Downtown Atlanta CID appoints as its designated representative for the receipt of notices, submittals, or other communications, Paul B. Kelman, whose address for the purpose of this Agreement shall be:

Paul B. Kelman, Executive Vice President
 Downtown Atlanta Community Improvement District
 C/o Central Atlanta Progress, Inc.
 50 Hurt Plaza
 Grand Lobby – The Hurt Building
 Atlanta, Georgia 30303
 404-658-1885

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, blueprints or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee



14.

COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

15.

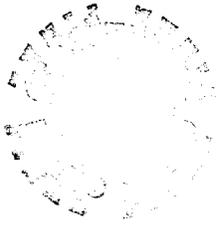
PERMITS AND LICENSES

Downtown Atlanta CID shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the services called for by this Agreement.

16.

GENERAL PROVISIONS OF THIS AGREEMENT

- a. The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- b. No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.



- f. Any agreement between Downtown Atlanta CID and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Downtown Atlanta CID and that the obligations of any Person under any agreement with Downtown Atlanta CID shall survive the termination of the existence of this Agreement and/or the termination of the existence of Downtown Atlanta CID.

17.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.



IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed the seals.

**DOWNTOWN ATLANTA COMMUNITY
IMPROVEMENT DISTRICT**

By: _____

Attest: _____

CITY OF ATLANTA

Municipal Clerk (Seal)

By: _____
Shirley Franklin, Mayor

RECOMMENDED

Commissioner, Department of
Planning & Community Development

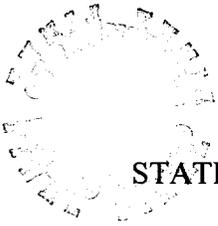
Commissioner, Department of
Public Works

APPROVED

Chief Financial Officer

APPROVED AS TO FORM

City Attorney



STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 2004 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia ("City"), and DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT, a community improvement district created and existing pursuant to the constitutional and the statutory authority of the State of Georgia ("Downtown Atlanta CID").

WITNESSETH

WHEREAS, the City of Atlanta desires to obtain the maximum benefit from funding made available under the region's Regional Transportation Plan ("RTP"), the Transportation Improvement Program ("TIP") and/or the State Transportation Improvement Program ("STIP"); and

WHEREAS, a specific program has been identified by the Georgia Department of Transportation as Project STP-0006-00(978) Simpson-West Peachtree Pedestrian Rail Connections (the "Project"); and

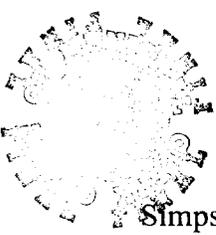
WHEREAS, the Project is approved as eligible for federal and state funds if the City can provide 20 % in local government matching funds to the Georgia Department of Transportation; and

WHEREAS, Article IX, Section VII of the Constitution of the State of Georgia authorizes municipalities to create community improvement districts and pursuant to the "Atlanta Community Improvement District Act", enacted by the Georgia General Assembly as House Bill 544, the City of Atlanta created Downtown Atlanta CID pursuant to the constitutional and statutory authority cited herein (City Council Resolution No. _95-R-1374); and

WHEREAS, the Resolution of the City of Atlanta provided that Downtown Atlanta CID provide such governmental services as the construction and maintenance of local, collector and arterial streets as shown on the City's street classification map or as otherwise included in the City's street classification map or as otherwise included in the City's most recently adopted Comprehensive Development Plan, including curbs, sidewalks, street lights and devices to control the flow of traffic on local, collector and arterial streets; and

WHEREAS, Downtown Atlanta CID is authorized to contract with the City pursuant to the constitutional and statutory authority above referenced; and

WHEREAS, the City has entered into agreements (Project Agreement) with the State of Georgia, Department of Transportation (the "Department") for project management, preliminary engineering (design) activities, and construction and the acquisition of right of way (Contract for Acquisition of Right of Way) of certain improvements referred to as Project STP-0006-00(978)



Simpson-West Peachtree Pedestrian Rail Connections which is identified in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to collectively as the "Project"; and

WHEREAS, the City and Downtown Atlanta CID have represented to the Department a desire to participate in certain activities of the Project as set forth in this Agreement and as set forth in the Project Agreement, the Contract for Acquisition of Right of Way and the Intergovernmental Agreement Relating to Land Transportation Projects; and

WHEREAS, the Department has expressed a willingness to participate in certain activities of the Project as set forth in the Project Agreement, the Contract for Acquisition of Right of Way and the Intergovernmental Agreement Relating to Land Transportation Projects; and

WHEREAS, Downtown Atlanta CID has or is willing, under the terms set forth in this agreement, to provide funding to or on behalf of the City in an amount equal to the 20% local government match required of the City in order to allow the City to utilize the funding presently programmed to the Project; and

WHEREAS, the City wishes, under the terms set forth herein, to accept the grant in an amount equal to the 20% local government match from Downtown Atlanta CID to fund the City's commitment under the Local Government Project Agreement with the Department in order to allow the City to utilize the funds programmed to the Project at present or in the future.

WHEREAS, the City and Downtown Atlanta CID believe that a public partnership to complete the project set forth in this Agreement offers unique opportunities to significantly improve mobility in the Downtown Atlanta area; and

WHEREAS, the City desires the continued involvement of Downtown Atlanta CID in the development in the area comprising the Project and Downtown Atlanta CID desires to work with the City to supervise certain design, engineering, and right of way acquisition work associated with the Project; and

WHEREAS, Resolution, _____ adopted by the City Council on _____, 2004 and approved by the Mayor on _____, 2004 and made a part hereof by reference, authorized the Mayor to enter into this agreement with Downtown Atlanta CID under the terms specified herein; and

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta and Downtown Atlanta CID hereby agree that, as a condition for funding the City's local match, Downtown Atlanta CID will be responsible for and perform the obligations which the City has agreed to perform pursuant to the Project Agreement which is attached as



Exhibit A.. Downtown Atlanta CID may act as the City's agent and enter into agreements with a project manager, engineer and one or more professional or technical consultants (hereinafter "Persons") to perform the obligations set forth in the Project Agreement so long as the process used to enter into such agreements and the terms of such agreements are consistent with and permitted by the Project Agreement and/or other applicable law. This Agreement does not assign, sublet or transfer any or all of the City's interest in the Project Agreement.

2.

THE EFFECT OF THE PROJECT AGREEMENT

Downtown Atlanta CID stipulates that it is aware of and has fully reviewed the Project Agreement entered into between the City and the Department and attached as Exhibit A.. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of Downtown Atlanta CID to the City than the obligations of the City to the Department, as set forth in the Project Agreement, the terms of the Project Agreement shall be considered as further clarifying and explaining the obligations of Downtown Atlanta CID in this Agreement unless it is specially stated that such variation in obligations is permitted. Downtown Atlanta CID agrees that, to the extent possible, the obligations of Downtown Atlanta CID to perform under this Agreement should be construed to be equal to the obligations of the City to perform under the Project Agreement. However, the City's obligations under Paragraph 3 of the Project Agreement regarding roadway, interchange and pedestrian lighting shall remain the obligations of the City and shall not be the responsibility of Downtown Atlanta CID.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of Downtown Atlanta CID or any other Person after termination of the Project Agreement by the Department.
- b. Should the Department terminate the Project Agreement prior to the completion of the work, Downtown Atlanta CID agrees that any of the streets or sidewalks, which are uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of the streets and sidewalks of the City prior to the beginning of construction.
- c. The City agrees that should the Department terminate the Project Agreement prior to the completion of the work, that Downtown Atlanta CID shall receive the reimbursement to which the City would be entitled under the terms of the Project Agreement, provided that such funds are not required to restore the street and sidewalks of the City to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic.



3.

TIME OF PERFORMANCE

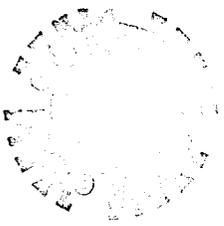
Downtown Atlanta CID shall commence the performance of its obligations pursuant to the terms of the Project Agreement no later than thirty (30) calendar days after execution of this Agreement by each of the parties. The work to be performed by Downtown Atlanta CID shall be completed before December 31, 2007. Provided however that Downtown Atlanta CID may request that the City seek an extension of the time for completion of the Project Agreement and that if the extension of the operation Project Agreement is granted, such extension shall apply to this Agreement. The City agrees to request an extension of the Project Agreement from the Department within five business days after receipt of a written request for extension from Downtown Atlanta CID. In addition, Downtown Atlanta CID may request that the scope of any phase or part of the Project be allocated or divided or that the order of letting the Project be adjusted and the City agrees to seek Department approval of such request, and if granted the request shall apply to this Agreement. The City agrees to submit said requests within five business days after receipt of a written request from Downtown Atlanta CID.

4.

PROFESSIONAL RESPONSIBILITY

Downtown Atlanta CID shall assume all responsibility undertaken by the City in the Project Agreement with respect to the professional quality, technical accuracy and the coordination of all designs, drawings, and specifications and other services furnished by or on behalf or required of the City pursuant to the Project Agreement.

- a. Downtown Atlanta CID shall correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in the Project Agreement and furnished for the Project by Downtown Atlanta CID on behalf of the City under this Agreement, for which the City has received notice from the Department, within such time that the City shall not be in breach of its obligations to the Department under the Project Agreement. The City shall give such written notice to Downtown Atlanta CID no later than the third business day after receipt of notice from the Department. Downtown Atlanta CID is aware that the City is obligated to address any errors or deficiencies in the work as specified in the Project Agreement and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for Downtown Atlanta CID to be required to make such revisions and corrections. All plans shall be prepared in English units.
- b. Downtown Atlanta CID shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts errors or omissions related to the designs, drawings, specifications, construction and/or other services



required to be furnished by or on behalf of the City pursuant to the Project Agreement, in the event that such claim, damage, loss or expense arises from obligations which Downtown Atlanta CID has specifically undertaken in this Agreement.

- c. Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, Downtown Atlanta CID agrees that authorized representatives of the Department and the Federal Highway Administration ("FHWA") and the City may at all reasonable time review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, Downtown Atlanta CID or any other Person.
- d. Downtown Atlanta CID agrees to incorporate into its work activities any reasonable review recommendation of the Department or the City, provided that the City's review recommendations are made prior to the Department's final approval of the design documents. The City shall be given written notice of each submission to the Department and provided with sufficient information to determine if the plans to be submitted to the Department have been reviewed by the City prior to submission to the Department for final approval.
- e. Downtown Atlanta CID agrees that all agreements with any Person shall cause all such Persons to be bound to the same terms and conditions and standards of performance as this Agreement. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Downtown Atlanta CID under this Agreement. No contract or sub-contract under this Agreement shall be assigned
- f. All the services required hereunder will be performed under the direct supervision of Downtown Atlanta CID with the exception of the construction and related activities undertaken by the Department as provided by the terms of the Project Agreement. All Persons engaged in any work by Downtown Atlanta CID to work on the Project shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- g. Downtown Atlanta CID agrees that the specifications required by the Department in transportation infrastructure improvements are generally known and that the vast majority of the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work under the terms of the Project Agreement even if such terms are not specifically set forth herein or in the Scope of Work.
- h. The City will make available in a timely manner all records and documents required by Downtown Atlanta CID to fulfill the Scope of Work.



- i. Any data transferred to Downtown Atlanta CID by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Downtown Atlanta CID may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.
- j. Downtown Atlanta CID waives for itself, its successors, and its assigns and any Person employed by it in any capacity, all rights to any claim to damages whatsoever arising out of the use of the City's data for the Project, and/or the provision of this data to Downtown Atlanta CID and/or the transfer of this data to Downtown Atlanta CID shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.
- k. Downtown Atlanta CID agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this Agreement or developed in connection with the Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, Downtown Atlanta CID warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Downtown Atlanta CID waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to this Project ("Project Data").

5.

FUNDING OF THE PROJECT

Downtown Atlanta CID and the City hereby acknowledge and agree that the Project Agreement contains a Budget Estimate which specifies that the total estimated costs for the Project are as depicted on Exhibit A. Downtown Atlanta CID and the City further acknowledge and agree that the Project Agreement states that funds of the Department, funds apportioned to the Department by the Federal Highway Administration, capital funding as provided by the terms of the Intergovernmental Agreement Relating to Land Transportation Projects or a combination of funds from said sources or regional funds shall be subject to the terms of the Project Agreement.

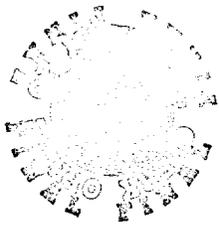


- a. Downtown Atlanta CID acknowledges and agrees that the Project budget includes any and all claims by it against the City under this Agreement and/or in the conduct of the entire scope of work for the Project.
- b. Downtown Atlanta CID agrees that it shall contribute to the Project by funding all or certain portions of the project costs for the preconstruction engineering (design) activities as per Exhibit "A" to the Project Agreement, utility relocations, right of way acquisitions as per a future Right of Way Agreement and Construction per a future Construction Agreement and agrees that the City is not required or expected to provide any funds for any part of the cost of the Project. The City agrees to cooperate with all reasonable applications for budget adjustments which Downtown Atlanta CID may request that the City forward to GDOT.
- c. Downtown Atlanta CID acknowledges and agrees that Resolution _____ does not authorize the City to commit funds to this Project. However, the City and Downtown Atlanta CID acknowledge that the City may, at its sole discretion, contribute Quality of Life Matching Funds to the Project. All costs of the Project in excess of available federal funds, capital funding, regional funds and funds which may be contributed through Quality of Life Matching Funds are solely the responsibility of Downtown Atlanta CID.
- d. In the event of termination of the Project by the Department, the obligations of Downtown Atlanta CID are governed by Paragraph 2, subpart b of this Agreement.

6.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project. Downtown Atlanta CID acknowledges and agrees that Project must meet any requirements of the City in addition to any requirements of the Department and FHWA. Downtown Atlanta CID shall submit all plans for any work on the Project to the Commissioner of Public Works for the City's comments, which shall be provided in writing within ten (10) business days, unless extended by the City for reasonable grounds and with prior written notification. Downtown Atlanta CID may at the time of submission of plans to the Commissioner of Public Works, submit a copy to the Department. Within two (2) business days of receipt, Downtown Atlanta CID shall forward the City's comments with Downtown Atlanta CID's submittals to the Department. Downtown Atlanta CID shall review any previously approved plans with the City for confirmation of the City's approval.

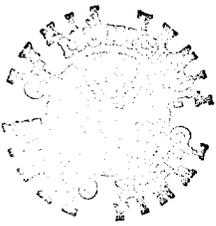


7.

PROCUREMENT OF CONTRACTS

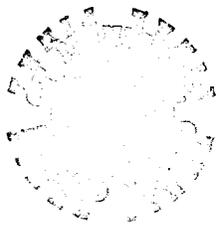
In the event Downtown Atlanta CID in the performance of this Agreement should need to enter into a construction contract, Downtown Atlanta CID, acting as the City's agent, is authorized to contract with others for construction services, provided that such construction contracts are procured in accordance with this Agreement, the Project Agreement, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of construction contracts, does not relieve Downtown Atlanta CID from its obligation to follow all requirements relating to procurement of contracts which are set forth in the Project Agreement or incorporated by reference in the Project Agreement. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Downtown Atlanta CID prior to the execution of this Agreement for engineering, design or right of way acquisition services. In addition said procurement requirements shall not be applicable to Downtown Atlanta CID regarding construction agreements entered by the Department relative to the performance of the Project Agreement.

- a. Any construction contract paid from funds related to the Project in excess of \$20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by Downtown Atlanta CID or by federal funds.
- b. Downtown Atlanta CID acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.
- c. Downtown Atlanta CID acknowledges and agrees that the construction bid documents must comply with federal requirements and, ten (10) business days prior to the advertisement for bids, will provide completed construction plans, bid documents, and specifications to the Department's Project Manager for approval. Bid packages shall be prepared by Downtown Atlanta CID in consultation with the City's Purchasing Agent (who shall undertake its best efforts to approve the bid package within five (5) business days of the approval by the Department), and approval of the construction plans by all necessary departments of the City. After approval by the Department's Project Manager and the City's Purchasing Agent, bid packages shall be made available for purchase by interested bidders at the location customarily employed by the City of Atlanta Bureau of Purchasing and Real Estate for such purposes.
- d. Downtown Atlanta CID acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of



the City's Purchasing Agent. Downtown Atlanta CID will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Downtown Atlanta CID, the City shall provide language for the advertisement within ten (10) business days of submission to the Purchasing Agent unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.

- e. If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act
- f. Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- g. Bid bonds equal to five (5) percent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.
- h. Downtown Atlanta CID acknowledges and agrees that negotiations with bidders are prohibited. If all bids are in excess of any cost estimate set forth in the Project Agreement, Downtown Atlanta CID acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Downtown Atlanta CID acknowledges and agrees that it will either revise the plans and estimate, re-advertise and re-bid for the contract or accept the lowest responsive bid and accept responsibility for the cost difference.
- i. Downtown Atlanta CID and the City acknowledge and agree that the Department requires a bidder to be pre-qualified before submitting a bid in excess of five hundred thousand dollars (\$500,000) and that if the bid involves major structures such as bridges and retaining walls, the contractor must be pre-qualified regardless of bid amount. If a single sub-contract is in excess of two hundred and fifty thousand dollars (\$250,000), the sub-contractor must be registered with the Department. It shall be the responsibility of Downtown Atlanta CID to deal directly with the Department to resolve all questions involving the pre-qualification of bidders, the determination of whether a bid involves major structures, or the registration of bidders.
- j. Downtown Atlanta CID acknowledges and agrees that no advertisements will be placed until such time as the Department has issued a notice to bid to the City authorizing the bidding of the Project.



- k. Downtown Atlanta CID and the Department of Procurement will evaluate the bids. Downtown Atlanta CID shall be responsible for having the bids reviewed by the Department, including without limitation, those parts of the bids with respect to DBE compliance. After approval by the Department of the decision to award, or the Department's decision to decline to review the decision to award, Downtown Atlanta CID shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Downtown Atlanta CID shall be responsible for assuring execution of the contract and issuance of the notice to proceed.
- l. Downtown Atlanta CID acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq* and the City shall maintain one original and one copy of all bids.

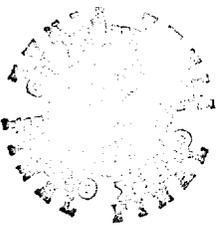
8.

**EQUAL BUSINESS OPPORTUNITY (EBO)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

Downtown Atlanta CID acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. Downtown Atlanta CID acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Downtown Atlanta CID further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Downtown Atlanta CID agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

Downtown Atlanta CID acknowledges and agrees that the Department has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. Downtown Atlanta CID acknowledges and agrees that it will follow all applicable DBE requirements set by the Department and will be responsible for the submission of all reports required by the Department.

The level of minority and female enterprise participation required by the Department through its annual aggregate 12% Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by the Department to be in effect for the purposes of the Project Agreement.



9.

INSURANCE AND BONDING

In the event Downtown Atlanta CID in the performance of this Agreement should need to enter into a construction contract, the following insurance and bonding provisions shall be applicable:

a. Insurance.

(1) During the entire term of this Agreement, Downtown Atlanta CID agrees to cause all Persons to maintain insurance required by the Project Agreement, and where applicable to obtain such insurance on its own behalf.

(2) Downtown Atlanta CID acknowledges and agrees that the minimum levels of insurance applicable to the Project are as follows: A. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia; B. Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to any one person and in an amount of not less than \$300,000 on account of any one occurrence and C. Property Damage Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000 and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to any one person, shall be increased to \$500,000 per occurrence. Said insurance shall be maintained in full force and effect during the term of the Agreement and until final completion of the Project.

(3) The City shall be named as an additional insured in each policy related to the Project.

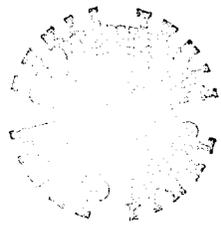
(4) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.

(5) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Downtown Atlanta CID agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.

(6) Downtown Atlanta CID agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance.

b. Bonding-Construction contracts.

(1) At the time of the execution of any construction contract to be paid from funds allocated by this Agreement, Downtown Atlanta CID agrees to



cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.

(2) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.

(3) All performance bonds and payment bonds required under the Project Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any construction contract with any Person.

(4) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.

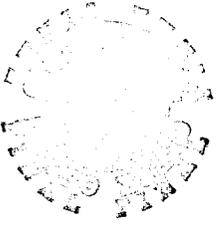
(5) Downtown Atlanta CID agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond.

(6) Downtown Atlanta CID agrees to specifically provide in all construction contracts or agreements that the specific obligations set forth in this paragraph shall be binding on all Persons.

10.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) the Department's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by the Department or FHWA or designee, the City, the Department and FHWA shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City, the Department and FHWA are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. Downtown Atlanta CID shall provide in all contract or agreements relating to the Project that the right of entry and inspection given, by Downtown Atlanta CID in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a contract with Downtown Atlanta CID. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Downtown Atlanta CID or of any sub-contractors, which reasonably relate to this Agreement.



11.

PAYMENT OF INVOICES

- a. Downtown Atlanta CID agrees and understands that the Project Agreement states that GDOT will only disburse funds to the City and that the terms of Resolution _____ which authorized this Agreement do not allow the City to disburse any of its own funds for any of the work on the Project.
- b. The City shall submit to the Department a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").

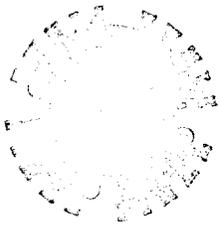
(1) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to the Department, is the sole responsibility of Downtown Atlanta CID. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th of every month or the next business day thereafter in the event that the 30th falls on Saturday, Sunday or a legal holiday.

(2) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to the Department, but the City, without the approval of Downtown Atlanta CID, shall have the right to add comments or other material. Downtown Atlanta CID agrees that only the City may submit the Monthly Report to the Department. At the same time the Monthly Report is submitted to the Department, the City shall provide a copy to Downtown Atlanta CID.

- c. Downtown Atlanta CID agrees and understands that the Department will only pay to the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City

(1) The City agrees to receive proposed vouchers prepared by Downtown Atlanta CID and when the City is satisfied that the work is within the terms and conditions of the Project Agreement certify the voucher and transmit it to the Department, provided that the City shall not submit more than one voucher to the Department for any calendar month. At the same time a voucher is submitted to the Department, the City shall provide a copy to Downtown Atlanta CID.

(2) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by Downtown Atlanta CID within five (5) business days of the receipt of a proposed voucher. The City agrees to notify Downtown Atlanta CID of any part of the proposed voucher that will not be



certified and to undertake discussions as to what steps Downtown Atlanta CID must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.

(3) After its five (5) day review period, the City agrees to submit to the Department, on the next business day, all parts of the voucher which it is willing to certify. Downtown Atlanta CID agrees that only the City may submit vouchers to the Department.

(4) The preparation and presentation to the City of the documents which will comprise a voucher is the sole responsibility of Downtown Atlanta CID.

(5) Upon the receipt of payment from the Department for the work submitted in a certified voucher, the City agrees to remit such funds to Downtown Atlanta CID as soon as the transfer of the funds can be arranged, but in no case, no later than the second business day after receipt.

- d. Downtown Atlanta CID acknowledges and agrees that the Department will only make a final payment to the City if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the Department for work done, materials furnished, costs incurred or other matters arising from the Project Agreement. Downtown Atlanta CID further acknowledges and agrees that the Project Agreement states that the acceptance of the final payment by the City shall release the Department from any and all further claims of whatever nature, whether known or unknown, for and account of the Project Agreement and for any and all work done, and labor and materials furnished, in connection with the Project Agreement. Downtown Atlanta CID acknowledges and agrees that the City will only request the final payment from the Department on the condition that Downtown Atlanta CID shall release the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and/or the Project Agreement and for any and all work done, and labor and materials furnished, in connection with this Agreement and/or the Project Agreement.
- e. Downtown Atlanta CID acknowledges and agrees that the Department will only make a final payment to the City if the City will allow the examination and verification of the costs of the Project by the Department's representative's review of books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project as maintained by Downtown Atlanta CID. Such records shall be made available to the Department and any reviewing agency designated by the Department during the Project and for a period of three years from the date of final payment. If the Department's examination of the cost records result in unallowable expenses, Downtown Atlanta CID understands and agrees that they shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of the



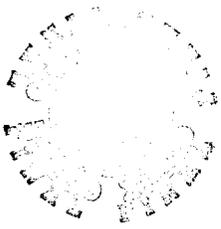
Department, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to the Department.

12.

INDEMNIFICATION

Downtown Atlanta CID acknowledges that the Project Agreement between the Department and the City which provides for the construction of those improvements described in the Project Agreement obligates the City to the Department in several respects and Downtown Atlanta CID agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the Project Agreement except where the City specifically assumes an obligation or responsibility under this Agreement. Downtown Atlanta CID further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which Downtown Atlanta CID has agreed to assume including any subsequent obligations or responsibilities which may be imposed on the City by the Department under the Project Agreement. The language of this general assumption of obligation and responsibility and general indemnity shall not be construed to waive or supersede any previous language of this Agreement which more specifically describes any other assumption of responsibility or obligation or indemnification, but shall be construed to supplement those specific assumptions of responsibilities and obligations or indemnifications. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the Project Agreement under which Downtown Atlanta CID has assumed any responsibility or obligation and includes as a part of the indemnity, an Agreement by Downtown Atlanta CID to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the Project Agreement, regardless whether such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the Project Agreement, construction delays, personal injury, injuries to property or any other type of claim expense or cost.

- a. Downtown Atlanta CID acknowledges and agrees that this general indemnity includes the possibility that federal funds may be disapproved for reasons not relating to actual construction of the Project, including without limitation, the procurement process, the requirements related to record keeping, and the final audit of the Project
- b. Downtown Atlanta CID acknowledges and agrees that this general indemnity provided by this Agreement shall survive its termination.



13.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, David E Scott, the Commissioner of the Department of Public Works, or any successor, whose address for the purpose of this Agreement shall be:

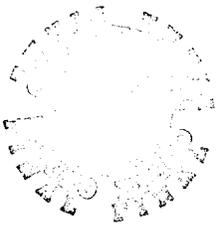
David E. Scott
Commissioner of Public Works
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 4700,
Atlanta, GA, 30335
404-330-6240

with a copy to: James Shelby
Interim Commissioner of Planning and Community Development
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 1450
Atlanta, GA, 30335
404-330-6070

Downtown Atlanta CID appoints as its designated representative for the receipt of notices, submittals, or other communications, Paul B. Kelman, whose address for the purpose of this Agreement shall be:

Paul B. Kelman, Executive Vice President
Downtown Atlanta Community Improvement District
C/o Central Atlanta Progress, Inc.
50 Hurt Plaza
Grand Lobby – The Hurt Building
Atlanta, Georgia 30303
404-658-1885

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, blueprints or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee



14.

COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

15.

PERMITS AND LICENSES

Downtown Atlanta CID shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the services called for by this Agreement.

16.

GENERAL PROVISIONS OF THIS AGREEMENT

- a. The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- b. No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.



- f. Any agreement between Downtown Atlanta CID and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Downtown Atlanta CID and that the obligations of any Person under any agreement with Downtown Atlanta CID shall survive the termination of the existence of this Agreement and/or the termination of the existence of Downtown Atlanta CID.

17.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.