

11- R-1577

(Do Not Write Above This Line)

A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR THE LEASE OF PROPERTY LOCATED BENEATH THE I-75/I-85 FREEWAY VIADUCT BETWEEN AUBURN AVENUE AND EDGEWOOD AVENUE TO BE USED FOR THE CONSTRUCTION OF A VEHICLE MAINTENANCE FACILITY FOR THE ATLANTA STREETCAR; AND FOR OTHER PURPOSES.

As Amended
ADOPTED BY

NOV 07 2011

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee Finance/Executive

Date 11/2/11

Chair [Signature]

Action

Fav, Adv, Hold (see rev. side)

Other

On condition

Members [Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

Refer To [Signature]

Committee _____

Date _____

Chair _____

Action

Fav, Adv, Hold (see rev. side)

Other

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action

Fav, Adv, Hold (see rev. side)

Other

Members _____

Refer To _____

Committee _____

Date _____

Chair _____

Action

Fav, Adv, Hold (see rev. side)

Other

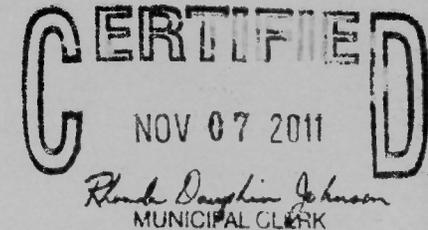
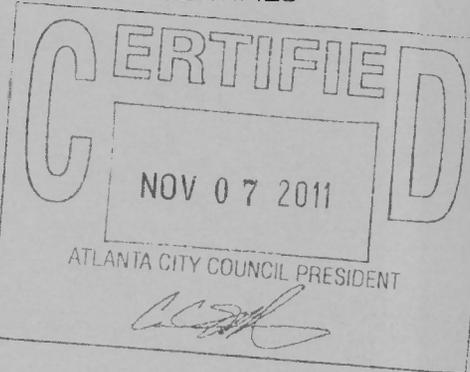
Members _____

Refer To _____

FINAL COUNCIL ACTION

- 2nd
- 1st & 2nd
- 3rd
- Readings
- Consent
- V Vote
- RC Vote

CERTIFIED

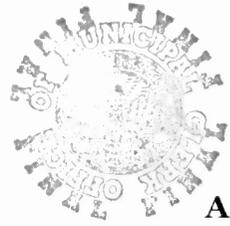


MAYOR'S ACTION

APPROVED

NOV 16 2011

WITHOUT SIGNATURE
BY OPERATION OF LAW



**A RESOLUTION
BY FINANCE/EXECUTIVE COMMITTEE**

11-R-1577

**AS SUBSTITUTED
BY FULL CITY COUNCIL**

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR THE LEASE OF PROPERTY LOCATED BENEATH THE I-78/I-85 FREEWAY VIADUCT BETWEEN AUBURN AVENUE AND EDGEWOOD AVENUE TO BE USED FOR THE CONSTRUCTION OF A VEHICLE MAINTENANCE FACILITY FOR THE ATLANTA STREETCAR; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to Ordinance 11-O-0327, adopted by the Atlanta City Council on March 7, 2011 and approved by the Mayor on March 14, 2011, the City of Atlanta (the "City") entered into an intergovernmental agreement in March, 2011 ("Intergovernmental Agreement") with Metropolitan Atlanta Rapid Transit Authority ("MARTA"), the Downtown Atlanta Community Improvement District, and the Atlanta Downtown Improvement District, Inc. (the "Parties"), to build a modern streetcar system in the City (the "Atlanta Streetcar"); and

WHEREAS, the operation of the Atlanta Streetcar will require facilities designed and equipped to handle the maintenance, repair and storage of the Streetcar vehicles; and

WHEREAS, the property is approximately seventy seven thousand six hundred twenty five square feet (77,625 sq. ft.), located beneath the I-75/I-85 freeway viaduct between Auburn Avenue and Edgewood Avenue and is ideally located along the route of the Atlanta Streetcar; and

WHEREAS, the improvement of this property to provide for a Vehicle Maintenance Facility will help to revitalize that portion of the Atlanta Streetcar routes; and

WHEREAS, the Parties desire to enter into this agreement to allow for the construction of the facility and use of the facility to maintain and repair the City of Atlanta Streetcars.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES that the Mayor is authorized into an Intergovernmental Agreement with the Georgia Department of Transportation to lease the property located beneath the I-75/I-85 freeway viaduct between Auburn Avenue and Edgewood Avenue for the purpose of building a Vehicle Maintenance Facility for the Atlanta Streetcar Project.



BE IT FURTHER RESOLVED, that the City Attorney is directed to negotiate, prepare, and/or review the Intergovernmental Agreement, in substantially similar form as attached in Exhibit A, to affect the intent of this resolution provided that such agreement is in compliance with the conditions set forth herein.

BE IT FINALLY RESOLVED, that the Agreement (and any additional amendments to the Intergovernmental Agreement) will not become binding upon the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to the Parties.

A true copy,

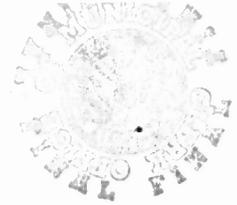
A handwritten signature in black ink, appearing to be "John [unclear]", written over a horizontal line.

Deputy Municipal Clerk

**ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403**

**Nov. 07, 2011
Nov. 16, 2011**

EXHIBIT A



**DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT**

GEORGIA, FULTON COUNTY

Project: Atlanta Streetcar
Fulton County

P I No. XXXXXX, Parcel XX

THIS LEASE AGREEMENT, entered into this ___ day of _____, 20____, between the DEPARTMENT OF TRANSPORTATION of the State of Georgia, hereinafter referred to as the Lessor, and the City of Atlanta, Georgia (hereinafter referred to as "Lessee" or from time to time "City") on terms and conditions as follows:

1.

Lessor for and in consideration of rents, covenants and agreements hereinafter reserved to be paid, kept and performed by Lessee, does hereby lease, rent and demise the following described property, hereinafter referred to as "Leased Premises," situated in FULTON COUNTY, Georgia which Leased Premises are Depicted on the plat attached hereto as Exhibit "A" and more particularly described as follows:

BEGINNING at a point

(see attached plat).

2.

The term of this lease shall commence on September 1, 2011 and shall be for the entire period that the City of Atlanta is under obligation to the Federal Transit Administration ("FTA") in connection with the Atlanta Streetcar Project (the "Project") based on those certifications and assurances which are required for all federal assistance programs administered by FTA in accordance with 49 U.S.C. 5323(n), any of the grant agreements between the City and FTA and in compliance with such other requirements as may be further provided by any and all applicable Federal laws and regulations and applicable Federal directives, except to the extent that FTA determines otherwise in writing (the "Federal Obligations") or not longer than fifty (50) years which ever period is shorter. Lessor may terminate this lease for cause after Lessee's failure to cure.

Lessee shall have the right to request that the Lessor terminate this lease in the event that the federal funding for the Project is withdrawn or declined by the City prior to the beginning of construction or revenue service by giving Lessor thirty (30) days written notice. If the Lessor declines to terminate the lease within



30 days after the occurrence of such event and after receiving such written notice from the Lessee, the Lessee reserves the right to terminate this lease upon a further thirty-(30) day written notice to Lessor.

Lessee agrees to pay Lessor the monthly rental amount of \$1.00. Payment shall be made upon execution and delivery of this agreement by Lessee. Each subsequent monthly payment shall be made by the 1st day of the month. Lessor will have the right to evaluate the rate of rent at the end of the first five (5) year period to determine the rate of increase for each remaining five (5) year period.

3.

Lessor acknowledges that the Leased Premises may not be considered as part of the adjoining property for purposes of commercial activity, or for the purpose of obtaining any change in zoning, building permits or other plans for expansion of buildings or improvements on the adjoining property.

4.

Lessee accepts the Leased Premises in their present condition as of the date and time of this Lease Agreement. Lessee agrees that no modifications will be made to the existing roadway or bridge structure which passes over the Leased Premises, including, without limitation, attachments to the supporting columns. Except as provided herein, Lessor shall be required to make no further repairs or improvements thereon.

Lessee agrees that in accordance with 36 CFR 800.13(a) Planning for Discovery, during the term of this agreement, Lessee will ensure that an archaeologist who meets the Secretary of Interior's Guidelines for Professional Qualifications Standards will supervise the monitoring of all land disturbing activities within the Leased Premises area of potential environmental effect within and adjacent to the existing right-of-way of Fort Street. The monitoring will include the recovery, recording, and reporting of all subsurface archaeological features or artifact concentrations located during construction. If any such features or concentrations are located during monitoring, land disturbing activity shall be halted in the immediate vicinity of the resource(s) to provide no more than five (5) days time for the project archaeologist, in consultation with the State Historic Preservation Officer, to evaluate their significance by applying National Register criteria, and allowing for their proper excavation and recovery. The work stoppage will not exceed the minimum time necessary for completion of this work for each occurrence of significant archaeological resources (see Standard Specifications of Road and Bridges, 1993, Section 107.13 (A), paragraphs 4 and 5). The project archaeologist and the Lessor's archaeologist shall be notified within 48 hours prior to any ground disturbing on the Leased Premises in the area within and adjacent to the existing right-of-way of Fort Street.



5.

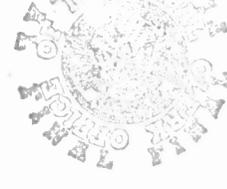
Lessor agrees that the Leased Premises may be improved with the construction of a facility consisting of one or more buildings to be used for the maintenance of electric streetcars being used for the benefit of the Project (the "Maintenance Facility"). No portion of any structure shall block access to any part of the bridge in a manner that will prevent inspection of the entire structure. Until such time as the Maintenance Facility is put into use, the Leased Premises may be used for any purpose related to the construction of the Project such as the storage of equipment and materials, parking and the erection of temporary structures related to the construction of the Project. If in the future, the Project is expanded or connected to other projects operated by or for the City, Lessor agrees that the Maintenance Facility may be used for the maintenance of streetcars or light rail vehicles used for such purposes. Lessee is authorized to grade, pave, fence and install security lighting on the Leased Premises in addition to the erection of structures. If approved by the Department of Homeland Security or the Federal Highway Administration, a museum or building for the display to the public of material associated with the history of streetcar and/or railroad operation in Atlanta may be erected on a part of the Leased Premises in a configuration that shall not interfere with the security of the Maintenance Facility.

6.

Only non-flammable liquids and flammable liquids related to the maintenance and operation of electric streetcars will be allowed. No on site liquid fueling of gasoline or diesel will be permitted for vehicles associated with the electric streetcar project without regard to whether the vehicles are used in connection with the maintenance of electric streetcars or whether such vehicles are used by security, inspection or management, personnel.

All containers, whether drums or pails and smaller, are to be kept in drum cabinets with spill containment; except as required for immediate use. The following list of materials is permitted:

- One (1) partial 55 gallon drum of gear case oil. This is the "in-use drum", sealed, but with drum pump ready to top off a streetcar gear case when needed;
- One (1) full 55 gallon drum of gear case oil, in inventory;
- One (1) 55 gallon drum of spent gear case oil, for recycling;
- One (1) case of brake fluid consisting of (24) individual quart size bottles;
- One (1) pallet of cleaning solvent containing (4) 5 gallon pails, sealed;

- 
- Twenty-four (24) individual cans of spray lubricant to be kept in fire / safety cabinets;
 - Twenty-four (24) individual cans of spray paint (aerosol) to be kept in fire / safety cabinets;
 - One (1) 35 gallon spent oil receiver for HVAC refrigerants, sealed;
 - Four (4) 5 gallon pressurized new refrigerant supply canisters;
 - One set of Oxy-Acetylene bottles (on cart) for occasional cutting requirements;
 - One small hand torch (Bernz-O-Matic), and one replacement bottle;
 - General grease products for miscellaneous lubrication needs; but usually limited to very small quantities and container sizes such as (lithium base) motor bearing grease usually purchased in tubes for small hand grease guns.

Commercially available non-flammable commodities such as car washing detergent and spray cleaners (including chlorine compounds as might be contained in light commercial cleaning compounds) are permitted. No oxidizers, heavily acidic, or caustic agents shall be allowed at the premises except by amendment to this lease or if for occasional use, pursuant to written permission of Lessor.

No paint booth may be installed and painting activities shall be limited to the use of permitted aerosol cans.

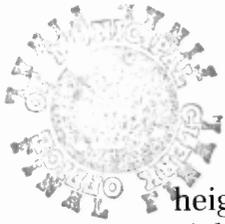
No manufacturing or fabrication activities are permitted.

A parts washer with 15 gallon capacity shall be allowed. The parts washer shall be lidded to prevent evaporative loss.

An electric welding machine with Oxy-Acetylene bottles on a cart is permitted and except when in immediate use the Oxy-Acetylene bottles on the welding cart shall be stored in a drum cabinet.

Automobiles, light trucks other vehicles with fuel tanks will be permitted as a part of the parking requirements.

An overhead crane or hoist system is allowed but it shall be designed, constructed and used in a manner that the operation shall not cause any part of the system to contact the bridge structure. The maximum height of a fully extended boom or arm of the overhead crane shall not exceed sixteen (16) feet in



height, and shall not be operated in a manner to cause it to be extended within eight (8) feet of the columns and supports of the bridge.

In the event that in Lessor's exercise of the right of entry and inspection, Lessor discovers a condition which in Lessor's opinion violates the terms set forth herein for the keeping and handling of flammable materials permitted on site, the Lessee agrees, upon notice, to correct within a reasonable amount of time any manner or method of storage of permitted materials, and/or remove unpermitted materials, provided however that the terms of this Lease shall control with respect to the Lessee's right to keep the listed materials on the Leased Premises in the manner set forth herein.

7.

Lessee agrees that all construction which is undertaken within the Leased Premises granted to Lessee, by this agreement shall be in accordance with plans approved by the Lessor and in compliance with Federal Law, Title 23, United States Code Section 156, and 23 CFR 713, Subpart B.

- (a) Lessor reserves the right to approve any modifications to design and construction plans for the proposed facility.
- (b) Lessee will assume responsibility for all costs in providing and maintaining adequate lighting, drainage, utilities, signage, and security of the facility.
- (c) Lessor reserves the right to enter the "Leased Premises" for the purpose of maintaining or inspecting the highway facility.

Lessee shall at all times during the lease and at its own expense repair and maintain in a good, safe and substantial condition all improvements and the Lessee shall use all reasonable precautions to prevent waste, damage or injury to the Leased Premises. Lessee shall have no obligation to repair any part of the roadway which passes over the Leased Premises unless there is damage to the roadway which is the result of negligence of the Lessee.

8.

As soon as is reasonably practicable after the beginning of construction, the Leased Premises shall be secured by fencing and access control maintained through a keycard system meeting Tier 1 requirements of the Department of Homeland Security. The streetcar vehicles shall have gate controllers to minimize gate open time.

9.



Upon termination of this agreement, Lessee agrees that all improvements placed on the Leased Premises will become the property of the Lessor who may allow any or all improvements to remain on the site; however, such decision will be at the sole discretion of the Lessor. In the event that the Lessor not to take possession of the improvements, Lessor shall notify Lessee who shall remove such improvements and restore the Leased Premises to generally the same condition as when Lessee began its occupancy, at Lessee's expense. Lessee agrees to restore the Leased Premises to a condition satisfactory to Lessor, however, in no case shall Lessee be required to turn over the leased premises in a condition better than when occupancy began.

10.

Lessor reserves and the Lessee agree to accord the Lessor the right of entry upon the Leased Premises at the Lessor's sole discretion for the purpose of inspecting the Leased Premises and/or the roadway which passes over the Leased Premises.

11.

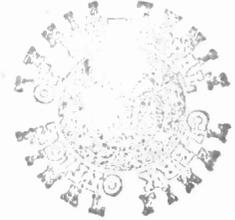
Lessee shall not assign or transfer this lease or any interest herein, without written permission of the Lessor. Neither this Lease Agreement nor the leasehold estate of Lessee nor any interest of the Lessee hereunder in the Leased Premises or any improvements thereon shall be subject to involuntary assignment, transfer or sale, including assignment, transfer or sale by operation of law, in any manner whatsoever. Any such attempted involuntary assignment, transfer or sale shall be void and of no effect and shall at the option of the Lessor terminate the Lease Agreement.

12.

Lessee will indemnify and save harmless Lessor of and from any and all lawsuits, claims, demands and actions of any kind or nature by reason of any breach, violation or nonperformance of any condition hereof by Lessee. Lessee will indemnify, protect and save harmless Lessor from and against any and all losses, costs, damages or expenses (including attorney's fees) caused by or resulting from injuries to persons or property while in, on or about the Leased Premises except where resulting from the negligence of Lessor with regard to its obligations related to the maintenance of the roadway which passes over the Leased Premises. Any and all property of Lessee, which may be located on Leased Premises, shall be so at the sole risk of Lessee.

13.

Lessee shall on the last day of the term or on earlier termination or forfeiture of the lease peaceably and quietly surrender and deliver the Leased Premises to the Lessor free of all sustenances in good condition and repair.



14.

This Lease Agreement contains the entire agreement between the parties and cannot be changed or terminated by Lessee except by a written instrument subsequently executed by the parties thereto.

15.

Any notice necessary to be given with the respect to the lease shall be in writing and sent by registered or certified mail with postage prepaid and return receipt request to: Georgia Department of Transportation, ATTN: Property Inventory and Disposal, 600 West Peachtree St., Atlanta, Georgia 30308. Any notice necessary to Lessee will be sent by the same registered or certified mail to: Office of Enterpriser Assets Management, ATTN: Director, 68 Mitchell Street, Suite 1225 Atlanta Georgia 30303.

Notice is deemed given upon deposit in the United States Mail in the prescribed manner.

16.

Time is of the essence in all provisions of this Lease Agreement including reasonable time after notice to cure any breach.

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of the day and year first above written.

LESSOR: DEPARTMENT OF TRANSPORTATION

BY : _____
Vance C. Smith, Jr.
Commissioner

Signed, Sealed and Delivered
this ____ day of _____,
20____, in the Presence of:

BY: _____
Witness

ATTEST

Angela O. Whitworth
Treasurer

Notary Public

LESSEE: CITY OF ATLANTA



BY : _____
Kasim Reed, Mayor.

ATTEST

Municipal Clerk

This ____ day of _____, 20____.

RCS# 1542
11/07/11
4:30 PM

Atlanta City Council

REGULAR SESSION

11-R-1577

INTGOVMNT AGRMNT W/GDOT FOR LEASE OF
PROPERTY AT I-75/I-85 FOR STREETCAR FAC
ADOPT/SUBSTITUT

YEAS: 9
NAYS: 1
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 2
ABSENT 2

Y Smith	Y Archibong	N Moore	NV Bond
Y Hall	Y Wan	Y Martin	E Watson
B Young	Y Shook	B Bottoms	Y Willis
Y Winslow	Y Adrean	E Sheperd	NV Mitchell

11-R-1577

RCS# 1541
11/07/11
4:30 PM

Atlanta City Council

REGULAR SESSION

11-R-1577

BRING SUB

YEAS: 10
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 2
EXCUSED: 2
ABSENT 2

Y Smith	Y Archibong	Y Moore	NV Bond
Y Hall	Y Wan	Y Martin	E Watson
B Young	Y Shook	B Bottoms	Y Willis
Y Winslow	Y Adrean	E Sheperd	NV Mitchell

11-R-1577