

11-1435
 (Do Not Write Above This Line)

**A RESOLUTION BY
 COMMUNITY
 DEVELOPMENT/HUMAN
 RESOURCES COMMITTEE**

**A RESOLUTION AUTHORIZING
 THE MAYOR, OR HIS DESIGNEE,
 TO EXECUTE A RIGHT OF WAY
 MAINTENANCE AGREEMENT
 WITH THE METROPOLITAN
 ATLANTA RAPID TRANSIT
 AUTHORITY, TO INSTALL A
 PUBLIC ART MURAL ON PORTIONS
 OF PROPERTY UNDER THE
 CONTROL OF THE
 METROPOLITAN ATLANTA RAPID
 TRANSIT AUTHORITY; AND FOR
 OTHER PURPOSES.**

ADOPTED BY

NOV 21 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 C/HR
 Date 12/1/11
 Chair _____
 Action (See rev. side)
 Fav, Adv, Hold (See rev. side)
 Other _____
 Members _____

Refer To _____

Committee C/HR
 Date 11/15/11
 Chair _____
 Action (See rev. side)
 Fav, Adv, Hold (See rev. side)
 Other _____
 Members _____

Refer To _____

Committee _____
 Date _____
 Chair _____
 Action (See rev. side)
 Fav, Adv, Hold (See rev. side)
 Other _____
 Members _____

[Handwritten signatures and initials]

FINAL COUNCIL ACTION
 2ND 1ST & 2ND 3RD
 Readings
 Consent V Vote RC Vote

CERTIFIED

CERTIFIED
 NOV 21 2011
 ATLANTA CITY COUNCIL PRESIDENT
[Signature]

CERTIFIED
 NOV 21 2011
[Signature]
 MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

NOV 30 2011

WITHOUT SIGNATURE
 BY OPERATION OF LAW



CITY COUNCIL
ATLANTA, GEORGIA

11-R-1435

**A RESOLUTION BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A RIGHT OF WAY MAINTENANCE AGREEMENT WITH THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY, TO INSTALL A PUBLIC ART MURAL ON PORTIONS OF PROPERTY UNDER THE CONTROL OF THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY; AND FOR OTHER PURPOSES.

WHEREAS, as part of the City of Atlanta's ("City") Art Services Program, the Office of Cultural Affairs has contracted with a local artist to install two large scale artistic murals ("Project"); and

WHEREAS, the Project will be located at the viaduct on Arizona Avenue, near DeKalb Avenue, and will extend the full length on both sides of the viaduct and will become part of the City's Public Art Collection; and

WHEREAS, this property is owned and under the control of the Metropolitan Atlanta Rapid Transit Authority ("MARTA"); and

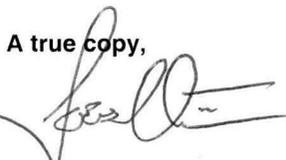
WHEREAS, MARTA requires a Right-of-Way Maintenance Agreement (attached hereto as Exhibit "A") for maintenance of the Project; and

WHEREAS, the Department of Parks, Recreation and Cultural Affairs has agreed to enter into a Maintenance Agreement with MARTA to assume the obligations as set forth in the Right-of-Way Maintenance Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor, or his designee, is authorized to enter into a Right-of-Way Maintenance Agreement (attached hereto as Exhibit "A") with the Metropolitan Atlanta Rapid Transit Authority concerning certain portions of property owned and under the control of MARTA.

BE IT FINALLY RESOLVED, that this Right-of-Way Maintenance Agreement will not become binding upon the City and the City shall incur no obligation or liability thereunder until it has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to the Metropolitan Atlanta Rapid Transit Authority.

A true copy,



Deputy Municipal Clerk

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

Nov. 21, 2011
Nov. 30, 2011



**LICENSE AGREEMENT BETWEEN THE CITY OF ATLANTA AND
METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY
FOR THE ARIZONA AVENUE PUBLIC MURAL PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 2011, by and between **METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY**, a Georgia public body corporate (“**the Authority**”), and **THE CITY OF ATLANTA, GEORGIA**, a Georgia Municipal Corporation (“**the City**”);

WITNESSETH:

WHEREAS, the Authority is a public body corporate created by legislation, Georgia Laws 1965, p. 2243, as amended, for the purpose of planning, designing, leasing, improving, operating, maintaining and administering a rapid transit system in the City of Atlanta, Fulton County and DeKalb County;

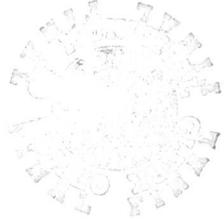
WHEREAS, the Authority is one of the owners of certain real property described in Exhibit A attached hereto known as the Arizona Avenue rail bridge (the “Property”), the other owner being CSX Railroad;

WHEREAS, the City is desirous of placing a mural on the Property to provide vibrancy and color to the neighborhood (“the Arizona Avenue Public Mural Project”) and the Authority has agreed to accommodate the City by permitting the City to paint the mural on the “Mural Location”, as further defined herein and upon the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Authority and the City, the Authority and the City do hereby agree as follows:

1. Use of Property; Installation Plan. The Authority hereby grants to the City a non-exclusive, revocable license for the purpose of installing a mural, as further described herein, upon the Mural Location described in the attached Exhibit A. Subject to an Installation Plan to be approved by the Authority, the City shall cause to be installed upon the Mural Location, a mural consisting of artwork applied by _____ (artist) as shown on the attached Exhibit B (“the Mural”).

2. Term. The term of this Agreement shall commence on the date of the execution of this Agreement, and continue in perpetuity, unless earlier terminated pursuant to this Agreement.



3. **Installation of Mural.** The City shall be solely responsible for all costs associated with the design, preparation, and painting of the Mural on the Mural Location in conformance with an Installation Plan to be approved by the Authority prior to the commencement of installation. All artists and contractors used to install the Mural shall be approved by the Authority prior to the commencement of work. The City shall be responsible for all costs associated in any manner with the Arizona Avenue Public Mural Project, whether incurred by the City, the Authority or any authorized third party.

4. **Maintenance of Mural.** The City, at its sole cost and expense, shall provide periodic maintenance of the Mural Location and the Mural to maintain its appearance in a like new condition.

5. **Suspension of Activities During Threat Level Escalation.** During the course of installation or subsequent maintenance, when the Secretary of Homeland Security announces an alert under the National Terrorism Advisory Service (NTAS), whether such alert is issued publically or otherwise, the Authority shall have the right to suspend or delay installation or maintenance activities and take additional action as the Authority deems necessary to secure the Property until such time as the alert expires. In addition to the foregoing, the Authority may restrict or deny access to the Property in the event that a credible threat or emergency condition, as determined in the sole discretion of the Authority, is received with respect to the specific Property.

6. **Continued Access By the Authority.** The Authority hereby reserves the right, for itself and its patrons, employees, agents, contractors and subcontractors, to access upon, across and through the Property.

7. **Limitations on Use.** The City is expressly prohibited from using the Property for any purpose whatsoever other than as set forth specifically herein. Any signage placed upon the Property to advise patrons of the installation of the Mural shall have the prior approval and consent of the Authority with respect to the location, design, content, size and construction of the signage.

8. **Prior Agreements; Order of Precedence.** The City and /or the Authority are parties to existing agreements with respect to the ownership, use, maintenance and repair of the Property, including but not limited to the following: (1) Agreement dated February 5, 1975 between the City, the Authority and Georgia Railroad, (2) Easement Agreement dated February 8, 1984 between the City and Georgia Railroad creating two perpetual easements for maintenance purposes. This license is granted subject to the rights and responsibilities created by all prior agreements, which shall remain of full force and effect and take precedence over anything contained in this license agreement.

9. **Insurance.** The City shall require all contractors and artists participating in the installation of or maintenance of the Mural to obtain the coverages and limits of insurance listed below. All policies shall be taken out and maintained with insurers and under forms of policies that are satisfactory to the Authority, and shall include an endorsement providing that the



Authority shall be given written notice at least 30 days before any termination, cancellation, or reduction of coverage takes effect.

The City or its contractors and the artist shall provide to the Authority current certificates of all insurance required and such certificates shall recite the Authority's right to notice as aforesaid.

A. Workers' Compensation. Statutory with Employer's Liability in an amount of \$500,000.

B. Commercial General Liability Insurance: Bodily Injury and Property Damage - \$1,000,000 per occurrence, \$1,000,000 annual aggregate (where applicable);

C. Automobile Liability Insurance:

- (1) Bodily Injury - \$500,000 per person, \$1,000,000 per occurrence; and
- (2) Property Damage - \$500,000 per occurrence;

10. Indemnification. To the extent allowable by law, the City shall and does hereby agree to indemnify and hold harmless the Authority and the Authority's officers, directors, officials, employees, attorneys, agents, servants, successors, assigns, transferees and representatives from any and all, and all manner of, action and actions, cause and causes of action, suits, losses, costs, expenses, judgments, claims, liabilities, injuries and expenses whatsoever, in law and in equity, which may arise in connection with (a) any rights or obligations under this Agreement by the City, and/or (b) any activities whatsoever undertaken by the City or any third party or parties whomsoever or whatsoever occurring on the Property and (c) any and all claims for personal injury or property damage arising from the claimant's use of or presence upon the Property. Such indemnification shall include the obligation on the part of the City to defend any such action, suit, claim or cause of action and to settle or compromise same with the express consent of the Authority. The City shall require its contractors and artists entering on the Property to indemnify the Authority as set forth in this paragraph.

11. Assignment. The City shall not further license, transfer, convey or assign any or all of its rights or obligations under this Agreement without the express written consent of the Authority. Any attempt to further license, transfer, convey or assign such rights or obligations without such consent shall be void, and shall be grounds for immediate termination by the Authority of this Agreement.

12. Termination. The Authority reserves the right to terminate this Agreement upon sixty (60) days written notice to the City if the Authority determines, in its sole discretion that the placement of the Mural interferes with its use of Property. The City shall have the right, at any time, to terminate this Agreement. Termination by either party shall be in writing, and said termination shall become effective on the date set forth in such written notice. Upon such termination, the City shall cause the Mural to be removed and the Property restored to its original condition.



CITY OF ATLANTA, GEORGIA

By: _____
Kasim Reed, Mayor

Municipal Clerk (SEAL)

Recommended

Commissioner, Dept. of Parks, Recreation and Cultural Affairs

Approved as to Form

City Attorney



13. Notices. Notification to either party as required by this agreement will be sufficient when deposited in the United States mail, first class mail, certified letter or return receipt requested, postage prepaid or by overnight courier as set forth below:

To the Authority: Ms. Cheryl King
Assistant General Manager of Planning
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road, NE
Atlanta, Georgia 30324

To the City: George Dusenbury, Commissioner
City of Atlanta
Department of Parks, Recreation and Cultural Affairs
233 Peachtree Street, Suite 1700
Atlanta, GA 30303

12. Entire Agreement. This writing contains the entire agreement between the Authority and the City and no representations, inducements, promises or agreements, oral or otherwise, between the Authority and the City with respect to the subject matter hereof not set forth herein shall be of any force or effect. This Agreement may be amended or modified only by an instrument of equal formality signed by both parties.

IN WITNESS WHEREOF, the Authority, acting by and through its duly authorized officers, has caused this Agreement to be executed, and the City, acting by and through its duly authorized officers, has caused this Agreement to be executed as of the date first above written.

**METROPOLITAN ATLANTA
RAPID TRANSIT AUTHORITY**

By: _____
Beverly A. Scott, Ph.D.
General Manager/CEO

Approved as to Legal Form

RCS# 1554
11/21/11
2:02 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

ALL ITEMS EXCEPT 11-O-1553

ADOPT

YEAS: 15
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 0

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

CONSENT I

RCS# 1553
11/21/11
2:00 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

RECONSIDER

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

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

CONSENT I

RCS# 1552
11/21/11
1:59 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I

ADOPT

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

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

CONSENT I