



TO: John McDonough, City Manager

FROM: Garrin M. Coleman, P.E., Public Works Director

DATE: October 3, 2014 for Submission onto the Agenda of the October 7, 2014 City Council Consent Agenda

ITEM: Consideration of Approval of the Georgia Department of Transportation (GDOT) Lighting Agreement for Roadway Lighting on Roswell Road at Northridge Road for Capital Program Project T-0033

Recommendation:

Staff recommends that the Mayor and City Council approve the Lighting Agreement between the City of Sandy Springs (City) and the Georgia Department of Transportation (GDOT) and that the City Council authorize the Mayor to execute the agreement subject to Legal and Finance Department approval.

Background:

The City is installing pedestrian scale lighting funded as a part of the Community Development Block Grant (CDBG) Program. This Memorandum of Agreement (MOA) with GDOT recognizes that the City is installing pedestrian lighting in the GDOT-controlled right of way on Roswell Road (State Route 9) and that the City accepts all responsibility for the maintenance and operation of the City-installed lighting. This agreement addresses 11 decorative pedestrian lights. The lights and their maintenance are covered under an installation and maintenance agreement with Georgia Power.

Discussion:

The City is asked to sign a MOA with GDOT to serve as the framework for ongoing maintenance and operation of the lighting installed by the sidewalk project.

Alternatives:

Should the Mayor and City Council not approve the agreement, GDOT will not permit installation of the lights as described above.

Financial Impact:

The City will be responsible for maintenance and repair. This will be provided by Georgia Power at a rate of \$99.33/month.

Attachments:

- I. GDOT Lighting Agreement for Roswell Road @ Northridge Road
- II. City and Georgia Power Agreement for Lighting
- III. Resolution

PUBLIC WORKS

MEMORANDUM OF AGREEMENT

FOR

ROADWAY LIGHTING ON STATE ROUTE 9/Roswell Road @ Northridge Road

CONSISTING OF

11 New Pedestrian Lighting Structures by Permit No. 1114354 along State Route 9/Roswell Road, from Northridge Road northward for 635 feet in Sandy Springs, Georgia in Fulton County.

BETWEEN

The City of Sandy Springs, acting by and through its City Council, hereinafter called the **CITY**, and the Department of Transportation, an agency of the State of Georgia, hereinafter called the **DEPARTMENT**.

RELATIVE TO

The **City** is requesting to install 11 new pedestrian lighting structures on Permit No. 1114354 on and along Route 9/Roswell Road, beginning at Northridge Road northward for 635 feet in Sandy Springs, Georgia in Fulton County.

I. IT IS THE INTENTION OF THE PARTIES:

A. That the **CITY**, only to the extent that it may be bound by contracts which may hereafter be entered into, shall be responsible for the following:

1. The **CITY** shall Install, Locate, Provide the Energy, Operate, Maintain and Design additional roadway lighting in accordance with the Georgia Department of Transportation's Design Policy Manual, along the existing roadway of State Route 9/ Roswell Road, Sandy Springs, Georgia in Fulton County.

2. The **CITY**, in its operation and maintenance of the lighting systems, shall not in any way alter the type or location of any of the various components which make up the entire lighting system without

prior written approval from the **DEPARTMENT**.

3. The **CITY** shall at all times indemnify and save harmless the **DEPARTMENT** and the State of Georgia, to the extent allowed by law, from any and all responsibility for damages or liability, or both, which may result from the installation, construction, reconstruction, operation, maintenance or repair, or any combination of any of the foregoing.

4. The **CITY** assumes full responsibility for the requirements of the Georgia Utility Facility Protection Act.

II. IT IS FURTHER AGREED, that the **DEPARTMENT**, only to the extent that it may be bound by contracts which may hereafter be entered into, shall reserve the right to remove the aforementioned lighting upgrades in the event that the **CITY** elects to de-energize or fails to properly maintain any individual component within the systems or the complete system(s) including poles, mast arms, luminaires, foundations and associated wiring. In addition the **DEPARTMENT** reserves the right, at its sole discretion, to remove or replace any lighting upgrades where the public safety is at any time compromised by the actions or inactions of the **CITY**.

III. IT IS FURTHER AGREED, that this Agreement shall remain in effect for a period of fifty (50) years.

IV. IT IS FURTHER AGREED, 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.

This document is a **Memorandum of Agreement** expressing the present intentions of the parties. Nothing contained herein shall require the undertaking of any act, project, study, analysis, or any other activity by any party until a contract for such activity is executed. Nor shall this document require the expenditure of any funds by any party until a contract authorizing such expenditure is executed.

However, nothing contained herein shall be construed to prohibit any party's undertaking any act, project, study, analysis, or any other activity, which the party is required by law to contract to undertake as part of any other program, which fulfills some function shown herein as intended to be performed by the party undertaking such act, project, study, analysis, or any other activity.

IN WITNESS WHEREOF, the parties hereto have executed this **Memorandum of Agreement** to be executed by their duly authorized officials, and their respective seals attached hereto.

Signed and delivered
this _____ day of _____,
201_, in the presence of:

GEORGIA DEPARTMENT OF TRANSPORTATION

STATE UTILITIES ENGINEER

WITNESS

REQUESTED BY: CITY OF SANDY SPRINGS, GEORGIA

BY: _____
TITLE:

BY: _____
WITNESS

BY: _____
NOTARY PUBLIC
My Commission Expires: _____

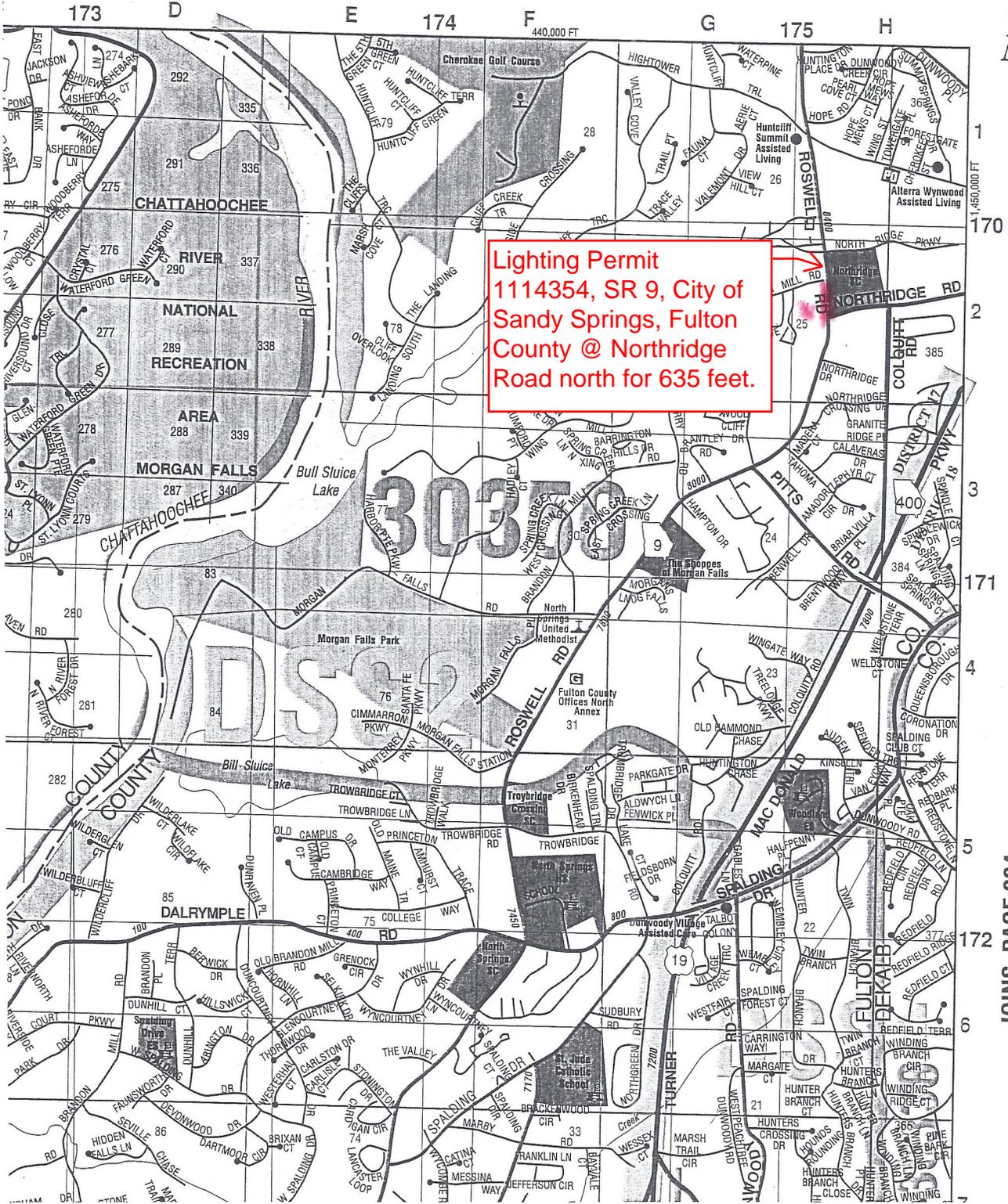
(OFFICIAL SEAL OF CITY OF SANDY SPRINGS)

SWORN TO AND SUBSCRIBED BEFORE
ME ON THIS _____ DAY OF _____,
201_.

Attest:

This Agreement approved by the
City Counsel at a meeting held
at _____ on
the ___ day of _____, 201_.

BY: _____
City Clerk



Lighting Permit
 1114354, SR 9, City of
 Sandy Springs, Fulton
 County @ Northridge
 Road north for 635 feet.

Lighting Services – NESC® Standard Lease Agreement



Ref # _____ DWE # _____ LAMP # _____
 Ref # _____ DWE # _____ LAMP # _____
 Lead # _____

Customer Name: City of Sandy Springs Tel #: 770-730-5600 Alt. Tel #: _____

Service Address: 8359 Roswell Road
(street, apt #, zp, etc)
Sandy Springs, GA 30350

Mailing Address: 7840 Roswell Road - Building 500 - Attn: Charlie Roberts
(street, apt #, zp, etc)
Sandy Springs, GA 30350

SS# / Tax ID #: 20-3767758 Acct# _____ County: Fulton Region: Metro North

Type Customer: Commercial Industrial Residential New Account Customer Choice
 Conversion? Yes No Type of Construction: New Existing

Description of Business (Apartment Complex, Car Dealer, etc.): Streetscape Project

Governmental Non-Governmental

| EQUIPMENT | | | | | | | | | | |
|--|-----|--------------|-----------------------|--------------------------------|-------|------|-----------------------|-----------------------------------|---|--|
| Prepaid Amount (excludes applicable sales tax) | | | | | | | \$ 75,901.80 | | Bill <input type="checkbox"/> Collected <input checked="" type="checkbox"/> | |
| Action | Qty | Lamp Wattage | Type Lamp (HPS, etc.) | Fixture Description | OH/UG | M/UM | Equipment Amount (\$) | Estimated Regulated Charge * (\$) | Estimated Monthly Charge * (\$) | |
| I | 10 | 70 | LED | LUMEC POST TOP FIXTURES | UG | UM | \$66.00 | \$24.30 | \$90.30 | |
| I | 1 | 70 | LED | LUMEC SHEPHERD'S CROOK FIXTURE | UG | UM | \$6.60 | \$2.43 | \$9.03 | |
| Monthly Total * | | | | | | | \$ 72.60 | \$ 26.73 | \$ 99.33 | |

* Estimated Regulated Charge is subject to change at any time as dictated by the Georgia Public Service Commission. "Estimated Monthly Charge" is the sum of "Equipment Amount" and "Estimated Regulated Charge" and will vary with the Regulated Charge. Excludes any applicable sales tax

Project Notes:

New account

Initial Term of Agreement: 1 Months *Initial term starts on the date billing begins*

Customer agrees to lease the Equipment described above from Georgia Power Company on the attached terms and conditions.

Customer's Authorized Signature:

✓ Signature: *John McDonough* Date: 3/21/13
 ✓ Print Name: JOHN MCDONOUGH
 ✓ Print Title: CITY MANAGER

Georgia Power Company:

Signature: _____ Date: _____
 Print Name: William Canady
 Print Title: Account Executive

1. **Lighting Equipment Lease.** Georgia Power Company ("GPC") will lease to Customer the "Equipment" described on Page 1 of this Lease Agreement ("Agreement") for use at the "Premises" (the "Service Address" shown on Page 1) and will provide electric service to operate the Equipment. Customer grants a license and right of access to GPC (and to GPC's representatives and contractors) to enter the Premises to install, connect, inspect, maintain, test, replace, repair, or remove the Equipment; to remove or disconnect pre-existing equipment as noted; to provide electric service for the Equipment; or to conduct any other Agreement-related activity (collectively, the "GPC Activities"). Customer acknowledges that the Equipment, though attached to real property, will always remain the exclusive personal property of GPC and that GPC may remove the Equipment when this Agreement ends. Customer also acknowledges that regulatory change during the Agreement term may require GPC to modify or replace some Equipment.
2. **Term.** The "Initial Term" of this Agreement is the period stated on Page 1, calculated from the date of the first monthly bill. After the Initial Term, the Agreement will automatically renew on a month-to-month basis until terminated by either Customer or GPC by providing written notice of intent to terminate to the other party at least 30 days before the desired termination date. GPC's address for notice is 1790 Montreal Circle, Tucker, GA 30084-6801; Customer's address for notice is the Mailing Address shown on Page 1.
3. **Payment.** GPC will invoice Customer per the terms stated on Page 1. Customer acknowledges that the electric service charge will vary as dictated by the Georgia Public Service Commission. Customer agrees to pay the amount billed by the due date (20 days after billing date). If there is a balance outstanding past the due date, Customer agrees to also pay a 1.5% late fee on the unpaid balance and also acknowledges that Customer may be required to pay a deposit of up to two times the Estimated Monthly Charge in order to continue service. CUSTOMER ACKNOWLEDGES THAT GPC MAKES NO REPRESENTATION OR WARRANTY REGARDING TREATMENT OF THIS TRANSACTION BY THE INTERNAL REVENUE SERVICE OR THE STATUS OF THIS AGREEMENT UNDER ANY FEDERAL OR STATE TAX LAW; CUSTOMER ENTERS INTO THIS AGREEMENT IN SOLE RELIANCE UPON CUSTOMER'S OWN ADVISORS.
4. **Equipment Protection.** Throughout this Agreement's term, Customer will inform its personnel (and any contractor or person performing construction at the Premises or digging near the Equipment) of the Equipment's presence. Either Customer or the other party must provide notices and locate requests to the Georgia Utilities Protection Center and must coordinate all activities with the Utilities Protection Center and with all utility facility owners or operators as required by the then-current Georgia Utility Facility Protection Act (O.C.G.A. § 25-9-1 *et seq.*) or High-voltage Safety Act (O.C.G.A. § 46-3-30 *et seq.*). As between Customer and GPC, Customer will bear all costs arising from failure to comply with these laws or for Equipment damage caused by anyone other than GPC (or GPC's representatives or contractors). IF THE EQUIPMENT IS DAMAGED, CUSTOMER WILL REPORT THE DAMAGE TO GPC AS SOON AS POSSIBLE BY CALLING (888) 660-5890.
5. **Maintenance.** During this Agreement's term, GPC will maintain the Equipment and will bear the cost of routine repair or replacement. Customer must notify GPC of any need for Equipment repair by either calling (888) 660-5890 or reporting the need online (<http://outdoorlighting.georgiapower.com>). If the Equipment damage was caused by Customer or a third party, Customer will reimburse GPC for the repair or replacement cost.
6. **Safety; Damages.** CUSTOMER ACKNOWLEDGES SOLE RESPONSIBILITY FOR THE SAFETY OF THE PREMISES AND ACKNOWLEDGES THAT GPC NEITHER HAS, NOR ASSUMES, ANY OBLIGATION TO ENSURE THE PREMISES' SAFETY. GPC MAKES NO COVENANT, WARRANTY, OR REPRESENTATION OF ANY KIND (INCLUDING WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY) REGARDING THE EQUIPMENT OR ANY GPC ACTIVITY UNDER THIS AGREEMENT. Customer will not be entitled to indirect or consequential damages from GPC of any kind (including loss of revenue, loss of actual or anticipated profits, loss of capital costs, loss of business reputation, or punitive damages) arising from any damage or delay involving the Equipment or this Agreement.
7. **Indemnity.** To the fullest extent allowed by law, Customer agrees to indemnify, defend (if requested by GPC), and hold harmless GPC and its affiliates and contractors (and their officers, directors, employees, representatives, and agents) from and against any claim, demand, damage, expense (including attorneys' fees and court costs), action, proceeding, judgment, penalty, fine, cost, or other liability (whether based upon tort, breach of contract, strict liability, equity, or otherwise) of any kind or nature for bodily injury (including death) to persons, damage to real or personal property (including loss of use), monetary damage, or equitable relief caused by or arising out of any act or omission of Customer involving this Agreement, the Equipment, or the Premises, in whatever manner caused and regardless of whether caused by or arising out of the joint, concurrent, or contributory (but not sole) negligence of GPC, any other person indemnified under this Agreement, or any other person not a party to this Agreement.
8. **Default.** Customer will be in default if any amount owed under this Agreement is not paid within 45 days of billing. GPC's waiver of any past default will not waive any other default. If default occurs, GPC may, at its discretion, immediately terminate this Agreement, collect all past due amounts and all amounts due for the Equipment during the Agreement's remaining term, remove the Equipment from the Premises, and seek any other available remedy.
9. **Entire Agreement.** This Agreement contains the parties' entire agreement relating to the Equipment and replaces any prior agreement, written or oral. This Agreement may be modified only by an amendment signed by each party, except that updated contact information (e.g., address, phone, website) may be provided at any time by written notice to the other party. This Agreement will be governed by Georgia law. If any provision is ruled invalid or unenforceable, the Agreement as a whole will not be affected. In this Agreement, "including" means "including, but not limited to."
10. **Pole Attachments.** If Customer desires to attach anything to any Equipment (poles, light fixtures, etc.), Customer must first obtain GPC's written permission. Customer must call GPC Lighting Services Business Unit at 1-888-768-8458 to obtain the proper pole attachment authorization.
11. **Georgia Security, Immigration, and Compliance Act (Applicable Only if Customer is a Georgia Governmental Entity).** Customer is a "public employer" as defined by O.C.G.A. § 13-10-91 and this Agreement is a contract for physical performance of services within the State of Georgia. Compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 is a condition of this Agreement and is mandatory. GPC's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 will be attested by execution of the contractor's affidavit attached as Exhibit "1" and made a part of this Agreement. GPC agrees that, if it employs or contracts with any subcontractor(s) in connection with this Agreement, GPC will secure from each subcontractor attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by execution of a subcontractor's affidavit in the form attached as Exhibit "2." The affidavit will become a part of the GPC/subcontractor agreement and GPC will maintain records of the affidavits for inspection by Customer.
12. **Customer Representations.** Customer represents to GPC that: (i) Customer is expressly authorized by all Premises owners (and any other party with rights in the Premises) to enter into this Agreement and to authorize the GPC Activities (including the use of vehicles, equipment, tools, and materials as necessary); (ii) all Premises property lines are clearly and accurately marked; and (iii) the Premises' final grade will vary no more than six inches from the grade existing at the time of Equipment Installation.
 - (a) **Customer Duty.** If GPC agrees to allow Customer to perform any part of the Equipment Installation (including trenching) itself or through a third party, Customer warrants that its work will meet GPC's Installation specifications (which will be provided to Customer and are incorporated by this reference). Customer will bear all reasonable additional costs arising from Customer's non-compliance with GPC's specifications or lack of timely (i.e., 10 days) notice to GPC that GPC's portion of the Equipment Installation can commence.
 - (b) **Underground Facilities/Obstructions.** Because GPC's Activities may require excavation or digging, Customer acknowledges that Customer must mark all underground obstructions and private utilities and facilities (e.g., gas lines, water lines, sewer lines, irrigation facilities, low voltage data or communication cables or lines, etc.) at the Premises. Customer warrants either that: (i) all underground obstructions and private utilities and facilities have been marked or will be marked before GPC commences Equipment Installation or other GPC Activities involving excavation or digging; or (ii) there are no underground obstructions or private utilities or facilities at the Premises.
 - (c) **Unforeseen Conditions.** If Customer fails to properly mark or identify a private utility or facility or other underground obstruction, and damage occurs in connection with GPC's Activities, Customer agrees that, as between Customer and GPC, Customer will bear sole responsibility and that GPC will have no liability for any damage or resulting delay. Customer also acknowledges that the estimated charges shown on Page 1 include no allowance for any subsurface rock, wetlands, underground stream, buried waste, unsuitable or unstable soil, underground obstruction, archeological artifact, burial ground, threatened or endangered species, hazardous substance, etc. not properly identified and marked by Customer ("Unforeseen Condition"). If an Unforeseen Condition is encountered, GPC, in its sole discretion, may stop all GPC Activity until Customer either remedies the Unforeseen Condition or agrees to reimburse all GPC expenses arising from the Unforeseen Condition. Customer will bear all costs of any Equipment modification or change requested by Customer or dictated by Unforeseen Conditions or circumstances outside GPC's control.

CUSTOMER REPRESENTATIONS ACKNOWLEDGED BY CUSTOMER: Initials Date 3/24/13

STATE OF GEORGIA
COUNTY OF FULTON

A RESOLUTION TO APPROVE THE AUTHORIZATION OF THE MAYOR TO EXECUTE A ROADWAY LIGHTING MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF SANDY SPRINGS AND THE GEORGIA DEPARTMENT OF TRANSPORTATION (GDOT) FOR ROADWAY LIGHTING ON STATE ROUTE 9/ROSWELL ROAD AT NORTHRIDGE ROAD

WHEREAS, it is necessary, from time to time, to establish policies, procedures and guidelines consistent with the administration of a municipal government consistent with the US Constitution, Federal Statutes, alignment with Federal and Georgia's State Constitution, and the Charter for the City of Sandy Springs; and

WHEREAS, the City of Sandy Springs (City) has represented to the Georgia Department of Transportation (GDOT), a desire to install Pedestrian Lighting along Roswell Road (SR9) from Northridge Road to Roberts Drive in the City of Sandy Springs. Said Pedestrian Lighting to be installed under City of Sandy Springs Project T-0033-2, CDBG Sidewalks, Phase 2; and

WHEREAS, by Resolution adopted, the City of Sandy Springs (City) has entered into a Memorandum of Agreement with the Department of Transportation (GDOT); and

WHEREAS, the City has represented to GDOT a desire to participate in: 1) providing the Energy and 2) the Operation and Maintenance of said lighting systems at the aforesaid location, and GDOT has relied upon such representation; and

WHEREAS, the City desires to enter into a Memorandum of Agreement (MOA) with GDOT; and

WHEREAS, upon adoption of this Resolution, the City will manage the installation, operations and maintenance of these street lights.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA

That they receive, accept, and affirm the authorization for the Mayor to execute the Agreement with GDOT for the implementation of Memorandum of Agreement for Roadway Lighting on State Route 9/Roswell Road @ Northridge Road.

APPROVED AND ADOPTED on this the 7th day of October, 2014.

Approved:

Russell K. Paul, Mayor

Attest:

Michael Casey, City Clerk

(Seal)