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## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Brent Walker, Parks and Recreation Manager

**Date:** August 13, 2012

**Subject:** **DNR Recreational Trails Grant**

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### **ITEM DESCRIPTION**

Staff has received final word that Dunwoody has been awarded \$100,000 in grant funds to create phase II of the multi-use trail in Brook Run Park and recommends acceptance.

### **BACKGROUND**

Brook Run Park is traversed by a trail system that was originally created in the 1970s when the site was used by the State of Georgia. On November 14, 2011, the Mayor and City Council, through Resolution 2011-11-56, supported staff's application for \$100,000 in grant funds through the Department of Natural Resources Recreational Trails Grant Program to create a multi-use trail at Brook Run Park.

The grant funds are intended to be used to conduct an assessment of the existing trails system and transform this underutilized amenity into a new recreational opportunity that will be designed to meet the needs of users with a variety of different abilities. A multi-use recreational trail through Brook Run Park will allow the community to traverse the expanses of the park and provide linkages between recreational resources and community activities.

In March, staff received preliminary word from the Georgia Department of Natural Resources that our application had met the established criteria and would continue in the approval process. Staff is working with the Dunwoody Volunteer Coordination Committee to fulfill some, if not all, of the grant match obligation through volunteer service hours clearing brush and preparing the trail corridor.

In July, staff received word that our Brook Run Park Recreational Trail project has been approved by the State Historic Preservation Office, the Georgia Natural Heritage Program, the U.S. Fish & Wildlife Service, and other applicable agencies. In order to receive funds, the City must provide a Resolution that authorizes the acceptance of the grant and enter into a Project Agreement with the Department of Natural Resources.

If the City accepts these funds, the assessment, design, and engineering phase of the project would begin as early as fall 2012. Based on DNR reporting and project requirements, construction of the trail will likely not begin until early-2013.

### **RECOMMENDATION**

Staff recommends accepting the \$100,000 grant via Resolution and authorizing the Mayor and City Manager to execute all documents.

**STATE OF GEORGIA  
CITY OF DUNWOODY**

**RESOLUTION 2012-xx-xx**

**A RESOLUTION TO APPROVE AND AUTHORIZE ACCEPTANCE OF THE  
DEPARTMENT OF NATURAL RESOURCES RECREATIONAL TRAILS GRANT**

- WHEREAS,** Dunwoody is a municipality created by the 2008 Georgia General Assembly pursuant to Ga. L. 2008, p. 3526; and
- WHEREAS,** the City seeks to protect and preserve greenway corridors by developing outdoor recreational trails opportunities; and
- WHEREAS,** Brook Run Park is traversed by a trail system that was originally created in the 1970s when the site was used by the State of Georgia; and
- WHEREAS,** by systematically studying and improving upon the existing trail remnants at Brook Run Park the City will create a new recreational opportunity that will be designed to meet the needs of users with a variety of different abilities; and
- WHEREAS,** a multi-use recreational trail through Brook Run Park will allow the community to traverse the expanses of the park and provide linkages between recreational resources and community activities; and
- WHEREAS,** the City has been awarded a prestigious Recreational Trails Grant of \$100,000 from the Georgia Department of Natural Resources to develop this outdoor recreational opportunity, and the Project Agreement between the City and Georgia Department of Natural Resources regarding same is attached hereto and incorporated herein by reference; and
- WHEREAS,** the City has allocated the required local match towards this project as part of the Parks and Recreation Capital Budget; and

**NOW, THEREFORE BE IT RESOLVED** by the Mayor and City Council of the City of Dunwoody that by passage of this Resolution the City of Dunwoody authorizes an Agreement with the Georgia Department of Natural Resources, as attached hereto and incorporated herein, for the execution of the Recreational Trails Grant program. The Mayor and City Manager are hereby authorized to execute all appropriate documents in acceptance thereof.

**SO RESOLVED AND EFFECTIVE** this 13<sup>th</sup> day of August, 2012.

Approved:

\_\_\_\_\_  
Michael G. Davis, Mayor

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

Seal

**STATE OF GEORGIA  
DEPARTMENT OF NATURAL RESOURCES  
PROJECT AGREEMENT**

Applicant: **City of Dunwoody**

Street: **41 Perimeter Center East, Suite 250**

County: **DeKalb**

City: **Dunwoody**

Zip: **30346**

Phone #: **678-382-6857**

Project Title: **Brook Run Park Trail Phase II**

Project Period: **Date this agreement is executed to December 31, 2014**    Project # **NRT-11(10)**

Project Scope: (Description of Project)

Construct 1 mile of paved and unpaved multi-use non-motorized trail circling the Brook Run Park. The trail will connect to current amenities and an on street bike path, the Jim Benson Trail.

Title of Grant-in-Aid: Georgia Recreational Trails Program

Project Cost:		The following are hereby incorporated into this agreement:
		1. Disadvantaged Business Enterprise Certification of Compliance
Total Cost	\$129,310	2. General Provisions (attached hereto)
Fund Support	77%	3. Project Proposal and Application (submitted by applicant and on file with DNR)
Grant-in-Aid	\$100,000	
Minimum Local Match	\$29,310	

The State of Georgia, Department of Natural Resources (hereinafter referred to as DNR), and the City of Dunwoody (hereinafter referred to as the Applicant) in consideration of the mutual promises and benefits flowing to each as hereinafter stated, do hereby agree to perform this agreement in accordance with the National Recreational Trails Act (NRTA), Title I, Part B, Section 1301 of the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240, 105 Stat. 1914), later reauthorized as the Recreation Trails Program under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (P.L. 109-59, 119 Stat. 1144), and the provisions and conditions of the Federal Highway Administration guidelines for the RTP grant program, and with the terms, promises, conditions, covenants, assurances, plans specifications, estimates, procedures, project proposals, and maps attached hereto or retained by the Applicant or DNR and made a part hereof.

The Applicant certifies that it possesses the legal authority to apply for the grant, enter into this Agreement, and to finance and construct the proposed facilities. A resolution, motion or similar action

has been duly adopted or passed authorizing the filing of the project application, approving this agreement, including all understandings and assurances contained therein, and directing the persons whose names and signatures appear herein below to sign this agreement on behalf of the Applicant and to act in connection with the project and provide such additional information as may be required.

The Applicant further certifies and assures that it has the ability and intention to finance the non-State (local) share of the costs for the project, and that sufficient funds will be available to assure effective operation and maintenance of the facilities acquired or developed by the project.

DNR agrees to obligate to the Applicant the sum specified hereinabove as the Grant-in-Aid, and to tender to the Applicant that portion of said grant which is required to pay DNR's share of the costs of the project, based upon the percentage of assistance specified hereinabove as Fund Support.

The Applicant agrees to execute the project in accordance with the terms of the agreement.

The Applicant further agrees that, as the benefit to be derived by the State of Georgia and DNR from the full compliance by the Applicants with the terms of this agreement is the preservation, protection, and the net increase in the quality of public recreational trails which are available to the people of the State and the United States, and as such benefit exceeds to an immeasurable and unascertainable extent the amount of money furnished by DNR by way of assistance under the terms of the agreement, that payment by the Applicant to DNR of an amount equal to the amount of assistance extended under this agreement by DNR would be inadequate compensation to DNR for any breach by the Applicants of this agreement. The Applicant further agrees, therefore, that **THE APPROPRIATE REMEDY IN THE EVENT OF A BREACH BY THE APPLICANT OF THIS AGREEMENT SHALL BE THE SPECIFIC PERFORMANCE OF THIS AGREEMENT.**

The Applicant agrees to use its best efforts to ensure compliance with regulations pertaining to Disadvantaged Business Enterprises (DBE). The Applicant shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of contractors, including procurement of materials and leases of equipment.

The following special project terms and conditions apply:

- a. In planning and executing the project, the Applicant agrees to consider the comments of agencies who responded to the environmental review requests for this project.
- b. The Applicant shall minimize the use of heavy equipment for clearing and grading, and is encouraged to use porous/pervious surfacing.
- c. As directed under Executive Order 13186, in furtherance of the Migratory Bird Treaty Act (16 U.S.C. sections 703-711), actions must be taken to avoid or minimize impacts to migratory bird resources, and to prevent or abate the detrimental alteration of the environment for the benefit of migratory birds, as practicable. An area of forested habitat of 100 acres or larger could be a significant or important site for migratory birds, as could existing bridges or culverts, where the birds may nest. DNR and the Applicant agree that the area of impact of this project is less than 100 acres, and therefore is not considered significant or important to the support of migratory bird populations. The parties also agree that no existing bridge or culvert on the project site will be reconstructed or removed as part of this project. The Applicant agrees to notify DNR if it seeks to modify the scope of the project or reconstruct or remove any existing bridge or culvert at the project site.

In witness whereof, the parties hereto have executed this Agreement as of the most recent date entered below.

**STATE OF GEORGIA, DEPARTMENT OF  
NATURAL RESOURCES**

**APPLICANT, CITY OF DUNWOODY**

BY \_\_\_\_\_  
BECKY KELLEY, DIRECTOR  
PARKS, RECREATION & HISTORIC SITES

BY \_\_\_\_\_  
MICHAEL G. DAVIS, MAYOR

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

(Seal)

DEPARTMENT OF NATURAL RESOURCES  
PROJECT AGREEMENT  
GENERAL PROVISIONS

The applicant and DNR Mutually agree as follows:

A. DEFINITIONS

1. The term "Applicant" as used herein means the local political subdivision, State, or Federal agency which is a party to this agreement.
2. The term "DNR" as used herein means the Department of Natural Resources of Georgia.
3. The term "development project" as used herein means a project which does not involve the acquisition of real property with grant funds from DNR.
4. The term "Commissioner" as used herein means the Commissioner, Department of Natural Resources, or any representative lawfully delegated the authority to act for said Commissioner.
5. The Term "Division Administrator" as used herein means the appropriate administrator of the Federal Highway Administration or any representative lawfully delegated the authority to act for the said Division Administrator.
6. The term "FHWA" as used herein means the Federal Highway Administration, United States Department of Transportation.
7. The term "Contractor" as used herein means the contractor hired or selected by the Applicant to provide services as contracted.
8. The term "project" as used herein means that project which is the subject of this agreement.

B. PROJECT EXECUTION

1. The Applicant shall attend an orientation meeting with appropriate DNR staff prior to any construction being undertaken on the project, in order to ensure compliance with applicable State and Federal laws, and financial, reimbursement and audit procedures and requirements.
2. For development projects, the applicant shall execute and complete the approved project in accordance with the following time schedule.

<u>Time Frame</u>	<u>Recommended % of Construction</u>	<u>Progress Report</u>	<u>Billing Requests</u>
To 6 mos.	Begin	Yes	No
To 9 mos.	N/A	Yes	No
To 12 mos.	25%	Yes	Yes
To 15 mos.	N/A	Yes	No
To 18 mos.	50%	Yes	Yes
To 21 mos.	N/A	Yes	No
To 24 mos.	100%	Yes	Yes

Progress reports are due by the 15<sup>th</sup> of the month following the last day of each calendar quarter. Final reports are due 15 days after completion.

3. For acquisition projects, the Applicant shall execute and complete the approved project within eighteen (18) months of project approval.
4. For combination acquisition and development projects, the real property shall be acquired within eighteen (18) months of project approval, and the development shall proceed and be completed within twenty-four (24) months of project approval.
5. Failure to render satisfactory progress or to complete this or any other project which is the subject of State assistance under the appropriate DNR grant program to the satisfaction of the Commissioner may be cause for the suspension of all obligations of DNR under this agreement.
6. The Applicant shall permit periodic site visits by the Commissioner and/or the Division Administrator to insure work progress is in accordance with the approved project, including a final inspection upon project completion.
7. All significant deviations from the project proposal shall be submitted in writing to the Commissioner for approval.
8. The acquisition cost of real property shall be based upon the appraisal of a competent appraiser, and the reports of such appraisers shall be made available to the Commissioner with the project application for review and approval. The Commissioner's approval of an appraisal report will determine the extent of DNR participation for acquisition costs of real property. Costs incurred for appraisal reports, and other costs considered as incidental to acquisition, will not be reimbursed by DNR.
9. The applicant shall comply with the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646), 94 Stat. 1894 (1970)**, as amended, and the applicable regulations and procedures implementing such act for all real property acquisitions and where applicable shall assure that the Act has been complied with for property to be developed with assistance under the project agreement.

10. If any tract or parcel of, or interest in, real property subject to being purchased under the provisions of this agreement, but not identified herein, is found by the Commissioner for any reason not to be suitable for DNR assistance, all obligations of DNR shall cease as to such parcel, tract or interest.
11. The applicant shall comply with the flood insurance purchase requirements of **Section 102(a) of the Flood Disaster Protection Act of 1973, (P.L. 93-234), 87 Stat. 975**, approved December 31, 1976. Section 102(a) requires on, and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
12. The applicant shall comply with the provisions of **Executive Order 11988**, relating to flood plain management; **Executive order 11288**, relating to the prevention, control, and abatement of water pollution; and **Executive Order 11990**, relating to the protection of wetlands.
13. In order to prevent discrimination against disabled users, the Applicant shall require the facility or program to comply with the following federal laws and their implementing regulations where applicable: the **Americans with Disabilities Act**, the **Rehabilitation Act of 1973**, and the **Architectural Barriers Act of 1968**. The Applicant shall be responsible for conducting inspections to insure compliance with these requirements by the contractor.
14. The Applicant agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments.
15. The Applicant agrees to assist FHWA and DNR in complying with **Section 106 of the National Historic Preservation Act of 1966**, as amended, **Executive Order 11593**, and the **Archaeological and Historic Preservation Act of 1966**; and further agrees to promptly notify DNR and FHWA of the existence of any affected properties and to avoid or mitigate adverse effects upon such properties.
16. The Applicant shall comply with the **Coastal Barrier Resources Act (CBRA) P.L. 97-348, 96 Stat. 1653, (43 CFR Subtitle A)**, if applicable. Section 2 requires that a coordinated program among Federal, State and local governments is critical to the more appropriate use and conservation of coastal barriers. It is the purpose of the Act to minimize damage to fish, wildlife, and other natural resources associated with coastal barriers along the Atlantic and



Gulf coasts by restricting Federal expenditures and financial assistance which have the effect of encouraging development of coastal barriers and by establishing a Coastal Barrier Resources System.

17. The Applicant shall provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications. The Applicant will furnish progress reports and such other information as DNR and FHWA may require.
18. Development plans and specifications shall be available for review by either the Commissioner or the Division Administrator upon request.
19. In the event the project covered by this Agreement, including future stages of the project, cannot be completed in accordance with the plans and specifications for the project, the Applicant shall bring the project to a point of recreational usefulness agreed upon by the Commissioner and the Division Administrator.

**FAILURE TO COMPLY WITH THE ABOVE PROVISIONS WILL  
CONSTITUTE A MATERIAL BREACH OF THIS AGREEMENT AND  
LOSS OF STATE FUNDS ALLOCATED UNDER THIS AGREEMENT.**

C. **PROJECT CONTRACT AND SUBCONTRACT REQUIREMENTS**

The Applicant shall secure completion of the work in accordance with the approved construction plans and specifications, and shall comply and secure compliance with all applicable Federal, State, and local laws and regulations now existing, or which may hereafter be enacted or adopted. At the least, the Applicant shall meet the following requirements in contracting for goods and services:

1. The Applicant shall follow its own laws, regulations or rules governing procurement and construction contracting in order to secure competition in the award of contracts. If the Applicant does not have laws, regulations or rules to secure such competition, the Applicant shall follow the laws and regulations that govern the State of Georgia in its contracting activities. Copies of all advertisements, bids, and a copy of each such contract shall be retained for inspection by the Commissioner and the Division Administrator.
2. The Applicant shall inform all bidders on contracts for construction that State and/or Federal funds are being used to assist in construction. Requests for proposals and bid solicitations shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

3. **Written change orders** shall be issued for all necessary changes in the facility being constructed under contracts of \$25,000 or more. Such change orders shall be made a part of the project file and shall be kept available for audit.
4. The Applicant shall comply with **Executive Order 12432, Minority Business Enterprise Development**, if applicable, which encourages greater economic opportunity for minority entrepreneurs.
5. The Applicant shall document the procedure it follows in selecting vendors and contractors.
6. The Applicant shall not use the grant funds to support procurements utilizing exclusionary or discriminatory specifications.
7. The Applicant must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under **Executive Order 12549, "Debarment and Suspension,"** or has been suspended or debarred pursuant to the Georgia Department of Administrative Services' **Georgia Vendor Manual, section 7.21.**
8. Where applicable, **46 U.S.C. 1241(b)(1)** and **46 CFR Part 381** impose cargo preference requirements on the shipment of foreign made goods.
9. Where applicable, **Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Parts 660 and 661** impose "Buy America" provisions on the procurement of foreign products and materials.
10. Where applicable, **Section 105(f) of the Surface Transportation Assistance Act of 1982, Section 106(c) of the Surface Transportation and Uniform Relocation Act of 1987, and 49 CFR Part 23** impose requirements for the participation of disadvantaged business enterprises.
11. Where applicable, **23 U.S.C. 112(e)** requires standardized contract clauses concerning site conditions, suspension of work, and material changes in the scope of the work.
12. Where applicable, FHWA grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under **Title IX of the Federal Property and Administrative Services Act of 1949**, or equivalent State qualifications-based requirements. For FHWA

programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

13. The Applicant shall incorporate, or cause to be incorporated, into all construction contracts:
- (a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases.)
  - (b) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)
  - (c) Compliance with **Executive Order 11246** of September 24, 1965, entitled "**Equal Employment Opportunity**," as amended by **Executive Order 11375** of October 13, 1967, and as supplemented in Department of Labor Regulations (**41 CFR Part 60**). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees).
  - (d) Compliance with the **Copeland "Anti-Kickback" Act (18 U.S.C. 874)** as supplemented in Department of Labor regulations (**20 CFR Part 3**). (All contracts and subgrants for construction or repair).
  - (e) Compliance with the **Davis-Bacon Act (40 U.S.C. 276 a to a-7)** as supplemented by Department of Labor regulations (**29 CFR Part 5**). (Construction contracts in excess of \$2,500 awarded by grantees and subgrantees).
  - (f) Compliance with **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 – 330)** as supplemented by Department of Labor regulations (**29 CFR Part 5**). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).
  - (g) Notice of awarding agency requirements and regulations pertaining to reporting.
  - (h) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

- (i) Awarding agency requirements and regulations pertaining to copyrights and rights in data.
- (j) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly appointed representatives to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts, and transcriptions.
- (k) Retention of all required records for three years after grantees or subgrantees make final payment and all other pending matters are closed.
- (l) Compliance with all applicable standards, orders, or requirements issued under **Section 306 of the Clean Air Act (42 U.S.C. 1857(h))**, **Section 508 of the Clean Water Act (33 U.S.C. 1368)**, **Executive Order 11738**, and Environmental Protection Agency regulations (**40 CFR Part 15**). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000).
- (m) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the **Energy Policy and Conservation Act (Pub.L. 94-163)**.

14. The Applicant shall incorporate, or cause to be incorporated, into all construction contracts **exceeding \$10,000** the following **Equal Employment Opportunity** clauses:

“During the performance of this contract, the contractor agrees as follows:

- “(1) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or handicapping condition. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or handicapping condition. Such action shall include but not be limited to, the following: Employment, upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provision of this nondiscrimination clause.

- “(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, or handicapping condition.
- “(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers’ representative of the contractor’s commitments under **Section 202 of Executive Order 11246, as amended (3 CFR 169 (1979))**, and shall post copies of notices in conspicuous places available to employees and applicants for employment.
- “(4) The contractor will comply with all provisions of **Executive Order 11246**, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- “(5) The contractor will furnish all information and reports required by **Executive Order 11246**, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- “(6) In the event of the contractor’s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in **Executive Order 11246**, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246, as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- “(7) The contractor will include the provisions of **Paragraphs (1) through (7)** in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to **Section 204 of Executive Order 11246**, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting

agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

15. The Applicant shall (1) comply with provisions C.1 through 14 herein above in construction work carried out by itself, (2) assist and cooperate actively with the Commissioner, FHWA, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with such provision and with the rules, regulations, and relevant orders of the Secretary of Labor, (3) obtain and furnish to the Commissioner, FHWA, and the Secretary of Labor such information as they may require for the supervision of such compliance, (4) enforce the obligation of contractors and subcontractors under such provisions, rules, regulations, and orders, (5) carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by DNR, the Secretary of Labor or FHWA pursuant to **Executive Order 11246** of September 24, 1965 entitled “**Equal Employment Opportunity**” as amended by **Executive Order 11375** of October 13, 1967 and as supplemented in Department of Labor regulations (**41 CFR Part 60**), and (6) refrain from entering into any contract with a contractor debarred or suspended from participation in Federal Assistance programs under **Executive Order 12549**, “**Debarment and Suspension**,” or with a contractor debarred or suspended under the Georgia Vendor Manual, section 7.21.

#### D. PROJECT COSTS

Project costs eligible for assistance shall be determined upon the basis of the criteria set forth in the **Georgia Recreational Trails Program (G RTP)** manual and Office of Management and Budget (OMB) **Circular A-87**. Generally, costs must be necessary, reasonable, and directly related to the grant. In addition, they must be legal, proper, and consistent with the policies that govern the Applicant’s own expenditures. Any credits, such as purchase discounts, price adjustments, and federal funds available from other sources, must be deducted from total costs. Applicable cost principles are listed in **49 CFR 18.22**.

#### E. PROJECT ADMINISTRATION

1. Property and facilities acquired or developed pursuant to this agreement shall be available for inspection by the Commissioner and FHWA upon request.

2. It is the intent of the parties hereto that the Applicant will use the monies granted hereunder for the purpose of the **Georgia Recreational Trails Program**, and that assistance granted from **DNR** will result in a net increase, commensurate at least with DNR's cost-share, in an Applicant's recreational facilities. It is intended by both parties hereto that assistance from DNR will be added to, rather than be replaced by or be substituted for, local outdoor recreational trails funds.
3. The Applicant shall provide to DNR, within 60 days after the date of completion of the project, all financial and performance reports required as a condition of the grant. The date of completion is the date when all work under a project is completed, or the expiration date of the grant agreement, whichever comes first.
4. The Applicant further agrees to submit relevant reports as the Commissioner or the Division Administrator may request.

F. PROJECT TERMINATION

1. The Applicant may unilaterally terminate the project at any time prior to the first payment on the project. After project commencement, this agreement may be terminated, modified, or amended only by mutual written agreement.
2. The Commissioner may temporarily suspend State and Federal assistance under the project pending corrective action by the Applicant or pending the decision to terminate the grant by DNR and FHWA.
3. The Commissioner may terminate the project in whole, or in part, at any time before the date of completion, whenever it is determined that the Applicant has failed to comply with the conditions of the grant. The Commissioner will promptly notify the Applicant in writing of the determination and the reasons for the termination, together with the effective date. Payments made to the Applicant or recoveries by DNR under a project terminated for cause shall be in accord with the legal rights and liabilities of the parties.
4. The Commissioner or the Applicant may terminate the grant in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date, and shall cancel as many outstanding obligations as possible.
5. Termination either for cause or convenience requires that the project in question be brought to a state of recreational trail usefulness agreed upon by DNR and the Division Administrator and that all funds provided by DNR and FHWA be returned.

G. CONFLICT OF INTEREST

1. No official or employee of the Applicant, the State, or the Federal Government, who is authorized in his official capacity to negotiate, make, accept, or approve, or to take part in such decisions regarding a contract or subcontract in connection with this project shall have any financial or other personal interest in any such contract or subcontract.
2. No person performing services for the Applicant in connection with this project shall have a financial or other personal interest other than his employment or retention by the Applicant, in any contract or subcontract in connection with this project. No officer or employee of such person retained by the Applicant shall have any financial or other personal interest in any real property acquired for this project unless such interest is openly disclosed upon the public records of the Applicant, and such officer, employee or person has not participated in the acquisition for or on behalf of the Applicant.
3. The parties to this agreement certify that the provisions of law contained in **O.C.G.A. Sections 45-10-20 through 45-10-28** prohibiting full- and part-time appointive officials and employees of the State from engaging in certain transactions affecting the State have not and will not be violated in any respect in regard to this Agreement.
4. No member of or delegate to Congress shall be admitted to any share or part of this agreement, or to any benefit to arise herein, unless such benefit shall be in the form of an agreement made with a corporation for its general benefit.
5. The Applicant, DNR, and FHWA shall be responsible for enforcing the conflict of interest provisions of this agreement.

H. FINANCIAL RECORDS

1. The Applicant shall maintain for a period of three (3) years satisfactory financial records, supporting documents, and statistical records, and shall make them available to the Commissioner, the State Auditor, FHWA, and the U.S. Comptroller General, and any authorized representatives thereof, for the purpose of making audit, examination, excerpts and transcripts at reasonable times. Such accounts and records shall be retained beyond the three-year period if audit findings have not been resolved. The retention period begins on the date of final payment for the project.
2. The Applicant must use a generally accepted accounting system. The financial system selected must be tailored to the circumstances of the award. Yet, all financial management systems must be designed to reflect



the standards required by State and Federal laws and regulations and be capable of audit by independent audit professionals.

3. Where applicable, the Applicant shall be responsible for obtaining audits in accordance with the **Single Audit Act of 1984 (31 U.S.C. 7501-7)** and Federal agency implementing regulations. The audit shall be made by an independent auditor in accordance with generally accepted accounting principles. One copy of the audit report shall be provided to DNR within 180 days for each audit period in which GRTP grant money is expended and/or received.
4. The Applicant shall, if so directed by DNR, employ at Applicant's expense an independent public accounting firm, approved by the Commissioner, for an audit of the Applicant's project. One copy of the audit report shall be provided to DNR.

I. GRANT PAYMENTS

1. No payment shall be made to the Applicant until such time as the person or persons in charge of keeping records on behalf of the Applicant has attended the orientation meeting referred to in B.1. hereinabove.
2. Payments to the Applicant will be made on a reimbursable basis. In order to secure payment of funds obligated for purposes set forth in the approved project agreement, the Applicant must submit a billing request for reimbursement, for the total costs incurred for such purposes during the period covered by the billing request. The amount of the payment of State funds will be computed by the DNR accounting office on the basis of the percentage of fund support agreed to by both parties.
3. Billing requests shall be submitted by the Applicant for not less than 25 percent of the total grant amount, and shall be submitted in a timely fashion. Final billing and closeout documents are due within 60 days of project completion. (See B.2. above for construction and billing schedule.)
4. The form of billing requests to be used will be discussed further in the orientation meeting (see I.1.), must be consistent with the GRTP manual and DNR policies, and must be certified by the Applicant.
5. In the event that FHWA makes any demand on DNR to repay grant funds used in the project, or should FHWA make demands for any other relief, the Applicant shall make such repayment to DNR or take such other action as will enable DNR to comply with the demands of FHWA; provided, however, that the Applicant shall only make such repayment or take such action if its action or inaction was the reason for the demand by FHWA.

J. USE OF FACILITIES

The Applicant agrees that the property described in this project agreement is being acquired or developed with **Georgia Recreational Trails Program** assistance, and shall be available for general public recreational trail use.

K. NONDISCRIMINATION

1. The Applicant shall comply with **Title VI of the Civil Rights Act of 1964 (P.L. 88-352)** and in accordance with **Title VI** of that act, no person in the United States shall, on the ground of race, religion, color, sex or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the use of any property or facility acquired or developed pursuant to the project agreement. The Applicant shall immediately take any measures necessary to effectuate this provision. This assurance shall be binding on the Applicant and other political subdivision or other public agency to which GRTP assistance or property acquired or developed with GRTP assistance has been transferred for public recreational trail assistance.
2. The Applicant shall comply with **Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e)** prohibiting employment discrimination where (1) the primary purpose of the grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of the persons who are or should be benefiting from the grant-in-aid activity. **23 U.S.C. 140 (b)** authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.
3. The Applicant shall comply with the regulations and guidelines promulgated pursuant to the **Civil Rights Act of 1964** by the Secretary of Labor, FHWA and DNR.
4. The provisions of **K.1.** through **K.3.** hereinabove apply to any part of the recreational system within which the assisted facility or property exists.

L. MANUAL

The Applicant shall comply with the policies and procedures set forth in the **Georgia Recreational Trails Program** manual. Said manual is hereby incorporated into and made a part of this agreement. The Applicant agrees that the property and facilities described in the project agreement shall be operated and maintained as prescribed by requirements of the manual.

M. COMPLIANCE

The Applicant shall be responsible for compliance with the terms of this agreement by any political subdivision or public agency to which funds are transferred pursuant to this agreement. Failure by such political subdivision or public agency to so comply shall be deemed a failure by the Applicant to comply with the terms of this agreement.

N. INTERPRETATION

1. This agreement and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.
2. This agreement is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

O. NON-ASSIGNMENT

Neither the performance nor the proceeds of this agreement may be assigned except with the prior written consent of the Commissioner.

P. NON-WAIVER OF BREACH

The failure of DNR at any time to require performance by the Applicant of any provision hereof, shall in no way affect the right of DNR thereafter to enforce the same, nor shall the waiver by DNR of any breach of any provision hereof be taken or held to be a waiver of such provision, or as a waiver of the provision itself.



# Brook Run Park Trailway - Phase I and II



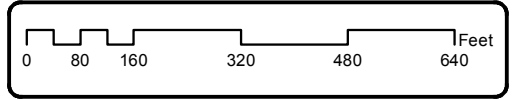
### Legend

**Brook Run Trailway**

Type

- Phase I - .75 mi.
- Phase II - 1 mi.
- Parcel Boundaries
- Stream

Lakes



## Dunwoody

**\*Smart people – Smart city**

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