03-O -0408

AN ORDINANCE

BY: COUNCILMEMBER DEBI STARNES

AN ORDINANCE TO APPROVE THE CITY OF ATLANTA'S PARTICIPATION IN THE "DOWNTOWN ATLANTA'S IN BLOOM" PROGRAM FOR PLANTERS AND HANGING FLOWER BASKETS; TO AUTHORIZE THE MAYOR OR HER DESIGNEE THE COMMISSIONER OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT WITH THE DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT RELATING TO SUCH PROGRAM; TO WAIVE CONFLICTING ORDINANCES; AND FOR OTHER PURPOSES.

WHEREAS, by resolution designated "95-R-1374," as amended by supplemental resolution "02-R-0241," the City of Atlanta activated and consented to the creation of the Downtown Atlanta Community Improvement District (the "District") to provide, accelerate, supplement, and enhance governmental services and facilities in the geographic area served by the District as permitted under the Atlanta Community Improvement District Act, 1991 Ga. Laws 3653, as amended; and

WHEREAS, the City of Atlanta has determined that the District's "Downtown Atlanta's in Bloom" program to place hanging flower baskets on light poles and other standards and to place planters containing flowers and other decorative plants in various locations in Downtown Atlanta will enhance the beauty of streets and sidewalks in the portion of the City of Atlanta served by the District and thus improve the general welfare of the City's citizens, workers, and visitors; and

WHEREAS, the City of Atlanta has determined that the Mayor or her designee the Commissioner of Public Works is the appropriate City official to execute and oversee an agreement with the District governing the "Downtown Atlanta's in Bloom" program,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA as follows:

Section 1. The City of Atlanta agrees to participate, in cooperation and partnership with the Downtown Atlanta Community Improvement District, in the "Downtown Atlanta's in Bloom" program to place hanging flower baskets on light poles and other standards and to place planters containing flowers and other decorative plants on sidewalks and along streets in the geographic area served by the Downtown Atlanta Community Improvement District.

Section 2. The Mayor or her designee the Commissioner of Public Works is hereby authorized to enter into an agreement with the Downtown Atlanta Community Improvement District for the operation of the "Downtown Atlanta's in Bloom" program substantially in the form attached hereto as Exhibit "A."

Section 3. To the extent that this Ordinance and the agreement authorized pursuant to this Ordinance are in conflict with the provisions of Sections 138-20 through 138-26 of the Code of Ordinances of the City of Atlanta relating generally to encroachments, or with the provisions of Sections 138-60 of the Code of Ordinances of the City of Atlanta relating specifically to flags, banners, signs, and displays, such provisions are hereby waived to the extent of such conflict.

Section 4. All ordinances or parts of ordinances in conflict with the terms of this Ordinance are hereby repealed to the extent of such conflict.

Memorandum of Agreement Concerning the
"Downtown Atlanta's in Bloom" Program

This Memorandum of Agreement (hereinafter the "**Agreement**") between the City of Atlanta (hereinafter the "**City**"), a municipal corporation of the State of Georgia, and the Atlanta Downtown Improvement District, Inc. (hereinafter the "**District**"), a public corporation of the State of Georgia, is entered into this _____ day of March, 2003.

A. PURPOSE

The Purpose of this Agreement is to establish and govern a program for the placement of hanging flower baskets and street planters containing flowers and other decorative plants in the public right-of-way to enhance the beauty of downtown Atlanta. This program, the "Downtown Atlanta's in Bloom" Program (the "Program"), is a joint program of the City and the District intended to improve the general welfare of the City's citizens, workers, and visitors.

B. GENERAL UNDERSTANDING

1. The major elements to the "Downtown Atlanta's in Bloom" program are listed below:

   a. The Program is funded (at least initially) as a charitable contribution by a local anonymous philanthropist for a one to two-year period, during the months of May – October. No City funds will be used to implement the Program.
   b. Prior to installation of any baskets or planters, the District will provide a plan to the Commissioner of Public Works which shall indicate the streets, sidewalks, and other rights-of-way proposed to be involved in the Program and the proposed location of flower baskets and street planters on such streets, sidewalks, and rights-of-way. Within two weeks of the receipt thereof, the Commissioner of Public Works shall return the plan to the District indicating his approval or the modifications that must be made to the plan in order to receive his approval.
   c. The District will place plant material, or cause such plant material to be placed, in hanging baskets and planters in May (commencing May 2003), and will install such hanging baskets and planters during this same month in the locations indicated on the approved plan. There will be approximately 150 baskets affixed to poles during the first year, with planters being positioned in accordance with the approved plan where feasible, aesthetically compatible, and within budget constraints.
   d. No street planter or hanging flower basket shall be permitted under this Program which contains or has affixed thereupon any advertisement of any event or occurrence to take place under the sponsorship or for the benefit of any person operating for profit.
   e. No City agency may use any City personnel or any City equipment to install or to aid in the installation of any street planter or hanging flower baskets along the City right-of-way associated with this Program.

f. The District will be responsible for all financial and physical obligations relating to the Program, to include: installation, maintenance, watering, replacement, and removal as required of all hanging baskets and planters and contents thereof.

2. The District will be responsible for removing plants from hanging baskets at the end of the summer growing season, which is anticipated to be in October. The District will remove and store the hanging baskets and planters at times when no plant materials are placed therein.

3. The District agrees to indemnify and hold the City, its officers, agents, and employees harmless from any and all claims arising out of the placement of, maintenance of, use of, or removal of street planters and hanging flower baskets, including claims of flower baskets or the structures upon which they are hung falling on persons or property.

4. The District will partner with select contractors to perform technical support functions, such as planting, maintenance (consulting), and lift support.

   a. Post Properties is partnering with the District to perform the planting, as well as assisting with the installation of the flowers and plants in their respective containers.
   b. A City-authorized lift company will be contracted by the District and used to assist with the installation and removal of any flower baskets affixed to poles.

5. The Commissioner of Public Works shall have the authority to rescind this Agreement upon a written determination that the District has failed to substantially comply with the conditions of this Agreement; provided, that the Commissioner of Public Works shall first provide written notice containing such determination to the District, and allow ten (10) business days from receipt of such notice for the District to demonstrate substantial compliance with all conditions of this Agreement.

6. The Program will be renewed on an annual basis as long as both parties agree, and adequate funding is available. Upon termination of the Program, regardless of the circumstances, the District agrees to remove all hanging baskets, planters, and related materials within 10 business days, at the District's own expense.

7. No fees will be assessed by the City to the District for this Program. However, any damage to light standards as a direct result of the Program will be the responsibility of the District.

8. Any amendment, change, or modification to this Agreement must be agreed to in writing by both parties.

9. The Effective Date of this Agreement shall be the date first noted above.

10. Each party represents and warrants that it has the authority to enter into this Agreement and that its governing body has authorized, by proper action, the execution and delivery of this Agreement.

DOWNTOWN ATLANTA COMMUNITY IMPROVEMENT DISTRICT

_____

Richard T. Reinhard
President
Atlanta Downtown Improvement District, Inc.

Date _____

CITY OF ATLANTA DEPARTMENT OF PUBLIC WORKS

_____

John Griffin
Interim Commissioner of PublicWorks
City of Atlanta

Date _____