

03-~~R~~-0577

**A RESOLUTION BY
CITY UTILITIES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A LOCAL GOVERNMENT PROJECT AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR DESIGN AND CONSTRUCTION OF VARIOUS SIDEWALKS WITHIN THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta has represented to the Georgia Department of Transportation a desire to construct sidewalks in the City of Atlanta along Howell Mill Road from Northside Parkway to Collier Road; and

WHEREAS, the Georgia Department of Transportation has expressed a willingness to participate in the funding of the design and construction of these transportation improvement projects with funds of GDOT or funds appropriated to the Georgia Department of Transportation by the Federal Highway Administration, for Congestion Mitigation Projects under Title 23, United States Code, Section 133(B)(8), or a combination of funds from the above sources; and

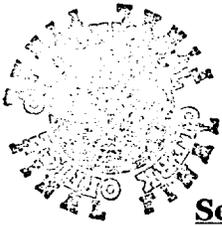
WHEREAS, the Georgia Department of Transportation has requested that the City of Atlanta participate in the design of this project by funding various percentages of the design as set forth in Exhibit "A" of the Agreement and one hundred percent of acquisition of right-of-way and easement costs directly related to the completion of this project and by accomplishing all of the design activities for this project; and

WHEREAS, the Georgia Department of Transportation has further requested that the City of Atlanta participate in the construction of this project by funding twenty percent of the construction and one hundred percent of utility relocation costs directly related to the completion of this project as set forth in Exhibit "A" of the Agreement and by accomplishing all the construction activities for this project.

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

Section 1: That the Mayor be and is hereby authorized to enter into an appropriate Local Government Project Agreement for the construction of sidewalks along Howell Mill Road from Northside Parkway to Collier Road.

Section 2: That the City Attorney be and is hereby directed to prepare an appropriate contractual agreement in cooperation with the Department of Public Works, for execution by the Mayor, to be approved by the City Attorney as to form.



Section 3: That this agreement shall not become binding on the City and the City shall incur no liability upon same until such agreement has been executed by the Mayor and delivered to the Georgia Department of Transportation and countersigned by that Party.

Section 4: That total City costs for design, construction, right-of-way acquisition and utility relocation associated with the execution of this agreement shall not exceed Six Hundred Ninety Thousand Seven Hundred Sixty One Dollars and No Cents (\$690,761.00), shall be charged to FAC Numbers: 1C42 574001 M23F033492AH; 1B02 574001 M22F0334KSCO.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

APR 21, 2003
APR 28, 2003

RCS# 4616
4/21/03
2:23 PM

Atlanta City Council

Regular Session

CONSENT I Pgs. 1-19; Except 03-O-0441; 03-O-0391

Adopt

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

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	Y Boazman	B Woolard

CONSENT I

4/21/03 FULL COUNCIL MEETING

Items Adopted on the Consent Agenda

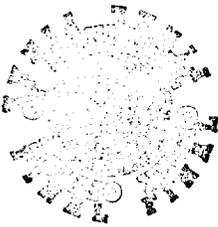
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|---------------|---------------|---------------|
| 1. 03-O-0186 | 36. 03-R-0451 | 72. 03-R-0498 |
| 2. 03-O-0350 | 37. 03-R-0571 | 73. 03-R-0499 |
| 3. 03-O-0401 | 38. 03-R-0549 | 74. 03-R-0500 |
| 4. 03-O-0442 | 39. 03-R-0555 | 75. 03-R-0501 |
| 5. 03-O-0438 | 40. 03-R-0556 | 76. 03-R-0502 |
| 6. 03-O-0445 | 41. 03-R-0558 | 77. 03-R-0503 |
| 7. 03-O-0446 | 42. 03-R-0559 | 78. 03-R-0504 |
| 8. 03-O-0443 | 43. 03-R-0560 | 79. 03-R-0505 |
| 9. 03-O-0450 | 44. 03-R-0561 | 80. 03-R-0506 |
| 10. 03-O-0485 | 45. 03-R-0562 | |
| 11. 03-O-0399 | 46. 03-R-0563 | |
| 12. 03-O-0369 | 47. 03-R-0564 | |
| 13. 03-O-0416 | 48. 03-R-0572 | |
| 14. 03-O-0193 | 49. 03-R-0588 | |
| 15. 03-O-0355 | 50. 03-R-0589 | |
| 16. 03-O-0359 | 51. 03-R-0590 | |
| 17. 03-O-0360 | 52. 03-R-0448 | |
| 18. 03-O-0436 | 53. 03-R-0454 | |
| 19. 02-O-1543 | 54. 03-R-0528 | |
| 20. 03-O-0432 | 55. 03-R-0529 | |
| 21. 03-O-0433 | 56. 03-R-0569 | |
| 22. 03-O-0434 | 57. 03-R-0570 | |
| 23. 03-R-0444 | 58. 03-R-0591 | |
| 24. 03-R-0530 | 59. 03-R-0592 | |
| 25. 03-R-0531 | 60. 03-R-0217 | |
| 26. 03-R-0532 | 61. 03-R-0539 | |
| 27. 03-R-0533 | 62. 03-R-0541 | |
| 28. 03-R-0534 | 63. 03-R-0542 | |
| 29. 03-R-0535 | 64. 03-R-0566 | |
| 30. 03-R-0536 | 65. 03-R-0593 | |
| 31. 03-R-0537 | 66. 03-R-0544 | |
| 32. 03-R-0538 | 67. 03-R-0545 | |
| 33. 03-R-0546 | 68. 03-R-0565 | |
| 34. 03-R-0577 | 69. 03-R-0496 | |
| 35. 03-R-0390 | 70. 03-R-0497 | |

**Items Adversed on
the Consent Agenda**

81. 03-R-0507
82. 03-R-0508
83. 03-R-0509
84. 03-R-0510
85. 03-R-0511
86. 03-R-0512
87. 03-R-0513
88. 03-R-0514
89. 03-R-0515
90. 03-R-0516
91. 03-R-0517
92. 03-R-0518
93. 03-R-0519
94. 03-R-0520
95. 03-R-0521
96. 03-R-0522
97. 03-R-0523
98. 03-R-0524
99. 03-R-0525
100. 03-R-0526
101. 03-R-0527

Consent I Vote: 15Yeas; 0 Nays: (See RCS #4616)

Items Removed from the Consent Agenda: 03-O-0441 & 03-O-0391



AGREEMENT
for
CONGESTION MITIGATION PROJECT
between
DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
and
City of Atlanta

This Agreement, made and entered into this _____ day of _____ 2003, by and between the DEPARTMENT OF TRANSPORTATION, an agency of the State of Georgia, hereinafter called the "DEPARTMENT", and City of Atlanta, GEORGIA, hereinafter called the "SPONSOR."

WHEREAS, the SPONSOR has been approved by the DEPARTMENT to carry out a Congestion Mitigation Project which consists of the construction of Project STP-00BK(69), P.I. NUMBER 762554, hereinafter referred to as the "PROJECT"; and

WHEREAS, the DEPARTMENT is authorized to receive federal funding for Congestion Mitigation Projects for Georgia pursuant to provisions of 23 U.S.C. Section 133(b)(8); and

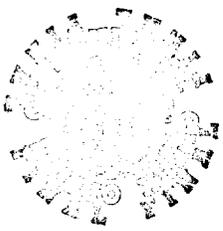
WHEREAS, the PROJECT is expected to positively impact the quality of transportation in the State of Georgia; and

WHEREAS, the DEPARTMENT desires to participate with the SPONSOR in the implementation of the PROJECT; and

WHEREAS, the SPONSOR has represented to the DEPARTMENT that it has the authority to receive and expend federal funds for the purpose of this PROJECT and is qualified and experienced to provide such services necessary for the construction of the PROJECT and the DEPARTMENT has relied upon such representations; and

WHEREAS, under Section 32-2-2(a)(7) of the Official Code of Georgia Annotated, the DEPARTMENT is authorized to participate in such an undertaking:

NOW, THEREFORE, in consideration of the mutual promises and covenant contained herein, it is agreed by and between the DEPARTMENT and the SPONSOR THAT:



ARTICLE I
SCOPE AND PROCEDURE

The SCOPE AND PROCEDURE for this PROJECT shall be the construction of **sidewalks located within the city limits of Atlanta, Georgia on Howell Mill Road from Northside Parkway to Collier Road** as set forth in Exhibit A, WORK PLAN, which is further defined by the PROJECT design and construction plans ("PROJECT PLANS") on file with the DEPARTMENT and the SPONSOR and referenced as if attached hereto and incorporated as if fully set out herein.

The SPONSOR shall be responsible for assuring that the PROJECT will be economically feasible and based upon sound engineering principles, meet American Association of State Highway and Transportation Officials ("AASHTO") Guidelines and will be sensitive to ecological, environmental and archaeological issues.

The WORK PLAN sets out the scope of work for the PROJECT. It is understood and agreed that the DEPARTMENT shall participate only in the PROJECT as specified in Exhibit A, WORK PLAN.

The SPONSOR shall establish a Task Force to advise the SPONSOR on the WORK PLAN and provide guidance during implementation of the PROJECT. The Task Force should include, but not be limited to, a representative from the DEPARTMENT designated as the DEPARTMENT'S Project Manager, the DEPARTMENT'S Area Engineer, the SPONSOR'S Project Manager, the SPONSOR'S Accountant, and the SPONSOR'S Public Works Engineer. The membership of the Task Force shall be developed by the SPONSOR and shall be subject to approval by the DEPARTMENT.

During the development of the PROJECT the SPONSOR has taken into consideration, as applicable, the DEPARTMENT'S Standard Specifications for the Construction of Roads and Bridges, AASHTO standards for sidewalks; FHWA guidelines for pedestrian facilities; compliance with the U.S. Secretary of the Interior "Standards and Guidelines, Archaeology and Historic Preservation"; compliance with Section 106 of the National Historic Preservation Act of 1966 and with Section 4(f) of the US DOT Act of 1966; compliance with the Archaeology and Historic Preservation Act of 1974; compliance with the Archaeological Resources Protection Act of 1979 and with the Native American Graves Protection and Repatriation Act, the Georgia Abandoned Cemeteries and Burial Grounds Act of 1991; compliance with the DEPARTMENT'S Scenic Byways Designation and Management Program, and with the American Society of Landscape Architect Guidelines; compliance with the Outdoor Advertising Requirements as outlined in the Official Code of Georgia Annotated, Section 32-6-70 et. seq. and other standards and guidelines as may be applicable to the PROJECT.

The SPONSOR has acquired rights of way and related services for the PROJECT in accordance with State and Federal Laws, DEPARTMENT'S Right of Way Procedure Manual, Federal Regulations and particularly Title 23 and 49 of the Code of Federal Regulations ("CFR"), as amended. The SPONSOR further acknowledges that no



acquisition of rights of way occurred until all applicable archaeological, environmental and historical preservation clearances were approved.

The SPONSOR shall ensure that all contracts as well as any subcontracts for the construction of the PROJECT shall comply with the Federal and State legal requirements imposed on the DEPARTMENT and any amendments thereto. Specifically, but not limited to the provisions governing the DEPARTMENT's authority to contract, Sections 32-2-60 through 32-2-77 of the Official Code of Georgia Annotated; the DEPARTMENT's Rules and Regulations governing the Prequalification of Prospective Bidders, Chapter 672-5; and the DEPARTMENT's Standard Specifications and Special Provisions.

The SPONSOR further agrees to comply with and shall require the compliance and physical incorporation of Federal Form FHWA-1273 into all contracts or subcontracts for construction, as attached hereto and incorporated herein as Exhibit B, Terms and Conditions.

ARTICLE II
COVENANTS AGAINST CONTINGENT FEES

The SPONSOR shall comply with all relevant requirements of Federal, State and local laws including but not limited to those applicable requirements as outlined in Exhibit B, TERMS AND CONDITIONS. The SPONSOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the SPONSOR, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the SPONSOR, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the DEPARTMENT shall have the right to annul this Agreement without liability, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE III
REVIEW OF WORK

Authorized representatives of the DEPARTMENT and the Federal Highway Administration, ("FHWA"), may at all reasonable times review and inspect the activities and data collected under the terms of this Agreement and amendments thereto, including but not limited to, all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the SPONSOR. The DEPARTMENT reserves the right for reviews and acceptance on the part of affected public agencies, railroads and utilities insofar as the interest of each is concerned.

Acceptance shall not relieve the SPONSOR of its professional obligation to correct, at its expense, any of its errors in the work.



The DEPARTMENT's review recommendations shall be incorporated into the work activities of the SPONSOR.

ARTICLE IV
TIME OF PERFORMANCE

TIME IS OF THE ESSENCE IN THIS AGREEMENT. The SPONSOR shall perform its responsibilities for the PROJECT, commencing on receipt of written "Notice to Proceed" from the DEPARTMENT, and shall complete the Project no later than **August 22, 2003**. The work shall be carried on in accordance with the schedule attached to this Agreement as "Exhibit C", WORK SCHEDULE, with that unforeseen events may make necessary some minor variations in that schedule.

The work shall be carried on expeditiously, it being understood, however, that this Agreement may be extended or continued in force by mutual consent of the parties and evidenced by a written amendment thereto.

ARTICLE V
RESPONSIBILITY FOR CLAIMS AND LIABILITY

The SPONSOR shall to the extent permitted by law be responsible for any and all damages to property or persons and shall save harmless the DEPARTMENT, its officers, agents and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the negligence of the SPONSOR in the performance of the work under this Agreement.

It is understood by the SPONSOR that claims, damages, losses, and expenses may include monetary claims made by the construction contractor for the PROJECT, and its related facilities, that are a result of the SPONSOR's negligence or improper representation in the plans.

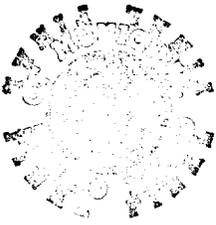
The SPONSOR shall ensure that the provisions of this Article are included in all contracts and subcontracts.

These indemnities shall not be limited by reason of any insurance coverage held by the SPONSOR or the SPONSOR's contractors or subcontractors.

ARTICLE VI
INSURANCE

Prior to beginning work, the SPONSOR shall obtain and where applicable cause its subcontractors to obtain and furnish certificates to the DEPARTMENT for the following minimum amounts of insurance:

- A. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- B. Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount



of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence.

- C. Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000).
- D. Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the PROJECT.

Insurance shall be maintained in full force and effect during the life of the Agreement and until final completion of the PROJECT.

ARTICLE VII COMPENSATION AND PAYMENT

It is agreed that the compensation hereinafter specified includes both direct and indirect costs chargeable to the PROJECT under generally accepted accounting principles and as allowed in the Federal Acquisition Regulations Subpart 31.6 and not prohibited by the Laws of the State of Georgia.

It is understood and agreed that the total estimated construction cost of the PROJECT as outlined in this Article and as shown in Exhibit "D", BUDGET ESTIMATE, attached hereto and incorporated as if fully set out herein, is **six hundred ninety thousand seven hundred sixty-one and no cents (\$690,761.00)**. The total estimated cost of the PROJECT to be financed under the Congestion Mitigation for Air Quality program of the U.S. Department of Transportation FHWA is **five hundred fifty-two thousand six hundred nine and no cents (\$552,609.00)** which is the total federal contribution to the PROJECT and is the maximum amount of the DEPARTMENT'S obligation. The approved PROJECT budget shall include any claims by the SPONSOR for all costs incurred by the SPONSOR in the conduct of the entire scope of work for the PROJECT.

The SPONSOR shall be solely responsible for any and all amounts in excess of such amount being payable only with non-Federal aid funds. In no event shall the Federal contribution of the project exceed **\$552,609.00**, which is the DEPARTMENT'S maximum obligation.

It is understood and agreed that nothing in the foregoing shall prevent an adjustment of the estimate of the PROJECT costs, provided that the DEPARTMENT'S maximum obligation under this Agreement is not exceeded and that the original intent of the PROJECT is not substantially altered from the approved PROJECT. In order to adjust said budget estimate, it is also understood that the SPONSOR shall request any and all budget changes in writing and that the DEPARTMENT shall approve or disapprove the requested budget estimate change in writing.



The SPONSOR shall submit to the DEPARTMENT a revised budget estimate in accordance with the successful contractor's bid within ninety days from the date of the contractor's contract being awarded for construction, and before any construction work on the PROJECT may begin.

The SPONSOR shall submit to the DEPARTMENT monthly reports of the PROJECT's progress to include a report on what was accomplished during the month, anticipated work to be done during the next month and any problems encountered or anticipated. Payment on account of the above fee will be made monthly on the basis of calendar months, in proportion to the percentage of the work completed for each phase of work. Payments shall be made after approval of a certified voucher from the SPONSOR. Upon the basis of its review of such vouchers, the DEPARTMENT shall, at the request of the SPONSOR, make payment to the SPONSOR as the work progresses, but not more often than once a month. Should the work for the PROJECT begin within any one month, the first voucher shall cover the partial period from the beginning date of the work through the last date of the month in which it began. The vouchers shall be numbered consecutively and subsequent vouchers submitted each month until the work is completed. Payment will be made in the amount of sums earned less previous partial payments. The final invoice shall reflect the actual cost of work accomplished by the SPONSOR under the terms of this Agreement, and shall be the basis for final payment.

No expense for travel shall be an allowable expense for the SPONSOR under this Agreement unless such travel is listed in the approved PROJECT budget submitted by the SPONSOR to the DEPARTMENT. In addition, budgeted costs for travel shall be limited to the amount included in the approved PROJECT budget, unless prior DEPARTMENT approval is obtained for increasing such amount.

Should the work under this Agreement be terminated by the DEPARTMENT, pursuant to the provisions of ARTICLE XV, the SPONSOR shall be paid based upon the percentage of work completed at the point of termination, notwithstanding any just claims by the SPONSOR.

ARTICLE VIII FINAL PAYMENT

IT IS FURTHER AGREED that upon completion of the work by the SPONSOR and acceptance by the DEPARTMENT of the work, including the receipt of any final written submission by the SPONSOR and a final statement of costs, the DEPARTMENT shall pay to the SPONSOR a sum equal to one hundred percent (100%) of the total compensation as set forth in all approved invoices, less the total of all previous partial payments, paid or in the process of payment.

The SPONSOR agrees that acceptance of this final payment shall be in full and final settlement of all claims arising against the DEPARTMENT for work done, materials furnished, costs incurred, or



otherwise arising out of this Agreement and shall release the DEPARTMENT from any and all further claims of whatever nature, whether known or unknown, for and on account of said Agreement, and for any and all work done, and labor and materials furnished, in connection with the same.

The SPONSOR will allow examination and verification of costs by the DEPARTMENT'S representatives before final payment is made, in accordance with the provisions of Article XIII, herein. If the DEPARTMENT'S examination of the contract cost records, as provided for in Article XIII, results in unallowable expenses, the SPONSOR shall immediately be responsible for reimbursing the DEPARTMENT the full amount of such disallowed expenses.

ARTICLE IX CONTINGENT INTEREST

The DEPARTMENT shall retain a contingent interest in the PROJECT for as long as there continues a Federal interest in the PROJECT as determined by the DEPARTMENT'S calculation of the economic life of the PROJECT. Based on the scope of work, as set forth in Exhibit A, WORK PLAN, the DEPARTMENT has determined the economic life of the PROJECT to be five years from the date of the PROJECT Final Acceptance.

ARTICLE X RIGHT OF FIRST REFUSAL

A determination by the SPONSOR to sell or dispose of the PROJECT shall entitle the DEPARTMENT to the right of first refusal to purchase or lease the PROJECT at net liquidation value. Such right of first refusal shall be retained for as long as the DEPARTMENT holds a contingent interest in the PROJECT pursuant to Article X of this Agreement.

Should the DEPARTMENT elect to purchase or lease the PROJECT at any time after completion of the PROJECT no compensation shall be provided for the value added as a result of the PROJECT.

ARTICLE XI SUBSTANTIAL CHANGES

No material changes in the scope, character, complexity, or duration of the PROJECT from those required under the Agreement shall be allowed without the execution of a Supplemental Agreement between the DEPARTMENT and SPONSOR.

Minor changes in the work which do not involve increased compensation, extensions of time, or changes in the goals and objectives of the PROJECT, may be made by written notification of such change by either party with written approval by the other party.

LARGE ATTACHMENT:

DOCUMENT(S),

MANUAL(S)

OR

MAP(S)

NOT COPIED,

PULL ORIGINAL

FOR COPY OR TO VIEW

03-R-0577

(Do Not Write Above This Line)

A RESOLUTION BY:
CITY UTILITIES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR OR HER
DESIGNEE TO EXECUTE A LOCAL GOVERNMENT PROJECT
AGREEMENT BETWEEN THE CITY OF ATLANTA AND THE
GEORGIA DEPARTMENT OF TRANSPORTATION FOR DESIGN
AND CONSTRUCTION OF VARIOUS SIDEWALKS WITHIN
THE CITY OF ATLANTA; AND FOR OTHER PURPOSES.

ADOPTED BY

APR 2 1 2003

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 _____
 Date _____
 Chair _____
 Action: _____
 Fav, Adv, Hold (see rev. side)
 Other: _____
 Members _____
 Refer To _____

Committee City Utilities
 Date April 1, 2003
 Chair [Signature]
 Action: _____
 Fav, Adv, Hold (see rev. side)
 Other: _____
 Members [Signatures]
 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
- Consent
- V Vote
- RC Vote

CERTIFIED

CERTIFIED
 APR 2 1 2003
Julia G. Moore
 COUNCIL PRESIDENT PROTEM

CERTIFIED
 APR 2 1 2003
Randy Douglas Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

Andrew J. Landis
 APR 2 8 2003
 MAYOR