CITY COUNCIL
ATLANTA, GEORGIA

CORRECTED COPY

AN ORDINANCE BY

03-O-0759

AN ORDINANCE ANTICIPATING AND APPROPRIATING FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA) THE TOTAL SUM OF $1,440,000 AS RECOMMENDED FROM THE REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM (TIP) FY 2002-2004 FOR THE TENTH/PIEDMONT AVENUE STREETSCAPE IMPROVEMENTS FROM JUNIPER AVENUE/TENTH STREET TO MONROE DRIVE/WESTMINSTER AVENUE AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta Regional Commission approved construction funds through the FY 2002-2004 TIP, and the City has contracted with the Georgia Department of Transportation (GDOT) in a Local Government Project Agreement (LGPA) for the purpose of constructing public improvements inclusive of sidewalks, streetscapes, pedestrian lighting, and crosswalks; and

WHEREAS, GDOT made said project eligible for $1,440,000 in federal matching funds against the City's local share of $360,000; and

WHEREAS, the City's matching share is covered by separate agreement, attached as exhibit "A", in which The Midtown Alliance agrees to make available all funds necessary to complete the Project in excess of that made available by the total federal contribution of $1,440,000.00, and the City of Atlanta is not required or expected to provide any funds for any part of the cost of the Project, and further agrees that the City of Atlanta per Resolution 02-R-1028, adopted by the Council of the City of Atlanta, Georgia on June 3rd 2002, will not commit funds to this Project, and any cost in excess of $1,400,000.00 are the responsibility of the Midtown Alliance; and that paragraph 2, subpart b of exhibit "A" governs the obligations of the Midtown Alliance in the event of termination of the Project; and

WHEREAS, the Midtown Business Association, Inc. ("Midtown Alliance") has committed to the City that it will provide the City's local share of $360,000 for the Tenth/Piedmont Avenue Streetscape Improvement; and

WHEREAS, the budget commission of the City of Atlanta has recommended increasing the estimated receipts in the amount of $1,440,000

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

Section 1: That the 2003 Intergovernmental Grant Fund Budget Department of Public Works budget is hereby amended as follows:

CORRECTED COPY

ADD TO ANTICIPATIONS

1B02	J53X0210ABA0	Federal Highway Administration (FHWA)	
	631101	Federal Grants/Entitlements	$1,440,000.00

ADD TO APPROPRIATIONS

1B02	M11F0751ABA0 774001	Tenth Street/Piedmont Avenue Fac. Other Than Bldgs	$1,440,000.00
			$1,440,000.00

Section 2: That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

A true copy,
Rhonda Dauphin Johnson
Municipal Clerk, CMC

ADOPTED by the Council MAY 19, 2003
APPROVED by the Mayor MAY 27, 2003

ATTachment:
Exhibit A

SILVERMAN

CONSTRUCTION
PROGRAM
MANAGEMENT

FAX TRANSMITTAL

DATE: May 5, 2003

TO: Bronaugh Bridges COMPANY: City of Atlanta

FROM: Arnie Silverman

FAX NO.: 404-658-7638 NO. OF PAGES 29 INCLUDING THIS PAGE

Re: Midtown Alliance
Contract with the City of Atlanta
10th and Piedmont Streetscape project

Attached executed Agreement per bob Shelor's request.

Cc Robert Shelor w/o attachment
Shannon Powell w/o attachment

midtown alliance 10th-piedmont city of atlanta bridges fax 0305 1.doc

1075 Zonolite Road NE Suite 5 Atlanta, Georgia 30306-2013 Phone 404/892-7274 Fax 404/892-0022 www.silvermanconstruction.com

CITY OF ATLANTA

Shirley Franklin
MAYOR

55 TRINITY AVENUE, S.W. SUITE 1790
ATLANTA, GEORGIA 30303
(404) 330-6204 Fax (404) 658-7705
Internet Home Page: www.ci.atlanta.ga.us

DEPARTMENT OF PROCUREMENT
Adam Lorenzo Smith
Chief Procurement Officer

VIA HAND DELIVERY

RECEIVED
APR 10 2003
SILVERMAN CPM

April 9, 2003

Ms. Susan Mendheim
Midtown Alliance
999 Peachtree Street
Suite #730
Atlanta, GA 30309

Re: **FC- 7559-03 Piedmont Avenue Streetscape Project – Project I**
Tenth Street Streetscape Project – Project II

Dear Ms. Mendheim:

I enclose an executed copy of the above-referenced contract.

A copy of the contract has been distributed to the Departments of Planning and Community Development, Public Works, Finance and the Office of Contract Compliance.

If you have any questions or would like to discuss this matter, please call Rholanda Malveaux Stanberry, at (404) 330-6938.

Your interest in doing business with the City of Atlanta is appreciated.

Sincerely,

Adam L. Smith

ALS/RMS

Attachment

cc: Ms. Lynnette Young (w/attachment)
Mr. Charles Graves (w/attachment)
Mr. John Griffin (w/attachment)
Ms. Sharon Davis (w/attachment)
Mr. Hubert Owens (w/attachment)
Mr. Arnie Silverman (w/attachment)
File

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT made and entered into this 9th day of April, 2003 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia, and MIDTOWN BUSINESS ASSOCIATION, INC., a non-profit corporation in Fulton County, State of Georgia, and a corporation organized and existing under the laws of the State of Georgia ("Midtown Alliance").

WITNESSETH

WHEREAS, the City of Atlanta desires to obtain the maximum benefit from funding made available under Transportation Improvement Program for fiscal years 2002 to 2004 (Q-23 Surface Transportation Program), which in connection with certain qualified and approved projects, provides a match of four federal dollars for every dollar contributed by a local government; and

WHEREAS, a specific program has been identified by the Atlanta Regional Commission and the Georgia Department of Transportation as AT-AR BP288 Tenth Street/Piedmont Avenue Streetscape Improvements from Juniper Avenue/Tenth Street to Monroe Drive/Westminster Avenue and/or as Agreement for Congestion Mitigation Project between Department of Transportation State of Georgia and City of Atlanta STP-7626-00(080), P.I. 762608 (the "Project") and approved as eligible for $1,440,000 in federal matching funds if the City can provide $360,000 in matching funds to the Georgia Department of Transportation; and

WHEREAS, the City will enter into or has already entered into a Congestion Mitigation Project Agreement with the Georgia Department of Transportation (the "Project Agreement") in order to allow the City to utilize the $1,440,000 presently programmed to the Project but lacks funding to allocate the $360,000 needed for the local government match; and

WHEREAS, the Midtown Alliance is willing, under the terms set forth in this agreement, to provide funding to the City in the amount of $360,000 in order to allow the City to utilize the $1,440,000 presently programmed to the Project; and

WHEREAS, the City wishes, under the terms set forth herein, to accept the grant of $360,000 from Midtown Alliance to fund the City's commitment under the Local Government Project Agreement with the Georgia Department of Transportation ("GDOT") in order to allow the City to utilize the $1,440,000 presently programmed to the Tenth Street/Piedmont Avenue Streetscape.

WHEREAS, Midtown Alliance offers qualifications not elsewhere available because of its ability and willingness to acquire and expend such non-City funds for the design and construction of the 10th Street-Piedmont Avenue Streetscapes Project and due to its long history of involvement in the proposed Project and Midtown Atlanta; and

WHEREAS, the City of Atlanta and Midtown Alliance believe that a public and private partnership to complete the project set forth in this Agreement offers unique opportunities to significantly improve pedestrian traffic and improve public access to Piedmont Park; and

WHEREAS, the City desires the continued involvement of Midtown Alliance in the development in the area comprising the Project and Midtown Alliance desires to work with the City to supervise certain design, engineering, and construction work associated with the Project; and

WHEREAS, Resolution 02-R-1028, adopted by the City Council on June 8,2002 and approved by the Mayor on June 10, 2002 and made a part of hereof by reference, authorized the Mayor to enter into this agreement with Midtown Alliance under the terms specified herein.

NOW THEREFORE, for and in consideration of the mutual agreements between the parties hereinafter, and for other good and valuable consideration, the parties hereto do agree as follows:

1.

STATEMENT OF AGREEMENT

The City of Atlanta and Midtown Alliance hereby agree that, as a condition for funding the City's local match, Midtown Alliance will be responsible for and perform the obligations which the City has agreed to perform pursuant to the Project Agreement which is attached as Exhibit A. Midtown Alliance may act as the City's agent and enter into agreements with a project manager, engineer and one or more general contractors or sub-contractors (hereinafter "Persons") to perform the obligations set forth in the Project Agreement so long as the process used to enter into such agreements and the terms of such agreements are consistent with and permitted by the Project Agreement and/or other applicable law. This Agreement does not assign, sublet or transfer any or all of the City's interest in the Project Agreement.

2.

THE EFFECT OF THE PROJECT AGREEMENT

Midtown Alliance stipulates that it is aware of and has fully reviewed the Project Agreement entered into between the City and GDOT and attached as Exhibit A (previously described as *AT-AR BP288 Tenth Street/Piedmont Avenue Streetscape Improvements from Juniper Avenue/Tenth Street to Monroe Drive/Westminster Avenue* and/or as *Agreement for Congestion Mitigation Project between Department of Transportation State of Georgia and City of Atlanta STP-7626-00(080), P.I. 762608*). In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of Midtown Alliance to the City than the obligations of the City to GDOT, as set forth in the Project Agreement, the terms of the Project Agreement shall be considered as further clarifying and explaining the obligations of Midtown Alliance in this Agreement unless it is specially

stated that such variation in obligations is permitted. Midtown Alliance agrees that, to the extent possible, the obligations of Midtown Alliance to perform under this Agreement should be construed to be equal to the obligations of the City to perform under the Project Agreement.

a. Midtown Alliance acknowledges and agrees that GDOT has reserved the right to terminate the Project Agreement for just cause after thirty days written notice to the City. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of Midtown Alliance or any other Person or Person after termination of the Project Agreement by GDOT.

b. Should GDOT terminate the Project Agreement prior to the completion of the work, Midtown Alliance agrees that any of the streets or sidewalks, which are uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of the streets and sidewalks of the City prior to the beginning of construction.

c. The City agrees that should GDOT terminate the Project Agreement prior to the completion of the work, that Midtown Alliance shall receive the reimbursement to which the City would be entitled under the terms of the Project Agreement, provided that such funds are not required to restore the street and sidewalks of the City to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic.

3.

TIME OF PERFORMANCE

Midtown Alliance shall commence the performance of the Project Agreement no later than thirty (30) calendar days after execution of this Agreement by each of the parties. The work to be performed by Midtown Alliance shall be completed on or before September 17, 2003, provided however that Midtown Alliance may request that the City seek an extension of the time for completion of the Project Agreement and that if the extension of the operation Project Agreement is granted, such extension shall apply to this Agreement. The City agrees to request an extension of the Project Agreement from GDOT within five business days after receipt of a written request for extension from Midtown Alliance.

4.

PROFESSIONAL RESPONSIBILITY

Midtown Alliance shall assume all responsibility undertaken by the City in the Project Agreement with respect to the professional quality, technical accuracy and the coordination

of all designs, drawings, and specifications and other services furnished by or on behalf or required of the City pursuant to the Project Agreement.

a. Midtown Alliance shall correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in the Project Agreement and furnished for the Project by Midtown Alliance on behalf of the City under this Agreement, for which the City has received notice from GDOT, within such time that the City shall not be in breach of its obligations to GDOT under the Project Agreement. The City shall give such written notice to Midtown Alliance no later than the third business after receipt of notice from GDOT. Midtown Alliance is aware that the City is obligated to address any errors or deficiencies in the work as specified in the Project Agreement and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for Midtown Alliance to be required to make such revisions and corrections. All plans shall be prepared in English units.

b. Midtown Alliance shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts errors or omissions related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City pursuant to the Project Agreement, in the event that such claim, damage, loss or expense arises from obligations which Midtown Alliance has specifically undertaken in this Agreement.

c. Prior to the later of: (i) GDOT's return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by GDOT or FHWA or designee, Midtown Alliance agrees that authorized representatives of GDOT and the Federal Highway Administration ("FHWA") and the City may at all reasonable time review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, Midtown Alliance or any other Person.

d. Midtown Alliance agrees to incorporate into its work activities any reasonable review recommendation of GDOT or the City, provided that the City's review recommendations are made prior to the GDOT's final approval of the design documents. The City shall be given written notice of each submission to GDOT and provided with sufficient information to determine if the plans to be submitted to GDOT have been reviewed by the City prior to submission to GDOT for final approval.

e. Midtown Alliance agrees that all agreements with any Person shall cause all such Persons to be bound to the same terms and conditions and standards of performance as this Agreement. No action, omission, error or failure to act

on the part of any Person shall excuse the obligations of Midtown Alliance under this Agreement. No contract or sub-contract under this Agreement shall be assigned

f. All the services required hereunder will be performed under the direct supervision of Midtown Alliance. All Persons engaged in any work by Midtown Alliance to work on the Project shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.

g. Midtown Alliance agrees that the specifications required by GDOT in transportation infrastructure improvements are generally known and that the vast majority of the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work under the terms of the GDOT Agreements even if such terms are not specifically set forth herein or in the Scope of Work.

h. The City will make available in a timely manner all records and documents required by Midtown Alliance to fulfill the Scope of Work.

i. Any data transferred to the Midtown Alliance by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Midtown Alliance may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.

j. Midtown Alliance waives for itself, its successors, and its assigns and any Person employed by it in any capacity, all rights to any claim to damages whatsoever arising out of the use of the City's data for the Project, and/or the provision of this data to Midtown Alliance and/or the transfer of this data to Midtown Alliance shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.

k. Midtown Alliance agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this Agreement or developed in connection with the Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without

restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, Midtown Alliance warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Midtown Alliance waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to this Project ("Project Data") and does not include those documents prepared by Silverman Construction Services, Inc. for use as a manual to assist with the bidding and administration of the Project (the "Project Manual"). However, in addition to Project Data, the parties agree that those parts of the Project Manual consisting of forms, certifications, notices, advertisements, or instructions, used by the City of Atlanta or GDOT in their usual and customary contracting process, or required by federal, state or local law, (including versions of all of the foregoing, which were altered or amended for this Project), or documents which could be considered public documents, are not a part of the Project Manual prepared by Silverman Construction Services, Inc. Where the Project Manual includes or makes a reference to Project Data, the parties agree that the inclusion of, or reference to, an item of Project Data in the Project Manual, shall not exempt such item of Project Data from the City's ownership by making it a part of the Project Manual. The parties agree that the terms of this Agreement which apply to the ownership of the Project Manual or Project Data do not waive, void, supersede, or alter any other term of this Agreement. Midtown Alliance agrees that the use of any part of the Project Manual in other project.

5.

FUNDING OF THE PROJECT

Midtown Alliance and the City hereby acknowledge and agree that the Project Agreement contains a Budget Estimate which specifies that the total estimated construction cost is estimated to be one million seven hundred fifty eight thousand six hundred and six dollars ($1,758,606.00). Midtown Alliance and the City further acknowledge and agree Project Agreement states that one million four hundred forty thousand dollars ($1,440,000.00) is to be financed under the Congestion Mitigation for Air Quality program of the United States Department of Transportation, Federal Highway Administration, which is the total federal contribution to the Project and the maximum amount of the obligation of GDOT under the Project Agreement.

a. Midtown Alliance acknowledges and agrees that the Project budget includes any and all claims by it against the City under this Agreement and/or in the conduct of the entire scope of work for the Project.

b. Midtown Alliance agrees that it will make available all funds necessary required to complete the Project in excess of that made available by the total federal contribution and agrees that the City is not required or expected to provide any funds for any part of the cost of the Project. The City agrees to

cooperate with all reasonable applications for budget adjustments which Midtown Alliance may request that the City forward to GDOT.

c. Midtown Alliance acknowledges and agrees that the amount of federal funds for this Project is a fixed amount and that Resolution 02-R-1028 does not allow the City to commit funds to this Project. Midtown Alliance acknowledges and agrees that all costs in excess of available federal funds are solely their responsibility.

d. In the event of termination of the Project by GDOT, the obligations of Midtown Alliance are governed by Paragraph 2, subpart b of this Agreement.

6.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project. Midtown Alliance acknowledges and agrees that Project must meet any requirements of the City in addition to any requirements of GDOT and FHWA. Midtown Alliance shall submit all plans for any work on the Project to the Commissioner of Public Works for the City's comments, which shall be provided in writing within ten (10) business days, unless extended by the City for reasonable grounds and with prior written notification. Midtown Alliance may at the time of submission of plans to the Commissioner of Public Works, submit a copy to GDOT. Within two (2) business days of receipt, Midtown Alliance shall forward the City's comments with Midtown Alliance's submittals to GDOT. Midtown Alliance shall review any previously approved plans with the City for confirmation of the City's approval.

7.

PROCUREMENT OF CONTRACTS

In the performance of this Agreement, Midtown Alliance, acting as the City's agent, is authorized to contract with others, provided that such contracts are procured in accordance with this Agreement, the Project Agreement, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of contracts, does not relieve Midtown Alliance from its obligation to follow all requirements relating to procurement of contracts which are set forth in the Project Agreement or incorporated by reference in the Project Agreement.

a. Any construction contract paid from funds related to the Project in excess of $20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by Midtown Alliance or by federal funds.

b. Midtown Alliance acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest

responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.

c. Midtown Alliance acknowledges and agrees that the construction bid documents must comply with federal requirements and, ten (10) business days prior to the advertisement for bids, will provide completed construction plans, bid documents, and specifications to the GDOT Project Manager for approval. Bid packages shall be prepared by Midtown Alliance in consultation with the City's Purchasing Agent (who shall undertake its best efforts to approve the bid package within five (5) business days of the approval by GDOT), and approval of the construction plans by all necessary departments of the City. After approval by the GDOT Project Manager and the City's Purchasing Agent, bid packages shall be made available for purchase by interested bidders at the location customarily employed by the City of Atlanta Bureau of Purchasing and Real Estate for such purposes.

d. Midtown acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of the City's Purchasing Agent. Midtown Alliance will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Midtown Alliance, the City shall provide language for the advertisement within ten (10) business days of submission to the Purchasing Agent unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.

e. If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act

f. Bid openings will occur at the offices of the City's Department of Procurement located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.

g. Bid bonds equal to five per-cent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.

h. Midtown Alliance acknowledges and agrees that negotiations with bidders is

prohibited. If all bids are in excess of any cost estimate set forth in the Project Agreement, Midtown Alliance acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Midtown Alliance acknowledges and agrees that it will either revise the plans and estimate, re-advertise and re-bid for the contract or accept the lowest responsive bid and accept responsibility for the cost difference.

i. Midtown Alliance and the City acknowledge and agree that GDOT requires a bidder to be pre-qualified before submitting a bid in excess of five hundred thousand dollars ($500,000) and that if the bid involves major structures such as bridges and retaining walls, the contractor must be must be pre-qualified regardless of bid amount. If a single sub-contract is in excess of two hundred and fifty thousand dollars ($250,000), the sub-contractor must be registered with GDOT. It shall be the responsibility of Midtown Alliance to deal directly with GDOT to resolve all questions involving the pre-qualification of bidders, the determination of whether a bid involves major structures, or the registration of bidders.

j. Documents to be used for the bidding of the Project shall be substantially in the form of those prepared by Midtown Alliance, Silverman Construction Services, Inc., the HOK Planning Group, and Laubman & Associates, Inc. and provided to the City of Atlanta Law Department, counsel for the City of Atlanta, on or about December 30, 2002 by Maddox, Nix, Bowman & Zoeckler, counsel for Midtown Alliance and revised on or about March 20, 2003 (the "March 20 Bid Documents"), which December 30 Bid Documents are incorporated into this Agreement by reference. Changes to the form of the December 30 Bid Documents prior to the bidding of the Project may be made in writing in a manner which clearly indicates the consent of both parties. The parties acknowledge and agree that no term of the March 20 Bid Documents will supersede, void, waive, or alter any of the terms of this Agreement, including, but not limited to, Midtown Alliance's indemnification obligations, or any requirements under Georgia law, including Midtown Alliance's obligations to follow the State of Georgia's competitive bid procedures. Any changes to the December 30 Bid Documents after the bidding of the Project shall be according to the terms set forth in the March 20 Bid Documents, and must also be approved by the written consent of the parties to this Agreement. Where the terms of the March 20 Bid Documents and this Agreement are in conflict, the terms of this Agreement shall control, as those terms relate to the obligations of the parties under this Agreement.

k. Midtown Alliance acknowledges and agrees that no advertisements will be placed until such time as GDOT has issued a notice to bid to the City authorizing the bidding of the Project.

l. Midtown Alliance and the Department of Procurement will evaluate the bids. Midtown Alliance shall be responsible for having the bids reviewed by GDOT,

including without limitation, those parts of the bids with respect to DBE compliance. After approval by GDOT of the decision to award, or GDOT's decision to decline to review the decision to award, Midtown Alliance shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Midtown Alliance shall be responsible for assuring execution of the contract and issuance of the notice to proceed.

k. Midtown Alliance acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq* and the City shall maintain one original and one copy of all bids.

8.

EQUAL BUSINESS OPPORTUNITY (EBO)
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Midtown Alliance acknowledges and understands it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, part 2, Division 12. Midtown Alliance acknowledges the availability of minority and female owned firms in the Atlanta area is 17% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 17% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Midtown Alliance further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Midtown Alliance agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance.

Midtown Alliance acknowledges and agrees that GDOT has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. Midtown Alliance acknowledges and agrees that it will follow all applicable DBE requirements set by GDOT and will be responsible for the submission of all reports required by GDOT.

The level of minority and female enterprise participation required by GDOT through its annual aggregate 12% Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by GDOT to be in effect for the purposes of the Project Agreement.

9.

INSURANCE AND BONDING

a. Insurance.

(1) During the entire term of this Agreement, Midtown Alliance agrees to cause all Persons to maintain insurance required by the Project Agreement, and where applicable to obtain such insurance on its own behalf.

(2) Midtown Alliance acknowledges and agrees that the minimum levels of insurance applicable to the Project are set forth in Article VII of the Project Agreement and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to any one person, shall be increased to $500,000 per occurrence.

(3) The City shall be named as an additional insured in each policy related to the Project.

(4) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.

(5) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Midtown Alliance agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.

(6) Midtown Alliance agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance.

b. Bonding.

(1) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Midtown Alliance agrees to cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.

(2) Each payment and performance bond obtained by any party providing materials and services under this Agreement shall name the City of Atlanta as a co-obligee.

(3) All performance bonds and payment bonds required under the Project Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any contract with any

Person.

(4) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.

(5) Midtown Alliance agrees to indemnify the City from any losses arising from the failure of any contractor to obtain and keep in force any payment or performance bond.

(6) Midtown Alliance agrees to specifically provide in all contracts or agreements that the specific obligations set forth in this paragraph shall be binding on all Persons.

c. All conditions in this paragraph supplement the terms imposed by Article VII of the Project Agreement and are not superseded by the terms of the Project Agreement. In the event that the terms of Article VII of the Project Agreement, and this paragraph are in conflict, the term, which can be construed to allow the City to obtain the benefit of the insurance and bonding requirements of this Agreement, will be presumed to govern.

10.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) GDOTs return to City of a fully executed Certification of Final Acceptance; or (ii) the completion of the Final Audit, if required, by GDOT or FHWA or designee, the City, GDOT and FHWA shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City, GDOT and FHWA are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. Midtown Alliance shall provide in all contract or agreements relating to the Project that the right of entry and inspection given, by Midtown Alliance in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a contract with Midtown Alliance. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Midtown Alliance or of any sub-contractors, which reasonably relate to this Agreement.

11.

PAYMENT OF INVOICES

a. Midtown Alliance agrees and understands that the Project Agreement states that GDOT will only disburse funds to the City and that the terms of Resolution 02-R-1028 which authorized this Agreement do not allow the City

to disburse any of its own funds for any of the work on the Project.

b. The terms of the Project Agreement require that the City submit to GDOT a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").

(1) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to GDOT, is the sole responsibility of Midtown Alliance. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th of every month or the next business day thereafter in the event that the 30th falls on Saturday, Sunday or a legal holiday.

(2) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to GDOT, but the City, without the approval of Midtown Alliance, shall have the right to add comments or other material. Midtown Alliance agrees that only the City may submit the Monthly Report to GDOT. At the same time the Monthly Report is submitted to GDOT, the City shall provide a copy to Midtown Alliance.

c. Midtown Alliance agrees and understands that GDOT will only pay to the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City

(1) The City agrees to receive proposed vouchers prepared by Midtown Alliance and when the City is satisfied that the work is within the terms and conditions of the Project Agreement certify the voucher and transmit it to GDOT, provided that the City shall not submit more than one voucher to GDOT for any calendar month. At the same time a voucher is submitted to GDOT, the City shall provide a copy to Midtown Alliance.

(2) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by Midtown Alliance within five (5) business days of the receipt of a proposed voucher. The City agrees to notify Midtown Alliance of any part of the proposed voucher that will not be certified and to undertake discussions as to what steps Midtown Alliance must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.

(3) After its five (5) day review period, the City agrees to submit to GDOT, on the next business day, all parts of the voucher which it is willing to certify. Midtown Alliance agrees that only the City may submit vouchers to GDOT.

(4) The preparation and presentation to the City of the documents which

will comprise a voucher is the sole responsibility of Midtown Alliance.

(5) Upon the receipt of payment from GDOT for the work submitted in a certified voucher, the City agrees to remit such funds to Midtown Alliance as soon as the transfer of the funds can be arranged, but in no case, no later than the second business day after receipt.

d. Midtown Alliance acknowledges and agrees that GDOT will only make a final payment to the City if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against GDOT for work done, materials furnished, costs incurred or other matters arising from the Project Agreement. Midtown Alliance further acknowledges and agrees that the Project Agreement states that the acceptance of the final payment by the City shall release GDOT from any and all further claims of whatever nature, whether known or unknown, for and account of the Project Agreement and for any and all work done, and labor and materials furnished, in connection with the Project Agreement. Midtown Alliance acknowledges and agrees that the City will only request the final payment from GDOT on the condition that Midtown Alliance shall release the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and/or the Project Agreement and for any and all work done, and labor and materials furnished, in connection with this Agreement and/or the Project Agreement.

e. Midtown Alliance acknowledges and agrees that GDOT will only make a final payment to the City if the City will allow the examination and verification of the costs of the Project by GDOT's representatives in accordance with Article XIII of the Project Agreement. If GDOT's examination of the cost records result in unallowable expenses, Midtown Alliance understands and agrees that they shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of GDOT, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to GDOT.

12.

INDEMNIFICATION

Midtown Alliance acknowledges that the Project Agreement between GDOT and the City which provides for the construction of those sidewalk improvements described in the Project Agreement obligates the City to the GDOT in several respects and Midtown Alliance agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the Project Agreement except where the City specifically assumes an obligation or responsibility under this Agreement. Midtown Alliance further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which Midtown Alliance has agreed to assume including any subsequent obligations or responsibilities which may

be imposed on the City by the GDOT under the Project Agreement. The language of this general assumption of obligation and responsibility and general indemnity shall not be construed to waive or supersede any previous language of this Agreement which more specifically describes any other assumption of responsibility or obligation or indemnification, but shall be construed to supplement those specific assumptions of responsibilities and obligations or indemnifications. The language of this general assumption of responsibility or obligation and general indemnity shall be construed in the broadest sense to include all parts of the Project Agreement under which Midtown Alliance has assumed any responsibility or obligation and includes as a part of the indemnity, an Agreement by Midtown Alliance to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the Project Agreement, regardless whether such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the Project Agreement, construction delays, personal injury, injuries to property or any other type of claim expense or cost.

a. Midtown Alliance acknowledges and agrees that this general indemnity includes the possibility that federal funds may be disapproved for reasons not relating to actual construction of the Project, including without limitation, the procurement process, the requirements related to record keeping, and the final audit of the Project

b. Midtown Alliance acknowledges and agrees that this general indemnity provided by this Agreement shall survive its termination.

-3-

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, Charles C. Graves, the Commissioner of the Department of Planning and Community Development, or any successor, whose address for the purpose of this Agreement shall be:

Charles C. Graves
Commissioner of Planning and Community Development
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 1450,
Atlanta, GA, 30335
404 330 6070

with a copy to:

John W. Griffin, Jr., P.E., Commissioner of Public Works
Atlanta City Hall
55 Trinity Avenue, S.W. Suite 4700
Atlanta, GA, 30335
404 330 6240

Midtown Alliance appoints as its designated representative for the receipt of notices, submittals, or other communications, Shannon Powell whose address for the purpose of this Agreement shall be:

Shannon Powell
Midtown Alliance
795 First Union Plaza
999 Peachtree Street
Atlanta, Georgia 30309
404 892 4782

with a copy to:

Arnold Silverman
Silverman Consrtuction Co.
1075 Zonolite Rd., Suite
Atlanta, GA, 30335
404 892 7274

All notices, submittals or other communications shall be made to the designated representative in writing and delivered by: (a) hand delivery at the address indicated herein; (b) United States Certified Mail - Return Receipt Requested, postage prepaid; or (c) by Facsimile immediately followed by a confirmation call. The day upon which such notice is hand delivered or faxed and confirmed shall be deemed the date of service of such notice if delivered by such means. The date of signature on the Return Receipt or the date of refusal shall be deemed the date of service of such notice if delivered by United States Certified Mail. Either party may change its designated representative by notice to the other as provided herein or may name other persons as sub-designees for the receipt of specific types of materials, such as engineering plans, blueprints or other voluminous documents, provided however that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee

14.

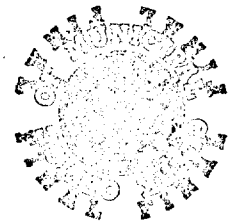
COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive compliance with any City ordinance.

15.

PERMITS AND LICENSES

Midtown Alliance shall obtain, at its own expense, all application for permits not previously provided by the City and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the services called for by this Agreement.



16.

GENERAL PROVISIONS OF THIS AGREEMENT

a. The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease or reference, and shall be disregarded in the construction of this Agreement.

b. No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.

c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.

d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.

f. Any agreement between Midtown Alliance and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Midtown Alliance and that the obligations of any Person under any agreement with Midtown Alliance shall survive the termination of the existence of this Agreement and/or the termination of the existence of Midtown Alliance.

17.

ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements and constitutes the full, complete and entire agreement between the parties with respect to the terms of the Agreement; no member, officer, employee, representative or agent of either party has authority to make, or has made, any statement, agreement, representation to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either party hereto

RCS# 4717
5/19/03
2:39 PM

Atlanta City Council

Regular Session

CONSENT I

Pgs. 1-14 Except:03-O-0456; 03-R-0598
03-R-0703; 03-R-0773; 03-R-0788
Adopt

YEAS:	13
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	2

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

5/19/03 FULL COUNCIL MEETING

Items Adopted on the Consent Agenda		Items Adversed on the Consent Agenda
1. 03-O-0601	36. 03-R-0726	42. 03-R-0732
2. 03-O-0551	37. 03-R-0727	43. 03-R-0733
3. 03-O-0552	38. 03-R-0728	44. 03-R-0734
4. 03-O-0600	39. 03-R-0729	45. 03-R-0735
5. 03-O-0554	40. 03-R-0730	46. 03-R-0736
6. 03-O-0617	41. 03-R-0731	47. 03-R-0737
7. 03-O-0632		48. 03-R-0738
8. 03-O-0633		49. 03-R-0739
9. 03-O-0660		50. 03-R-0740
10. 03-O-0772		51. 03-R-0741
11. 03-O-0628		52. 03-R-0742
12. 03-O-0759		53. 03-R-0743
13. 03-R-0655		54. 03-R-0744
14. 03-R-0700		55. 03-R-0745
15. 03-R-0701		56. 03-R-0746
16. 03-R-0704		57. 03-R-0747
17. 03-R-0784		58. 03-R-0748
18. 03-R-0785		59. 03-R-0749
19. 03-R-0707		60. 03-R-0750
20. 03-R-0708		61. 03-R-0783
21. 03-R-0709		
22. 03-R-0718		
23. 03-R-0782		
24. 03-R-0713		
25. 03-R-0714		
26. 03-R-0716		
27. 03-R-0760		
28. 03-R-0768		
29. 03-R-0774		
30. 03-R-0776		
31. 03-R-0779		
32. 03-R-0722		
33. 03-R-0723		
34. 03-R-0724		
35. 03-R-0725		

Consent I Vote: 13Yeas; 0 Nays: (See RCS #4717)

Items Removed from the Consent Agenda: 03-O-0456; 03-R-0598; 03-R-0703; 03-R-0773; 03-R-0788

RECEIVED

SEP 25 2003

ADMINISTRATIVE CORRECTION TO LEGISLATION REQUEST FORM

TO: Rhonda Dauphin Johnson
Municipal Clerk

Re: 03-O-0759
Legislative ID Number (Ordinance/Resolution)

7/21/03 Adoption Date

7/29/03 Approval Date

FROM: ☐ Councilmember ☒ Department Head

Name: Rick Anderson

Dept/Bureau: Department of Finance

E-Mail Address: randersonl@ci.atlanta.ga.us

Telephone No: 404 330-6454 Fax No.: 404 658-6667

Signature(s) of Councilmember and/or Department Head

(Questions 1-5, below and on reverse side of page, must be completed.)

1.) What is the requested change/correction? (Give detailed description; Use additional page(s) if necessary; Provide supporting attachments as needed.)

The change is needed in Section 1 and 3 such that M11F0734ABAO becomes M11F0751ABAO

03- ◯ -0759

(Do Not Write Above This Line)

AN ORDINANCE BY

AN ORDINANCE ANTICIPATING AND APPROPRIATING FROM FEDERAL HIGHWAY ADMINISTRATION (FHWA) THE TOTAL SUM OF $1,440,000 AS RECOMMENDED FROM THE REGIONAL TRANSPORTATION IMPROVEMENT PROGRAM (TIP) FY 2002-2004 FOR THE TENTH/PIEDMONT AVENUE STREETSCAPE IMPROVEMENTS FROM JUNIPER AVENUE/TENTH STREET TO MONROE DRIVE/WESTMINISTER AVENUE AND FOR OTHER PURPOSES.

ADOPTED BY

MAY 19 2003

COUNCIL

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☒ PERSONAL PAPER REFER

Date Referred 5/5/03

Referred To: Transportation

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee

Date

Chair

Referred to

Committee	Committee
TRANSPORTATION	
Date 5/14/3	Date
Chair	Chair
Action: Fav, Adv, Hold (see rev. side)	Action: Fav, Adv, Hold (see rev. side)
Other:	Other:
Members	Members
Refer To	Refer To

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

FINAL COUNCIL ACTION

☒ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☒ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

CERTIFIED MAY 19 2003 COUNCIL PRESIDENT

CERTIFIED MAY 19 2003 MUNICIPAL CLERK

MAYOR'S ACTION

MAY 2 2003 MAYOR