09- R -2153

A RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE PATH FOUNDATION, INC. ("PATH") ON BEHALF OF THE CITY OF ATLANTA; APPOINTING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE DESIGN AND IMPLEMENTATION OF A MULTI-USE RECREATIONAL TRAIL/PATH IN CHASTAIN PARK IN AN AMOUNT NOT TO EXCEED $265,000.00; ALL CONTRACTED WORK SHALL BE CHARGED TO AND PAID FROM ACCOUNT SEGMENT/PTAEO NUMBERS IDENTIFIED IN THIS RESOLUTION ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") has the on-going goal of providing trails for the use of its citizens and visitors as a safe venue to engage in outdoor activities free of conflicts with automobiles on the streets and rights of way; and

WHEREAS, this project as the stated goal of PATH is to facilitate such trail systems by providing expertise in the planning and implementation of such projects; and

WHEREAS, the Commissioner of the Department of Parks, Recreation and Cultural Affairs and PATH believe that a strong working relationship offers the City and its citizens the opportunity for the development of new greenspace, recreation areas, and alternative transportation infrastructure which will significantly improve the quality of life for all citizens of the City of Atlanta for a period of one (1) year; and

WHEREAS, the City desires the continued involvement of PATH to act as the City's Agent and Construction Manager for the design and implementation of a Multi-Use Recreational Trail/Path in Chastain Park along Power's Ferry Road from West Wieuca to Pool Road and Cochrane Road for a proposed 10 foot wide concrete pathway utilizing trust fund monies to accomplish this task.

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

SECTION 1. That the Mayor is hereby authorized to execute by entering into a contractual agreement with the PATH Foundation, Inc., on behalf of the City of Atlanta, Georgia so as to allow the PATH Foundation, Inc. to allow PATH to act as the City's Agent and Construction Manager for the design and implementation of a Multi-Use Recreational Trail/Path in Chastain Park for the Department of Parks, Recreation and Cultural Affairs, in an amount not to exceed $265,000.00) for a term of one (1) year.

SECTION 2. That the City Attorney be and is hereby directed to negotiate, prepare, review and present to the Mayor for execution, the contractual agreement(s) necessary to effect the intent of this Resolution provided that such contractual agreement(s) are in compliance with the conditions set forth herein.

SECTION 3. That this contractual agreement will not become binding upon the City and the City shall incur no obligation or liability hereunder until the same has been signed by the Mayor and attested to by the Municipal Clerk, and delivered to the PATH Foundation, Inc.

SECTION 4. That with respect to the proposed Chastain Park Multi-Use Recreational Trail/Path project all contracted work will be charged to and paid from Account Segment/PTAEO Numbers as follows:

GENERAL LEDGER

FUND: 7701 TRUST

GL DEPT: 140401 PRC CULTURAL AFFAIRS ADMIN

EXPENSE ACCT: 5212001 CONSULTANT/PROFESSIONAL SERVICES

FUNCTION/ACTIVITY: 6110000 CULTURAL/RECREATION ADMIN

GL PROJECT: 600372 CHASTAIN AMPHITHEATER PARK IMPROV

GL FUNDING SOURCE: 69999 NON CAPITAL TRUST

PTAEO NUMBERS

Project No. n/a

Task n/a

Award n/a

Expense n/a

Owning Org n/a

SECTION 5: That all Resolutions and parts of Resolutions in conflict herewith are hereby repealed for the purpose of this Resolution only, and to the extent of the conflict.

STATE OF GEORGIA
COUNTY OF FULTON

THIS AGREEMENT made and entered into this _____ day of _____, 2009 by and between the CITY OF ATLANTA, (the "City") a municipal corporation of the State of Georgia, and PATH Foundation, Inc., ("PATH") a non-profit corporation organized and existing under the laws of the State of Georgia.

WITNESSETH

WHEREAS, the City has the goal of providing trails for the use of its citizens and visitors as a safe venue to engage in outdoor activities free of conflicts with automobiles on the streets and rights of way; and

WHEREAS, the stated goal of PATH is to facilitate trail systems in the City of Atlanta by providing expertise in the planning; and

WHEREAS, the City of Atlanta and PATH believe that a strong working relationship offers the City and its citizens a unique opportunity for the development of new greenspace, recreation areas and alternative transportation infrastructure which will significantly improve the quality of life for all citizens of the City; and

WHEREAS, Pursuant to Ordinance 08-R-0345 adopted by the City Council on March 3, 2008, and approved by the Mayor on March 11, 2008, the 2008 Chastain Park Master Plan endorses extension of multi-use recreational path along Powers Ferry Road north from West Wieuca (Recommendation F).

WHEREAS, the City desires the continued involvement of PATH to act as the City's Agent and Construction Manager for the design and implementation of the multi-use recreational trail segment from West Wieuca to Pool Road and

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

1.

STATEMENT OF AGREEMENT

The City of Atlanta (hereinafter, "the City") and PATH Foundation, Inc., (hereinafter, "PATH" or "Construction Manager") hereby agree that PATH will enter into agreements with one or more general contractors for the services

hereinafter described in accordance with the terms and conditions set forth in this Agreement and will supervise the performance of the Scope of Work in the capacity as the Construction Manager for the City of Atlanta with respect to the "Chastain Park Trail – Powers Ferry – West Wieuca to Pool Road".

The Scope of Work consists of construction of a a ten ft wide multi-use trail along Powers Ferry Road at Wieuca Rd to Pool Road and sidewalk connections as necessary. The project may include sealing and re-striping the "Red" parking lot, and as necessary, reconfiguring of intersections, and entrances necessary for the safe use by trail users and best practices in traffic engineering The tasks could include, without limitation, in the Scope of Work: tree and stump removal, grading, forming, placement of concrete, utility relocation, sealing and pavement markings erosion control best management practices, fine grading, seed & straw or sodding , tree planting and placement of signs pertinent to safe trail use and wayfinding. The Scope of Work will be undertaken to meet the stated and implied intent of the 2008 Chastain Park. Master Plan, as well as City regulations, requirements and standards; and federal ADA standards. PATH will undertake all necessary coordination with the Department of Public Works, the Department of Watershed Management, the Department of Parks, Recreation & Cultural Affairs or any others with infrastructure or jurisdiction within the work area. Construction access will be the responsibility of PATH Foundation and will minimize disruption to the adjacent neighborhoods. [Both parties agree that they have sufficient knowledge of those documents submitted to the City of Atlanta Bureau of Buildings in connection with the permitting of the Project and that such documents are capable of precise identification such that including those documents by reference in this Scope of Work rather than by attachment to this Agreement does not work a hardship on either party or include any terms in this Agreement to which either party has not consented.] Each party agrees that any documents submitted to the City of Atlanta Bureau of Buildings in connection with the permitting of the Project may be used to bring or defend any type of action in a court of law and waives their right to claim that such documents are parol evidence outside of the scope of this Agreement.

PATH will supervise the performance of any contractor in connection with completion of the Project in the capacity of the Construction Manager for the City of Atlanta. PATH shall act as the City's agent and may enter into such agreements, as it deems necessary, with a project manager, engineer professional or technical consultants and one or more construction contractors (hereinafter also referred to as "Persons") to complete the Project so long as the terms of such agreements are consistent with the terms set forth herein.

2.

TERMINATION

Construction Manager agrees that its obligation under this Agreement is to hire and manage Persons to perform work equal to that which Construction Manager

is required to perform under this Agreement and that the termination of this Agreement shall be sufficient to cause Construction Manager to terminate any agreement with any third parties in a manner which shall not cause the City to incur any financial liability to such third parties.

(a) Either party may at its convenience, at any time upon thirty (30) days prior written notice to the other party, terminate (without prejudice to any right or remedy of either party) the whole or any portion of the Agreement.

(b) Construction Manager agrees to follow all reasonable instructions of the City with regard to termination of the Agreement including, without limitation, those instructions as to restoration of areas disturbed by construction as set forth in subpart (c) and (d) of this paragraph.

(c) The City agrees that, in the event of termination for the convenience of the City, that Construction Manager would be entitled to recover the reasonable and customary costs required to restore any area of the city disturbed in the construction of the Project 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 and which as near as possible reflects the condition of those areas of the city prior to the beginning of construction, even if such work is not directly within the Scope of Work. [The City may choose to fund this cost or waive the requirement set forth in subpart (d) as to Construction Manager's obligation.]

(d) Construction Manager agrees that in the event of termination for the convenience of the City that Construction Manager will restore any area of the city disturbed in the construction of the Project 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 and which as near as possible reflects the condition of those areas of the city prior to the beginning of construction, even if such work is not directly within the Scope of Work.

(e) Should the City terminate the Agreement prior to the completion of the work for cause as set forth in subsection (f), Construction Manager agrees that any area of the Project where work is 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 those areas of the City prior to the beginning of construction.

(f) If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or fails to comply with any terms or condition of this Agreement, then the City may, without prejudice to any right or remedy, and after giving notice required by this section, terminate this Agreement with ten (10) days prior written notice of such termination, specifying its effective date, and finish this Project by whatever method it deems expedient, including but not limited to replacing the Construction Manager by another construction manager. The City may at its sole option elect to receive the assignment from the Construction Manager of any contract entered into by the Construction Manager.

3.

TIME OF PERFORMANCE

Construction Manager shall commence the Services required by this Agreement no later than ten (10) calendar days after 1) receipt of a Notice to Proceed and 2) the issuance of a building permit. The work to be performed under the supervision of the Construction Manager shall be completed on or before one hundred eight (180) days from the date of this Agreement; provided, however, that Construction Manager may request from the City an extension of the time for completion and that, if such extension is granted by the City, such extension shall apply to this Agreement. The granting of said extension shall not be unreasonably withheld by the City.

4.

PROFESSIONAL RESPONSIBILITY

(a) Construction Manager agrees that it will secure the employment of all Persons required to perform all services to be completed under this Agreement. This Agreement shall not be assigned.

(b) All the services required hereunder will be performed under the direct supervision of the Construction Manager. All Persons hired to engage in the work supervised by the Construction Manager shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services. The failure to employ fully qualified Persons as set forth in this subpart is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such occurrence.

(c) Construction Manager agrees that all agreements with any Person made pursuant to this Agreement shall cause all such Persons to be bound to the same terms and conditions and standards of performance as set forth in the Project Agreement for which said Person was employed. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Construction Manager under this Agreement to cause all Persons employed to be bound to the same terms and conditions and standards of performance as set forth in this Agreement. The obligation to require that all Persons employed on the Project be bound to the same terms and conditions and standards of performance as set forth in this Agreement is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such failure to impose such terms and conditions.

(d) Construction Manager shall require in all agreements that all plans are to be prepared in English units, and that any Person must 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 and furnished for the Project on behalf of the City under this Agreement. The obligation to require that all Persons employed on the various Projects must correct or revise or cause to be corrected and revised any errors and deficiencies as set forth is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such failure to impose such terms and conditions.

(e) Construction Manager shall include in any contract for any part of the Project a requirement that the contractor shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts, errors or omissions of the contractor related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City. In the event that any claim, damage, loss or expense attributable to such negligent acts, errors or omissions does arise and the Construction Manager has failed to provide in the contract that such claim, damage, loss or expense shall be the responsibility of the contractor, Construction Manager shall be required to indemnify the City against such claim, damage, loss or expense.

(f) Prior to the later of: (i) the City's acceptance of the work; or (ii) the completion of any Final Audit, if required, by the City, Construction Manager agrees that authorized representatives of the City may at all reasonable times 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, the Construction Manager or any other Person.

(g) Construction Manager shall incorporate into all of its agreements the requirement that any reasonable recommendation of the City shall be included in the design documents being developed, provided that the City's review recommendations are made prior to the City's final approval of the design documents by issuance of a building permit.

(h) Construction Manager agrees that the specifications required by the City in trail, curbing, sidewalk, roadway, tree planting or related improvements of the type set forth in the Scope of Work are generally known and that 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 even if such terms are not specifically set forth herein.

(i) The City will make available in a timely manner all records and documents required by Construction Manager to fulfill the Project agreements. If the City has not responded to such request for records and documents within ten (10) days after written demand, additional time used by the City to reply will be added to the time allowed for completion of the Project. Where a request for permit approval is involved, the date of permit issuance shall begin the period.

(j) Any data transferred to Construction Manager 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. Construction Manager 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.

(k) The Construction Manager, for itself, its successors, its assigns and any Person employed by it in any capacity, waives all rights to any claim to damages whatsoever arising out of the use of any City data for any project, and/or the provision of this data to Construction Manager and/or the transfer of this data to Construction Manager. This waiver provision shall be included in any and all contracts or agreements related to any project and that any Person employed on any project shall agree to the same.

(l) Construction Manager 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, Construction Manager warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Construction Manager waives all claims for compensation connected with any future use of the Project Data.

5.

FUNDING OF THE PROJECT

Both parties hereby acknowledges and agrees that Exhibit "B" describes the area of the Project with sufficient precision, and Construction Manager further acknowledges that the specifications for the building of the Project are sufficiently set forth or known to Construction Manager such that Construction Manager is able to estimate or calculate total costs for the Project. Construction Manager acknowledges and agrees that the City's funding of the Project is limited as described herein.

(a) Construction Manager acknowledges and agrees that the funding described in this Agreement represents the entire funding of said Project and includes any and all claims by Construction Manager against the City under this Agreement and/or any and all claims by any Person in the completion of any Project which have now accrued or which may accrue in the future.

(b) The parties anticipate that the amount of funds designated for the entire Scope of Work may be insufficient to complete the work for "Chastain Park Trail – Powers Ferry – West Wieuca to Pool Road" described in the Scope.

(i) The parties agree that the most efficient use of the funds allocated to this Project is for design and construction of the trail located along Powers Ferry Road from West Wieuca to Pool Road as approved by Commissioner of Parks, Recreation and Cultural Affairs.

(ii) The parties agree that if the present funding is insufficient to pay for the "Chastain Park Trail – Powers Ferry – West Wieuca to Pool Road", that it shall be the subject of another contract.

(iii) The Construction Manager shall notify the City in writing when all aspects of the Project are completed.

(iv) The removal of any part of the work described shall not relieve the Construction Manager from meeting the requirements of Paragraph

12 with regard to payment in proportion to the percentage of work completed as to any aspect of the Project.

(v) If any funds allocated in this Paragraph 5 remain unspent after all other aspects of the Project are complete, the City at its sole option may request that the Construction Manager expend as much of the remaining funding as is reasonably practical in additional connecting trail work, supply and installation of site furnishings, pavement rehabilitation, planting or other pertinent landscaping work . Construction Manager agrees to undertake this work if so directed by the City in writing.

(c) The City and the Construction Manager acknowledge and agree that the funding commitments with respect to the Chastain Park Trail – Powers Ferry – West Wieuca to Pool Road project estimated total cost of $340,000 are from the Chastain Amphitheatre Parking/Ticket Trust Fund in the amount of $265,000 , with the remaining $75,000 provided by the PATH Foundation.

(d) In the event of termination of the Project, the obligations of the City and the Construction Manager are governed by Paragraph 2.

6.

REPORTS AND DOCUMENTATION

(a) All reports, information, data or other documents given to Construction Manager by the City or gathered or created by the Construction Manager under this Agreement shall be kept confidential and shall not be made available to any Person, individual or organization by Construction Manager without the prior written approval of the City. Documents prepared by Construction Manager containing information or data, in any form, that was provided to Construction Manager by the City and that would not have been available to Construction Manager except for the City's transfer of such information or data pursuant to this Agreement or in anticipation of this Agreement, shall not be made available to any individual or organization by Construction Manager for any purpose not specific to this contract without the prior written approval of the City. All data stored in digital or electronic format ("digital data") that is transferred to the Construction Manager is the proprietary product of the City. The City shall retain title and ownership of this digital data.

(i) Construction Manager shall specifically provide in all contracts or agreements that the specific obligations set forth in this section shall be binding on any Persons, and such documents shall further provide that in the event that any Person employed on the Project shall breach the agreement to keep confidential all reports,

information, data or other documents given to Construction Manager by the City, such Person shall indemnify the City for all costs which are required by the City to enforce its rights to ownership of the reports, information, data or other documents given to Construction Manager by the City or which arise from any issue related to the release of the same.

(b) The City will make available in a timely manner all records and documents required by the Construction Manager to fulfill the Scope of Work.

(c) In no event will the City be liable for any damages arising out of the use or arising out of the inability to use its documents or digital data including, without limitation, direct or indirect damages, loss of profits, costs or expenses incurred, lost savings, or other incidental or consequential damages. The Construction Manager may not, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any documents or digital data provided by the City, or any portion thereof, without the express written permission of the City.

(d) The City has made known to the Construction Manager, and the Construction Manager acknowledges such notice, that any or all reports and/or documents may contain errors and inconsistencies. The City does not ensure, represent, or warrant in any way the accuracy and/or reliability of any data. All data is provided in an "as is" format and condition. The Construction Manager expressly assumes all risks and liabilities that may arise from the data. Use of data in no way entitles the Construction Manager or any of its officers, employees, designees, or agents to recover any damages whatsoever from the City or its officers, agents, or employees for any cause of action based on the data, whether printed or digital. The Construction Manager hereby forever waives for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, the provision of this data to the Construction Manager, or the transfer of this data to the Construction Manager. The Construction Manager further agrees that the agreement recited in this subpart to waive for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, the provision of this data to the Construction Manager, the transfer of this data to the Construction Manager 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.

(e) The Construction Manager shall provide to the City in a digital format compatible with existing data standards in use by the City of Atlanta Department of Planning and Community Development and ready for modeling, editing, and reproduction, (i) a copy of all data compiled or

inventoried or otherwise produced under this Agreement, (ii) any data enhanced or improved from the data transferred by the City to the Construction Manager, and (iii) any deliverables described in this Agreement.

7.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project with respect to any permits that may be required. Construction Manager acknowledges and agrees that the Project must meet any requirements in the City Code.

8.

PROCUREMENT OF CONTRACTS

In the event Construction Manager in the performance of this Agreement should need to enter into a contract with a project manager, engineer professional or technical consultants and/or one or more construction contractors, the Construction Manager, acting as the City's agent, is authorized to prepare bid documents for such contracts on behalf of the City, provided that such contracts are procured in accordance with this Agreement and all applicable federal laws, state laws and City Ordinances, and Construction Manager further agrees to develop specific procurement procedures to be submitted to the City for approval as soon as reasonably possible but no later than thirty (60) days after the date of this Agreement. The lack of a specific requirement in this Agreement relating to procurement of construction contracts does not relieve Construction Manager from its obligation to follow all requirements relating to procurement of contracts as set forth in the City Code. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Construction Manager prior to the execution of this Agreement for engineering, design or right of way acquisition services."

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9.

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

Construction Manager 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. Construction Manager 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. Construction Manager further acknowledges that it will utilize minority and female business enterprises consistent with their availability in the Atlanta area. Construction Manager 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.

10.
INSURANCE AND BONDING

In the event Construction Manager in the performance of this Agreement should need to enter into any contract, the following insurance and bonding provisions shall be applicable:

(a) Insurance.

(i) During the entire term of this Agreement, Construction Manager shall cause all Persons to maintain insurance required by the various Project Agreements, and to obtain such insurance on its own behalf in the event that its errors and omissions in the management of any of the work on the various Projects shall cause loss or expense to the City.

(ii) All companies providing insurance must be rated A- or better and be at least a financial category size IX or better, as rated by A. M. Best & Company. The ratings for each company must be indicated on the insurance certificate provided. Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia. Additionally, all bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to the City, the City will provide written notification. A new policy or bond must be promptly obtained by an insurer acceptable to City and submit to City evidence of its compliance with these conditions. Failure to comply with all insurance and bonding requirements will not relieve any liability under the Agreement nor will it limit any indemnification obligations under the Agreement.

(iii) Construction Manager acknowledges and agrees that the minimum levels of insurance applicable to the various projects are as follows:

(1) Workers' Compensation and Employer's Liability Insurance to cover each employee who is or may be

engaged in work under the agreement in the statutory limits of $100,000 per accident, $100,000 per employee with a $500,000 policy limit; and

(2) Commercial General Liability Insurance in an amount not less than $1,000,000 per occurrence subject to a $2,000,000 aggregate. The following specific extensions of coverage must be provided:

a) Contractual Liability Insurance;
b) Broad Form Property Damage;
c) Personal Injury;
d) Advertising Injury;
e) Fire Legal Liability;
f) Premises - Operations;
g) Products - Completed Operations; and
h) Independent Contractors and Subcontractors; and,

(3) Commercial Automobile Liability Insurance in an amount not less than **$500,000** Bodily Injury and Property Damage combined single limit.

1. Comprehensive Form and
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

If Contractor/Consultant does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Contractor/Consultant's personal automobile policy or the Comprehensive General Liability coverage (c) required under this Appendix B.

(4) Property Insurance covering all forms of risk on any and all interests related to this contract, including inventory, supplies, and other property of Contractor/Consultant located at said premises, insuring against the perils of fire, lightning, extended coverage, perils vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the full replacement value of any and all interests of Contractor/Consultant in or about said premises.

(iv) The **City of Atlanta** must be named as certificate holder. The City also must be covered as Additional Insured under all required insurance and such insurance must be primary with respect to the Additional Insured, vesting with City all rights under the insurance policies that the primary insured has. Confirmation of this must unconditionally appear on the insurance certificate. Additionally,

evidence of such must be provided in the form of an Additional Insured endorsement for each policy of insurance under which it is required. The City shall not have liability for any premiums charged for such coverage.

(v) The cancellation of any policy of insurance required by this Agreement 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. As such, the City must, without exception, be given not less than thirty (30) days prior written notice of the proposed cancellation of any required insurance or bonds for other than non-payment of premium or material change in any insurance or bond. City must, without exception, be given not less than ten (10) days prior written notice of the proposed cancellation of any required insurance or bonds due to non-payment of premium. Confirmation of these mandatory notice requirements must appear on the insurance certificate and bonds. The City will not accept any insurance certificate that contains language similar in intent to the following: "Should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail thirty (30) days written notice to the certificate holder named to the left. If the underlying policy does not contain such compliant cancellation notice requirements, an endorsement evidencing City's rights to unconditional notice of a policy cancellation is required to amend the policy to comply.

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

(vii) Construction Manager 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. The purchase of insurance for errors and omissions in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.

(b) Bonding for Construction Contracts or Agreements

(i) At the time of the execution of any construction contract to be paid from any of the funds allocated by this Agreement, Construction Manager 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 100% of the contract price. If this Project involves GDOT funding and the bond amount required by GDOT is greater than 100% of the contract price, the

Construction Manager agrees to cause each Person to furnish the City with a performance bond or payment bond equal to the amount required by GDOT.

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

(iii) 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 construction contract with any Person.

(iv) 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.

(v) Construction Manager agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond. The purchase of insurance for errors and omissions or the purchase of a surety bond in favor of the City in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.

(c) Construction Manager agrees to specifically provide in all construction contracts or agreements with any Person that the specific obligations to obtain insurance and bonding set forth in this paragraph shall be binding on any sub-contractor that may be employed in any capacity and that the City shall be indemnified for any loss or expense to the City that may be caused by the failure of such Person to require such insurance or bonding from their sub-contractor.

11.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) the City's acceptance of the Scope of Work; or (ii) the completion of any audit required by the City, which shall begin within one hundred eighty (180) days of the City's acceptance of the Scope of Work, the City 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 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.

Construction Manager shall provide in all contracts or agreements relating to the Project that the right of entry and inspection given by Construction Manager in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a direct contract with Construction Manager. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Construction Manager or of any sub-contractors which reasonably relate to this Agreement.

12.

PAYMENT OF INVOICES

(a) Construction Manager agrees that the City shall only contribute funds as set forth in Paragraph 5.

(b) The Construction Manager shall submit to the City 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").

(c) The preparation and presentation of the Monthly Report, which shall contain all invoices to be paid, is the sole responsibility of Construction Manager and 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.

(d) Construction Manager agrees and understands that the City will only pay 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 the Monthly Report. The City shall make a reasonable effort to pay all invoices within forty-five (45) days upon said invoices being submitted to the City for payment.

(e) Construction Manager acknowledges and agrees that the City will only make a final payment with regard to this Agreement if the Construction Manager agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the City for work done, materials furnished, costs incurred or other matters arising from the Project. Construction Manager further acknowledges and agrees that the acceptance of the final payment shall release the City from any and all further claims of whatever nature, whether known or unknown, and for any and all work (including labor and materials furnished) done in connection with the Project.

13.

INDEMNIFICATION

Construction Manager agrees to require that any Person employed through a contract to perform any work on any of the Project shall indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to the negligence of such Person or any of their employees, subcontractors, materialmen, suppliers or other persons participating in the performance of the tasks required to complete the Project.

(a) Construction Manager acknowledges and agrees that the general indemnity required of Persons employed through a contract to perform any work on any of the various Project Agreements shall specifically include a provision that such indemnity shall survive termination of the contract and this Agreement.

(b) The requirement that this general assumption of obligation and responsibility and general indemnity is to be included in the contracts of the Persons employed by the Construction Manager shall not be construed to waive or supersede any previous language of this Agreement which specified that the Construction Manager shall be obligated to the City for any loss or expense which results from the negligence of the Construction Manager in the administration of this Agreement.

14.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, Dianne Harnell Cohen, Commissioner of the Department of Parks, Recreation & Cultural Affairs, or any successor, whose address for the purpose of this Agreement shall be:

Dianne Harnell Cohen
Commissioner of Parks, Recreation & Cultural Affairs
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 3270,
Atlanta, GA, 30335
404-817-6764

Construction Manager appoints as its designated representative for the receipt of notices, submittals, or other communications, Ed McBrayer whose address for the purpose of this Agreement shall be:

Ed McBrayer
PATH Foundation, Inc.
P.O. Box 14327
Atlanta, Georgia 30324
404-875-7284

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 of material which is sent to any sub-designee.

15.

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.

16.

PERMITS AND LICENSES

Construction Manager 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.

17.

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 of 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 the 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 the State 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 Construction Manager and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Construction Manager and that the obligations of any Person under any agreement with Construction Manager shall survive the termination of the existence of this Agreement and/or the termination of the existence of Construction Manager.

18.

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, or representation, nor 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 unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties and incorporated in and by reference made a part hereof.

SIGNED ON NEXT PAGE

IN WITNESS WHEREOF, the City and Contractor have affixed the signatures of their duly authorized officers, as of this _____ day of _____, 2009.

CITY OF ATLANTA:

_____

Municipal Clerk (Seal)

_____

Mayor

RECOMMENDED:

_____

Commissioner, Department of Planning & Community Development

_____

Commissioner, Department of Parks, Recreation &Cultural Affairs

APPROVED AS TO FORM:

_____

City Attorney

PATH FOUNDATION:

_____

Executive Director

ATTEST:

_____

Secretary

(affix corporate seal)

_____

Commissioner, Department of Public Works

_____

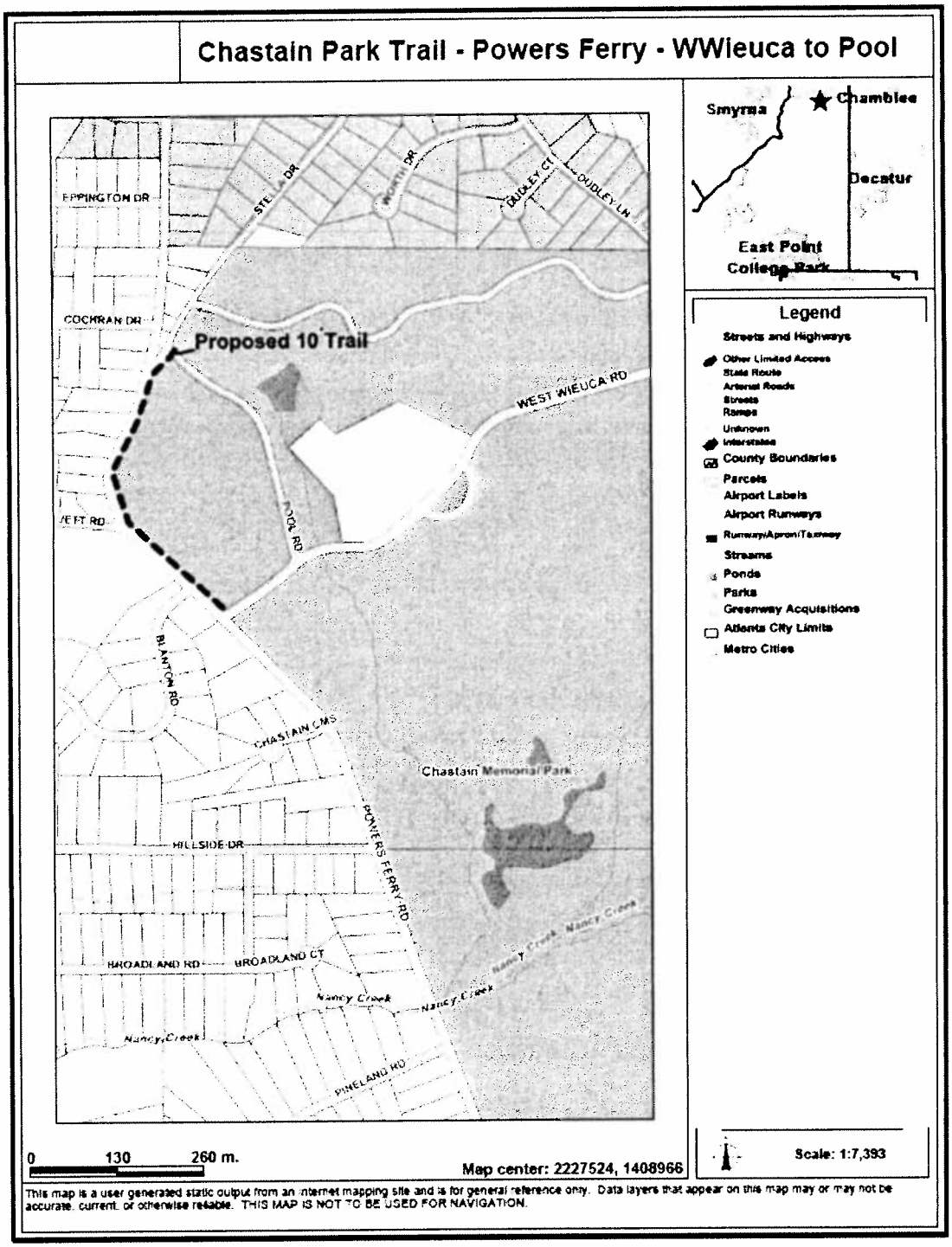
Chief Procurement Officer

Exhibit "A"

Resolution

Exhibit "B"

Key Map



Part II: Legislative White Paper:

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/Human Resources

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE PATH FOUNDATION, INC. ("PATH") ON BEHALF OF THE CITY OF ATLANTA; APPOINTING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE DESIGN AND IMPLEMENTATION OF A MULTI-USE RECREATIONAL TRAIL/PATH IN CHASTAIN PARK IN AN AMOUNT NOT TO EXCEED $265,000.00; ALL CONTRACTED WORK SHALL BE CHARGED TO AND PAID FROM ACOUNT SEGMENT/PTAEO NUMBERS IDENTIFIED IN THIS RESOLUTION ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

Council Meeting Date: December 17, 2009

Requesting Dept.: Parks, Recreation and Cultural Affairs

FAC Confirmed by: Melvin Anderson- DPRCA Budget Manager

1. Please provide a summary of the purpose of this legislation.

To authorize the Mayor to enter into an agreement with the PATH Foundation to act as the City's agent and construction manager for the design and implementation of the installation of a multi-use recreational trail (path) in Chastain Park along Powers Ferry Rd from West Wieuca to Pool Road, with related improvements. Funding has been identified in the Chastain Amphitheatre Parking/Ticket Trust in the amount of $265,000.00.

2. Please provide background information regarding this legislation.

- The 2008 Chastain Park Master Plan was adopted by the Atlanta City Council under Resolution Number 08-R-0345 on March 3, 2008 and approved by the Mayor on March 11, 2008.
- The Master Plan in Recommendation F, contemplates the provision of pathway/trail along Powers Ferry Road north from West Wieuca Road.
- A multi-use recreational trail/path has been implemented for several years on the east side of the park along Forrest Drive. Originally implemented with the PATH Foundation, it is one of the most popular facilities in the park and one of the most successful trails in the City. There is currently however no equivalent on the west side of the Park along Powers Ferry Rd.
- On site investigations were held in 2009 with the PATH Foundation, staff from the Department of Public Works, and representatives from the Chastain Park Conservancy and the Chastain Park Civic Association, to confirm the feasibility and best location for a multi-use recreational trail/path that would connect West Wieuca with Pool Road and Cochrane Road along Powers Ferry.
- The trail/path is currently proposed to be a 10 foot wide concrete pathway.
- PATH Foundation has the goal of facilitating provision of recreational and multi-use recreational trail/path systems by providing expertise in planning, designing and implementing such projects and in locating private funding to complement City funds.
- PATH Foundation has experience with managing projects with similar scope and scale.

- The City of Atlanta and PATH have a strong working relationship in the implementation of trails/paths and their ancillary components such as bridges.
- PATH has agreed to undertake the project management and implementation of the design and construction of the trail/path, adjacent connections and related improvements, and to cover the anticipated additional $75,000.00 costs required to complete the project. The PATH Foundation has started initial engineering work to prepare a routing plan, cross sections and tree impact plans.

3. <u>If Applicable/Known:</u>

Contract Type- Professional Services

Term of Contract: One (1) year

4. Account Segment/PTAEO Number(s):

PTAEO NUMBERS

Project No.	n/a
Task	n/a
Award	n/a
Expense	n/a
Owning Org	n/a

GENERAL LEDGER

FUND:	7701 TRUST
GL DEPT:	140401 PRC CULTURAL AFFAIRS ADMIN
EXPENSE ACCT:	5212001 CONSULTANT/PROFESSIONAL SERVICES
FUNCTION/ACTIVITY:	6110000 CULTURAL/RECREATION ADMIN
GL PROJECT:	600372 CHASTAIN AMPHITHEATER PARK IMPROV
GL FUNDING SOURCE:	69999 NON CAPITAL TRUST

5. Source of Funds: Chastain Amphitheatre Parking/Ticket Trust Fund 7701 140401

6. Fiscal Impact: This legislation will result in a reduction in the amount of $265,000.00 in the Chastain Amphitheater Parking/Ticket Trust by $265,000.00.

7. Method of Cost Recovery: N/a

This Legislative White Paper Was Prepared By: Paul Taylor, Director, Park Design Office and Debra F. Harris, Departmental Contracting Officer/Legislative Liaison Department of Parks, Recreation and Cultural Affairs.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: GREG PRIDGEON**

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Parks, Recreation and Cultural Affairs

Committee(s) of Purview: Community Development/ Human Resources Committee

Chief of Staff Deadline: November 17, 2009

Anticipated Committee Meeting Date(s): December 1, 2009

Anticipated Full Council Date: December 7, 2009

Legislative Counsel's Signature: Adrian Jackson

Commissioner Signature:

Chief Procurement Officer Signature:

CAPTION
A RESOLUTION BY COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACTUAL AGREEMENT WITH THE PATH FOUNDATION, INC. ("PATH") ON BEHALF OF THE CITY OF ATLANTA; APPOINTING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE DESIGN AND IMPLEMENTATION OF A MULTI-USE RECREATIONAL TRAIL/PATH IN CHASTAIN PARK IN AN AMOUNT NOT TO EXCEED $265,000.00; ALL CONTRACTED WORK SHALL BE CHARGED TO AND PAID FROM ACCOUNT SEGMENT/PTAEO NUMBERS IDENTIFIED IN THIS RESOLUTION ON BEHALF OF THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Received by CPO: _____ (date) Received by LC from CPO: _____ (date)

Received by Mayor's Office: _____ (date) Reviewed by: _____ (date)

Submitted to Council: _____ (date)