

11- R -1100

(Do Not Write Above This Line)

A RESOLUTION BY  
COMMUNITY DEVELOPMENT/HUMAN  
RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE  
MAYOR, OR HIS DESIGNEE, TO  
EXECUTE A RIGHT OF WAY MOWING  
AND MAINTENANCE AGREEMENT  
WITH THE GEORGIA DEPARTMENT  
OF TRANSPORTATION, FOR CERTAIN  
PORTIONS OF PROPERTY UNDER THE  
CONTROL OF THE GEORGIA  
DEPARTMENT OF TRANSPORTATION;  
AND TO SIMULTANEOUSLY TO  
EXECUTE AN AGREEMENT WITH THE  
SOUTH FORK CONSERVANCY, INC. TO  
ASSUME CITY OF ATLANTA  
OBLIGATIONS AS SET FORTH IN THE  
RIGHT OF WAY MOWING AND  
MAINTENANCE AGREEMENT WITH  
THE GEORGIA DEPARTMENT OF  
TRANSPORTATION; AND FOR OTHER  
PURPOSES.

*Substitute*

ADOPTED BY

AUG 15 2011

COUNCIL

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

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred to \_\_\_\_\_

Committee CD/HR  
 Date 7/26/11  
 Chair Joseph Sheppard  
 Action:  
 Fav, Adv, Hold (see rev. side)  
Subst Other:  
 Members  
Debra A. Archer  
Cheryl A. ...  
 Refer To \_\_\_\_\_

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

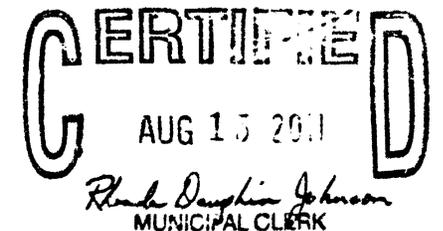
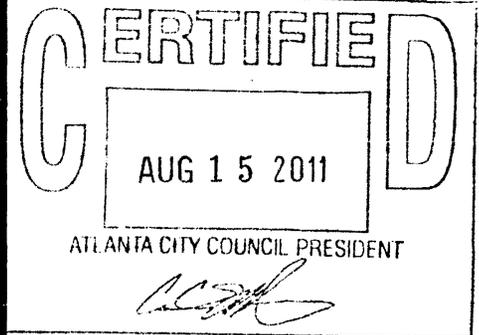
Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Action:  
 Fav, Adv, Hold (see rev. side)  
 Other:  
 Members \_\_\_\_\_  
 Refer To \_\_\_\_\_

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

FINAL COUNCIL ACTION

- 2nd     1st & 2nd     3rd  
 Readings  
 Consent     V Vote     RC Vote

CERTIFIED



MAYOR'S ACTION

APPROVED

AUG 24 2011

WITHOUT SIGNATURE  
BY OPERATION OF LAW



**SUBSTITUTE RESOLUTION BY  
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE**

**11-R-1100**

**A SUBSTITUTE RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION, FOR CERTAIN PORTIONS OF PROPERTY UNDER THE CONTROL OF THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND TO SIMULTANEOUSLY EXECUTE AN AGREEMENT WITH THE SOUTH FORK CONSERVANCY, INC. TO ASSUME CITY OF ATLANTA OBLIGATIONS AS SET FORTH IN THE RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION; AND FOR OTHER PURPOSES.**

**WHEREAS**, the South Fork Conservancy, Inc. (“SFC”) is a community organization that exists to restore, conserve and protect the Riparian Systems of the South Fork of Peachtree Creek watershed, and provide connectivity for minimal impact of human use; and

**WHEREAS**, SFC has completed a ‘Watershed Vision’ that lays out a goal of assembling publicly accessible trails within the South Fork Peachtree Creek watershed, which would connect North Dekalb County, the Atlanta Beltline, the Olmstead Linear Parks, Emory Village, and other locations; and

**WHEREAS**, one of the proposed trails identified by the SFC Watershed Vision, is the Creekside Trail (“Trail”), (attached hereto as Exhibit A) located on property which is under the control of the Georgia Department of Transportation (“GDOT”); and

**WHEREAS**, the Trail will form part of GDOT’s State Route 400/Interstate 85 reconstruction project; and

**WHEREAS**, and in order to move forward with the Trail GDOT requires a Right-of-Way Mowing and Maintenance Agreement for the maintenance of the Trail; and

**WHEREAS**, as GDOT will not enter into agreements with non-public entities, the Department of Parks, Recreation and Cultural Affairs (“DPRCA”) has agreed to enter into a Mowing and Maintenance Agreement with GDOT; and

**WHEREAS**, DPRCA intends to simultaneously enter into a Mowing and Maintenance Agreement with SFC to assume the City’s obligations as set forth in the Right-of-Way Mowing and Maintenance Agreement with GDOT.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, that the Mayor, or his designee, is authorized to enter into a Right-of-Way Mowing and Maintenance Agreement (attached hereto as Exhibit B) with the Georgia Department of Transportation concerning certain portions of property under the control of GDOT, provided that a third party agreement with the South Fork Conservancy, Inc. to undertake the City’s obligations is executed simultaneously.



**BE IT FURTHER RESOLVED**, that the Mayor, or his designee, is authorized to execute a Mowing and Maintenance Agreement (attached hereto as Exhibit C) with the South Fork Conservancy, Inc. to undertake the City's obligations under the Right-of-Way Mowing and Maintenance Agreement with GDOT.

**BE IT FINALLY RESOLVED**, that neither agreements will become binding upon the City and the City shall incur no obligation or liability thereunder until the agreements have been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to the South Fork Conservancy, Inc., and the Georgia

A true copy,

*Rhonda Dauphin Johnson*  
Municipal Clerk

ADOPTED by the Atlanta City Council  
APPROVED as per City Charter Section 2-403

Aug. 15, 2011  
Aug. 24, 2011

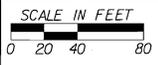
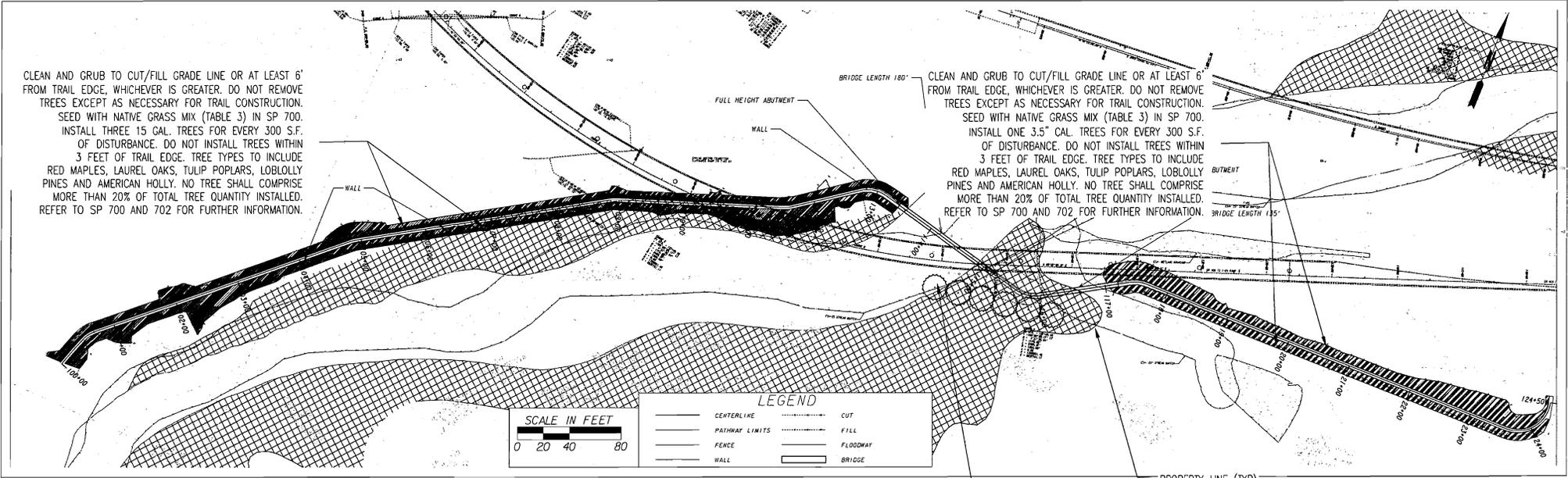


**EXHIBIT**

A

CLEAN AND GRUB TO CUT/FILL GRADE LINE OR AT LEAST 6' FROM TRAIL EDGE, WHICHEVER IS GREATER. DO NOT REMOVE TREES EXCEPT AS NECESSARY FOR TRAIL CONSTRUCTION. SEED WITH NATIVE GRASS MIX (TABLE 3) IN SP 700. INSTALL THREE 15 GAL. TREES FOR EVERY 300 S.F. OF DISTURBANCE. DO NOT INSTALL TREES WITHIN 3 FEET OF TRAIL EDGE. TREE TYPES TO INCLUDE RED MAPLES, LAUREL OAKS, TULIP POPLARS, LOBLOLLY PINES AND AMERICAN HOLLY. NO TREE SHALL COMPRISE MORE THAN 20% OF TOTAL TREE QUANTITY INSTALLED. REFER TO SP 700 AND 702 FOR FURTHER INFORMATION.

CLEAN AND GRUB TO CUT/FILL GRADE LINE OR AT LEAST 6' FROM TRAIL EDGE, WHICHEVER IS GREATER. DO NOT REMOVE TREES EXCEPT AS NECESSARY FOR TRAIL CONSTRUCTION. SEED WITH NATIVE GRASS MIX (TABLE 3) IN SP 700. INSTALL ONE 3.5" CAL. TREES FOR EVERY 300 S.F. OF DISTURBANCE. DO NOT INSTALL TREES WITHIN 3 FEET OF TRAIL EDGE. TREE TYPES TO INCLUDE RED MAPLES, LAUREL OAKS, TULIP POPLARS, LOBLOLLY PINES AND AMERICAN HOLLY. NO TREE SHALL COMPRISE MORE THAN 20% OF TOTAL TREE QUANTITY INSTALLED. REFER TO SP 700 AND 702 FOR FURTHER INFORMATION.

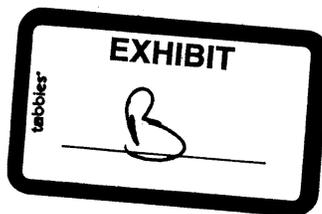


**LEGEND**

—	CENTERLINE	-----	CUT
—	PATHWAY LIMITS	-----	FILL
—	FENCE	-----	FLOODWAY
—	WALL	-----	BRIDGE

(6) 10 O.A. HGT.  
ILEX OPACA (AMERICAN HOLLY)

PROPERTY LINE (TYP)



**RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT  
("AGREEMENT")**

**BY AND BETWEEN**

**THE**

**GEORGIA DEPARTMENT OF TRANSPORTATION**

**AND**

**CITY OF ATLANTA**

For: NH000-0085-02(153), Fulton County  
PI No. 762380-

**THIS AGREEMENT** is made and entered into this \_\_\_\_ day of July, 2011 by and between the **GEORGIA DEPARTMENT OF TRANSPORTATION**, an agency of the State of Georgia (hereinafter alternately referred to as "**DEPARTMENT**" or "**LICENSOR**") and the **CITY OF ATLANTA** (hereinafter referred to as "**LICENSEE**").

**WHEREAS**, the **DEPARTMENT** desires to enter into a public/public partnership to perform certain services relating to mowing and maintenance within **DEPARTMENT'S** right of way (hereinafter referred to as the "**PROJECT**"), and

**WHEREAS**, the **LICENSEE** has represented to the **DEPARTMENT** that they are qualified and experienced to provide such services and the **DEPARTMENT** has relied upon such representations;

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:



## ARTICLE I SCOPE OF PROJECT

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The maintenance duties and responsibilities of the **LICENSEE** are defined and set forth in **ARTICLE XI - MAINTENANCE WORK PLAN** of this Agreement, and further enumerated and described in **EXHIBIT "A"** - Application and Permit for Special Encroachment with approved drawings or final working drawings for a Department-approved construction **PROJECT**. **EXHIBIT "A"** is attached hereto and incorporated by reference as if fully set out herein. The **PROJECT** location shall be defined or delineated as part of **EXHIBIT "A"**. The required Special Encroachment Permit and/or the construction **PROJECT** final working drawings are to be approved or issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in **ARTICLE XI - MAINTENANCE WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in **ARTICLE VIII**.

## ARTICLE II EXECUTION OF CONTRACT AND AUTHORIZATION TIME OF PERFORMANCE

Time is of the essence in this Agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within thirty (30) days after receipt of contract forms from the **DEPARTMENT**.



The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in **EXHIBIT "A"** or upon **PROJECT** construction completion).

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, edge, and maintain, as set forth in **ARTICLE XI - MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall be for fifty (50) years from the date above first written unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

### **ARTICLE III SUBSTANTIAL CHANGES**

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

### **ARTICLE IV ASSIGNMENT**

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in **ARTICLE I**, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

### **ARTICLE V CONTRACT DISPUTES**

This Agreement shall be deemed to have been executed in Fulton County, Georgia, without reference to its choice of law doctrine, and all questions of interpretation and



construction shall be governed by the laws of the State of Georgia. Any litigation arising out of this contract shall be commenced within the State of Georgia. The foregoing provisions shall not be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity which may be available to the **DEPARTMENT** or to the **LICENSEE**.

## **ARTICLE VI INSURANCE**

It is understood that the **LICENSEE** is self insured and all claims against **LICENSEE** will be handled through the \_\_\_\_\_ Prior to beginning work, if the **LICENSEE** intends that the construction or maintenance of the **PROJECT** is to be performed by a third party the **LICENSEE** shall insure that the third party has procured the insurance coverage listed below at the third parties own expense and shall furnish the **DEPARTMENT** certifications indicating that the third party has the following minimum amounts of insurance coverage: (i) Workers' Compensation Insurance as required by law; and (ii) commercial general liability (CGL) insurance with respect to its activities on or at the **PROJECT**, such insurance to afford minimum protection of Three Million Dollars (\$3,000,000) combined single limit, per occurrence and in the aggregate, providing coverage for bodily injury and property damage. **CONTRACTOR'S** CGL insurance shall contain a provision including **LICENSEE** and the **DEPARTMENT** as additional insureds to the extent of the indemnity provided by **CONTRACTOR** and required under this Agreement. These certificates shall also provide that the insurance will not be modified or canceled without a thirty (30) day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to insure the procurement and maintenance of the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, insure the deposit of certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.



**ARTICLE VII  
COMPENSATION**

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any and all issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such change shall only be permitted by a supplemental agreement as set forth in **ARTICLE III**. Any supplemental agreements involving compensation shall be subject to the **DEPARTMENT** review and approval.

**ARTICLE VIII  
RESPONSIBILITY FOR CLAIMS AND LIABILITY  
LICENSEE NOT AGENT FOR DEPARTMENT**

- A. **LICENSEE** agrees that it shall be fully responsible for injury or damage to landscaping, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** within the **DEPARTMENT'S** right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, to the extent that **LICENSEE** causes the damage.
- B.
  - 1. **LICENSEE** shall cause its **CONTRACTOR(S)**, performing the **MAINTENANCE WORK PLAN** in connection with this Agreement, to indemnify and hold harmless the **DEPARTMENT** and **LICENSEE**, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively



referred to as the “**INDEMNITEES**”) from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys' fees, due to liability to a third party or parties, for any loss due to bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Agreement or the **MAINTENANCE WORK PLAN** or any act or omission on the part of the **CONTRACTOR(S)**, its subcontractors, agents, employees or others working at the direction of the **CONTRACTOR(S)** or on its behalf, or due to any breach of this contract by the **CONTRACTOR(S)**, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. **LICENSEE** shall cause this indemnification to extend to the successors and assigns of the **CONTRACTOR(S)**. **LICENSEE** shall cause this indemnification obligation to survive the termination of the contract and the dissolution or, to the extent allowed by law, the bankruptcy of the **CONTRACTOR(S)**. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the “**FUNDS**”) established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter referred to as “**DOAS**”) **LICENSEE** shall cause the **CONTRACTOR(S)** to agree to reimburse the **FUNDS** for such monies paid out by the **FUNDS**.

2. This indemnification shall apply where the **INDEMNITEES** are partially responsible for the situation giving rise to the claim, provided however, that this indemnification shall not apply to the extent of the sole negligence of the **INDEMNITEES**.
3. This indemnification does not extend beyond the scope of this Agreement and the uses or work undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred directly by the **INDEMNITEES** due to breach or default by the **INDEMNITEES** under the terms and conditions of this Agreement.



It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT**.

#### **ARTICLE IX TERMINATION OF AGREEMENT**

The **DEPARTMENT** may terminate this Agreement for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this Agreement to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in **ARTICLE VII** up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this Agreement at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate this Agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

- A. The **LICENSEE**, at the discretion of the **DEPARTMENT**, removing the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the **LICENSEE** at no cost to the **DEPARTMENT**.
- B. The **LICENSEE** restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.
- C. The **LICENSEE** restoring the removed non-standard and decorative elements with standard **DEPARTMENT** elements that meet federal and state requirements.
- D. The **LICENSEE** reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape



related items, and other nonstandard and decorative elements that are no longer to be maintained by the **LICENSEE**.

**E.** No Reimbursal is required for termination of agreements for Mowing Only.

The **DEPARTMENT** and **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in **ARTICLE XI - MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items “A”, “B”, “C” and “D” above, as applicable, and then terminate the agreement.

**ARTICLE X  
COMPLIANCE WITH APPLICABLE LAW**

The undersigned certify that:

- A.** This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.
- B.** The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.
- C.** The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied with in full.

**ARTICLE XI  
MAINTENANCE WORK PLAN  
(ATTACHED BELOW AS EXHIBIT “B”)**

{INSERT}



**EXHIBIT "B"**



The covenants herein, contained shall, except as otherwise provided, accrue to the benefit and be binding upon the successors and assigns of the parties hereto.

**IN WITNESS WHEREOF**, said parties have hereunto set their hand and affixed their seals the day and year above first written.

**GEORGIA DEPARTMENT OF  
TRANSPORTATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Commissioner

**ATTEST:**

By: \_\_\_\_\_  
Name: Angela Whitworth  
Title: Treasurer

**LICENSEE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sworn to before me on this \_\_\_\_ day of  
March, 2011:

\_\_\_\_\_  
Unofficial Witness

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

**[NOTARIAL SEAL]**



**EXHIBIT "A"**

(Attach the Application and Permit for Special Encroachment with approved drawings or the final working drawings for a Department-approved construction)



**EXHIBIT C**

TO BE INSERTED HERE

Exhibit  
BC



STATE OF GEORGIA

COUNTY OF FULTON

MOWING AND MAINTENANCE AGREEMENT

By and Between

THE CITY OF ATLANTA

AND

THE SOUTH FORK CONSERVANCY, INCORPORATED

THIS MOWING AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between the CITY OF ATLANTA (the "City"), a municipal corporation of the State of Georgia, and The South Fork Conservancy, Incorporated ("SFC"), a Georgia not-for-profit corporation.

WITNESSETH

WHEREAS, SFC is a community organization that exists to restore, conserve and protect the riparian systems of the watershed of the south fork of Peachtree Creek and provide connectivity for minimal impact human use therein; and

WHEREAS, SFC has completed a 'Watershed Vision' that lays out a goal of assembling publicly accessible trails within said watershed, which would connect, *inter alia*, North Dekalb County, the Atlanta Beltline, the Olmstead Linear Parks, Emory Village, and other locations; and

WHEREAS, one of the proposed trails identified by the SFC Watershed Vision is the "Creekside Trail" (the "Trail"), which crosses a right-of-way which is under the control of the Georgia Department of Transportation ("GDOT"); and

WHEREAS, the Trail will a form part of GDOT's State Route 400/Interstate 85 reconstruction project; and

WHEREAS, GDOT has designed and plans to install physical improvements for the Trail; and

WHEREAS, in order to move forward with the Trail, GDOT requires a Right-of-Way Mowing and Maintenance Agreement for the maintenance of the Trail; and



WHEREAS, as GDOT will not enter into agreements with non-public entities, the City's Department of Parks, Recreation and Cultural Affairs ("DPRCA") has agreed to enter into a Right-of-Way Mowing and Maintenance Agreement with GDOT (the "GDOT/City MMA"); and

WHEREAS, DPRCA intends to simultaneously enter into a Trail Maintenance Agreement with SFC to assume the City's obligations as set forth in the GDOT/City MMA; and

WHEREAS, Resolution \_\_\_\_\_ adopted by the City Council on \_\_\_\_\_, 2011, and approved by the City Mayor on \_\_\_\_\_, 2011 and made a part hereof by reference, authorized the City Mayor to enter into this Agreement with SFC under the terms specified herein and to enter into a Right-of-Way Mowing and Maintenance Agreement with the Georgia Department of Transportation concerning certain portions of property under the control of GDOT, provided that a third party agreement with SFC to undertake the City's obligations is executed simultaneously; and

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

#### 1. STATEMENT OF AGREEMENT

The City and SFC hereby agree that, as a condition for the City's agreeing to enter into the GDOT/City MMA, SFC will perform the obligations which the City has agreed to perform pursuant to the GDOT/City MMA, a copy of which is attached hereto as Exhibit A.

#### 2. EFFECT OF THE MAINTENANCE AGREEMENT

SFC stipulates that it is aware of and has fully reviewed the GDOT/City MMA which is attached hereto as Exhibit A. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of SFC to the City than the obligations of the City to GDOT as set forth in the GDOT/City MMA, the terms of the GDOT/City MMA shall be considered as further clarifying and explaining the obligations of SFC in this Agreement, unless it is specially stated in this Agreement that such variation in obligations is permitted. SFC agrees that, to the greatest extent possible, its obligations to be performed under this Agreement should be construed to be equal to the obligations of the City to be performed under the GDOT/City MMA.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work described in the GDOT/City MMA or satisfy any claims of SFC or any claims of any other person or persons made upon SFC in connection with the work performed by SFC pursuant to this Agreement.



- b. Should GDOT terminate the GDOT/City MMA for any reason, SFC agrees that all areas covered by this Agreement shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public.
- c. This Agreement is being executed with full knowledge that the GDOT/City MMA may or may not have been fully executed at the time of execution of this Agreement. The obligations of SFC under this Agreement shall be binding on SFC as of the time of full execution of the GDOT/City MMA, provided that the GDOT/City MMA that is executed matches Exhibit A in all material respects.

### 3. TIME OF PERFORMANCE

SFC shall commence the performance of its obligations under this Agreement no later than thirty (30) calendar days after GDOT has completed the Trail and SFC has been notified thereof.

### 4. PROFESSIONAL RESPONSIBILITY

SFC shall assume all responsibility undertaken by the City in the GDOT/City MMA with respect to the professional quality of those tasks required by the Maintenance Work Plan set forth in the GDOT/City MMA (the "Project").

### 5. NO COMPENSATION PAID COSTS NOT FUNDED BY DEPARTMENT OF CITY

SFC and the City hereby acknowledge and agree that the GDOT/City MMA contains no provisions for compensation or cost reimbursement to be paid to the City by GDOT.

- a. SFC acknowledges and agrees that it will not be paid by the City or GDOT for the work to be done under this Agreement and/or the GDOT/City MMA.
- b. SFC agrees that it will bear all costs or pay all expenses necessary to fulfill the obligations of SFC set forth in this Agreement.
- c. SFC acknowledges and agrees that Resolution \_\_\_\_\_ does not authorize the City to commit funds to the Project. All costs and expenses necessary to fulfill the requirements of SFC under this Agreement are solely the responsibility of SFC.
- d. In the event of termination of the Project by GDOT, the obligations of SFC are governed by Section 2 b. of this Agreement.



## 6. RIGHT OF INSPECTION

The City and GDOT shall have the right to inspect any part of any work performed by SFC under this Agreement. SFC acknowledges and agrees that the performance of such work must satisfy all City ordinances in addition to any requirements of GDOT under the GDOT/City MMA.

## 7. NO ASSIGNMENT

The rights and obligations set forth in this Agreement may not be assigned, sublet, or transferred without prior written permission of the City; provided, however, that SFC may enter into agreements with "Contractors" (as such term is defined in the GDOT/City MMA) as anticipated in, but subject to the terms and conditions of, the GDOT/City MMA.

## 8. INSURANCE

During the term of this Agreement, SFC shall maintain insurance in full force and effect and shall, upon request, furnish to the City certificates of insurance evidencing such coverage. The City shall be named as an additional insured in each policy related to the Project. The following types of insurance shall be required:

General Liability Insurance in an amount of not less than \$1,000,000.00 Bodily Injury and Property Damage combined single limit.

## 9. INDEMNIFICATION

SFC acknowledges that the GDOT/City MMA obligates the City to GDOT in various respects for Project maintenance, and SFC agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the GDOT/City MMA except where the City specifically assumes an obligation or responsibility under this Agreement. SFC further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to any failure by SFC to perform those obligations or responsibilities which SFC has agreed to assume pursuant to this 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 GDOT/City MMA for which SFC has assumed any responsibility or obligation and includes as a part of the indemnity an agreement by SFC to reimburse the City for the payment of all costs and expenses arising from or in respect to any such claims. SFC acknowledges and agrees that all agreements for indemnity provided by this Agreement shall survive its termination with respect to any and all



claims prior to such termination. Nothing contained herein, nor any performance or compliance with any obligations or duties hereunder shall cause, result in, or be deemed to be or effect any waiver of any right of immunity or any liability limitations provided by the Georgia Recreational Use Act. Notwithstanding anything contained herein to the contrary, SFC shall have no obligation or responsibility for design or any initial construction matters, obligations, costs, expenses, or liabilities with respect to the Trail.

## 10. NOTICES

The City appoints as its designated representative for the receipt of notices, submittals, or communications, Commissioner of Parks, Recreation and Cultural Affairs, or any successor, whose address for the purpose of this Agreement shall be as follows:

George Dusenbury, Commissioner  
Department of Parks, Recreation and Cultural Affairs  
233 Peachtree Street, N.W.  
Suites 1600/1700  
Atlanta, GA, 30303  
404-546-6788  
\_\_\_\_\_ (fax)

Notice to SFC shall be provided to the following:

David O. Eldridge  
Byrne, Davis & Hicks, P.C.  
Suite 1460, Tower Place 100  
3340 Peachtree Road, N.E.  
Atlanta, GA 30326  
404-266-7277  
404-266-7272 (fax)

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, provided, however, that the designated representative shall always receive a simultaneous notice describing the type material which is sent to any sub-designee.

## 11. COMPLIANCE WITH CITY ORDINANCES

It is specifically agreed that none of the terms of this Agreement excuse, modify or waive



in accordance with any City ordinance.

## 12. PERMITS AND LICENSES

In connection with the performance of the services called for by this Agreement, SFC shall obtain, at its own expense, all permits and all licenses required by all municipal, state and federal authorities, now or hereafter required to be in force.

## 13. 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, and 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 SFC and any other person shall specify that the City shall have the right to enforce the terms of this Agreement without the consent of SFC.

## 14. 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 this 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 unless such modification or amendment shall be properly authorized, in writing, properly signed by both parties. Any subsequent amendments to the GDOT/City MMA shall be binding on SFC only to the extent SFC has agreed in writing to accept the responsibility for such amendment.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

**CITY OF ATLANTA**

Municipal Clerk (Seal)

By: \_\_\_\_\_  
Kasim Reed, Mayor

RECOMMENDED

\_\_\_\_\_  
Commissioner, Department of Parks,  
Recreation And Cultural Affairs

APPROVED

\_\_\_\_\_  
Chief Financial Officer

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

The South Fork Conservancy, Incorporated

By: \_\_\_\_\_

Its: \_\_\_\_\_

[Corporate Seal]

RCS# 1345  
8/15/11  
8:02 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I  
EXCEPT 11-R-1121, 11-R-1104, 11-O-1141  
ADOPT

YEAS: 12  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 1  
ABSENT 1

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	E Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

RCS# 1344  
8/15/11  
8:01 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I  
EXCEPT 11-R-1121, 11-R-1104  
RECONSIDER

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

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	E Shook	Y Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I

RCS# 1312  
8/15/11  
4:23 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I  
EXCEPT 11-R-1121, 11-R-1104  
ADOPT

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

B Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	NV Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I