

12-
R-0396

(Do Not Write Above This Line)

A RESOLUTION
BY TRANSPORTATION COMMITTEE

AUTHORIZING THE MAYOR, OR HIS
DESIGNEE, TO ENTER INTO AN
AGREEMENT WITH THE MDTOWN
BUSINESS ASSOCIATION, INC., D/B/A
MDTOWN ALLIANCE, ON BEHALF OF
THE CITY OF ATLANTA DEPARTMENT
OF PUBLIC WORKS, APPOINTING
MIDTOWN ALLIANCE TO ACT AS THE
CITY'S IMPLEMENTATION MANAGER
FOR THE REGIONAL TRAFFIC
OPERATIONS PROGRAM; AND FOR
OTHER PURPOSES.

ADOPTED BY

CONSENT REFER APR 16 2012

REGULAR REPORT REFER

ADVERTISE & REFER

1ST ADOPT 2ND READ & REFER

COUNCIL

Date Referred
Referred To:
Date Referred
Referred To:
Date Referred:
Referred To:

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

Committee

Date _____

Chair _____

Action _____

Fav, Adv, Hold (see rev. side)
Other _____

Members _____

Refer To _____

Committee

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
APR 16 2012

ATLANTA CITY COUNCIL, PRESIDENT

CERTIFIED
APR 16 2012

Richard D. Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

APR 25 2012

WITHOUT SIGNATURE
BY OPERATION OF LAW



**CITY COUNCIL
ATLANTA, GEORGIA**

**A RESOLUTION
BY TRANSPORTATION COMMITTEE**

12- R -0396

AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO ENTER INTO AN AGREEMENT WITH THE MIDTOWN BUSINESS ASSOCIATION, INC., D/B/A MIDTOWN ALLIANCE, ON BEHALF OF THE CITY OF ATLANTA DEPARTMENT OF PUBLIC WORKS, APPOINTING MIDTOWN ALLIANCE TO ACT AS THE CITY'S IMPLEMENTATION MANAGER FOR THE REGIONAL TRAFFIC OPERATIONS PROGRAM; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") desires to obtain the maximum benefit from funding made available to the City by the Georgia Department of Transportation ("GDOT"); and

WHEREAS, a specific program known as the Regional Traffic Operations Program ("RTOP") has been identified by GDOT to fund certain traffic equipment and traffic management improvements within the Midtown Atlanta area; and

WHEREAS, GDOT has committed \$1,000,000 for the development, planning, and completion of traffic signal timing, signal management, signal communications and other traffic improvements with funds of GDOT and funds appropriated to GDOT by the Federal Highway Administration, under Title 23, Highways, Code of Federal Regulations (CFR); and

WHEREAS, the City has entered into an agreement with GDOT for the development, planning, and completion of traffic signal timing, signal management, signal communications and other traffic improvements for the Regional Traffic Operations Program; and

WHEREAS, The Midtown Business Association, Inc., d/b/a Midtown Alliance ("Midtown Alliance") is authorized to provide such governmental services as project management, construction and maintenance of local, collector and arterial streets as shown on the City's street classification map or as otherwise included in the City's street classification map or as otherwise included in the City's most recently adopted Comprehensive Development Plan, including curbs, sidewalks, street lights and devices to control the flow of traffic on local, collector and arterial streets; and

WHEREAS, the City and Midtown Alliance believe that a strong working relationship offers the City unique opportunities to significantly improve mobility in the Midtown Atlanta area; and

WHEREAS, the City and Midtown Alliance have represented to GDOT a desire to participate in certain activities of the Regional Traffic Operations Program by providing program and implementation management services; and

WHEREAS, the City wishes to enter into an agreement with Midtown Alliance to act as the City's implementation manager for (RTOP).

THE CITY COUNCIL OF THE CITY OF ATLANTA HEREBY RESOLVES that the Mayor, or his designee, is hereby authorized to execute on behalf of the City of Atlanta



Department of Public Works, an agreement with the Midtown Business Association, Inc., D/B/A Midtown Alliance, appointing Midtown Alliance to act as the City's implementation manager for the Regional Traffic Operations Program.

BE IT FINALLY RESOLVED, that the City Attorney be and hereby is directed to negotiate, prepare, review and present to the Mayor for execution, the agreements necessary to effect the intent of this resolution provided that such agreements are in compliance with the conditions set forth herein.

A true copy,

Rhonda Dauphin Johnson
Municipal Clerk

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

APR 16, 2012
APR 25, 2012



STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT is made and entered into this ____ day of _____, 2012 by and between the CITY OF ATLANTA, a municipal corporation of the State of Georgia ("City"), and the MIDTOWN BUSINESS ASSOCIATION, INC., d/b/a MIDTOWN ALLIANCE, a non-profit corporation in Fulton County, State of Georgia, and a corporation organized and existing under the laws of the State of Georgia ("Midtown").

WITNESSETH

WHEREAS, the City desires to obtain the maximum benefit from funding made available to the City by the Georgia Department of Transportation ("Department"); and

WHEREAS, a specific program known as the Regional Traffic Operations Program ("RTOP") has been identified by the Department which can fund certain traffic equipment and traffic management improvements (the "Project") within the Midtown Atlanta area; and

WHEREAS, Article IX, Section VII of the Constitution of the State of Georgia authorizes municipalities to create community improvement districts and pursuant to the "Atlanta Community Improvement District Act", enacted by the Georgia General Assembly as House Bill 544, the City of Atlanta created the Midtown Community Improvement District pursuant to the constitutional and statutory authority cited herein (City Council Resolution No. 00-R-0317); and

WHEREAS, Resolution 00-R-0317 provided that Midtown is authorized to provide such governmental services as project management, construction and maintenance of local, collector and arterial streets as shown on the City's street classification map or as otherwise included in the City's street classification map or as otherwise included in the City's most recently adopted Comprehensive Development Plan, including curbs, sidewalks, street lights and devices to control the flow of traffic on local, collector and arterial streets; and

WHEREAS, Midtown is authorized to contract with the City pursuant to the constitutional and statutory authority above referenced; and

WHEREAS, the City has entered into an agreement ("") with the Department for traffic equipment improvements, timing, and system management; and

WHEREAS, the City and Midtown have represented to the Department a desire to participate in certain activities of the Project as set forth in this Agreement and as set forth in the Construction Agreement; and

WHEREAS, The Department has expressed a willingness to participate in certain activities of the Project as set forth in the Construction Agreement; and

WHEREAS, Midtown is willing, under the terms set forth in this Agreement, to provide program and implementation management services for the RTOP program; and

WHEREAS, the City wishes, under the terms set forth herein, to accept Midtown as the implementation manager for the Project in order to allow the City to utilize the RTOP funds programmed to the Project at present or in the future; and



WHEREAS, the City and Midtown believe that a public partnership to complete the project set forth in this Agreement offers unique opportunities to significantly improve mobility in the Midtown Atlanta area; and

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

WHEREAS, Resolution 12-R-_____ adopted by the City Council on _____, 2012 and approved by the Mayor on _____, 2012 and made a part hereof by reference and appended hereto as Exhibit B, authorized the Mayor to enter into this agreement with Midtown under the terms specified herein; and

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

1.

STATEMENT OF AGREEMENT

The City and Midtown hereby agree that Midtown will be responsible for and perform the obligations which the City has agreed to perform pursuant to the Construction Agreement which is attached as Exhibit A. Midtown may act as the City's agent and enter into agreements with a project manager, engineer, and one or more professional or technical consultants (hereinafter "Persons") to perform the obligations set forth in the Construction Agreement. This Agreement does not assign, sublet or transfer any or all of the City's interest in the Construction Agreement. The City agrees, subject to Department approval, that a representative of Midtown shall be included on the Task Force as defined in Article 1 of the Construction Agreement.

2.

THE EFFECT OF THE CONSTRUCTION AGREEMENT

Midtown stipulates that it is aware of and has fully reviewed the Construction Agreement. In any case where the terms of this Agreement may be interpreted or construed to require a lesser obligation of Midtown to the City than the obligations of the City to The Department, as set forth in the Construction Agreement, the terms of the Construction Agreement shall be considered as further clarifying and explaining the obligations of Midtown in this Agreement unless it is specially stated that such variation in obligations is permitted. Midtown agrees that, to the extent possible, the obligations of Midtown to perform under this Agreement should be construed to be equal to the obligations of the City to perform under the Construction Agreement.

- a. Under no circumstances shall the City be obligated to supply any funds to complete any portion of the work or satisfy any claims of Midtown or any other Person after termination of the Construction Agreement by the Department.
- b. Should the Department terminate the Construction Agreement prior to the completion of the work, Midtown agrees that any of the project work, which is not completed 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, which does not unreasonably impede the



flow of vehicular traffic, and which, as near as possible, reflects the condition of the streets and sidewalks of the City prior to the beginning of construction.

- c. The City agrees that should the Department terminate the Construction Agreement prior to the completion of the work, that Midtown shall receive the reimbursement to which the City would be entitled under the terms of the Construction Agreement, provided that such funds are not required to restore the street and sidewalks of the City impacted by 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.

3.

TIME OF PERFORMANCE

Midtown shall commence the performance of its obligations pursuant to the terms of the Construction Agreement no later than sixty (60) calendar days after execution of this Agreement by each of the Parties. The work to be performed by Midtown shall cease once the Department RTOP funding source expires. Midtown may request that the scope of any phase or part of the Project be allocated, divided, accelerated or that the order of letting the Project be adjusted and the City agrees to seek Department approval of such request, and if granted by the Department the request shall apply to this Agreement. The City agrees to submit said requests to the Department within five business days after receipt of a written request from Midtown.

4.

PROFESSIONAL RESPONSIBILITY

Midtown shall assume all responsibility undertaken by the City under the Construction Agreement with respect to the professional quality, technical accuracy and the coordination of all designs, drawings, and specifications and other services furnished by or on behalf or required of the City pursuant to the Construction Agreement.

- a. Midtown shall correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required in the Construction Agreement and furnished for the Project by Midtown on behalf of the City under this Agreement, for which the City has received notice from the Department, within such time that the City shall not be in breach of its obligations to the Department under the Construction Agreement. The City shall give such written notice to Midtown no later than the fifth business day after receipt of notice from the Department. Midtown is aware that the City is obligated to address any errors or deficiencies in the work as specified in the Construction Agreement and/or assume all responsibility caused by such errors and deficiencies and agrees that the time period specified herein is reasonable for Midtown to be required to make such revisions and corrections. All plans shall be prepared in English units.
- b. Midtown shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts errors or omissions related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City pursuant to the Construction Agreement, in the event that such claim, damage,



loss or expense arises from obligations which Midtown has specifically undertaken in this Agreement.

- c. Midtown agrees to incorporate into its work activities any reasonable review recommendation of the Department or the City, provided that the City's review recommendations are made prior to the Department's final approval of the design documents. The City shall be given written notice, along with copies of all design documents, at least five (5) days prior to each submission being made by Midtown to the Department. In this regard, the City must formally approve each submission of design documents prior their submission to the Department by Midtown.
- d. Midtown agrees that all agreements with any Person shall cause all such Persons to be bound to the same terms and conditions and standards of performance as this Agreement. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Midtown under this Agreement. No contract or sub-contract under this Agreement shall be assigned.
- e. All the services required hereunder will be performed under the direct supervision of Midtown with the exception of the construction and related activities undertaken by the Department as provided by the terms of the Construction Agreement. All Persons engaged in any work by Midtown to work on the Project shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- f. Midtown agrees that the specifications required by the Department in transportation infrastructure improvements are generally known and that the vast majority of the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Work Plan under the terms of the Construction Agreement even if such terms are not specifically set forth herein or in the Scope of Work.
- g. The City will make available in a timely manner all records and documents required by Midtown to fulfill the Scope of Work.
- h. Any data transferred to Midtown by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Midtown 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.
- i. Midtown waives for itself, its successors, and its assigns and any Person employed by it in any capacity, all rights to any claim to damages whatsoever arising out of the use of the City's data for the Project, and/or the provision of this data to Midtown and/or the transfer of this data to Midtown. Midtown shall be included in any and all contracts or agreements related to the Project the foregoing provision and any Person employed on the Project shall agree to the same.



- j. Midtown agrees that all reports, plans, drawings, studies, specifications, estimates, maps, computations, computer diskettes and printouts, and any other data prepared under the terms of this Agreement or developed in connection with the Project ("Project Data") shall become the property of the City. One copy of all Project Data shall be organized, indexed, bound, and delivered to the City no later than the advertisement of the Project for letting. The City shall have the right to use Project Data without restriction or limitation unless otherwise provided herein. Subject only to the terms of this Agreement which specify otherwise, Midtown warrants that it owns all Project Data and has the right to grant unlimited use of all Project Data to the City. Midtown waives all claims for compensation connected with any future use of the Project Data. The City agrees that Project Data is intended to be specific to the Project.

5.

FUNDING OF THE PROJECT

Midtown and the City hereby acknowledge and agree that the Construction Agreement contains a Budget Estimate which specifies that the total estimated costs for the Project are as depicted in Exhibit A – Project Budget. Midtown and the City further acknowledge and agree that the Construction Agreement states that funds of the Department shall be subject to the terms of the Construction Agreement.

- a. Midtown acknowledges and agrees that the Project Budget includes any and all claims by it against the City under this Agreement and/or in the conduct of the entire Work Plan for the Project.
- b. Midtown agrees that it shall contribute to the Project by funding all or certain portions of the project management by using Midtown employees and/or designated representatives and agrees that the City is not required or expected to provide any funds for any part of the cost of the Project. The City agrees to cooperate with all reasonable applications for budget adjustments which Midtown may request that the City forward to the Department. The City agrees that all expenditures and obligations for the Project shall be committed solely by Midtown. Said expenditures and obligations shall be in adherence to the Project Budget provided by the Construction Agreement.
- c. Midtown acknowledges and agrees that City Resolution 12-R-_____ does not authorize the City to commit funds to this Project. However, the City and Midtown acknowledge that the City may, at its sole discretion, contribute funding and/or equipment to the Project. All costs of the Project in excess of available Department funds are solely the responsibility of Midtown.
- d. In the event of termination of the Project by the Department, the obligations of Midtown are governed by Paragraph 2, subpart b of this Agreement.

6.

CITY'S RIGHT OF APPROVAL OF PLANS & WORK

The City shall have the right to approve any part of the plans for the Project. Midtown acknowledges and agrees that Project must meet any requirements of the City in addition to any requirements of the Department. Midtown shall submit all plans for any work on the Project to the Commissioner of Public



Works for the City's comments, which shall be provided in writing within ten (10) business days of the date of the submission, unless extended by the City for reasonable grounds and with prior written notification. Midtown may at the time of submission of plans to the Commissioner of Public Works, submit a copy to the Department. Within five (5) business days of receipt, Midtown shall forward the City's comments with Midtown's submittals to the Department. Midtown shall review any previously approved plans with the City for confirmation of the City's approval.

The City and Midtown agree that there are certain guiding principles which both parties would like to achieve during program development and as the ultimate outcome of the project. These guiding principles are as follows:

1. To optimize pedestrian mobility.
2. To develop a timing plan that coordinates the posted speed limits.
3. To optimize traffic calming techniques.
4. To optimize both City and Midtown current and future traffic communication assets.
5. To produce an active management protocol to minimize response times to adjust, repair, and/or replace all equipment and controller programming which vary from standard operations as mutually defined and recommended by the future engaged traffic consultant.

7.

PROCUREMENT OF CONTRACTS

In the event Midtown, in the performance of this Agreement, should need to enter into one or more construction contracts, Midtown, acting as the City's agent, is authorized to contract with others for construction services, provided that such construction contracts are procured in accordance with this Agreement, the Construction Agreement, and all applicable federal and state laws and City Ordinances including the provisions of the City's procurement code. The lack of a specific requirement in this Agreement, relating to procurement of construction contracts, does not relieve Midtown from its obligation to follow all requirements relating to procurement of contracts which are set forth in the Construction Agreement or incorporated by reference in the Construction Agreement. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Midtown prior to the execution of this Agreement for engineering or design. In addition said procurement requirements shall not be applicable to Midtown regarding construction agreements entered by the Department relative to the performance of the Construction Agreement.

- a. Any construction contract paid from funds related to the Project in excess of \$20,000 shall be let by public bid, regardless of whether such contract is funded by the matching funds provided by Midtown or by federal funds.
- b. Midtown acknowledges and agrees that it will follow the Department's competitive bid procedures and the City's procurement code and Midtown will document all activities related to the process.
- c. Midtown acknowledges and agrees that the construction bid documents must comply with Department and City requirements and, ten (10) business days prior to the advertisement for bids, will provide completed construction plans, bid documents, and specifications to the Department's Project Manager for approval. Bid packages shall be prepared by Midtown in consultation with the City's Department of Procurement (which shall undertake its best efforts to approve the bid package within five (5) business days of



the approval by the Department), and approval of the construction plans by all necessary departments of the City. After approval by the Department's Project Manager and the City's Department of Procurement, bid packages shall be made available for purchase by interested bidders at the location customarily employed by the City of Atlanta Procurement Department.

- d. Midtown acknowledges and agrees that bids must be advertised at least four weeks prior to bid opening and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisements will state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of the City's Department of Procurement. Midtown will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Midtown, the City shall provide language for the advertisement within ten (10) business days of submission to the Department of Procurement unless extended by the City for reasonable rounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.
- e. If applicable, all contracts related to the Project will specify that wage rates are subject to the provisions of the Davis-Bacon Act
- f. Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- g. Bid bonds equal to five (5) percent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.
- h. Midtown acknowledges and agrees that negotiations with bidders are prohibited. If all bids are in excess of any cost estimate set forth in the Construction Agreement, Midtown acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Midtown acknowledges and agrees that it will either revise the plans or estimate, re-advertise and re-bid for the contract or accept the lowest responsive bid and accept responsibility for the cost difference.
- i. Midtown and the Department of Procurement will evaluate the bids. Midtown shall be responsible for having the bids reviewed by the Department, including without limitation, those parts of the bids with respect to DBE compliance. After approval by the Department of the decision to award, or The Department's decision to decline to review the decision to award, Midtown shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Midtown shall be responsible for assuring execution of the contract and issuance of the notice to proceed. .
- j. Midtown acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act including all



exceptions to disclosure, O.C.G.A. § 50-18-70 *et seq.* The City shall maintain one original and one copy of all bids.

8.

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

Midtown acknowledges and understands it is the policy of the City to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in Section 2-1448 of the City's Procurement Code at Division 12 of Article X of the City of Atlanta Code of Ordinances.

Midtown and the City acknowledge and agree that the Department has set an annual aggregate 12% Disadvantaged Business Enterprise goal for all federal aid highway projects. Thus, Midtown and the City agree that the Department's requirements shall supersede the City's EBO requirements. Midtown acknowledges and agrees that it will follow all applicable DBE requirements set by the Department and will be responsible for the submission of all reports required by the Department.

9.

INSURANCE AND BONDING

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

a. Insurance.

- (1) During the entire term of this Agreement, Midtown agrees to cause all Persons to maintain insurance required by the Construction Agreement, and where applicable to obtain such insurance on its own behalf.
- (2) Midtown acknowledges and agrees that the minimum levels of insurance applicable to the Project are as follows:
 - A. Workmen's Compensation Insurance in accordance with the laws of the State of Georgia;
 - B. Public Liability Insurance in an amount of not less than \$100,000 for injuries, including those resulting in death to anyone person and in an amount of not less than \$300,000 on account of anyone occurrence and
 - C. Property Damage
Insurance in an amount of not less than \$50,000 from damages on account of any occurrence, with an aggregate limit of \$100,000 and that this minimum level of coverage shall be specified in any contract to be paid from funds allocated by this Agreement, provided however that the public liability insurance for injuries, including those resulting in death to anyone person, shall be increased to \$500,000 per occurrence, Said insurance shall be maintained in full force and effect during the term of the Agreement and until final completion of the Project.



- (3) The City shall be named as an additional insured in each policy related to the Project.
- (4) The cancellation of any policy of insurance required by this contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated.
- (5) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Midtown agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.
- (6) Midtown agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance.

b. Bonding-Construction contracts.

- (1) At the time of the execution of any construction contract to be paid from funds allocated by this Agreement, Midtown agrees to cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price.
- (2) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.
- (3) All performance bonds and payment bonds required under the Construction 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.
- (4) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.
- (5) Midtown 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.
- (6) Midtown agrees to specifically provide in all construction contracts or agreements that the specific obligations set forth in this paragraph shall be binding on all Persons.

10.

CITY'S RIGHT OF INSPECTION

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



11.

PAYMENT OF INVOICES

- a. Midtown agrees and understands that the Construction Agreement states that the department will only disburse funds to the City and that the terms of Resolution 12-R-_____ which authorized this Agreement do not allow the City to disburse any of its own funds for any of the work on the Project.
- b. The City shall submit to the Department a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").
 - (1) The preparation and presentation to the City of a proposed form of the Monthly Report, which the City shall submit to the Department, is the sole responsibility of Midtown. The proposed form of the Monthly Report shall be transmitted to the City no later than the 30th day of every month or the next business day thereafter in the event that the 30th day falls on Saturday, Sunday or a legal holiday.
 - (2) The City shall, within three business days of receipt of a submission of a proposed Monthly Report, submit the same to the Department, but the City, without the approval of Midtown, shall have the right to add comments or other material. Midtown agrees that only the City may submit the Monthly Report to the Department. At the same time the Monthly Report is submitted to the Department, the City shall provide a copy to Midtown.
- c. Midtown agrees and understands that the Department will only pay the City in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of a voucher certified by the City
 - (1) The City agrees to receive proposed vouchers prepared by Midtown and when the City is satisfied that the work is within the terms and conditions of the Construction Agreement certify the voucher and transmit it to the Department, provided that the City shall not submit more than one voucher to the Department for any calendar month. At the same time a voucher is submitted to the Department, the City shall provide a copy to Midtown.
 - (2) The City agrees to undertake its best efforts to verify whether it can certify the voucher proposed by Midtown within five (5) business days of the receipt of a proposed voucher. The City agrees to notify Midtown of any part of the proposed voucher that will not be certified and to undertake discussions as to what steps Midtown must undertake so that the City can agree to certify the part of the proposed voucher which is not submitted.
 - (3) After its five (5) day review period, the City agrees to submit to the Department, on the next business day, all parts of the voucher which it is willing to certify. Midtown agrees that only the City may submit vouchers to The Department.
 - (4) The preparation and presentation to the City of the documents which will comprise a voucher is the sole responsibility of Midtown.



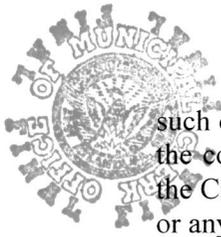
(5) Upon the receipt of payment from the Department for the work submitted in a certified voucher, the City agrees to remit such funds to Midtown as soon as the transfer of the funds can be arranged, but in no case, no later than the second business day after receipt.

- d. Midtown acknowledges and agrees that the Department will only make a final payment to the City if the City agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the Department for work done, materials furnished, costs incurred or other matters arising from the Construction Agreement. Midtown further acknowledges and agrees that the Project Agreement states that the acceptance of the final payment by the City shall release the Department from any and all further claims of whatever nature, whether known or unknown, for and account of the Construction Agreement and for any and all work done, and labor and materials furnished, in connection with the Construction Agreement. Midtown acknowledges and agrees that the City will only request the final payment from the Department on the condition that Midtown shall release the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and/or the Construction Agreement and for any and all work done, and labor and materials furnished, in connection with this Agreement and/or the Construction Agreement.
- e. Midtown acknowledges and agrees that the Department will only make a final payment to the City if the City will allow the examination and verification of the costs of the Project by the Department's representative's review of books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project as maintained by Midtown. Such records shall be made available to the Department and any reviewing agency designated by the Department during the Project and for a period of three years from the date of final payment. If the Department's examination of the cost records result in unallowable expenses, Midtown understands and agrees that it shall be responsible for reimbursing the City for the full amount of such disallowed expenses immediately upon the City's reimbursement of the Department, if the amount of such unallowable expenses has not already been paid to the City in anticipation of the City's payment to the Department.

12.

INDEMNIFICATION

Midtown acknowledges that the Construction Agreement between the Department and the City which provides for the construction of those improvements described in the Construction Agreement obligates the City to the Department in several respects and Midtown agrees to the maximum extent allowed by law to assume all of the obligations and responsibilities of the City under the Construction Agreement except where the City specifically assumes an obligation or responsibility under this Agreement. Midtown further agrees to indemnify the City with respect to any and all claims, losses or expenses which the City may incur with respect to those obligations or responsibilities which Midtown has agreed to assume including any subsequent obligations or responsibilities which may be imposed on the City by the Department under the Construction 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 Construction Agreement under which Midtown has assumed any responsibility or obligation and includes as a part of the indemnity, an Agreement by Midtown to reimburse the City for the payment of all claims, expenses, costs arising from or in respect to the Construction Agreement, regardless whether



such claims, expenses or costs arise from or in respect to, the professional quality, technical accuracy and the coordination of all designs, drawings, specifications and other services furnished by or on behalf of the City pursuant to the Construction Agreement, construction delays, personal injury, injuries to property or any other type of claim expense or cost.

- a. Midtown acknowledges and agrees that this general indemnity includes the possibility that federal funds may be disapproved for reasons not relating to actual construction of the Project, including without limitation, the procurement process, the requirements related to record keeping, and the final audit of the Project.
- b. Midtown acknowledges and agrees that this general indemnity provided by this Agreement shall survive its termination.

13.

NOTICES TO THE PARTIES

The City appoints as its designated representative for the receipt of notices, submittals, or other communications, Richard Mendoza, the Commissioner of The Department of Public Works, or any successor, whose address for the purpose of this Agreement shall be:

Richard Mendoza
Commissioner of Public Works
Atlanta City Hall
55 Trinity Avenue, S.W, Suite 4700,
Atlanta, GA, 30335
404-330-6070

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

Shannon Powell
Midtown Alliance
999 Peachtree Street
Suite 730
Atlanta, Georgia 30309
404-892-4782

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



14.

COMPLIANCE WITH CITY ORDINANCES

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

15.

PERMITS AND LICENSES

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

16.

GENERAL PROVISIONS OF THIS AGREEMENT

- a. The brief capitalized and bolded 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 this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- c. This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- d. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- e. The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.
- f. Any agreement between Midtown and any other Person shall specify that the City shall have the right to enforce the terms of the agreement without the consent of Midtown and that the obligations of any Person under any agreement with Midtown shall survive the termination of the existence of this Agreement and/or the termination of the existence of Midtown.



ENTIRE AGREEMENT

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

IN WITNESS WHEREOF said parties have hereunto set their hand and affixed the seals.

**MIDTOWN BUSINESS ASSOCIATION, INC. d/b/a
MIDTOWN ALLIANCE**

By: _____

Attest: _____

CITY OF ATLANTA

By: _____

Kasim Reed, Mayor

Municipal Court (Seal)

RECOMMENDED

Commissioner, Department of
Public Works

APPROVED

Chief Financial Officer

APPROVED AS TO FORM

City Attorney

RCS# 1860
4/16/12
2:25 PM

Atlanta City Council

CONSENT I

CONSENT AGENDA SECTION I
MONDAY, APRIL 16, 2012; EXCEPT 12-R-0451
ADOPT

YEAS: 12
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 1

NV Smith	B 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

		04-16-12
ITEMS ADOPTED ON CONSENT	ITEMS ADVERSED ON CONSENT	
1. 12-O-0298	38. 12-R-0416	
2. 12-O-0306	39. 12-R-0417	
3. 12-O-0307	40. 12-R-0418	
4. 12-O-0447	41. 12-R-0419	
5. 12-O-0459	42. 12-R-0420	
6. 12-O-0292	43. 21-R-0421	
7. 12-O-0206	44. 12-R-0422	
8. 12-O-0291	45. 12-R-0423	
9. 12-O-0235	46. 12-R-0424	
10. 12-O-0373	47. 12-R-0425	
11. 12-R-0196	48. 12-R-0426	
12. 12-R-0393	49. 12-R-0427	
13. 12-R-0394	50. 12-R-0428	
14. 12-R-0395	51. 12-R-0429	
15. 12-R-0396	52. 12-R-0430	
16. 12-R-0403	53. 12-R-0431	
17. 12-R-0404	54. 12-R-0432	
19. 12-R-0405	55. 12-R-0433	
20. 12-R-0406	56. 12-R-0434	
21. 12-R-0460		
22. 12-R-0461		
23. 12-R-0462		
24. 12-R-0463		
25. 12-R-0390		
26. 12-R-0441		
27. 12-R-0407		
28. 12-R-0456		
29. 12-R-0435		
30. 12-R-0436		
31. 12-R-0413		
32. 12-R-0414		
33. 12-R-0415		
34. 12-R-0467		
35. 12-R-0468		
36. 12-R-0469		
37. 12-R-0470		