

13-R-3275

(Do Not Write Above This Line)

First Reading

Committee _____
Date _____
Chair _____
Referred To _____

FINAL COUNCIL ACTION

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

A RESOLUTION BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES
COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR, ON
BEHALF OF THE CITY OF ATLANTA TO EXECUTE A
SERVICE AGREEMENT WITH THE PATH
FOUNDATION FOR THE PURPOSE OF PROVIDING
SUPPORT TO THE DEPARTMENT OF PARKS,
RECREATION AND CULTURAL AFFAIRS THROUGH
COORDINATION OF VOLUNTEER SUPPORT,
FUNDRAISING, PROJECT MANAGEMENT,
CONSTRUCTION AND OTHER SERVICES AND
PROGRAMS THROUGHOUT THE CITY OF ATLANTA
WITH A TERM COMMENCING UPON EXECUTION OF
THE AGREEMENT AND TERMINATING ON DECEMBER
31, 2017 OR TWO (2) YEARS FOLLOWING THE
COMPLETION OF THE PATH FOUNDATION'S LAST
PROJECT; AND FOR OTHER PURPOSES.

ADOPTED BY
JUL 01 2013

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:

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1 / Committee
CDHR

Date
6/25/13
Chair
Joyner
Action
Fav, Adv, Hold (see rev. side)
Other

Members

[Handwritten signatures]

Refer To

Committee

Date
Chair
Action
Fav, Adv, Hold (see rev. side)
Other

Members

Refer To

Committee

Date
Chair
Action
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Other

Members

Refer To

Committee

Date
Chair
Action
Fav, Adv, Hold (see rev. side)
Other

Members

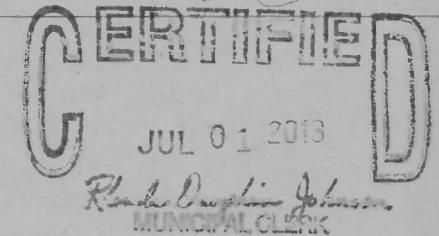
Refer To

MAYOR'S ACTION

APPROVED

JUL 10 2013

WITHOUT SIGNATURE
BY OPERATION OF LAW



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

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA TO EXECUTE A SERVICE AGREEMENT WITH THE PATH FOUNDATION FOR THE PURPOSE OF PROVIDING SUPPORT TO THE DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS THROUGH COORDINATION OF VOLUNTEER SUPPORT, FUNDRAISING, PROJECT MANAGEMENT, CONSTRUCTION AND OTHER SERVICES AND PROGRAMS THROUGHOUT THE CITY OF ATLANTA WITH A TERM COMMENCING UPON EXECUTION OF THE AGREEMENT AND TERMINATING ON DECEMBER 31, 2017 OR TWO (2) YEARS FOLLOWING THE COMPLETION OF THE PATH FOUNDATION'S LAST PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, The PATH Foundation ("PATH") was formed and organized in 1991 as a 501 (c) 3, nonprofit organization with a mission to develop a system of interlinking multi-use trails through metro Atlanta for commuting and recreational uses and has a demonstrated record of trail planning, design, construction and project management, completing projects on schedule, under budget and leveraging significant private funding for City of Atlanta ("City") projects (the services provided by PATH to the City collectively referred to as "Services"); and

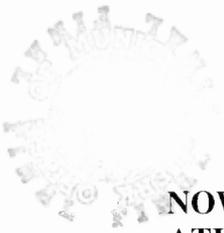
WHEREAS, the City owns numerous parks, pathways, bridges and other improvements and is desirous of encouraging further construction or reconstruction throughout Atlanta of same or similar projects (collectively referred to as "Projects"); and

WHEREAS, the City has an increased need to receive private support and funding for Projects; and

WHEREAS, PATH has raised approximately Eleven Million Dollars (\$11,000,000.00) in financial support and approximately Two Million Dollars (\$2,000,000.00) worth of in kind assistance to the City to build 21.5 miles of greenway trails since 1991; and

WHEREAS, the City desires to continue its relationship with PATH and recommends entering into an agreement whereby PATH provides Services for City Projects, with a term commencing upon execution of the agreement and terminating on December 31, 2017 or two (2) years following the completion of PATH's last Project with funds to be paid under the agreement contingent upon City approved Project funding on a per Project and as needed basis as more specifically detailed in the agreement attached hereto as Exhibit A; and

WHEREAS, entering into the agreement with PATH is in the best interest of the City.



NOW, THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor is hereby authorized, on behalf of the City, to enter into a Service Agreement with PATH in substantially similar form as attached hereto as Exhibit A whereby PATH provides Services for City Projects, with a term commencing upon execution of the agreement and terminating on December 31, 2017 or two (2) years following the completion of PATH's last Project.

BE IT FURTHER RESOLVED, the Services Agreement shall apply to new construction or reconstruction of trail, pathway, bridge, landscaping, improvement or related work in parks, greenways, City property or City-held easements or rights-of-way, where the Project has been identified in the City's Greenway Master Plan, and Park Master Plan, the Comprehensive Transportation Plan, known as the Connect Atlanta Plan, or any supplemental strategies or studies and previously adopted by the Atlanta City Council (collectively referred to as "Plan"). The Commissioner of the Department of Parks, Recreation, and Cultural Affairs ("DPRCA") (referred to herein as the "Commissioner") shall determine, in their sole discretion, when it is in the best interest of the City to have a Project designed, developed, and/or constructed by PATH. If the Commissioner determines, in his/her sole discretion that it is in the best interest of the City to have a Project designed, developed and/or constructed by PATH, PATH shall provide the Services at no cost to the City.

BE IT FURTHER RESOLVED, that for any Project, PATH shall engage a public bidding process which meets the procurement requirements of the City, the State of Georgia or the Federal Government as applicable; or as otherwise required by law.

BE IT FURTHER RESOLVED, that any Project and Project funding shall be previously approved by the Atlanta City Council in a Plan and the City shall provide the City's funds contribution for any Project to PATH without the need for further Atlanta City Council approval.

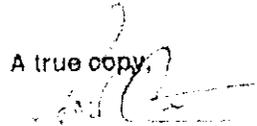
BE IT FURTHER RESOLVED, under the Service Agreement where maintenance or required improvements of operational Project infrastructure, amenities or landscaping exceeds Five Thousand Dollars (\$5,000.00) ("Capital Maintenance"), the City through the Commissioner, will work with PATH in good faith to identify available funding or resources to complete the necessary Capital Maintenance. In accordance with City of Atlanta Code of Ordinances Charter Section 3-104(14) Capital Maintenance for any Project in an amount less than One Hundred Thousand Dollars (\$100,000.00) per Project shall be paid to PATH, when and if funds are available, without the need for further Atlanta City Council approval. Any Capital Maintenance in an amount exceeding One Hundred Thousand Dollars (\$100,000.00) shall require Atlanta City Council approval.

BE IT FURTHER RESOLVED, that to the extent PATH is donating time and resources to the City, the City hereby accepts the donation.

BE IT FURTHER RESOLVED, that the City Attorney, or her designee is hereby authorized to prepare the Service Agreement for execution by the Mayor.

BE IT FINALLY RESOLVED, that the Service Agreement will not become binding upon the City, and the City shall incur no liability upon same until contract has been approved by the City Attorney as to form, executed by the Mayor, attested to by the Municipal Clerk, and delivered to PATH.

A true copy,


Deputy Clerk

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

JUL 01, 2013
JUL 10, 2013



EXHIBIT "A"



SERVICE AGREEMENT

This Service Agreement (the "Agreement"), is entered into as of the ____ day of _____, 2013 ("Effective Date"), by and between the CITY OF ATLANTA, a political subdivision of the State of Georgia (the "City"), and THE PATH FOUNDATION, a Georgia non-profit corporation ("PATH") (collectively referred to as "Parties" or "Party").

WHEREAS, PATH was formed and organized in 1991 as a 501 (c) 3, nonprofit organization with a mission to develop a system of interlinking multi-use trails through metro Atlanta for commuting and recreational uses; and

WHEREAS, PATH has a lean administrative structure, and a demonstrated record of trail planning, design and construction on numerous projects involving the City; showing its ability to complete projects on schedule, under budget, while leveraging significant private funding; and

WHEREAS, PATH's areas of expertise include without limitation, planning, routing, detailed design, project management, maintenance, coordination, land or easement acquisition, financing and performance of any or all other acts necessary or incidental to successful completion of cycle track, sidewalk, shared-use path and other high-quality bicycle and pedestrian projects; and

WHEREAS, PATH routinely contributes significant funding and project management staff services to cycle track, sidewalk, shared-use path and other high-quality bicycle and pedestrian projects which the City desires to engage in; and

WHEREAS, PATH has raised approximately Eleven Million Dollars (\$11,000,000.00) in financial support and approximately Two Million Dollars (\$2,000,000.00) worth of in kind assistance for City projects to build 21.5 miles of greenway trails since 1991; and

WHEREAS, it is in the best interest of the City to utilize PATH for the design, development and construction of certain cycle tracks, sidewalks, shared-use paths and other high-quality bicycle and pedestrian facilities and related landscaping and engineering projects; and

WHEREAS, the City is authorized to enter this Agreement pursuant to Ordinance number _____, adopted by the Atlanta City Council on _____, and approved by the Mayor on _____.

NOW THEREFORE, the City and PATH, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, do hereby agree as follows:



Section 1. Overview of Process and General Obligations.

This Agreement shall apply to new construction or reconstruction of cycle tracks, sidewalks, shared-use paths and other high-quality bicycle and pedestrian facilities or related work in parks, greenways, City property or City-held easements or rights-of-way (the “Project(s)”), where the Project has been identified in the City’s Greenway Master Plan, any Park Master Plan, the Comprehensive Transportation Plan, known as the Connect Atlanta Plan, or any supplemental strategies or studies and previously adopted by Atlanta City Council (collectively referred to as “Plan”). The Commissioner of the Department of Parks, Recreation, and Cultural Affairs (“DPRCA”) will certify whether a proposed project is identified in a Plan. The Commissioner of the Department of Parks, Recreation, and Cultural Affairs (referred to herein as the “Commissioner”) shall determine from time to time and in their sole discretion, when it is in the best interest of the City to have a Project designed, developed and/or constructed by PATH. If the Commissioner determines, in his/her sole discretion that it is in the best interest of the City to have a Project designed, developed and/or constructed by PATH, PATH shall provide coordination of these services at no cost to the City.

This section sets forth a general overview of the acquisition, design, development, and construction process applicable for any Project.

1. Procurement of any property or easements in connection with a Project shall be approved by City ordinance.
2. The City shall maintain ownership of all and shall have final decision making authority regarding any Project except as otherwise set forth in this Agreement.
3. For any Project, PATH shall engage a public bidding process which meets the procurement requirements of the City, the State of Georgia or the Federal Government as applicable; or as otherwise required by law. The specifications for the Project shall be developed by PATH in consultation with DPRCA. The Commissioner or their designee, shall be included in any bid review process. PATH, in consultation with the City’s Department of Procurement shall select the lowest and/or most responsive bidder. No contracts will be signed until all approvals have been obtained as provided herein.
4. PATH shall submit a draft development budget to DPRCA detailing the anticipated costs of any Project, as set forth in Section 2, paragraph 1 below. Within ten working days after receipt of the Budget, the Commissioner or their designee, shall review and approve the Budget or shall object to budgeted items and provide PATH written notice of any such objections. Where Georgia Department of Transportation (“GDOT”) review is required, additional time may be required to obtain State comments or objections. Thereafter, the City and PATH shall work in good faith to resolve any objections. The budget, once approved, shall be referred to as the Approved Budget. Notwithstanding the foregoing, if DPRCA and PATH cannot agree on a budget within



forty-five (45) days after PATH has received notice of budget objections, then the Project shall not move forward until an Approved Budget exists.

5. Based upon the selected bid/quote, the Approved Budget, and in consultation with PATH, the Commissioner shall determine in writing the amount of City funds, if any and contingent upon funds availability, to be provided for a Project. PATH shall not be required to pay for any portion of the Approved Budget or Project changes made pursuant to Section 1 Paragraph 8 below, unless otherwise agreed upon in writing by PATH and the Commissioner or their designee. Any Project and Project funding shall be previously approved by City Council in a Plan and the City shall provide the City's funds contribution for any Project to PATH without the need for further City Council approval. If the cost of any Project does not exceed the total contribution from the City, PATH shall refund the City all unexpended funds within thirty days of the City's "Final Approval" of the Project, as described and defined herein.
6. During the course of the design, development and/or construction of a Project, should the Project require additional unforeseen work that causes cost overruns to the City's portion of the Approved Budget, PATH shall not proceed with any additional work on the Project unless PATH has provided written notice to DPRCA, specifying and describing the additional work that is required and the cost to the City. The Parties hereto agree that in the event of cost overruns or budget shortfalls relating to a Project, DPRCA and PATH will work in good faith to determine current priorities, re-define the Project scope, and determine allocation of funds. The Commissioner or their designee, in their sole discretion, may or may not approve any additional work, cost overrun or modify an Approved Budget, allocating additional funds to the Project, provided that all modifications are duly priced and authorized in writing by the Commissioner or designee.
7. For each Project that incorporates both design and construction, the City may provide its Project funds to PATH in two phases where the first is paid for design and the second for construction. The City may pay in multiple installments – which may take the form of re-imbursements to PATH, but only as agreed upon in advance by PATH and the City. Notwithstanding the payment installments, the City may hold the last ten percent (10%) of its allocated Project funds until the Final Approval of a Project. Within thirty (30) days of granting Final Approval of the Project, the City shall pay to PATH the remaining ten percent (10%) holdback. Where the Project consists solely of design or engineering work, any holdback will be released upon receipt and acceptance of all deliverables.
8. Final Trail Design must be approved in writing by the Commissioner or his designee prior to issuance of a Notice to Proceed for construction.
9. PATH shall conduct, or cause to be conducted, periodic project management meetings for each Project, of which DPRCA, shall be informed by PATH, at which time the Commissioner(s) or his designee(s), and a PATH representative(s), shall review the



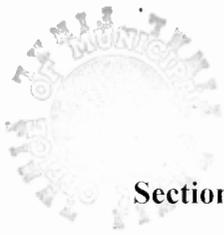
Project, including without limitation, all Project work proposed, all Project work performed and all Project financial information. DPRCA shall be consulted and shall make all final decisions regarding Projects.

10. Despite City review and approval, the quality and safety of Project work performed by or on behalf of PATH shall be the responsibility of PATH, and the City shall not be deemed liable in the event of any damages arising from a Project in connection with the work performed by or on behalf of PATH under this Agreement, unless any damages result from the intentional misconduct of the City, its agents, successor, assigns or onsite inspectors.
11. The Commissioner or his designee and a PATH representative shall perform a Final Inspection at the completion Project construction. The Commissioner shall notify PATH of the City's Acceptance and Final Approval of completed Project construction and such approval shall not be unreasonably withheld or delayed.

Section 2. Project Costs.

In addition to the provisions set forth elsewhere in this Agreement, the following requirements shall apply to Project costs.

1. In addition to the services contemplated in this Agreement, PATH may from time to time contribute significant funding to a Project. Where the Approved Budget consists of both City and PATH funding, the City's portion or contribution to the Project shall not exceed the Project amount authorized by the Atlanta City Council in the Plan.
2. The Approved Budget's Project costs shall include, without limitation, the cost of labor, materials, consultant fees, construction management fees, survey and engineering fees, public notification costs, printing and courier costs, bond premiums (payment and performance), permit fees, impact fees, percent-for-art fees, equipment (acquired or rented), utility hookup costs and fees, environmental site assessments, hazardous material removal, environmental mitigation and remediation, landscaping, erosion control measures, storm water runoff reduction compliance measures, tree recompense or tree ordinance compliance expenses, and cost of the acquisition of temporary construction easements and temporary access infrastructure if any.
3. Despite the Project funding provided by the City to PATH, the Project will be performed by PATH, by and through its contractors, subcontractors and suppliers, under those powers and authority granted to PATH by applicable law. The Parties acknowledge that PATH, and not the City, will become financially obligated to meet the Project financial requirements set forth in PATH's contracts with Project contractors, subcontractors, and suppliers.



Section 3. Details of Design Portion of Projects.

In addition to the provisions set forth elsewhere in this Agreement, the following requirements shall apply to Project design.

1. Prior to initiating any Project-related design or engineering work, PATH shall convene a scoping meeting with representatives from DPRCA, and as necessary, DPCD and DPW, to establish the Project framework; scope; public involvement process and other details required to move forward with preliminary design of the Project.
2. If requested by DPRCA, DPCD or DPW, PATH shall host Public Open Houses at the scoping stage and at the 30% design stage with assistance from DPRCA, DPCD or DPW staff. These Public Open Houses shall include an opportunity for members of the general public to review the project scope, 30% design if available and other project related documents and provide comments and suggestions to PATH and DPRCA, DPCD or DPW staff. PATH shall provide a sign-in sheet and notes from the Public Open House to DPRCA staff within 15 working days of the event.
3. PATH and/or its designees shall design, develop, and engineer each Project in accordance with the terms and conditions of this Agreement, the Plans, and in accordance with all applicable local, state and federal laws, regulations, policies and standards.
4. All Projects managed by PATH shall adhere to industry best practices for the design and operation of cycle tracks, sidewalks, shared-use paths and other high-quality bicycle and pedestrian facilities; including, but not limited to the latest editions of the City of Atlanta's street design guide, American Association of State Highway Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities, AASHTO Guide for the Planning, Design, and Operation of Pedestrian Facilities, National Association of City Transportation Officials (NACTO) Urban Bikeway Design Guide and the Manual of Uniform Traffic Control Devices (MUTCD).
5. At the 30%, 60% and 100% engineering stages, design development drawings, detailed construction drawings, specifications and other construction-related documents ("Construction Document Package") shall be prepared by PATH and submitted to the Commissioner or his designee, and all other applicable governmental agencies for approval, which approval shall not be unreasonably delayed or withheld. Approval of plans shall be signified by the addition of a stamp and signature by the DPRCA Commissioner or their designee. Any stamped and signed Construction Document Package shall be referred to herein as the "Approved Plans,"; said Approved Plans are an express condition of commencement of construction of any Project. Any significant changes or amendments to the Approved Plans must be expressly approved by the Commissioner or his designee in writing.



Section 4. Details of Construction Portion of Projects.

In addition to the provisions set forth elsewhere in this Agreement, the following requirements shall apply to the Project construction.

1. PATH and/or its designees shall construct each Project in accordance with the terms and conditions of this Agreement, in substantial conformity with the Approved Plans, and in accordance with all applicable local, state and federal laws, regulations, policies, building codes, and standards.
2. The construction of each Project shall be completed lien free, in a good workmanlike manner, and free of material defects.
3. PATH shall require that any and all contractors, subcontractors or suppliers comply with the applicable provisions of federal, state and local safety laws, and take all measures necessary in an effort to prevent accidents, damages, injury or loss to persons and property in the construction of each Project.
4. PATH shall repair, or shall cause to be repaired, any damage to City property, infrastructure, and/or facilities, or any private property caused by or related to construction of a Project. The City expressly reserves the right for the Commissioner or designee, at her/his sole discretion, after consultation with PATH where practicable, to halt construction, direct construction activities, or take appropriate measures in the event that such activities are a threat to the public health, safety or welfare, including without limitation, dangers or threats to persons or real or personal property. Despite the City's authority, the quality and safety of Project work performed by or on behalf of PATH shall be the responsibility of PATH, and the City shall not be deemed liable in the event of any damages arising from the Project in connection with the work performed by or on behalf of PATH under this Agreement, unless any damages result from the intentional misconduct of the City, its agents, successor, assigns or onsite inspectors.
5. PATH shall obtain and pay for all permits, licenses, certifications, and inspections necessary for the construction of a Project.
6. PATH will make every effort to employ "Green" materials and techniques in both design and construction efforts and shall report on actual use, percent demolition materials diverted from landfills.
7. All Projects shall have a warranty period, as described in Section 6 herein. At the end of the two (2) year warranty period for plants and trees as described in Section 6 of this Agreement, an inspection by the Commissioner or his designee(s) shall be made, at which date all maintenance functions are to be up to



date, all dead plant material under warranty replaced, all mulched areas topped up, all signs in place, and all systems tested and operational. If satisfactory, the Commissioner shall issue a certificate of "Final Acceptance" for the Project. Upon Final Acceptance any ongoing Project maintenance shall be a City obligation, and the City shall release to PATH any remaining funds to be paid for a Project.

Section 5. Maintenance.

1. PATH shall maintain a Project for the life of this Agreement. Maintenance shall include routine mowing, trimming, weeding and mulching of planting beds or tree wells, sweeping, regulatory or way finding sign replacements, and other "custodial" or minor repair work. The maintenance and warranty period for trees planted as replacements to meet the obligations of the tree protection ordinance(s) shall be two (2) years.
2. Where maintenance or required improvements of operational Project infrastructure, amenities or landscaping exceeds Five Thousand Dollars (\$5,000.00) ("Capital Maintenance"), the City through the Commissioner, will work with PATH in good faith to identify available funding or resources to complete the necessary Capital Maintenance. In accordance with Section 3-104(14) of the City of Atlanta Code of Ordinances Capital Maintenance for any Project in an amount less than One Hundred Thousand Dollars (\$100,000.00) per Project shall be paid to PATH, when and if funds are available, without the need for further City Council approval. Any Capital Maintenance in an amount exceeding One Hundred Thousand Dollars (\$100,000.00) shall require City Council approval.
3. PATH shall include in its construction contracts for each Park or Project that, in the event of a deviation of the Maintenance Plan, which deviation is caused by the actions or inactions of the contractor and which deviation is not approved in writing by PATH, the contractor may be deemed in default of its contract with PATH, which default shall be remedied in accordance with the default provisions of said construction contract.

Section 6. Warranties.

1. **Warranties of Quality and Condition.** PATH shall ensure that all Project contractors for the design and construction for each Project represent and warrant that: (a) Project services shall meet all of the requirements of this Agreement; (b) contractors shall perform all Project services in a professional, first-class manner and in accordance with the reasonable and customary industry standards; (c) materials used for Project services and all deliverables shall be of a suitable grade of their respective kinds for their intended uses, shall be free of any defect in design or workmanship, and shall be of merchantable quality and fit for the



purposes for which they are intended by the City; and (d) reasonable maintenance of Project works will not require procedures substantially in excess of those described in the approved Project design and plans.

2. Warranties of Title: PATH shall ensure that all of its Project contractors for each Project represent and warrant that: (a) except as otherwise disclosed in writing to the City and PATH, all aspects of the their services, including without limitation all of their work product prepared with regard to a Project, are and will be unique and original and do not and will not infringe upon any copyright, trademark, or other intellectual property, contract, or other right of any third party; (b) all of the services and final products they produce regarding a Project are and will be free and clear of any liens from any source whatsoever; (c) contractors have good, clear, and exclusive ownership and title to any Project work product and site improvements, and all intellectual property rights therein if any, and upon Final Approval, the City shall have good, clear, and exclusive ownership and title to such work product and improvements, including without limitation all intellectual property rights therein, if any.
3. Warranty Period: PATH shall ensure that Project contractors provide a warranty period regarding paragraphs (1) and (2) of this Section 6 that shall extend to a date that is twelve (12) months after the Final Approval of the Project, as described above. Notwithstanding the foregoing, the warranty for subsections (1)(b) and (1)(c) of this Section 6 shall be deemed to last for five (5) years after Final Approval, where a discovered defect in a deliverable or service was, as a practical matter, impossible or difficult to detect through the normal course of events or through the Final Approval process. As pertains to plant or tree materials, the warranty period shall be two (2) years. The warranty extension of five additional years shall not apply to, and the contractor shall have no further responsibility for any defect to the extent that the defect is caused by improper maintenance or a failure of maintenance by the City. The City shall be deemed to have performed proper maintenance where it complies with all maintenance instructions provided pursuant to this Agreement. For purposes of this Section 6, alterations or deteriorations resulting from ordinary wear and tear shall not constitute a defect.
4. City as a Third-Party Beneficiary: PATH shall cause the City to be a third-party beneficiary to any agreements between PATH and any contractors, subcontractors or suppliers of all warranty provisions herein required with the full rights to enforce such warranty provisions for each Project.
5. Discovery of Defects: If, at any time during the warranty period (normal or extended), the City or PATH discover that any of the warranties set forth in this Section 6 are not met, PATH shall have the right, but not the responsibility, to enforce all warranty provisions. As a third-party beneficiary of the warranties relating to each Project, the City shall also have the right to enforce the warranty



provisions with respect to each Project. Notwithstanding the foregoing, if PATH fails to cause the City to be a third-party beneficiary of the warranties relating to any Project under this Agreement, PATH shall be responsible for enforcing the warranties applicable to such Project.

6. Remedies for Defects: PATH shall ensure that its contracts address remedies that apply in the event of a Project contractor's breach of warranty. Specifically, if a breach of one of the foregoing warranties is discovered by the City or PATH, and PATH directs the contractor in writing to take corrective action, the Project contract must require the contractor to rework, repair, or remove and replace defective equipment or materials or re-perform defective services so that all warranty requirements are met. PATH and the City shall each have the right, but not the obligation, to enforce all warranty provisions, as described in Section 6 (5) above. PATH or the City, in consultation with the other Party and the contractor, shall set forth a reasonable period of time in which this reparative work must be performed. Where the contractor's reparative work is unsuccessful, or where the contractor is unwilling or unable to perform the reparative work within the time frame established by PATH or the City, PATH or the City, in consultation with the other Party, may direct the contractor in writing and the contractor agrees to either (i) cooperate with others assigned by PATH or the City to correct such defects and pay to PATH all actual costs and expenses reasonably incurred by PATH or the City in performing or in having performed corrective actions; or (ii) propose and negotiate in good faith an equitable reduction in the compensation to be paid or previously paid to the contractor under its contract with PATH in lieu of corrective action. All costs incidental to corrective actions including without limitation demolition for access, removal, reconstruction, retesting and re-inspection, as may be necessary to correct the defect and to demonstrate that the previously defective work conforms to the requirements of the contract between PATH and the contractor, shall be borne by the contractor or PATH and the City shall have no obligation to pay for same. The warranties set forth in this Section 6 shall apply with respect to corrected services or materials for an additional warranty period of twelve (12) months, beginning as of the date that the City and PATH have accepted the re-performed services.

Section 7. Bonds, Insurance and Indemnification.

1. Bonds and Insurance. PATH shall ensure that its contractor(s) for the construction of each Project provides performance and payments bonds for 100% of the costs of the construction work necessary for the Project. Such bonding requirement shall be included in the contract for the construction of the Project between PATH and its contractor. The City shall be named as a co-obligee on all required bonding. Additionally, PATH shall cause its contractor for the construction of each Project to maintain a policy of general liability insurance that names PATH and the City as additional insureds. Additionally, PATH shall require any engineer(s) or other professional contractor(s) to obtain and maintain



a professional liability policy of \$1,000,000.00 in addition to a general liability policy appropriate for the level of work provided, as determined in the reasonable discretion of PATH in consultation with the City's Office of Risk Management, and to name the City and PATH as additional insureds on all such applicable policies. Prior to PATH's issuing a Notice To Proceed for the construction of each Project, PATH shall provide to the City a copy of said bonds and an appropriate certificate of insurance for all applicable insurance policies.

2. Indemnification. PATH hereby releases and shall indemnify, defend, and hold harmless the City of Atlanta, its elected officials, officers, agents, employees, authorized representatives, successors, and assigns from and against any and all suits, actions, legal or administrative proceedings, claims, debts, demands, damages, liabilities, injuries, obligations, losses, judgments, charges, interest, attorneys' fees, costs, causes of action of every kind and character, whether in law or equity, and expenses of every kind or nature, whether arising before or after the termination of this Agreement and in any manner directly or indirectly caused, occasioned, or contributed to in whole or in part, or claimed to be caused, occasioned, or contributed to in whole or in part, by reason of any act, omission, fault or negligence whether active or passive of PATH, its officers, employees, agents, subcontractors or of anyone acting under its direction or control or on its behalf in connection with or incidental to this Agreement. A. This indemnification and hold harmless provision shall survive any termination or expiration of this Agreement.

3. Negligence and Waiver. PATH's aforesaid release, indemnity, and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnified, or held harmless. PATH specifically waives any immunity provided against this indemnity by any industrial insurance or workers' compensation statute. PATH further agrees that this agreement to indemnify, defend, and hold harmless the parties released shall not be limited to the limits or terms of the insurance, if any, required under this Agreement. This Indemnification and hold harmless provision shall survive any termination or expiration of this Agreement. PATH shall require, enforce, and otherwise include in all contracts between PATH and all of its Project contractors, terms that require PATH's contractor or contractors to indemnify and hold harmless the City, its officials, agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including but not limited to attorneys fees and costs, arising out of or resulting from the performance of the Project ("Indemnification Obligation"). The Indemnification Obligation shall not be waived or reduced because the City approved, required modification of or did not require modification of any aspect of the Project, including without limitation any plan, calculation or specification



submitted by or on behalf of PATH concerning or relating to the Project.

3. Relevant Agreements. PATH shall provide the City with copies of all relevant agreements, bonds and insurance certificates evidencing compliance with this Section 7 prior to and as a condition of commencement of work on each Project.

Section 8. Inspection and Maintenance of Records.

1. Inspection. The City shall be permitted but not required to inspect, monitor and evaluate the construction of each Project to ensure that the construction is performed in accordance with the terms of this Agreement, including without limitation, providing an onsite inspector to monitor the work. At any time the City determines that construction is resulting in materially defective work, the City shall provide notice to PATH, and PATH shall reasonably work with the City to cause any materially defective work to be remedied by the contractor. This provision notwithstanding, the quality and safety of the Project work performed by or on behalf of PATH is the responsibility of PATH, and the City shall not be deemed liable in the event of any damages arising from the Project unless any damages result from the intentional misconduct of the City, its agents, successor, assigns or onsite inspectors.
2. Records. PATH shall maintain all records and accounts in connection with the performance of this Agreement that accurately document all funds received by and all costs incurred by PATH, both direct and indirect, of whatever nature, and shall maintain all books, correspondence, instructions, drawings, receipts, vouchers, weigh tickets, testing results, inspection reports, photographic records and other documents related to each Project (collectively the "Records"). Such Records shall be kept in good order and in conformance with generally accepted accounting, project management and records retention principles. PATH shall maintain the Records for each Project for a minimum period of six years after Final Acceptance, unless a longer duration is specified by law. PATH shall maintain and provide the City with auditable reports of each Project's Costs at certain times during the Project as determined by the City in consultation with PATH. The City or its designated representatives shall have the right to inspect, review, analyze and/or copy any or all of the Records at all reasonable times, with advance notification to PATH. The City reserves the right to audit the Records at the City's expense.
3. As Builts. PATH shall require of all contractors and sub-contractors, measured "As Built" drawings of all work and provide two copies of all manufacturer's warranties, operators manuals, parts lists, keys, lists of materials and suppliers, paint codes etc. to be delivered prior to Final Approval. PATH shall deliver an As Built package including all materials as noted above to the City prior to Final Acceptance.



Section 9: Compliance with EBO and Non-Discrimination

1. PATH shall comply with City, State and Federal Equal Business Opportunity laws and guidelines.
2. PATH shall comply with Non-Discrimination laws, and will not discriminate based upon race, creed, color, religion, gender, national origin, domestic relationship status, familial status, marital status, parental status, age, disability, political affiliation, sexual orientation, or gender identity in the implementation of any aspect of the Agreement.

Section 10. Miscellaneous Provisions

1. Term. This term of this Agreement (the "Term") shall commence on the Effective Date and shall end on the later of (a) December 31, 2017 or (b) two (2) years following the last Project delegated to PATH by either DPRCA or DPW prior to December 31, 2017.
2. Entire Agreement. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof. This Agreement shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this Agreement is executed.
3. Binding Effect. This Agreement shall injure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.
4. Severability. In the event any provision or portion of this Agreement is held by any Court of competent jurisdiction to be invalid or unenforceable, such holdings shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.
5. Notices. Notices and reports described herein shall be delivered or sent to the Parties as follows.

To PATH:

President and Chief Executive Officer
The PATH Foundation
1601 Peachtree St
Atlanta, Georgia 30309
Fax: (404) 875.3242



Tel: (404) 875-7284

With a copy to:

General Counsel
(The PATH Foundation)

Insert address

Xxxxxx, Georgia

Fax:

Tel:

To the City:

Commissioner

Department of Parks, Recreation and Cultural Affairs

233 Peachtree St NE

Suite 1700

Harris Tower

Atlanta, Georgia 30303

Fax: 404-546-9355

Tel: 404-546-6762

With a copy to:

City Attorney

Department of Law

Suite 4100, City Hall Tower

68 Mitchell Street, S.W.

Atlanta, Georgia 30303

Fax: 404.546.9379

Tel: 404.330.6400

6. Waiver. Waiver of any term or condition of this Agreement shall be effective if in writing and shall not be construed as a waiver of any subsequent breach or waiver of the same term or condition, or a waiver of any other term or condition of this Agreement.
7. Governance. This Agreement shall be governed by the laws of the State of Georgia.
8. Default and Termination- PATH. Notwithstanding the foregoing, if PATH defaults in its performance of its obligations as set forth herein, and fails to cure such default within thirty (30) days of the Commissioner's written notice to PATH of such default (or if such default is not capable of being cured within thirty (30) days, PATH has not commenced and diligently pursued such cure to completion within a reasonable amount of time as determined by the



Commissioner), this Agreement may be terminated by the City upon five (5) days' prior written notice to PATH.

9. Default and Termination- The City. Notwithstanding the foregoing, if the City defaults in its performance of its obligations as set forth herein, and fails to cure such default within thirty (30) days of the written notice to the City by PATH of such default (or if such default is not capable of being cured within thirty (30) days, the City has not commenced and diligently pursued such cure to completion within a reasonable amount of time as determined by PATH, as the case may be, this Agreement may be terminated by PATH upon five (5) days' prior written notice to the City. Notwithstanding the foregoing in this Section 8(b), if the City defaults under any payment obligation to PATH hereunder, then the City shall cure the same within forty-five (45) days of written notice to the City by PATH and in the event the City fails to cure such payment default within the allowable forty-five (45) day period, then PATH may terminate this Agreement immediately.
10. Time is and shall be of the essence in this Agreement.



IN WITNESS WHEREOF, the City and PATH have executed this Agreement and caused their seals to be affixed and attested as of the day and year first above written.

Attest:

THE PATH FOUNDATION

Secretary

By: _____ (SEAL)
XXXXXXXXXXXX
President and Chief Executive Officer

Attest:

CITY OF ATLANTA, GEORGIA

(SEAL)
Municipal Clerk

By: _____
Mayor

Approved as to Form:

RECOMMENDED:

Sr. Assistant City Attorney

Commissioner, Department of Parks
Recreation and Cultural Affairs

RCS# 2863
7/01/13
3:21 PM

Atlanta City Council

CONSENT AGENDA (PAGES 3 - 14)

Except 13-R-3270 def

ADOPT

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

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

RCS# 2866
7/01/13
3:26 PM

Atlanta City Council

CONSENT AGENDA SECTION I

RECONSIDER

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

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

RCS# 2867
7/01/13
3:26 PM

Atlanta City Council

CONSENT AGENDA (PAGES 3 - 14)

EXCEPT 13-R-3270 bcp
ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

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

+

		07-01-13
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT	
1. 13-O-1043	36. 13-R-3285	
2. 13-O-1103	37. 13-R-3286	
3. 13-O-1106	38. 13-R-3287	
4. 13-O-1075	39. 13-R-3288	
5. 13-O-1087	40. 13-R-3289	
6. 13-O-1091	41. 13-R-3290	
7. 13-O-1092	42. 13-R-3291	
8. 12-O-1093	43. 13-R-3292	
9. 13-O-1099	44. 13-R-3293	
10. 13-O-1104	45. 13-R-3294	
11. 13-R-3305	46. 13-R-3295	
12. 13-R-3275	47. 13-R-3296	
13. 13-R-3276	48. 13-R-3297	
14. 13-R-3271		
15. 13-R-0015		
16. 13-R-3263		
17. 13-R-3264		
18. 13-R-3265		
19. 13-R-3267		
20. 13-R-3273		
21. 13-R-3298		
22. 13-R-3299		
23. 13-R-3300		
24. 13-R-3301		
25. 13-R-3302		
26. 13-R-3303		
27. 13-R-3304		
28. 13-R-0636		
29. 13-R-3277		
30. 13-R-3279		
31. 13-R-3280		
32. 13-R-3281		
33. 13-R-3282		
34. 13-R-3283		
35. 13-R-3284		