13-O -0032

AN ORDINANCE BY
FINANCE EXECUTIVE COMMITTEE

AN ORDINANCE TO CORRECT ORDINANCE 12-O-0961 ADOPTED BY CITY COUNCIL ON JULY 16, 2012 AND APPROVED AS PER CITY CHARTER SECTION 2-403 ON JULY 25, 2012, CORRECTING THE ORACLE FUND NUMBER, PROJECT NUMBER LISTED FROM 600394 TO 600395; AND FOR OTHER PURPOSES.

WHEREAS, Ordinance 12-O-0961 adopted by City Council on July 16, 2012 and approved pursuant to City Charter 2-403, July 25, 2012; attached hereto as Exhibit A contained an incorrect project number; and

WHEREAS, the Department of Parks, Recreation and Cultural Affairs desires to correct the error with the corrected project number as listed below.

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

SECTION 1: That the project number listed on Section 18 of Ordinance 12-O-0961 which reads 600394, is corrected to read as follows:

FUND	7701	Trust Fund
DEPT/ORG	140201	PRC Parks and Administration
ACCOUNT	381001	Land Rentals, General
FUNCTION/ACTIVITY	6210000	Parks Administration
PROJECT	**600395**	**Mims Park**
AWARD	69999	Funding Source for Non-Capital Trust Projects

SECTION 2: All ordinances and resolutions in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of said conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/Human Resources Committee

Caption: AN ORDINANCE BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO CORRECT ORDINANCE 12-O-0961 ADOPTED BY CITY COUNCIL ON JULY 16, 2012 AND APPROVED AS PER CITY CHARTER SECTION 2-403 ON JULY 25, 2012, CORRECTING THE ORACLE FUND NUMBER, PROJECT NUMBER LISTED FROM 600394 TO 600395; AND FOR OTHER PURPOSES.

Council Meeting Date: January 22, 2013

Requesting Dept.: Department of Parks, Recreation and Cultural Affairs

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to correct Ordinance 12-O-0961 adopted by City Council on July 16, 2012 and approved as per City Charter section 2-403 on July 25, 2012, correcting the oracle fund number.

2. Please provide background information regarding this legislation.

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

(a) **Contract Type:**

(b) **Source Selection:**

(c) **Bids/Proposals Due:**

(d) **Invitations Issued:**

(e) **Number of Bids:**

(f) **Proposals Received:**

(g) **Bidders/Proponents:**

(h) **Term of Contract:**

4. **Fund Account Center:**

5. **Source of Funds:**

6. **Fiscal Impact:** $0

7. **Method of Cost Recovery:**

This Legislative Request Form Was Prepared By: Trina Horton, Departmental Contracting Officer

EXHIBIT A

CITY COUNCIL
ATLANTA, GEORGIA

AN ORDINANCE BY **12-O-0961**

COUNCIL MEMBERS IVORY YOUNG, JR., ALEX WAN, KWANZA HALL, C.T. MARTIN, CLETA WINSLOW, H. LAMAR WILLIS, YOLANDA ADREAN, FELICIA A. MOORE, NATALYN ARCHIBONG AND CARLA SMITH

AS SUBSTITUTED AND AMENDED BY FINANCE/ EXECUTIVE COMMITTEE

AS SUBSTITUTED BY FULL COUNCIL

A SUBSTITUTE ORDINANCE AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY, TO ENTER INTO AND EXECUTE A FIFTY YEAR LEASE WITH THE NATIONAL MONUMENTS FOUNDATION, INC., FOR APPROXIMATELY SIXTEEN (16) ACRES OF CITY OWNED PROPERTY, WHEREBY THE TERMS OF THE LEASE WILL INCLUDE THE FOUNDATION'S DEVELOPMENT OF HISTORIC MIMS PARK AT NO COST TO THE CITY, AND THE FOUNDATION'S MAINTENANCE OF THE SAME; AND AUTHORIZING THE WAIVER OF CITY CODE SECTION 2-1547 REGARDING THE PROCEDURES FOR LEASING CITY-OWNED REAL PROPERTY, FOR PURPOSES OF ENTERING THIS LEASE, WHERE SAID WAIVER IS BASED UPON THE UNIQUE CIRCUMSTANCES OF THE PROPOSED PARK; AND REQUIRING CERTAIN PREREQUISITE TRANSACTIONS TO OCCUR PRIOR TO EXECUTING THE LEASE; AND FOR OTHER PURPOSES.

WHEREAS, in the late 19th century, Mims Park was donated to the City of Atlanta (hereinafter the "***City***") by former Mayor, Livingston Mims. That park was an Olmstead design and was located at the site where Bethune Elementary School currently stands; and

WHEREAS, the elementary school eventually took over the Mims Park site, and Mims Park was never relocated; and

WHEREAS, Rodney Mims Cook Jr. (hereinafter "***Mims Cook***") is a descendant of Livingston Mims. He is a highly-respected international authority on classical architecture and urban planning. Mims Cook has been encouraged by his father, Rodney Mims Cook, Sr., to rebuild Mims Park, using the original Olmstead plan, at a location close to the site of the original park; and

WHEREAS, Mims Cook is the Founder and President of the National Monuments Foundation (hereinafter "***NMF***"), a public non-profit organization whose purpose is to build self-sustaining monuments, museums, parks and civic spaces that will be destination landmarks of national, historical and aesthetic significance, and that will uplift the communities in which they are built through a classical approach; and

WHEREAS, NMF has identified sixteen acres of mostly undeveloped land two blocks from the original Mims Park location, and has presented a proposal (hereinafter "***Proposal***") to the City

whereby NMF will develop the land into Historic Mims Park (hereinafter the "***Park***", as more specifically defined in Section 3 below) at no cost to the City; and

WHEREAS, the sixteen acres (hereinafter the "***Premises***", as further defined in Section 1 below) are located in the area shown on Exhibit A hereto; and

WHEREAS, Historic Mims Park would honor the contributions of many generations of the Mims family to the City of Atlanta and to the Civil Rights movement. The Atlanta City Council honored the Mims family by proclamation on December 5, 2011. In addition to donating the original Mims Park, the family's contributions include two family members serving as Atlanta Mayor and the donation of the property for the original City Hall. The proclamation also honored Rodney Mims Cook Sr. for his sacrifices during the Civil Rights struggles in the 1960s and 1970s, including opposing the Peyton Road barricade and promoting the seating of State Senator Julian Bond. Because of Mims Cook's advocacy of racial equality, his entire family received death threats, his children had to be driven to school by police, and a cross was burned on the family's front lawn; and

WHEREAS, according to the Proposal, Historic Mims Park will be dedicated to Atlanta's contribution to peace and civil rights. It will include passive green space, water features, public art, educational components, an urban garden, and numerous other amenities related to use for park, recreational and cultural purposes. The specific contents of the Park are described in Section 3 below; and

WHEREAS, Mims Cook and NMF have a history of successfully performing grand projects in Atlanta. Mims Cook coordinated the design and construction of the World Athletes Monument (commonly known as the Prince of Wales Monument) at Pershing Point on Peachtree Street, which commemorates the 1996 Centennial Olympic Games. NMF choreographed the design and construction of the Millennium Gate Museum at Atlantic Station which includes the most comprehensive museum of Georgia history in the state, and which is the largest classical monument erected in the United States since the Jefferson Memorial. At age fourteen, Mims Cook initiated a campaign to successfully save the Fox Theatre, and was subsequently awarded the National Trust for Historic Preservation Prize by trust President James Biddle; and

WHEREAS, consistent with its mission, NMF will seek to strengthen the Westside TAD community in which the Park is located. The Park will generate numerous jobs, including construction, park maintenance, facility maintenance, restaurant and museum operations, urban farming, and concessions sales. NMF's objective is to fill approximately 50% of these entry level positions and approximately 20% of the positions overall with residents of the Westside TAD community; and

WHEREAS, consistent with NMF's mission, the Park will be self-sustaining. All of NMF's net income from the Park will be used solely for the improvement, maintenance, repair, operation and management of the Park, for which NMF will have full responsibility at no cost to the City; and

WHEREAS, in order for NMF to implement the Proposal, it will need control of the 16-acre Premises. The Premises are currently owned by different entities, as reflected on Exhibit A hereto; and

WHEREAS, approximately 4.7 acres of the Premises, divided into 13 parcels, are owned by Invest Atlanta. The parcels are identified on Exhibit A, and have the following addresses: 217 Elm Street; 227 Elm Street; 231 Elm Street; 235 Elm Street; 243 Elm Street; 257 Elm Street; 261 Elm Street; 267 Elm Street; 279 Elm Street; 289 Elm Street; 641 Spencer Street; 628 Thurmond Street; and 641 Thurmond Street. Invest Atlanta is donating these 4.7 acres to the City by legislation 12-O-0960; and

WHEREAS, approximately 8.4 acres of the Leased Premises are within the purview of the Department of Watershed Management, and are shown in green on Exhibit A. This land is subject to certain bond covenants that require that the Department of Watershed Management receive fair market value for the parcels. An appraisal is being performed to determine the fair market value; and

WHEREAS, seven of the parcels that comprise the Leased Premises are owned by private parties, as shown in white on Exhibit A. NMF is in the process of purchasing three of these parcels which are located at 273 and 283 Elm Street, and Vine Street NW Rear; and

WHEREAS, four parcels that are privately owned may be included in the Premises in the future if the City obtains ownership of the property. The parcels are located at 205, 209, 211, and 221 Elm Street; and

WHEREAS, the parties agree that NMF will transfer each Private Parcel to the City in the Parcel's as-is condition after NMF's acquisition. The City, at no cost to NMF, shall be responsible for resolving all tax liens (if any), and all City liens including without limitation utility liens (if any);

WHEREAS, the City and NMF have negotiated terms for implementation of the Proposal. Those terms are set forth on the term sheet attached hereto as Exhibit B (hereinafter "***Term Sheet***"); and

WHEREAS, pursuant to the Term Sheet, the City's Department of Parks, Recreation and Cultural Affairs would take possession of all of the parcels comprising the Premises, and would lease the entire Premises to NMF (hereinafter the "***Lease***"); and

WHEREAS, because of the unique circumstances of this transaction, most notably the rebuilding of a previously-donated and destroyed park by a descendant of the donor, the Lease will be awarded without a competitive process. After reviewing the facts of this situation, the Chief Procurement Officer agrees that the situation is unique and supports waiving the Procurement Code for the purpose of entering the Lease; and

WHEREAS, the elements and scale of the proposed Park will provide direct investment in the City, will create numerous jobs, will enhance the economic and aesthetic conditions in the

surrounding community, and will establish a remarkable, educational and artistic City landmark that will be enjoyed by generations of Atlanta residents and visitors; and

WHEREAS, it is in the City's best interest to enter the Lease with NMF.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ATLANTA GEORGIA HEREBY ORDAINS as follows:

Section 1: The Mayor, on behalf of the City, is authorized to enter into and execute a fifty-year Lease with the National Monuments Foundation for the Premises, as shown on Exhibit A. The Premises is comprised of all of the property that is: 1) bordered by Joseph E. Boone Boulevard on the north and Elm Street on the west; and 2) bordered on the southern and eastern perimeters by Spencer Street between Elm and Vine Streets, Vine Street between Spencer and Thurmond Streets, Thurmond Street between Vine and Walnut Streets, and Walnut Street between Thurmond Street and Joseph E. Boone Boulevard; and 3) excluding the parcels located at 205, 209, 211 and 221 Elm Street; and 4) excluding the parcels located at 583 and 587 Tyler Street and 582 Joseph E. Boone Boulevard. The total acreage and exact legal description of the Premises shall be determined by a boundary survey (hereinafter the "***Survey***") performed by a licensed surveyor commissioned by the City. To the extent that there is any conflict between Exhibit A and the results of the Survey, the term "Premises" shall refer to the area defined by the Survey, and the Lease shall be for the location defined by the Survey. The Lease shall not be executed until the Survey is complete and the resultant definition of the Premises is set forth in the Lease.

Section 2: The terms of the Lease shall be substantially similar to those provisions set forth on the Term Sheet attached hereto as Exhibit B, which include without limitation the points set forth in Section 3 through Section 11 below.

Section 3: NMF shall develop the Leased Premises, as set forth in this Section 3, to create Historic Mims Park (the Premises plus the landscaping, water features, buildings and other improvements thereon, and including the Sculptures and Removable Works as defined below, collectively, hereinafter the "***Park***"), all at no cost to the City:

a) The rectangular portion of the Premises bordered by Joseph E. Boone Boulevard at the north, Vine Street at the east, Thurmond Street at the south, and Elm Street at the west (hereinafter the "***Olmsted Plan Park***") shall be a public park. Its design will be materially consistent with the original park design created by the Olmsted Brothers in the late 19th Century. This area shall include passive green space, gardens, a community pavilion, and two large fountains. It may also include urban gardens.
b) The Olmsted Plan Park shall include stand-alone monuments and sculptures of Georgia peacemakers from the 1733 founding of the Colony of Georgia to the present (hereinafter the "***Sculptures***"). These Sculptures may include Dorothy Bolden, Reverend Ralph David Abernathy, Julian Bond, Joseph Boone, R. Mims Cook Sr., W.E.B. DuBois, Mayor Maynard Jackson, Coretta Scott King, Dr. Martin Luther King, Jr., Mayor Livingston Mims, and Booker T. Washington.

c) An 80 foot Peace Column topped with Chief Tomochichi (Chief of the Yamacraw Tribe and Co-founder of Georgia) shall be located in the Olmsted Plan Park. A museum may be located in the base of the Peace Column.

d) The area immediately to the south of the Olmsted Park Plan Park, bordered by Thurmond Street at the north, Vine Street at the east, Spencer Street at the south, and Elm Street at the west, but excluding the privately-owned parcels located at 205, 209, 211 and 221 Elm Street unless added to the Leased Premises as described in Section 8 below, (hereinafter the "***Pantheon Parcel***") shall contain a 25,000 square foot Peace Pantheon at its southern tip. The Pantheon will include commemorative sculptural works of peacemakers throughout history. It will also include bronze relief panels commemorating Georgians who have contributed to establishing peace.

e) The area bordered by Joseph E. Boone Boulevard on the north, Walnut Street on the east, Thurmond Street on the south and Vine Street on the west, but excluding the three privately owned properties located at 583 and 587 Tyler Street and 582 Joseph E. Boone Boulevard, (hereinafter the "***Eastern Parcel***") shall include a lake that will serve as a water retention pond.

f) The Eastern Parcel will contain a Center for Tourism at the entrance which will serve as a welcome and information station.

g) The Eastern Parcel will include an Urban Farm that may contain farming gardens, greenhouses, a nursery greenhouse, farm vocation centers and a playground. It may also contain a Farmers' Market housed in a colonnaded structure. Though the Urban Farm may be managed and operated by a farming cooperative, and though portions of the Urban Farm will be used by individual farmers, the Urban Farm will be open to the public at designated times each day for observation, educational classes, and/or farming-related activities. The playground shall also be open to the public.

h) Approximately one (1) acre of property at the northern edge of the Eastern Parcel bordering Joseph E. Boone Boulevard (hereinafter the "***Amenities Property***"), the exact boundaries of which shall be designated on the Survey, shall be utilized for commercial public accommodations, contingent upon receipt of the necessary zoning approval. It is anticipated that the Amenities Property will contain two restaurants facing Joseph E. Boone Boulevard.

i) The northern portion of the Pantheon Parcel (hereinafter the "***Headquarters Property***") shall not be deemed part of Historic Mims Park, shall not be designated as a public park, and instead may be utilized for private commercial purposes. The Headquarters Property shall be no greater than two (2) acres, and the exact boundaries shall be designated on the Survey. It is anticipated that the Headquarters Property will contain the Prince of Wales Foundation Built Environment Headquarters, which will have flanking buildings utilized for office space. This is the only portion of the Premises that may be closed to the general public.

j) NMF may not construct any other buildings on the Premises other than those listed above in this Section 3 (the Buildings, which shall not include the Peace Pantheon and the Peace Column). The collective ground area of all of the Buildings shall not exceed five (5) acres. All Buildings will be LEED certified or certified by an equivalent recognized designation system acceptable to the City in its reasonable discretion.

k) NMF will develop no fewer than fifty (50) public parking spaces serving the Park. The spaces will provide parking options for general park users, and therefore must be in

addition to parking spaces specifically dedicated for employees and/or visitors of a specific Building. By way of example, parking created for the Headquarters Property may not be counted in determining whether fifty public spaces exist. NMF's specific parking plans shall be consistent with the zoning ordinance, and shall not be deemed final until approved by the Mayor or her/his designee.

l) None of the work performed by or at the direction of NMF pursuant to the Lease shall diminish or supersede the City's obligation to comply with the requirements of the First Amended Consent Decree, set forth in Civil Action File No. 1:98CV1956TWT.

m) An historic oversight committee of no fewer than three and no greater than five people will be created to review all proposed and existing historical elements of the Park for accuracy and authenticity. Committee members will be selected by NMF, and the selection will not be deemed final until approved by the Mayor or his designee, where such approval will not be unreasonably denied, conditioned or delayed. Committee members must be accomplished historians who specialize in Atlanta history, human rights history, and/or historical presentation.

Section 4: Phase 1 of the Park will be completed by July 4, 2014 and will include: the Olmsted Plan Park with the exception of the Sculptures and the Peace Column; the Center for Tourism; the lake/ water retention pond on the Eastern Parcel; the Urban Farm; the greenhouses; the playground; the Farmers' Market; and the landscaping of the undeveloped portions of the Premises so that they are in a good, attractive, sanitary and safe condition. Phase 2 includes construction of the Peace Column, including the museum located therein, and has an anticipated completion date of July 4, 2015. Phase 3 includes construction of the Peace Pantheon and restaurants, and erection of the Sculptures, and has an anticipated completion date of July 4, 2016. Phase 4 includes construction of the Prince of Wales Headquarters, flanking buildings and any other adjacent office space, and has an anticipated completion date of July 4, 2017.

Section 5: NMF must have possession of 50% of the construction costs of the Olmsted Plan Park by no later than July 4, 2013. For each of the remaining Phases, NMF will not begin construction until it has received a financial commitment of no less than 50% of the construction costs of the Phase.

Section 6: The entire Leased Premises will be within the purview of the Department of Parks, Recreation and Cultural Affairs. Upon transfer to the Department of Parks, Recreation and Cultural Affairs of the Leased Premises, the entire Premises will be deemed and is hereby dedicated in perpetuity as public park land, except for the Headquarters Property. With the exception of the Headquarters Property, the Leased Premises shall be used for park and recreational (including without limitation cultural) purposes.

a) The Amenities Property shall be dedicated for commercial space utilized solely for public accommodations and other park amenities.

b) NMF may maintain the Amenities Property as passive green space that can be utilized by the public prior to construction of the commercial improvements, and said use shall not convert the land into non-commercial space. The land is and shall remain dedicated for commercial purposes.

Section 7: The Headquarters Property must be owned by the City of Atlanta in perpetuity, and this requirement shall be reflected in a covenant on the Headquarters Property deed. NMF may maintain the Headquarters Property as passive green space that can be utilized by the public prior to construction of the improvements, and said use shall not convert the area into park land or land dedicated for public use. The land is and shall remain dedicated for private use.

Section 8: Annual rent for the Premises shall be as follows:

a) NMF shall pay the City annual rent for the ground area of the Headquarters Property and Amenities Property, including the Perimeters of said Properties, in an amount equal to $3,968.40 per acre, which is 8% of the fair market value of the land. The fair market value of the land was determined by an independent appraisal performed in July 2012. The annual rental amount shall be adjusted every five years as described in the Term Sheet. The City shall deposit all rent into a trust fund, whose account number is set forth in Section 18 below, and said funds may be utilized solely for improvement, maintenance and repair of Historic Mims Park.
b) NMF shall owe no rent for any portion of the Leased Premises other than the Buildings located on the Headquarters Property and Amenities Property. In exchange for a waiver of rent regarding the remainder of the Leased Premises, NMF shall have full responsibility for the maintenance, repair, operation and management of the Leased Premises (including without limitation the Buildings), including utilities and all other costs associated therewith.

Section 9: Title to any and all improvements made upon the Headquarters Property and the Amenities Property by or at the direction of NMF shall pass to and be vested in the City upon expiration or termination of the Definitive Agreement. Title to any and all improvements made to or upon any portion of the Leased Premises other than the Headquarters Property and the Amenities Property, which are made by or at the direction of NMF, shall pass to and be vested in the City upon completion of each improvement, except that NMF shall retain ownership of the Sculptures and the Removable Works.

Section 10: In the event that the City receives ownership of any or all of the parcels located at 205, 209, 211 and 221 Elm Street, the Mayor, on behalf of the City, is authorized to amend the Lease to add each of the newly-acquired parcels to the definition of "leased premises". The amendment(s) may be executed without obtaining further legislative approval.

Section 11: Section 110-3(i) of the Code of Ordinances of Atlanta, Georgia is hereby waived such that NMF is authorized to receive vending permit(s) for its Concessions Program for locations of the Park designated in the Lease, provided that NMF meets all of the criteria set forth in Atlanta Code of Ordinances section 30-1401 through 30-1460, entitled "Vending on Public Property", as may be amended and re-codified from time to time. NMF shall be permitted to operate its Concessions Program without paying a vending fee.

Section 12: The requirements of the City's Procurement and Real Estate Code, including but not limited to City Code Section 2-1547 regarding the leasing of City-owned real property, are hereby waived for purposes of the Lease only.

Section 13: The Mayor may not execute the Lease unless and until all three of the following occur:

a) DPRCA's purchase of the 8.4 acres of Watershed property shown in green on Exhibit A is authorized by duly enacted legislation;
b) The City's acceptance from Invest Atlanta of the 4.7 acres of property shown in yellow on Exhibit A, and payment of all encumbrances located on said property, are authorized by duly enacted legislation; and
c) The City's acceptance from NMF of the parcels located at 273 and 283 Elm Street and Vine Street NW Rear, as shown on Exhibit A, is authorized by duly enacted legislation.

Section 14: The City Attorney or her designee is hereby directed to prepare for execution by the Mayor, the Lease and any and all other deeds, instruments, and other documents that the City Attorney deems necessary or advisable to carry out the purposes and intent of this Ordinance, but excluding the documents arising from the transactions described in Section 13 above.

Section 15: In addition to his authority to execute the Lease, the Mayor, on behalf of the City, is authorized to execute any and all deeds, instruments and other documents that the City Attorney deems to be necessary or advisable in order to carry out the purposes and intent of this Ordinance, except for documents arising from the transactions described in Section 13 above which may not be executed until passage of the authorizing legislation described in the Section.

Section 16: The Lease, deeds, instruments and documents referenced in Section 15 must be approved as to form by the City Attorney or her designee prior to execution by the Mayor.

Section 17: The Lease, deeds, instruments and other documents referenced in Section 15 shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the Lease, deed, instrument or document has been signed by the Mayor, attested to by the Municipal Clerk and delivered to NMF.

Section 18: The City shall deposit all rent received pursuant to the Lease into the following trust account, and the account funds may be utilized solely for improvement, maintenance and repair of Historic Mims Park:

Fund	7701	TRUST FUND
Dept\Org	140201	PRC PARKS ADMINISTRATION
Account	3810001	LAND RENTALS, GENERAL
Function\Activity	6210000	PARK ADMINISTRATION
Project	600394	MIMS PARK
Award	69999	FUNDING SOURCE FOR NON-CAPITAL TRUST PROJECTS

Section 19: Every six months, beginning on the first Community Development Human Resources ("CDHR") Committee meeting of 2013, a presentation will be made by NMF and the Department of Parks, Recreation and Cultural Affairs ("DPRCA") to the CDHR Committee regarding the status of the construction of Historic Mims Park, and such presentations shall continue until completion of the construction and final acceptance of the work by DPRCA.

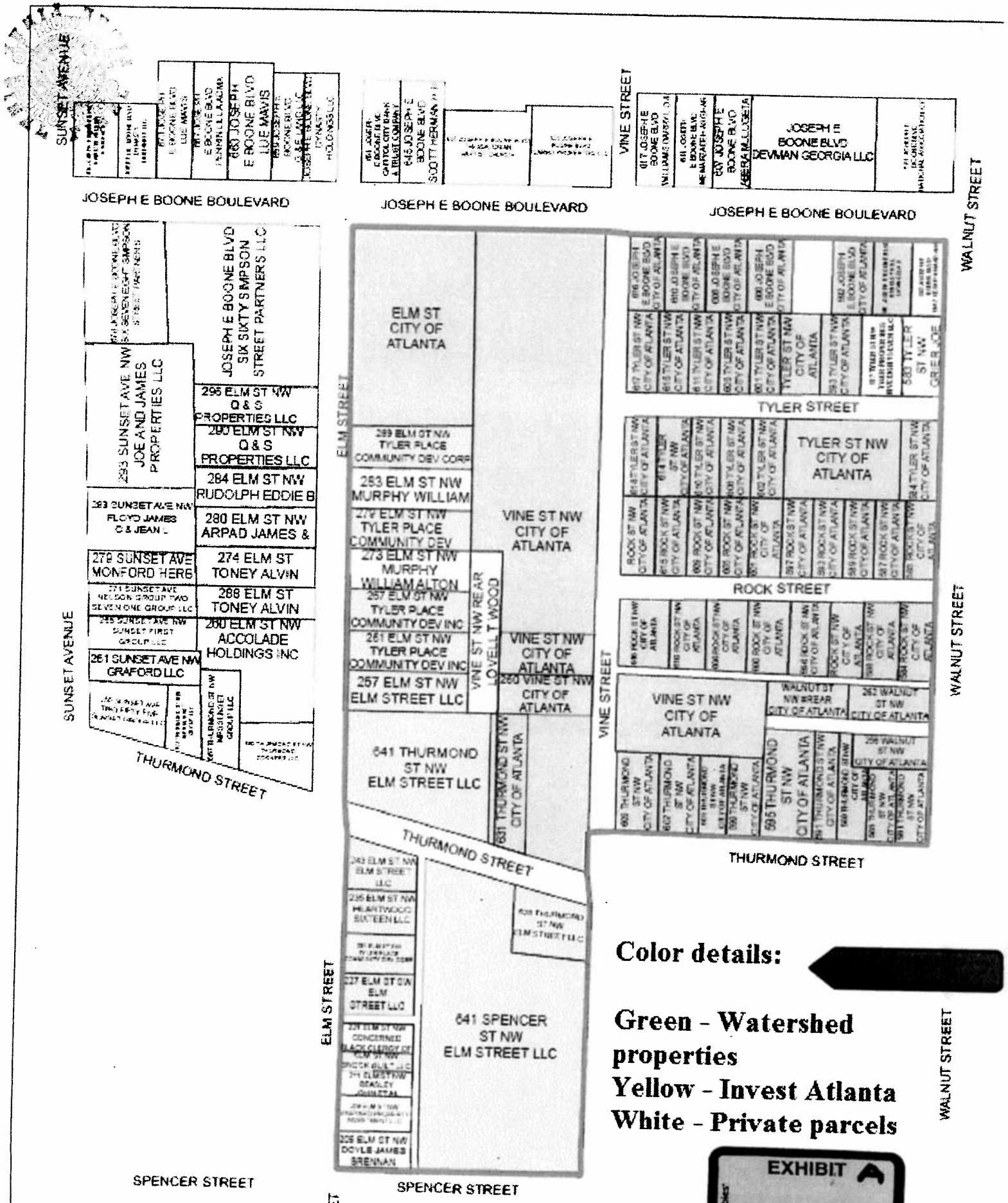
Section 20: All ordinances and parts of ordinances in conflict herewith are hereby waived for purposes of this Ordinance only, and only to the extent of the conflict.

A true copy,

Deputy Municipal Clerk

ADOPTED as amended by the Atlanta City Council **July 16, 2012**
APPROVED as per City Charter Section 2-403 **July 25, 2012**

618170v1



Ownership information is taken from the 2010 Tax Digest of Fulton County and represents [illegible] 2010.

CITY OF ATLANTA

TERM SHEET FOR LEASE OF MIMS PARK PROPERTY

Date: July 11, 2012

The following are the proposed terms for an agreement between the City of Atlanta ("***City***") and National Monuments Foundation ("***NMF***") for the lease of approximately sixteen (16) acres of land as depicted on Exhibit A hereto (the "***Leased Premises***" or the "***Premises***").

This Term Sheet is not intended to create or constitute any legally binding obligation between the City and NMF. The Term Sheet consists of certain general terms that exist to provide an outline and structure for drafting a document ("***Definitive Agreement***") to be executed by and between the parties to consummate the lease of the Premises by the City to NMF for the development, operation and maintenance of Historic Mims Park, and nothing herein precludes the Definitive Agreement containing other terms besides those addressed conceptually in this Term Sheet. Neither the City nor NMF will have any liability to the other with respect to this Term Sheet. If a Definitive Agreement is not prepared, authorized, executed or delivered for any reason, neither the City nor NMF will have any liability to the other based upon, arising from, or relating to this Term Sheet. This Term Sheet has not been legislatively approved by the City and that the City's signatory to the Term Sheet is not authorized under the City's Charter and Code of Ordinances to execute contracts on behalf of the City or bind the City to contractual obligations.

Should a Definitive Agreement be executed by the parties, the parties' rights and obligations with respect to the matters described in this Term Sheet shall be governed by the Definitive Agreement without reference to this Term Sheet.

EXHIBIT B TO ORDINANCE 12-O-0961

Leased Premises

The Premises, which is depicted on Exhibit A, consists of approximately 16 acres of undeveloped land. The Premises is bordered by Joseph E. Boone Boulevard on the north and Elm Street on the west. The southern and western perimeter of the Premises is comprised of: Spencer Street between Elm and Vine Streets; Vine Street between Spencer and Thurmond Streets; Thurmond Street between Vine and Walnut Streets; and Walnut Street between Thurmond Street and Joseph E. Boone Boulevard. The Premises will not include the Private Parcel (as defined below) located at 205, 209, 211 and 221 Elm Street unless and until the Private Parcel is purchased by NMF or its representative, transferred to the City, and added to the Definitive Agreement pursuant to the terms set forth herein below. In addition, the Premises will not include the parcels located at 583 and 587 Tyler Street and 582 Joseph E. Boone Boulevard.

Currently, 13.1 acres of land belong to the City or to Invest Atlanta, as shown in green and yellow on Exhibit A. At the time the lease is executed, all 13.1 acres will be owned by the City. The property will be free of all utility liens, no taxes will be owed on the property, and any necessary reimbursements to the Federal Department of Housing and Urban Development and to the City's Department of Watershed Management regarding the Premises will have occurred.

In addition to the 13.1 acres, the Premises includes seven parcels that are currently owned by private individuals, namely 205, 209, 211, 221, 273 and 283 Elm Street, and Vine Street NW Rear (collectively the "***Private Parcels***"). NMF will purchase the Private Parcels, or cause them to be purchased, and will transfer them in fee simple to the City, all at no cost to the City. NMF must have ownership or control of the Private Parcels north of Thurmond Street, namely 273 and 283 Elm Street and Vine Street NW Rear, at the time of entering the Definitive Agreement. NMF will transfer to the City ownership of each Private Parcel north of Thurmond Street, and each Private Parcel south of Thurmond Street which it has acquired, at the time of execution of the Definitive Agreement. In the event that one or more of the Private Parcels south of Thurmond Street has not been acquired by NMF at the time of entering the Definitive Agreement, NMF will make (or cause to be made) commercially reasonable good faith efforts to purchase the remaining Private Parcels as quickly as possible, and will proceed diligently in that effort until each of the Private Parcels is acquired by NMF. NMF will transfer these Private Parcels to the City at the time of acquisition, except that upon mutual agreement of the parties, NMF may wait to transfer ownership so that the transfer of some or all of the Private Parcels south of Thurmond Street occur in one transaction.

For the Private Parcels transferred after execution of the Definitive Agreement, the Definitive Agreement will be amended at the time of transfer to include the newly acquired Private Parcel in the definition of the Leased Premises. The original authorizing legislation for the Definitive Agreement will anticipate these amendments and will authorize them to occur without the need for further legislative approval.

The parties agree that NMF will transfer each Private Parcel to the City in the Parcel's as-is condition at the time of NMF's acquisition. The City, at no cost to NMF, shall be responsible for resolving any and all City liens, including without limitation utility liens and all tax liens. With the exception of this City obligation, the Leased Premises will be received by NMF in its "as-is"

condition, as the same exists on the effective date of the Definitive Agreement, and as the later-acquired Private Parcels exist at the time they are added to the Leased Premises by Amendment.

The total acreage to be leased and the exact boundaries thereof shall be determined by a boundary survey (the "***Survey***") performed by a licensed surveyor commissioned by the City. NMF may, but shall not be required to appoint its own surveyor to determine acreage and boundaries of the Premises. The City shall require its surveyor to perform the Survey in cooperation with the NMF-selected surveyor, though the City's surveyor shall make all final determinations and issue the final report.

Lease Term

The Lease term shall begin on the date that the Definitive Agreement is sealed by the Atlanta Clerk of Council, and shall continue for fifty years thereafter.

Development and Required Elements of Leased Premises

NMF shall be responsible for developing the Leased Premises to create Historic Mims Park (the Premises plus the landscaping, water features, buildings and other improvements thereon, and including the Sculptures and Removable Works as defined below, collectively the "***Park***"). A charrette of the proposed, fully developed Historic Mims Park is attached hereto as Exhibit B; the charrette is not binding. At a minimum, the Premises and Park shall include the following:

- The rectangular portion of the Premises bordered by Joseph E. Boone Boulevard at the north, Vine Street at the east, Thurmond Street at the south, and Elm Street at the west (the "***Olmsted Plan Park***") shall be a traditional public park. Its design will be materially consistent with the original park design created by the Olmsted Brothers in the late 19th Century, as depicted on Exhibit B hereto. This area shall include passive green space, gardens, a community pavilion, and two large fountains. It shall also include stand-alone monuments and sculptures of Georgia peacemakers from the 1733 founding of the Colony of Georgia to the present (the "***Sculptures***"), such as: Dorothy Bolden; Reverend Ralph David Abernathy; Julian Bond, Joseph Boone; R. Mims Cook Sr.; W.E.B. DuBois; Mayor Maynard Jackson; Coretta Scott King; Dr. Martin Luther King, Jr.; Mayor Livingston Mims; and Booker T. Washington. Throughout the term of the Definitive Agreement, NMF may add Sculptures of other individuals to the Olmsted Plan Park as NMF deems fit, contingent upon approval by the Mayor or her/his designee of the individual selected by NMF, where such approval shall not be unreasonably denied, conditioned or delayed.

- An 80 foot Peace Column topped with Chief Tomochichi (Chief of the Yamacraw Tribe and Co-founder of Georgia) shall be located in the Olmsted Plan Park. A museum shall be located in the base of the Peace Column. It is anticipated that there will be a larger museum located immediately across Elm Street, on the western side of the road, and that NMF will construct an underground tunnel between the Peace Column and the larger museum. NMF may build the underground tunnel provided that: 1) NMF does not jeopardize the structural integrity and safety of any underground infrastructure; 2) NMF receives the necessary approvals and permits for the work; and 3) Entry to the tunnel can be closed to the public from both sides. The Chiefs of the Atlanta Police Department and

Atlanta Fire Rescue Department or their designees shall have the right to order that the tunnel be closed upon her/his/their reasonable determination that closure is needed to avoid a substantial public safety risk, but only until such public safety risk is materially eliminated.

- The area immediately to the south of the Olmsted Park Plan Park shall be bordered by Thurmond Street at the north, Vine Street at the east, Spencer Street at the south, and Elm Street at the west (the "***Pantheon Parcel***"), except that the Pantheon Parcel will not include the Private Parcels located at 205, 209, 211 and 221 Elm Street unless and until the properties are transferred to the City by NMF or its representative and added to the definition of "Leased Premises" through amendment of the Definitive Agreement.

- The northern portion of the Pantheon Parcel (the "***Headquarters Property***") shall not be deemed part of Historic Mims Park, shall not be designated as a public park, and instead may be utilized for private commercial purposes. The Headquarters Property shall not exceed two (2) acres, and its exact boundaries shall be designated on the Survey. It is anticipated that the area of the Pantheon Parcel designated for private commercial purposes will contain the Prince of Wales Foundation Built Environment Headquarters, which will have flanking buildings utilized for office space. This is the only portion of the Premises that may be closed to the general public.

- The remainder of the Pantheon Parcel shall be dedicated public park. It will contain a 25,000 square foot Peace Pantheon at its southern tip. The Pantheon will include commemorative sculptural works of peacemakers throughout history. It will also include bronze relief panels commemorating Georgians who have contributed to establishing peace. Throughout the term of the Definitive Agreement, NMF may add to the Peace Pantheon sculptural works and bronze relief panels commemorating other individuals as NMF deems fit, contingent upon approval by the Mayor or her/his designee of the individual selected by NMF, where such approval shall not be unreasonably denied, conditioned or delayed. The Peace Pantheon will be constructed during NMF's second phase of development of the Premises.

- The eastern portion of the Leased Premises shall be bordered by Joseph E. Boone Boulevard on the north, Walnut Street on the east, Thurmond Street on the south and Vine Street on the west, excluding the three privately owned properties located at 583 and 587 Tyler Street and 582 Joseph E. Boone Boulevard (the "***Eastern Parcel***").

- The Eastern Parcel will contain a Center for Tourism at the entrance which will serve as a welcome and information station.

- The Eastern Parcel shall include a lake that will serve as a water retention pond.

- The Eastern Parcel will include an Urban Farm that may contain farming gardens, greenhouses, a nursery greenhouse, farm vocation centers and a playground. It may also contain a Farmers' Market housed in a colonnaded structure. NMF will install an irrigation system at that location. It is anticipated that the produce grown at the Urban Farm will be utilized by the restaurants located on the Leased Premises, and that the produce will be sold to the public at the Farmers' Market. Though the urban farm may be

managed and operated by a farming cooperative, and though portions of the Urban Farm will be used by individual farmers, the Urban Farm will be open to the public at designated times each day for observation, educational classes, and/or farming-related activities.

- Urban Farm gardens may also be located at the northern portion of the Olmsted Plan Park facing Joseph E. Boone Boulevard, and at the southern portion of the Olmsted Plan Park.

- The property located at the northern edge of the Eastern Parcel bordering Joseph E. Boone Boulevard ("***Amenities Property***"), whose size shall not exceed one (1) acre and whose exact boundaries shall be designated on the Survey, will be designated by the City as a commercial portion of the Park containing public accommodations, contingent upon receipt of the necessary zoning approval. It is anticipated that the Amenities Property will contain restaurants.

- All buildings constructed by NMF on the Premises, (the "***Buildings***", which shall not include the Peace Pantheon or the Peace Column) must be located on the Eastern Parcel or the Pantheon Parcel. The Buildings that may be constructed are limited to those structures described above in this section. The Perimeter of each Building ("***Perimeter***") shall extend to twenty feet from every side of the Building that does not face right-of-way. For Building sides that face right-of-way, the Perimeter shall extend to twenty feet from the Building side or to the start of the right-of-way, whichever is less. The entire Perimeter of each Building shall be considered part of the Building area.

- The Headquarters Property shall not exceed a ground area of two (2) acres. The collective ground area of all of the Buildings shall not exceed five (5) acres. The exact size of each Building shall be consistent with the zoning ordinance, and will not be deemed final until approved by the Mayor or her/his designee, where such approval shall not be unreasonably denied, withheld or delayed. For purposes of this paragraph only, acreage calculations shall not include a Building's Perimeter, as that term is defined elsewhere in this section. All Buildings will be LEED certified or certified by an equivalent recognized designation system acceptable to the City in its reasonable discretion.

- The entire Leased Premises, other than the Headquarters Property, will be used for park and recreational (including cultural) purposes. The use of each Building located on the park land shall be consistent with the purpose established therefore in the Definitive Agreement. By way of example, the activity that occurs in the Urban Farm will be limited to farming-related activities and playground use. The activity that occurs in the Farmers' Market shall be consistent with that type of venue, including without limitation sale of fresh produce, flower sales, and cooking classes.

- NMF will develop no fewer than fifty (50) public parking spaces serving the Park. The spaces will provide parking options for general park users, and therefore must be in addition to parking spaces specifically dedicated for employees and/or visitors of a specific Building. By way of example, parking created for the Headquarters Property may not be counted in determining whether fifty public spaces exist. NMF's specific parking plans shall be consistent with the zoning ordinance, and shall not be deemed final

until approved by the Mayor or her/his designee, where such approval shall not be unreasonably denied, conditioned or delayed.

- The Sculptures will be placed in locations that are materially the same as the locations demarcated on Exhibit B. The Sculptures will be larger-than-life bronzes with informational plaques. At the discretion of NMF, the Sculptures may be made from different permanent materials and/or may differ in size. In the event that NMF desires to add more Sculptures to the Olmsted Plan Park than are depicted on Exhibit B hereto, NMF must receive approval from the Mayor or her/his designee regarding the quantity of Sculptures. The City and NMF shall negotiate cooperatively regarding the number of Sculptures, and the final determination shall be reasonably decided by the Mayor or her/his designee. In the event that NMF desires to place a Sculpture in a location that is materially different from any of the locations designated on Exhibit B, the proposed location may not be utilized unless and until it is approved by the Mayor or her/his designee after consultation with NMF, and said approval shall not be unreasonably denied, conditioned or delayed. NMF shall not be required to obtain City approval regarding the quantity and location of additional sculptural works and bronze relief panels that are constructed or installed within the footprint of the Peace Pantheon.

- NMF shall retain ownership of the Sculptures and the sculptural works located in the Peace Pantheon which may be removed without substantial damage to the Peace Pantheon ("***Removable Works***"). NMF may temporarily or permanently remove any or all of the Sculptures and/or Removable Works at any time for any duration of time, but only after consultation with the Mayor or her/his designee. Upon request of the Mayor or her/his designee, NMF shall replace the removed item with a replica of materials chosen by NMF, provided that the replica is visually, substantially identical to the original, with a plaque that provides factual information about the original and its current location. The Mayor or her/his designee may direct NMF to remove one or more Sculptures or Removable Works from the Leased Premises, but only for reasonable cause and only after consultation with NMF. The Mayor or his designee shall have the right to request that NMF relocate a Sculpture or Removable Work to accommodate a City purpose. The relocation may not occur until approval is received from the President of NMF, where such approval shall not be unreasonably denied, conditioned or delayed. In such instance, the City shall pay (or cause to be paid) the relocation costs. NMF shall have full responsibility for the care and upkeep of the Sculptures and Removable Works, and shall maintain them in a safe and attractive condition, at all times that they are in public view on the Leased Premises. NMF shall also have full responsibility for the care and upkeep of all other sculptural works and bronze relief panels located in the Peace Pantheon, in addition to the Removable Works, and shall maintain them in a safe and attractive condition. NMF shall retain ownership and all maintenance, care and upkeep responsibilities described herein for the Sculptures and Removable Works regardless of whether the Definitive Agreement is assigned, subleased, transferred, or otherwise encumbered in any manner. Similarly, NMF shall retain all maintenance, care and upkeep responsibilities described herein for the other sculptural works and bronze relief panels located in the Peace Pantheon, regardless of whether the Definitive Agreement is assigned, subleased, transferred, or otherwise encumbered in any manner. NMF shall not sell, transfer, assign, sublease, or otherwise encumber these rights and responsibilities regarding the Sculptures and Removable Works without obtaining prior consent from the

Mayor or her/his designee, and said approval shall not be unreasonably denied, conditioned or delayed.

Phases of Completion

Development of the Premises shall be completed in four phases (collectively the "***Phases***", or any one of them, a "***Phase***") as follows:

- Phase 1: The following shall be completed by no later than July 4, 2014: the Olmsted Plan Park with the exception of the Sculptures and the Peace Column; the Center for Tourism; the lake/ water retention pond on the Eastern Parcel; the Urban Farm; the greenhouses; the playground; the Farmers' Market; and the landscaping of the undeveloped portions of the Premises so that they are in a good, attractive, sanitary and safe condition.
- Phase 2: Phase 2 shall include the following: construction of the Peace Column, including the museum located therein. It is anticipated that Phase 2 will be completed by July 4, 2015.
- Phase 3: Phase 3 shall include the following: construction of the Peace Pantheon; construction of the restaurants; and erection of the Sculptures. It is anticipated that Phase 3 will be completed by July 4, 2016.
- Phase 4: Phase 4 shall include the following: construction of the Prince of Wales Headquarters, flanking buildings and any other adjacent office space. It is anticipated that Phase 4 will be completed by July 4, 2017.

Capital Expenditures

NMF must have possession of 50% of the construction costs of the Olmsted Plan Park by no later than July 4, 2013, and shall provide the Mayor or her/his designee with documentation of the same. NMF must receive approval of this documentation by the Mayor or her/his designee. The amount of construction costs will be determined by NMF during the design stage of the Olmsted Plan Park. NMF will provide the Mayor or her/his designee with documentation supporting the construction cost determination, and the amount will not be deemed final until approved by the Mayor or her/his designee.

For each of the remaining Phases, NMF will not begin construction until it has received a financial commitment of no less than 50% of the construction costs of the Phase, and the Mayor or her/his designee has approved NMF's documentation of the commitments. The amount of construction costs for Phases 2, 3 and 4 will be determined by NMF during the design stage of each Phase. The amount will not be deemed final until approved by the Mayor or her/his designee after review of NMF's documentation supporting the cost determination.

All documentation required under this Section shall be in a form and detail reasonably satisfactory to the Mayor or her/his designee. In addition, where approval from the Mayor or her/his designee is required under this section, said approval shall not be unreasonably denied, conditioned or delayed.

Street Closures

NMF shall make the following changes to City-owned streets, contingent upon receiving the necessary permits and other approvals prior to commencing construction:

- The portion of Thurmond Street between Elm and Vine Streets shall be straightened so that it forms a straight line with the portion of Thurmond Street between Vine and Walnut Streets.
- Tyler Street will be closed from Vine Street up to the western property line of 587 Tyler Street.
- Rock Street will be closed between Vine and Walnut Streets.

Rent, Maintenance and Repair

NMF shall pay the City annual rent for the ground area of the Headquarters Property and Amenities Property, including the Perimeters of said Properties, in an amount equal to $3,968.40 per acre, which is 8% of the fair market value of the land. The fair market value of the land was determined by an MAI-certified appraisal performed in July 2012. On the five year anniversary of the execution of the Definitive Agreement, annual rent shall increase by 10%. Within six months prior to the ten year anniversary of the execution of the Definitive Agreement, the City, in consultation with NMF, shall select and engage an MAI-certified appraiser to appraise and determine the fair market value ground lease rental amount for each of the Headquarters Property and the Amenities Property. NMF's annual rent shall be adjusted to the amount determined by the appraisal beginning on the ten year anniversary date of the execution of the Definitive Agreement. The 10% increase of annual rent shall occur again on the 15, 25, 35 and 45 year anniversaries of the execution of the Definitive Agreement, and the increase shall be based upon the annual rent charged during the immediately preceding five years. The appraisal and related annual rent increase or decrease shall be repeated on the 20, 30 and 40 year anniversaries of the execution of the Definitive Agreement. The City shall deposit all rent into a trust fund that may be utilized solely for improvement, maintenance and repair of Historic Mims Park. Expenditures from the trust fund shall be made at the discretion of the Commissioner of the Department of Parks, Recreation and Cultural Affairs after consultation with NMF, and shall be authorized by duly enacted City legislation where required by law.

NMF shall not owe rent for any portion of the Premises other than the Headquarters Property and Amenities Property. In exchange for a waiver of rent regarding the remainder of the Leased Premises, NMF shall have full responsibility for the maintenance, repair, operation and management of the Park (including without limitation the Buildings), including all costs associated therewith. NMF, at no cost to the City, may contract with other entities to perform these responsibilities, including without limitation contracting with a farming cooperative to operate and manage the Urban Farm. NMF shall maintain and keep (or cause to be maintained and kept) the Park in good, attractive, sanitary and safe order, repair and condition at all times. This standard of care shall apply to those portions of the Park where future development or no development is anticipated so as not to detract from public enjoyment of the developed areas of the Park.

Utilities

NMF shall pay all utility costs for the Park, including without limitation monthly usage costs and repair costs.

Security

The Atlanta Police Department will enforce applicable laws throughout the entire Park. For the Buildings and Urban Farm, the Atlanta Police Department will provide public safety services at a level consistent with the services it provides for privately-owned businesses. For the remainder of the Premises, the Department will provide public safety services at a level consistent with the services it provides to other City parks.

NMF shall provide all security services for the Buildings and Urban Farm at the level needed for the effective and safe operation and management of those locations, as determined in consultation with the Atlanta Police Department.

NMF must provide and pay for supplemental security services (or cause the supplemental services to be provided and paid for) to patrol the Park, (other than the Buildings and Urban Farm), the quantity of which shall be determined in consultation with the Atlanta Police Department. The security services may be similar to the Ambassador Program established in Woodruff Park, where Ambassadors encourage voluntary compliance with park rules and applicable laws, but rely upon the Atlanta Police Department for park eviction and arrests.

Revenue from Historic Mims Park

All concessions and sales that occur on the Leased Premises, except in the Buildings, and except during permitted outdoor festivals and gated ticketed events (as defined in Chapter 142 of the City Code of Ordinances), including without limitation sale of food, beverages and merchandise, must be performed by NMF. NMF may contract with a third party to perform the concessions and/or sales; NMF may not allow a third party to perform sales in its own name. NMF's concessions locations shall be limited to the areas that are materially the same as the locations shown on Exhibit B hereto. The City will grant vending permit(s) for these locations provided that NMF satisfies the criteria in the Atlanta Code of Ordinances regarding vending on public property, and complies with all other applicable laws. For purposes of these locations, any City moratorium on new vending permits will be waived. In addition, Atlanta Code section 110-3(i) will be waived such that NMF may vend in the approved locations without paying a vending fee. Consistent with City law, alcohol will be prohibited on the Leased Premises, other than inside of Buildings, except during City-permitted outdoor festivals and gated ticketed events.

NMF shall utilize all net income that it receives from the Park solely for the improvement, maintenance and repair of the Park.

Compliance with Regulations of the Department of Watershed Management

The Department of Watershed Management ("DWM") has identified specific locations on the Leased Premises that must remain accessible to DWM at all times for purposes of operations, repair and maintenance of existing public water, sewer and/or storm water facilities, and these

locations are set forth on Exhibit C attached hereto. With the exception of surface-scape, NMF may not place permanent structures or other permanent encroachments at these locations without the express permission from the DWM Commissioner or her/his designee. DWM shall restore the Leased Premises to its condition immediately prior to the commencement of the DWM work within a commercially reasonable period of time after the DWM work is completed. Should NMF develop those locations with surface-scape materials that exceed DWM standards (DWM standards cover replacement of asphalt, concrete sidewalks and grass, but not materials such as brick pavers), the City/DMW will not be financially responsible for restoring the property to its original condition prior to performance of the DWM work.

DWM anticipates the need to access the Leased Premises in the near future to complete needed improvements to the sewer, water and/or storm water facilities. DWM will identify the specifics of future improvement projects (if any) and will coordinate timing of these projects with NMF to avoid delay or disruption of NMF's development of the Premises or operation of the Park.

DWM will follow its standard safety protocol for performing work in parks during the times that it performs work on the Leased Premises. DWM will not store any vehicles or other portable equipment on the Leased Premises, except as may be required in the performance of DWM's operation, maintenance and/or construction of improvements to the water, sewer, and/or storm water systems on the Premises.

NMF's development of the Premises will follow all applicable storm water management ordinances.

NMF will work cooperatively with DWM during NMF's design and construction of the Leased Premises, and especially design and construction of the storm water retention facilities, and will use commercially reasonable efforts to implement DWM's reasonable requests, where the purpose of such requests is to improve water quality conditions.

Compliance with EBO, First Source

NMF will comply with the City's Equal Business Opportunity and non-discrimination laws. NMF 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 Definitive Agreement.

Data from the most recent national census reveals, and the parties acknowledge that there are a large number of residents located in the five (5) census tracts largely comprising the Westside TAD Neighborhood Area ("***Local Residents***") that are unemployed, underemployed, and/or below the federal poverty level. The parties wish to implement a jobs policy that helps to improve these conditions.

NMF shall make a commercially reasonable good faith effort, or shall cause a commercially reasonable good faith effort to be made, to employ Local Residents to work at least fifty percent (50%) of the total hours for all *entry-level* construction and Premises maintenance positions, and twenty percent (20%) of the total hours for *all* construction and premises maintenance positions, and other positions arising from the commercial use of the Leased Premises. These positions

will include without limitation personnel needed to operate and maintain the urban farm, the museum, and the restaurant, if and when each is created.

Ownership of Improvements

Title to any and all improvements made upon the Headquarters Property and the Amenities Property by or at the direction of NMF shall pass to and be vested in the City upon expiration or termination of the Definitive Agreement. Title to any and all improvements made to or upon any portion of the Leased Premises other than the Headquarters Property and the Amenities Property, which are made by or at the direction of NMF, shall pass to and be vested in the City upon completion of each improvement, except that NMF shall retain ownership of the Sculptures and the Removable Works.

Audits and Inspections

NMF will maintain records and accounts in connection with the performance of the Definitive Agreement that will accurately document all funds received by NMF and all costs incurred by NMF, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of the Definitive Agreement unless otherwise specified by applicable law. The records shall be organized to show the costs and revenue for each element/amenity of the Premises. Wages reflected on the records and accounts shall include the specific amount paid to each employee by name. NMF shall provide the City with a CPA-certified audit for each calendar year. The annual audit shall include, without limitation, the information described in this paragraph, and shall be submitted to the City by no later than April 1 of the immediately following calendar year.

The City or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City shall also have the right to perform audits of NMF's records and accounts. NMF will provide the City with access to personnel working at the Premises, and to the various amenities on the Premises for the purpose of performing audits and inspections. Such audits, inspections and access may be conducted to: (a) verify the accuracy of reported net revenue and expenses; (b) examine the performance of services; (c) monitor compliance with the terms of the Definitive Agreement; and (d) gather information about any other matters reasonably requested by City.

NMF shall place this Audit and Inspections provision in all of its contracts regarding the Premises, thereby allowing the City to audit and inspect the records of any contractor or service provider performing services at or related to the Leased Premises.

Indemnification

NMF shall agree to indemnify, defend and hold harmless the City, its elected officials, agents, employees, and authorized representatives for claims, demands, losses, damages, costs or expenses (including without limitation attorneys' fees) arising from the Definitive Agreement or relating in any way to any death or injury of any kind whatsoever to persons or property, or arising from any accident, fire, or other casualty or cause in the Park during the term of the Definitive Agreement, except to the extent caused by the negligence or intentional misconduct of the City or its officials, agents authorized representatives, contractors and/or employees where

such individuals are acting in their official capacity, and except to the extent arising from a City project or other City work performed by the City, its officials, agents, authorized representatives, contractors and/or employees.

Insurance

NMF shall abide by the insurance and bonding requirements established by the City's Office of Risk Management, which shall be incorporated into the Definitive Agreement.

Limitations on Assignment, Transfer, and Subletting

It is anticipated that NMF will assign or sublease its rights under the Definitive Agreement to a public non-profit entity whose sole purpose is to develop and operate the Leased Premises. It is further anticipated that NMF will enter a second assignment or sublease of the rights under the Definitive Agreement with a public non-profit entity whose sole purpose is to operate the Leased Premises. These assignments, subleases, and any other transfers or encumbrances of NMF's interest in the Leased Premises must be approved by the City through duly enacted legislation. This provision shall not apply to the Statues, the Removable Works, or the sculptural works and bronze relief panels located in the Peace Pantheon.

Default

Default shall occur if NMF fails to perform any of its obligations under the Definitive Agreement when due or called for, and fails to cure the default within sixty (60) days after receiving written notice from the City regarding the default; provided, however, that if the default is the result of a force majeure occurrence or is otherwise of a nature such that it cannot be fully cured within that sixty (60) day period, NMF shall have such additional time as is reasonably necessary to cure the default so long as NMF is proceeding diligently to complete the necessary cure after service of notice by the City.

If the nature of the default is such that it constitutes an immediate hazard to public health, the City shall have the right to close the impacted portion of the Leased Premises until the hazard is eliminated, and NMF must commence efforts to cure the hazard immediately upon written notice from the City. Cure of a hazardous condition must be completed within ten (10) days of receiving notice from the City regarding the hazard; provided, however, that the parties may agree to additional time if necessary so long as NMF is proceeding diligently to complete the work.

If the nature of the default is a failure to perform work, including but not limited to maintenance work, and in the event that NMF does not make a good faith effort to implement the corrective action within the time frame established by the City, either originally or in an extension of time, the City shall have the right (but not the obligation) to perform the work or direct that the work be performed. NMF shall reimburse the City for the reasonable cost of performing the work.

Should NMF default on its obligations under the Definitive Agreement, the parties shall identify whether the default pertains to one or more specific elements (hereinafter the "Elements") of the Leased Premises. The Elements consist of: 1) the Olmsted Plan Park; 2) the Peace Pantheon; 3) the Sculptures; 4) the Urban Farm; 5) the water retention pond; 6) the fountain and/or other water

features other than the retention pond; 7) the Farmers' Market; 8) the Buildings, where each Building constitutes a separate Element.

Where the default is limited to a specific Element or Elements, the parties shall have the right to amend the Definitive Agreement rather than terminating it, where such amendment includes without limitation renegotiated terms for the Element(s) defaulted upon. Such amendment may occur only upon mutual consent of the parties, including approval of the amendment through duly enacted legislation by the City.

If the parties cannot mutually agree upon an amendment to the Definitive Agreement, or where NMF's default is not limited to an Element or Elements, the City may take possession of the Leased Premises and re-let all or any portion thereof. The City may exercise any and all other rights or remedies available at law or in equity, including, without limitation, the right to obtain restraining orders, injunctions, and decrees of specific performance.

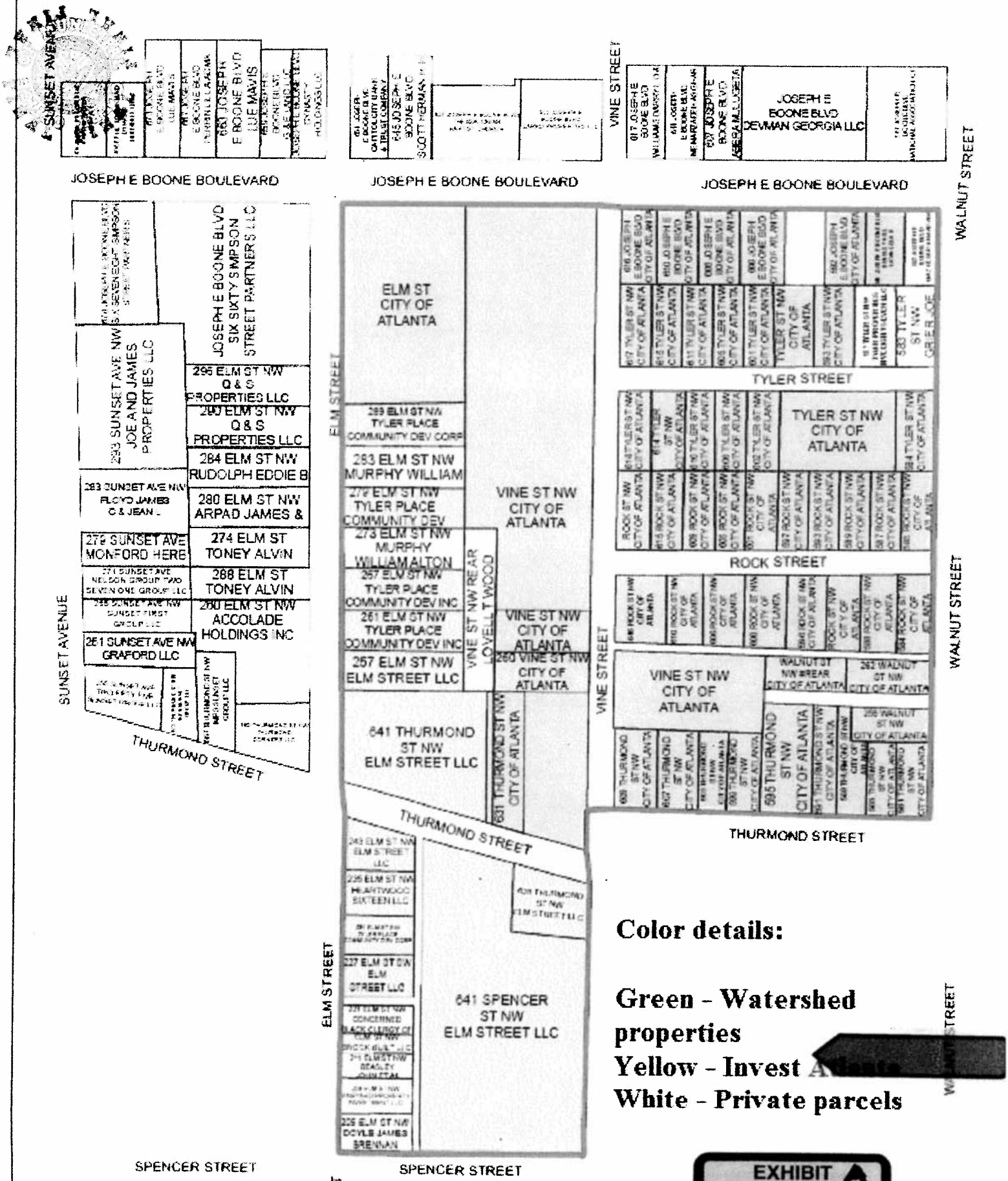
Legislative Authorization

The Definitive Agreement will be authorized by the City through a duly enacted ordinance. The ordinance will waive the city's Procurement Code in order to lease the Premises to NMF without a competitive process. The unique circumstances of this transaction justify the waiver, including without limitation the prior donation of nearby park land by Mayor Livingston Mims and the Mims family's desire to rebuild the park, coupled with NMF's extensive development of the Premises at no cost to the City.

All parcels that comprise the Leased Premises must be in the inventory of the Department of Parks, Recreation and Cultural Affairs prior to effectuating the lease to NMF, except for the Private Parcels which may be added to the executed Definitive Agreement as described in the "Leased Premises" section above. At this time, some of the parcels are owned by the Department of Watershed Management, some are owned by Invest Atlanta, and seven are owned by private parties. The details regarding the DWM and Invest Atlanta properties are currently being negotiated, and those details must be authorized by city legislation. NMF is in the process of negotiating the purchase of the seven privately-owned parcels.

Sustainability

NMF shall consult with the City's Office of Sustainability and will install equipment and utilize construction, landscaping and maintenance techniques that further the environmental sustainability efforts of the City, including without limitation utilizing strategically placed recycling bins and installing bicycle racks. NMF shall make all final decisions about which equipment to install and which techniques to utilize.



Ownership information is taken from the 2010 Tax Digest of Fulton County and repr /2010.

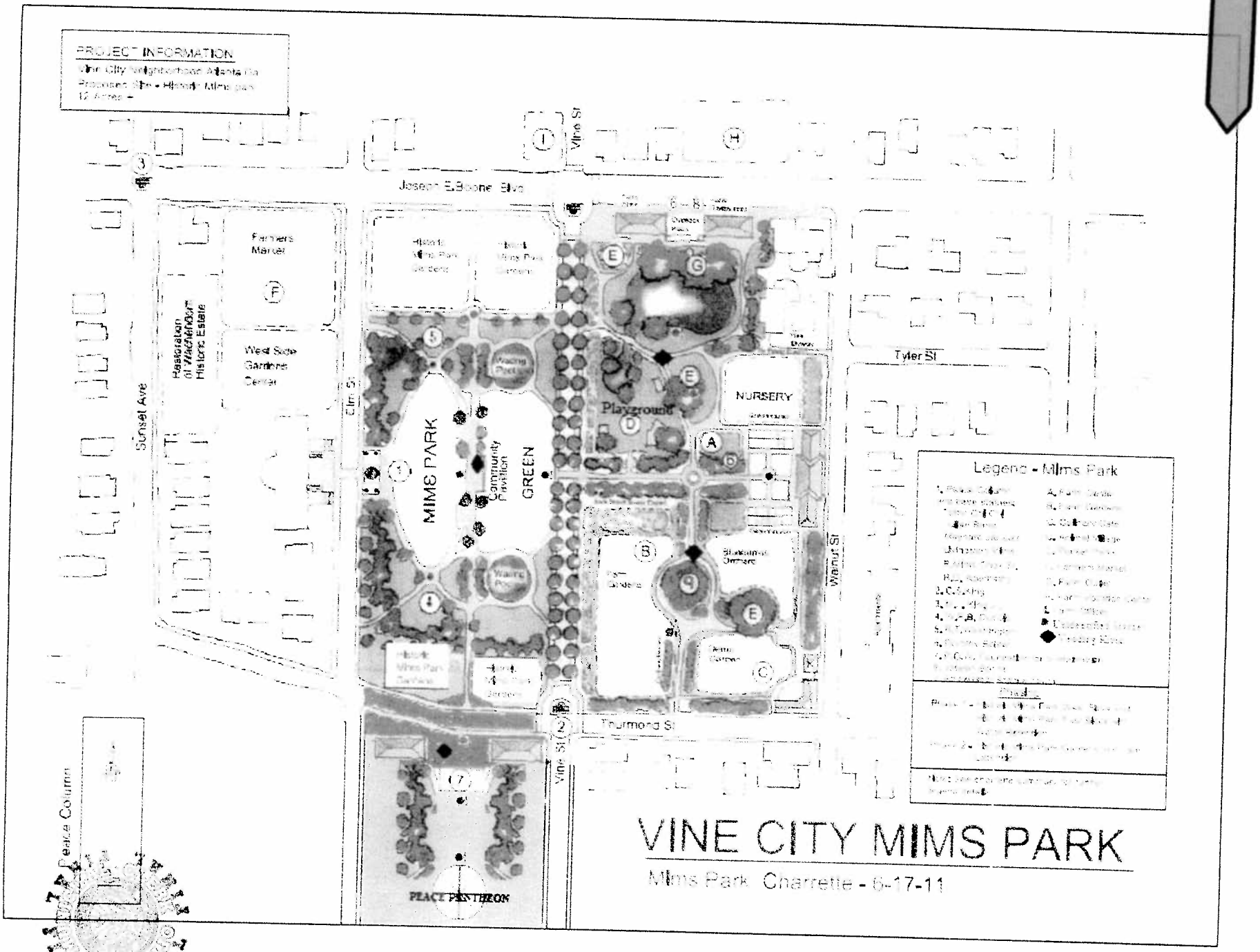


EXHIBIT B
Term Sheet

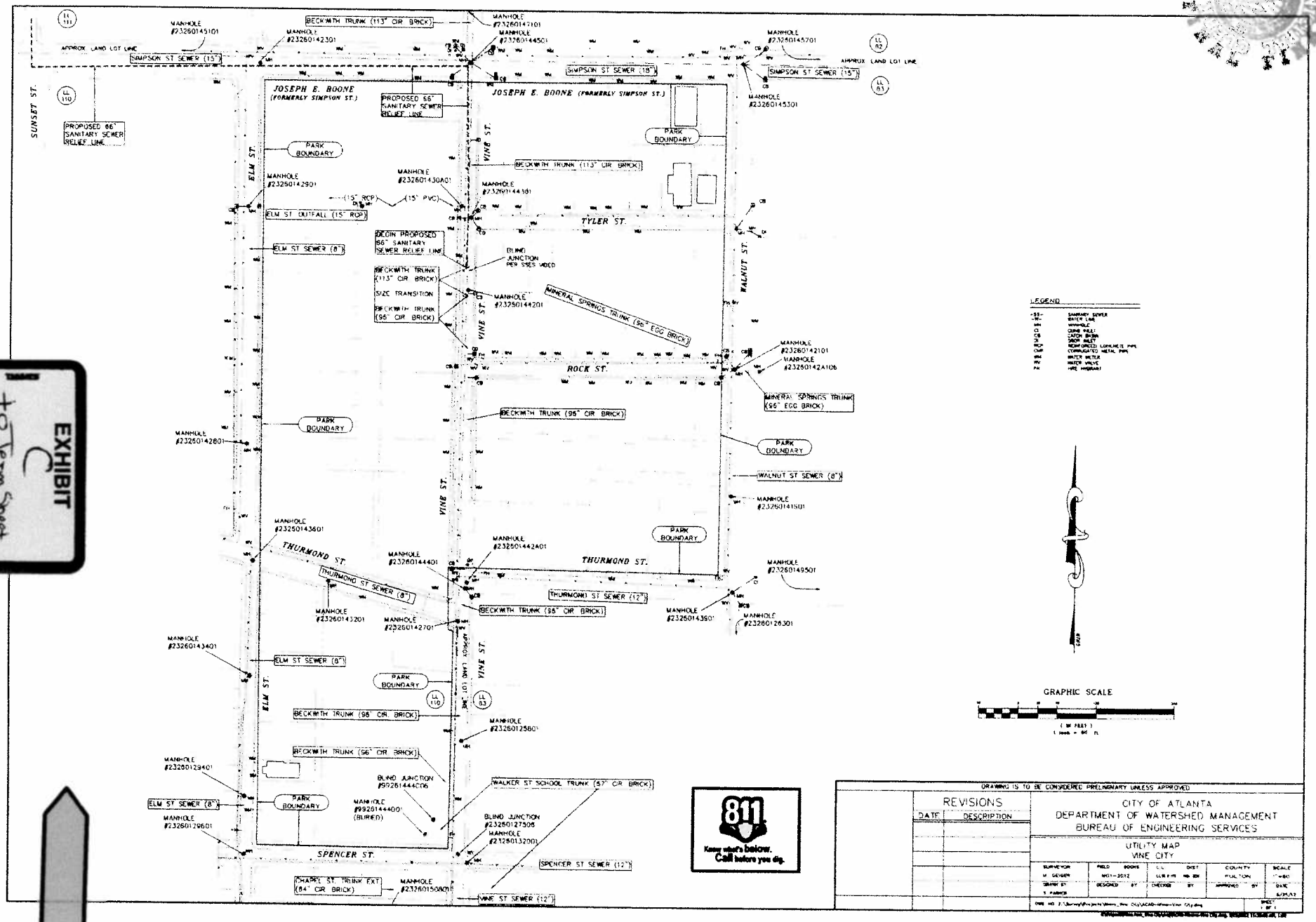


EXHIBIT C to Term Sheet

DRAWING IS TO BE CONSIDERED PRELIMINARY UNLESS APPROVED

REVISIONS	
DATE	DESCRIPTION

CITY OF ATLANTA
DEPARTMENT OF WATERSHED MANAGEMENT
BUREAU OF ENGINEERING SERVICES

UTILITY MAP
VINE CITY

SURVEYOR	FIELD BOOKS	L.L.	DIST.	COUNTY	SCALE
M. GEIGER	NG1-3012			FULTON	1"=60'
DRAWN BY	DESIGNED BY	CHECKED BY		APPROVED BY	DATE
S. PARKER					8/29/02

DWG. NO. | SHEET 1 OF 1

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE **ATTN: CANDACE L. BYRD**

Dept.'s Legislative Liaison: Trina Horton

Contact Number: (404) 546-6795

Originating Department: Department of Parks, Recreation and Cultural Affairs

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

Chief of Staff Deadline: December 28,, 2012

Anticipated Committee Meeting Date(s): January 15, 2013

Anticipated Full Council Date: January 22, 2013

Legislative Counsel's Signature:

Commissioner's Signature:

Chief Information Officer Signature *(for IT Procurements)*

Chief Procurement Officer Signature:

CAPTION
AN ORDINANCE BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE

AN ORDINANCE TO CORRECT ORDINANCE 12-O-0961 ADOPTED BY CITY COUNCIL ON JULY 16, 2012 AND APPROVED AS PER CITY CHARTER SECTION 2-403 ON JULY 25, 2012, CORRECTING THE ORACLE FUND NUMBER, PROJECT NUMBER LISTED FROM 600394 TO 600395; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT: (if any)
Mayor's Staff Only

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

Received by Mayor's Office: 12-26-12 (date) **Reviewed by:** _____ (date)

Submitted to Council: _____ (date)