

**A RESOLUTION BY CITY UTILITIES COMMITTEE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING THE PATH FOUNDATION, INC. TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.**

**Review List:**

|  |           |                     |
|--|-----------|---------------------|
| Santana Wright                         | Completed | 06/28/2013 12:51 PM |
| Rita Braswell                          | Completed | 06/28/2013 1:53 PM  |
| Richard Mendoza                        | Completed | 07/01/2013 12:45 PM |
| Saul Schultz                           | Completed | 07/01/2013 12:58 PM |
| Mayor's Office                         | Completed | 07/01/2013 1:49 PM  |
| Office of Research and Policy Analysis | Completed | 07/01/2013 4:02 PM  |
| City Utilities Committee               | Pending   |                     |
| Atlanta City Council                   | Pending   |                     |

|   |                    |
|---|--------------------|
| Certified by Presiding Officer                              | Certified by Clerk |
|   |                    |
| Mayor's Action<br><i>See Authentication Page Attachment</i> |                    |

**A RESOLUTION  
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION BY CITY UTILITIES COMMITTEE AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING THE PATH FOUNDATION, INC. TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.**

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

WHEREAS, one of the stated goals of the Path Foundation, Inc. ("PATH") is to facilitate such trail systems by providing expertise in the planning, design and implementation of such projects and by providing private funding for such projects; and

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

WHEREAS, PATH has facilitated arrangements in which funding is made available from sources other than the City for design, engineering, and construction connected with development of such projects; and

WHEREAS, local match contributions for the design, engineering, and construction work necessary to complete certain infrastructure improvements for the Georgia 400 Trail Project ("Project") will be funded fully by PATH; and

WHEREAS, the City entered into a Project Framework Agreement with PATH for the Project via Resolution 13-R-3246 adopted by the City Council on June 17, 2013; and

WHEREAS, a Memorandum of Understanding Agreement between the Georgia Department of Transportation ("GDOT") and the City will outline respective roles and responsibilities related to the Project; and

THE CITY COUNCIL OF THE CITY OF ATLANTA HEREBY RESOLVES that the Mayor is hereby authorized to execute, on behalf of the City of Atlanta, a Memorandum of Understanding with GDOT to provide preliminary engineering and construction services for the Project and to authorize PATH to act as the City's agent and construction manager for the Project.

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

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: CANDACE L. BYRD

Dept.'s Legislative Liaison: Santana Kempson Wright

Contact Number: 404-330-6579

Originating Department: Department of Public Works

Committee(s) of Purview: Finance/Executive Committee

Chief of Staff Deadline: June 21, 2013

Anticipated Committee Meeting Date(s): July 9, 2013

Anticipated Full Council Date: July 15, 2013

Legislative Counsel's Signature: Saul Schultz

Commissioner's Signature: [Signature]

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

Chief Information Officer Signature (for IT Procurements) \_\_\_\_\_

Chief Procurement Officer Signature: \_\_\_\_\_

**CAPTION**

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING PATH TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.

**FINANCIAL IMPACT:**

Mayor's Staff Only

Received by CPO: \_\_\_\_\_  
(date)

Received by LC from CPO: \_\_\_\_\_  
(date)

Received by Mayor's Office: 6.21.13  
(date)

Reviewed by: [Signature]  
(date)

Submitted to Council: \_\_\_\_\_ (date)

Attachment: Transmittal - GDOT MOU for GA 400 Trail (13-R-3320 : MOU with GDOT for GA 400 Trail Project)

**A RESOLUTION  
BY CITY UTILITIES COMMITTEE**

**A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING THE PATH FOUNDATION, INC. TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.**

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

**WHEREAS**, one of the stated goals of the Path Foundation, Inc. ("PATH") is to facilitate such trail systems by providing expertise in the planning, design and implementation of such projects and by providing private funding for such projects; and

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

**WHEREAS**, PATH has facilitated arrangements in which funding is made available from sources other than the City for design, engineering, and construction connected with development of such projects; and

**WHEREAS**, local match contributions for the design, engineering, and construction work necessary to complete certain infrastructure improvements for the Georgia 400 Trail Project ("Project") will be funded fully by PATH; and

**WHEREAS**, the City entered into a Project Framework Agreement with PATH for the Project via Resolution 13-R-3246 adopted by the City Council on June 17, 2013; and

**WHEREAS**, a Memorandum of Understanding Agreement between the Georgia Department of Transportation ("GDOT") and the City will outline respective roles and responsibilities related to the Project; and

**THE CITY COUNCIL OF THE CITY OF ATLANTA HEREBY RESOLVES** that the Mayor is hereby authorized to execute, on behalf of the City of Atlanta, a Memorandum of Understanding with GDOT to provide preliminary engineering and construction services for the Project and to authorize PATH to act as the City's agent and construction manager for the Project.

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

---

Attachment: GDOT MOU for GA 400 Trail (13-R-3320 : MOU with GDOT for GA 400 Trail Project)

**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:**

**Caption:**

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING THE PATH FOUNDATION, INC. TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.

**Committee of Purview:** City Utilities Committee

**Committee Meeting Date:** July 9, 2013

**Council Meeting Date:** July 15, 2013

**Requesting Dept.:** Department of Public Works

**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 enter into this Memorandum of Understanding Agreement the Georgia Department of Transportation for the preliminary engineering and construction services for the GA 400 Trail Project and authorizing the PATH Foundation to act as the City's agent and construction manager for the project.

**2. Please provide background information regarding this legislation.**

The trail is approximately five (5) miles long, extending from a historic cemetery site to trailhead off Loridans Drive south to the Atlanta Beltline's Peachtree Creek spur trail. The trail will wind through the North Buckhead, Peachtree Park and Lindmont Lavista neighborhoods, providing an alternate mode of transportation and recreational activity for residents.

**3. If Applicable/Known:**

(a) **Contract Type:** Memorandum of Understanding

(b) **Source Selection:** n/a

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

- (d) **Invitations Issued:** n/a
- (e) **Number of Bids:** n/a

---

- (f) **Proposals Received:** n/a
- (g) **Bidders/Proponents:** n/a
- (h) **Term of Contract:** n/a

**4. Fund Department Account Center:** None

**5. Source of Funds:** None

**6. Fiscal Impact:** None

**7. Method of Cost Recovery:**

**This Legislative Request Form Was Prepared By:** Dawn Riley

**Memorandum of Understanding  
between  
Georgia Department of Transportation  
City of Atlanta**

**SR 400 Trail  
City of Atlanta Fulton County Project Number: 0010521**

**1.0 PURPOSE**

This Memorandum of Understanding (MOU) is entered into jointly by the Georgia Department of Transportation (GDOT) and the City of Atlanta. The purpose of this MOU is to coordinate and document each entity's respective roles and responsibilities related to the SR 400 Trail Project.

**2.0 BACKGROUND**

The City of Atlanta has identified the need to expand the existing network of trails in North Buckhead. The desired trail is a five (5) mile trail site within the City of Atlanta on GDOT's Right-of-Way under and around Georgia 400. It is anticipated that the SR 400 Trail will be a key destination for the Mountain Way Trail Project.

**3.0 LEGAL DESCRIPTION**

The portions of the SR 400 Trail is as follows (GDOT Property): SR 400 Loridans Drive to Lindbergh Drive/SR 236. The trail travels east off GDOT property due to the MARTA Station for a portion before reconnecting with GDOT property south of Peachtree Road/SR 141 from Tower Place Drive to Highland Drive. It then connects back with right of way along SR 400 and travels under MARTA/ CSX Railroad. North of Sidney Marcus Boulevard the trail goes off state right of way and reconnects south of Sidney Marcus Boulevard and continues onto Lindbergh Drive/SR 236.

**4.0 ROLES OF THE PARTIES**

Design, analysis, and construction of this Project are entirely the responsibility of the City of Atlanta and its consultant. For the purpose of this agreement consultant is defined as any entity that is not a municipality. The City of Atlanta is responsible for the coordination and preparation of the preliminary engineering activities, including environmental analysis and documents and engineering design in compliance with federal and state regulations. The City of Atlanta is responsible for construction bidding administration and will oversee construction of the Project. Upon completion of construction, the City of Atlanta will be responsible for all maintenance and landscaping of the GDOT Property associated with the Mountain Way Trail at its sole cost and expense.

GDOT maintain all rights of access, operations and use to the GDOT Property. At all times, the City of Atlanta shall take all necessary steps to not interfere with GDOT, operations and use of the GDOT Property or any of materials, supplies, equipment or buildings currently located on the GDOT Property or which may be placed on the GDOT Property at a later date. The failure of the City of Atlanta to comply with these responsibilities will result at the sole discretion of GDOT in the automatic termination of this MOU and the Special Encroachment Permit.

At all times, the City of Atlanta shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to employees performing its work and other persons, including without limitations the General Public, who may be affected thereby. The failure of

the City of Atlanta to comply with these responsibilities will result at the sole discretion of GDOT in the automatic termination of this MOU and the Special Encroachment Permit.

#### 5.0 PERMITTED USE OF GDOT PROPERTY

Only those limited uses listed herein will be permitted on the GDOT Property. The conduction of any activities not listed herein or strictly prohibited will result at the sole discretion of GDOT in the automatic termination of this MOU and the Special Encroachment. At anytime, GDOT may determine that a use that was once permitted is no longer permitted, and may thereafter order that the City of Atlanta immediately stop the non-permitted activity.

The following activities are permitted:

- Benches
- Trash Receptacles
- Wayfinding Signage
- Lighting
- 911 Call Boxes
- Dog Curbing Stations
- Bicycle/Skating Trails (Paved)
- Bicycle Trails (Unpaved)
- Jogging Paths (Hard Surface)
- Jogging Paths (Soft Surface)
- Hiking Trails
- Natural Areas
- Sidewalks
- Outdoor Seating Areas
- Sculptural Installations
- Murals (not to be installed on GDOT structures)
- Decorative Walls
- Decorating Lighting (GDOT Wall on Loop)
- Bike Racks

#### 6.0 ENCROACHMENT EXPIRATION

The proposed project is subject to Federal Highway Administration approval of the Categorical Exclusion and execution of a Special Encroachment Permit between GDOT and the City of Atlanta. The allowance of the trail within Georgia 400 is temporary. Because the trail is a temporary recreational use of land, that will cease once completion of the highway or transportation project resumes, including but not limited to the widening Georgia 400 or other transportation uses, it is not protected under the provision of Section 4(f), [4(f) of the Department of Transportation Act of 1966]. Should GDOT widen Georgia 400 or require removal of the trail for any other purpose, GDOT will not be responsible for replacing the trail.

Additionally, GDOT will allow the trail within Georgia 400 right-of-way for a time period of twenty (20) years, or until the Right-of-Way is required for GDOT purposes whichever comes first. If trail removal is required, GDOT will provide the City of Atlanta a minimum of One Hundred Twenty (120) days notice. At that time, it will be the responsibility of the City of Atlanta to close the trail to the public with barricades at the trail entrance(s) and orange barrier fence between the trail and public roads. If trail removal is not required within twenty (20) years of construction, this MOU and the special encroachment permit will be considered expired. At that time, a new permit application from the City of Atlanta to GDOT will be required to maintain the trail access on the GDOT Property.

7.0 CONCLUSION

In signing the MOU, the undersigned understand and accept the roles and responsibilities assigned to each of the parties. Each of the parties agrees to pursue maximum cooperation and communication to ensure that the Project as completed fully complies with applicable requirements. This MOU may be amended, as necessary, by mutual consent of all parties upon issuance of written notification of such modification, signed and dated by all parties. This MOU shall become effective upon signature by all parties and shall continue in effect until the proposed trail is permanently removed, or twenty (20) years from construction of the trail, whichever comes first.

IN WITNESS WHEREOF, said Parties have hereunto set their hands and affixed their seals this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

GEORGIA DEPARTMENT OF TRANSPORTATION

CITY OF ATLANTA

By: \_\_\_\_\_ (Seal)  
Keith Golden, P.E.

By: \_\_\_\_\_ (Seal)  
Name and Title

Attest:

Signed, sealed and delivered  
This \_\_\_\_ day of \_\_\_\_\_,  
2013, in the presence of:

\_\_\_\_\_  
Angela O. Whitworth  
Treasurer

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Notary Public

This Agreement, approved by \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Attest:  
\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Federal Employer Identification  
Number

Attachment: GDOT MOU for GA 400 Trail (13-R-3320 : MOU with GDOT for GA 400 Trail Project)

STATE OF GEORGIA  
COUNTY OF FULTON

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between the CITY OF ATLANTA, (the "City") a municipal corporation of the State of Georgia, and PATH Foundation, Inc., ("PATH") a non-profit corporation organized and existing under the laws of the State of Georgia.

**WITNESSETH**

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

**WHEREAS**, the stated goal of PATH is to facilitate trail systems in the City of Atlanta by providing expertise in the planning and implementation of such projects and locating private funding to reduce or eliminate the cost to the City and its taxpayers; and

**WHEREAS**, PATH has represented to the City a desire to make Transportation Facility Improvements for bicycle and pedestrian use; and

**WHEREAS**, the City has expressed a willingness to allow PATH to construct the Georgia 400 Trail, project as set forth in this Agreement as depicted in Exhibit "A" attached hereto; and

**WHEREAS**, the City has accepted 100% responsibility of the project funding obligations through a Project Framework Agreement with the Georgia Department of Transportation ("GDOT") for the Georgia 400 Trail project; and

**WHEREAS**, the City has requested that PATH participate in the construction of the Georgia 400 Trail project by assuming the City's project funding obligations as set forth from GDOT, One Hundred percent (100%) of design services, right of way costs, and utility relocation costs, directly related to the completion of this project as described in this agreement, and One Hundred percent (100%) of the construction and 5 years of maintenance cost for this project; and

**WHEREAS**, PATH will provide to or on behalf of the City of Atlanta all the funding required of the City by GDOT for the Georgia 400 Trail project and to facilitate the work; and

**WHEREAS**, the City desires the involvement of PATH in the development of the Georgia 400 Trail project and PATH desires to work with the City to manage the design, engineering, right of way acquisition, construction, and maintenance activities associated with the Project; and

**WHEREAS**, the City wishes to enter into a Project Management Agreement with PATH to act as the City's Agent and Construction Manager for the Georgia 400 Trail Project; and

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

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

1.

#### STATEMENT OF AGREEMENT

The City of Atlanta (hereinafter, "the City") and PATH Foundation, Inc., (hereinafter, "PATH" or "Construction Manager") hereby agree that PATH will enter into agreements with one or more consultants and general contractors for the services hereinafter described in accordance with the terms and conditions set forth in this Agreement and will supervise the performance of the Scope of Work in the capacity as the Construction Manager for the City of Atlanta.

The Scope of Work:

Georgia 400 Trail which consists of construction of a 5.2 mile multiuse trail project to be located along GA400 corridor from Loridans Drive (just below toll plaza) on the north to Adina Drive (Near MARTA Headquarters) on the south. Typical section is 12 feet wide concrete path with additional modifications to the GDOT sound wall, installations of public art, security cameras at key locations that tie in to the Atlanta Police Department's Video Integration Center and potentially emergency call boxes The project is located primarily on GDOT right-of-way, but does include portions that are on City streets and in MARTA and Norfolk Southern right-of-way, as set forth in the map attached as Exhibit "A."

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

## 2.

## TERMINATION

The Construction Manager agrees that its obligation under this Agreement is to hire and manage Persons to perform work equal to that which the PATH is required to perform under this Agreement.

(a) The City agrees that should GDOT terminate their Project Agreement with the City prior to the completion of the work, that the Construction Manager shall receive any reimbursement to which the City would be entitled under the terms of the Project Agreement, provided that such funds are not required to restore the street and sidewalks of the City to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic. The Construction Manager agrees to follow all reasonable instructions of the City with regard to termination of the Project Agreement by GDOT.

(b) The City may, at the City's convenience, at any time upon thirty (30) days prior written notice to the Construction Manager, terminate (without prejudice to any right or remedy of the City) the whole or any portion of the Agreement for the convenience of the City.

If the City terminates the whole or any portion of this Agreement at the City's convenience, then the City shall pay for reasonable costs reimbursable and work satisfactorily performed up to the date of termination and for reasonable expenses in demobilizing.

(c) The City agrees that in the event of termination for the convenience of the City that PATH would be entitled to recover the reasonable and customary costs required to restore any area of the City disturbed in the construction of the Project to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of those areas of the City prior to the beginning of construction, even if such work is not directly within the Scope of Work. The City may choose to fund this cost or waive the requirement set forth in subpart (d) as to PATH's obligation.

(d) PATH agrees that in the event of termination for the convenience of the City that PATH will restore the any area of the City disturbed in the construction of the Project to a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of those areas of the City prior to the beginning of construction, even if such work is not directly within the Scope of Work.

319732V2

(e) Should the City terminate the Agreement prior to the completion of the work for cause as set forth in subsection (f), Construction Manager agrees that any area of the Project where work is uncompleted as of the date of termination, shall be left in a condition which is not hazardous to the health, safety and welfare of the City and the public and which does not unreasonably impede the flow of vehicular traffic and which as near as possible reflects the condition of those areas of the City prior to the beginning of construction.

(f) If the Construction Manager is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if it persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or fails to comply with any terms or condition of this Agreement, then the City may, without prejudice to any right or remedy, and after giving notice required by this section, terminate this Agreement with thirty (30) days prior written notice of such termination, specifying its effective date, and finish this project by whatever method it deems expedient, including but not limited to replacing the Construction Manager by another Construction Manager. The City may at its sole option elect to receive the assignment from the Construction Manager of any contract entered into by the Construction Manager.

### 3.

#### TIME OF PERFORMANCE

PATH shall commence the Services required by this Agreement no later than ten (10) calendar days after receipt of the Notice to Proceed. The work to be performed under the supervision of PATH for the Georgia 400 Trail project will terminate on December 31, 2020 or five (5) years following the completion of the Project. Provided however that the Construction Manager may request that the City seek an extension of the time for completion and that if such extension is granted, such extension shall apply to this Agreement.

### 4.

#### PROFESSIONAL RESPONSIBILITY

The PATH Foundation shall assume all responsibility with respect to the professional quality, technical accuracy and the coordination of all designs, drawings, and specifications and other services furnished by or on behalf of the City.

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

- (b) All the services required hereunder will be performed under the direct supervision of the Construction Manager. All Persons hired to engage in the work supervised by the Construction Manager shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services. The failure to employ fully qualified Persons as set forth in this subpart is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such occurrence.
- (c) Construction Manager agrees that all agreements with any Person made pursuant to the this Agreement shall cause all such Persons to be bound to the same terms and conditions and standards of performance as set forth in the Project Agreement for which said Person was employed. No action, omission, error or failure to act on the part of any Person shall excuse the obligations of Construction Manager under this Agreement to cause all Persons employed to be bound to the same terms and conditions and standards of performance as set forth in this Agreement.

The obligation to require that all Persons employed on the Project be bound to the same terms and conditions and standards of performance as set forth in this Agreement is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such its failure to impose such terms and conditions.

- (d) Construction Manager shall require in all agreements that all plans are to be prepared in English units and that any Person must correct or revise or cause to be corrected and revised any errors and deficiencies in the designs, drawings, specifications, construction and/or other services as required and furnished for the Project on behalf of the City under this Agreement. The obligation to require that all Persons employed on the various Projects must correct or revise or cause to be corrected and revised any errors and deficiencies as set forth is specifically agreed to be the responsibility of the Construction Manager who shall be responsible for any costs or expenses resulting from such its failure to impose such terms and conditions.
- (e) Construction Manager shall include in any contract for any part of the Project, a requirement that the contractor shall be responsible for any claim, damage, loss or expense to the City that is attributable to negligent acts, errors or omissions related to the designs, drawings, specifications, construction and/or other services required to be furnished by or on behalf of the City. In the event that any claim, damage, loss or expense attributable to such negligent acts, errors or omissions does arise and the Construction Manager has failed to provide in the contract that such claim, damage, loss or expense shall be the responsibility of the contractor, Construction Manager shall be required to indemnify the City

against such claim, damage, loss or expense.

- (f) Prior to the later of: (i) the City's acceptance of the work; or (ii) the completion of any Final Audit, if required, by the City, Construction Manager agrees that authorized representatives of the City may at all reasonable time review and inspect the activities and data collected under the terms of this Agreement and any amendments hereto, including but not limited to all reports, drawings, studies, specifications, estimates, maps, and computations, prepared by or for the City, the Construction Manager or any other Person.
- (g) Construction Manager shall incorporate into all of its agreements the requirement that any reasonable recommendation of the City shall be included in the design documents being developed, provided that the City's review recommendations are made prior to the City's final signed approval of the design documents.
- (h) Construction Manager agrees that the specifications required by the City in trail improvements of the type set forth in the Scope of Work are generally known and that the specifications to be applied to the Project may be ascertained through the exercise of due diligence such that it is possible to agree to perform the Scope of Work even if such terms are not specifically set forth herein.
- (i) The City will make available in a timely manner all records and documents required by Construction Manager to fulfill the Project Agreements. If the City has not responded to such request for records and documents within ten (10) days after written demand, additional time used by the City to reply will be added to the time allowed for completion of the Project.
- (j) Any data transferred to Construction Manager by the City remains the proprietary product of the City. The City shall retain title and ownership of all data including any digital data. In no event will the City be liable for any damages whatsoever, including but not limited to, direct or indirect damages, any loss of profits, any costs or expenses incurred, any lost savings, or other incidental or consequential damages, arising out of the use or arising out of the inability to use any data transferred by the City. Construction Manager may not redistribute, rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any data provided by the City, or any portion thereof, without the express written permission of the City.
- (k) The Construction Manager for itself, its successors, and its assigns and any Person employed by it in any capacity, waives all rights to any claim to damages whatsoever arising out of the use of any City data for any Project, and/or the provision of this data to Construction Manager and/or the transfer of this data to

Construction Manager. This waiver provision shall be included in any and all contracts or agreements related to any Project and that any Person employed on any Project shall agree to the same.

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

5.

FUNDING OF THE PROJECT

Construction Manager hereby acknowledges and agrees that Exhibit "A" describes the area of the Projects with sufficient precision and that the specifications for the building of the Project is sufficiently set forth or known to Construction Manager such that Construction Manager is able to estimate or calculate total cost of the project based on the description of the Scope of Work. The Construction Manager acknowledges and agrees that the City is under no obligation to fund any portion of the project as described herein.

- (a) Construction Manager acknowledges and agrees that the funding described in this Agreement represents the entire funding of said projects and includes any and all claims by Construction Manager against the City under this Agreement and/or any and all claims by any Person in the completion of said projects which have now accrued or which may accrue in the future.
- (b) The City and the Construction Manager acknowledge and agree that the Construction Manager shall contribute to the Georgia 400 Trail Project by funding all or certain portions of the project costs for the preconstruction engineering (design) activities, utility relocations, right of way acquisitions, construction, and maintenance, and agrees that the City is not required or expected to provide any funds for any part of the cost of the project. The City and the Construction Manager agree that the City may, at its sole discretion, contribute local funds to the projects.

319732v2

- (c) The Construction Manager shall contribute the balance of the amount required to complete the project by funding that portion of the costs which are over and above the funding provided herein. The City and the Construction Manager agree that this amount may include amounts expended prior to the full execution this Agreement.
- (d) In the event of termination of the Georgia 400 Trail Project, or the failure of GDOT to perform for any reason, the obligations of the City and the Construction Manager are governed by Section 2.

## 6.

## REPORTS AND DOCUMENTATION

- (a) All reports, information, data or other documents, given to Construction Manager by the City or gathered or created by the Construction, under this Agreement shall be kept confidential and shall not be made available to any Person, individual or organization by Construction Manager without the prior written approval of the City. Documents prepared by Construction Manager containing information or data, in any form, that was provided to Construction Manager by the City and that would not have been available to Construction Manager except for the City's transfer of such information or data pursuant to this Agreement or in anticipation of this Agreement, shall not be made available to any individual or organization by Construction Manager for any purpose not specific to this contract without the prior written approval of the City. All data stored in digital or electronic format ("digital data") that is transferred to the Construction Manager is the proprietary product of the City. The City shall retain title and ownership of this digital data.
  - (i) Construction Manager shall specifically provide in all contracts or agreements that the specific obligations set forth in this section shall be binding on any Persons and such documents shall further provide that in the event that any Person employed on the Project shall breach the agreement to keep confidential all reports, information, data or other documents, given to Construction Manager by the City, such Person shall indemnify the City for all costs which are required by the City to enforce its rights to ownership of the reports, information, data or other documents, given to Construction Manager by the City or which arise from any issue related to the release of the same.
- (b) The City will make available in a timely manner all records and documents required by the Construction Manager to fulfill the Scope of Work.

- (c) In no event will the City be liable for any damages arising out of the use or arising out of the inability to use its documents or digital data including without limitation, direct or indirect damages, loss of profits, costs or expenses incurred, lost savings, or other incidental or consequential damages. The Construction Manager may not rent, lease, sell, transfer or otherwise use for any purpose not specific to this contract, any documents or digital data provided by the City, or any portion thereof, without the express written permission of the City.
- (d) The City has made known to the Construction Manager, and the Construction Manager acknowledges such notice, that any or all reports and/or documents may contain errors and inconsistencies. The City does not ensure, represent, or warrant in any way the accuracy and/or reliability of any data. All data is provided in an "as is" format and condition. The Construction Manager expressly assumes all risks and liabilities that may arise from the data. Use data in no way entitles the Construction Manager or any of its officers, employees, designees, or agents to recover any damages whatsoever from the City or its officers, agents, or employees for any cause of action based on the data, whether printed or digital. The Construction Manager hereby forever waives for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, and/or the provision of this data to the Construction Manager and/or the transfer of this data to the Construction Manager.
- (i) The Construction Manager further agrees that the agreement, recited in this subpart, to waive for itself, its heirs, successors, and its assignees any and all rights to any claim to damages whatsoever arising out of the use of the City's data by the Construction Manager, and/or the provision of this data to the Construction Manager and/or the transfer of this data to the Construction Manager shall be included in any and all contracts or agreements related to the Project and that any Person employed on the Project shall agree to the same.
- (e) The Construction Manager shall provide to the City in a digital format compatible with existing data standards in use by the City of Atlanta Department of Public Works, and ready for modeling, editing, and reproduction, a copy of all data compiled or inventoried or otherwise produced under this Agreement, (ii) any data enhanced or improved from the data transferred by the City to the Construction Manager, and (iii) any deliverables described in this Agreement.

## 7.

## CITY'S RIGHT OF APPROVAL OF PLANS &amp; WORK

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

8.

PROCUREMENT OF CONTRACTS

In the event Construction Manager in the performance of this Agreement should need to enter into a contract with a project manager, engineer professional or technical consultants and/or one or more construction contractors, the Construction Manager, acting as the City's agent, is authorized to prepare bid documents for such contracts on behalf of the City, provided that such contracts are procured in accordance with this Agreement, and all applicable federal and state laws and City Ordinances. The lack of a specific requirement in this Agreement, relating to procurement of construction contracts, does not relieve Construction Manager from its obligation to follow all requirements relating to procurement of contracts as set forth in the City Code. However, said procurement requirements shall not be applicable to any technical consultant or professional engaged by Construction Manager prior to the execution of this Agreement for engineering, design, right of way acquisition, construction, and/or maintenance services. Where applicable, the following subparts will apply:

- (a) Any construction contract related to the Project in excess of \$20,000 which it is to be paid from funds provided by the City and shall be let by public bid.
- (b) Construction Manager acknowledges and agrees that it will follow the State of Georgia's competitive bid procedure and will document all activities related to the process. All contracts let by public bid will be awarded to the lowest responsive bidder, unless it can be shown that the lowest bidder did not meet the advertised criteria for contractor selection.
- (c) Construction Manager acknowledges and agrees that the Bid Documents must comply with City Code and, ten (10) business days prior to the advertisement for bids, will provide completed plans, bid documents, and specifications to the City for approval. Bid packages shall be prepared by Construction Manager in consultation with the City's Purchasing Agent (who shall undertake its best efforts to approve the Bid Documents within ten (10) business days of submittal by PATH), and approval of the construction plans by all necessary departments of the City. After approval by the City's Purchasing Agent, bid packages shall be made available for purchase by interested bidders at the location and in the manner customarily employed by the City of Atlanta Department of Procurement

for such purposes. Where there is a conflict between the requirement of the City's public bidding process and GDOT's bid process, the bid process required by GDOT will control.

- (d) Construction Manager acknowledges and agrees that bids must be advertised at least four (4) weeks prior to bid opening, and published again two weeks prior to bid opening and once again published one week prior to bid opening. Such advertisement shall state that the project is being advertised as a project of the City of Atlanta and the text of the advertisements are subject to the approval of the City's Purchasing Agent. Construction Manager will provide the proposed form of an advertisement at least ten (10) business days in advance of the time that such advertisement must be placed for publication. If the City's Purchasing Agent is unable to approve the text of advertisements submitted by Construction Manager, the City shall provide language for the advertisement within ten (10) business days of submission to the Purchasing Agent unless extended by the City for reasonable grounds and with prior written notification. In no event shall an advertisement be placed which does not have City approved language.
- (e) If applicable, all contracts related to the Project will specify that wage rates established by the Davis-Bacon Act
- (f) Bid openings will occur at the offices of the City's Department of Procurement, located at Suite 1750, 55 Trinity Avenue, Atlanta Georgia 30335. After the opening of bids in a meeting open to the public, the names of contractors submitting bids and the amount of all bids will be read aloud.
- (g) Bid bonds equal to five (5) percent of the submitted bid must be included with all bids. The bid bond shall be in the form of a bond from a surety acceptable to the City's Risk Manager, a certified check, or other negotiable instrument and shall serve as assurance that the Person bidding for the contractor will, upon acceptance of their bid, execute such contractual documents as may be required within a specified period of time.
- (h) Construction Manager acknowledges and agrees that negotiations with bidders are prohibited. If all bids are in excess of any cost estimate set forth in the Bid Documents, Construction Manager acknowledges and agrees that it may not negotiate with the lowest bidder to bring the costs within the estimate. In such a case, Construction Manager acknowledges and agrees that it will either, revise the plans and estimate, re-advertise and re-bid for the contract, or accept the lowest responsive bid and accept responsibility for the cost difference.

- (i) Construction Manager agrees that the City's determination as to all questions involving the qualification of bidders and completeness of the responses will be final.
- (j) Construction Manager acknowledges and agrees that no advertisements will be placed until such time as the City has issued a notice to bid.
- (k) Construction Manager and the Department of Procurement will evaluate the bids. Construction Manager shall be responsible for having the bids reviewed by the Department, including without limitation, those parts of the bids with respect to DBE compliance. After approval by the Department of the decision to award, or the Department's decision to decline to review the decision to award, Construction Manager shall send the letter notifying the lowest responsive bidder that the contract has been awarded. Construction Manager shall be responsible for assuring execution of the contract and issuance of the notice to proceed.
- (l) Construction Manager acknowledges and agrees that all documents connected with the public bidding process and the contract will be subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et Seq and the City shall maintain one original and one copy of all bids.

## 9.

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

Construction Manager acknowledges and understands (that the following will be applicable if city/federal funds are use for any part of this project), it is the policy of the City of Atlanta to actively promote full and equal business opportunities for local minority and female business enterprises through its Equal Business Opportunity Program as outlined in the City of Atlanta Code of Ordinances, Chapter 2, Article X, Division 12. Construction Manager acknowledges the availability of minority and female owned firms in the Atlanta area is 17.5% Minority Business Enterprise ("MBE") -- African-American Business Enterprise ("AABE") and Hispanic Business Enterprise ("HBE") -- and 13% Female Business Enterprise ("FBE") as outlined in the previously referenced provisions of the City Code. Construction Manager further recognizes that upon completion of project design an estimate for the percentages of the various scopes of work will be submitted to the City of Atlanta for further review and EBO and DBE percentage adjustments, if required. The Construction Manager further acknowledges that it will use its best efforts to utilize minority and female business enterprises consistent with their availability in the Atlanta area. Construction Manager agrees to provide all pertinent information regarding participation by MBE's and FBE's within 30 days after a request by the Office of Contract Compliance. the City agrees that it will

319732v2

accept the level of participation required by GDOT. The Construction Manager acknowledges and agrees that where the amount of participation required by GDOT is less than the amount required by the City Code, the Construction Manager will follow all applicable DBE requirements set by GDOT and will be responsible for the submission of all reports required by GDOT. The level of minority and female enterprise participation required by GDOT through its annual aggregate Disadvantaged Business Enterprise goal for federal aid highway projects shall be credited fully for the purposes of the City of Atlanta's Equal Business Opportunity Program under the uniform certification process stated by GDOT to be in effect for the purposes of this Project Agreement. Construction Manager agrees that it will make best efforts to meet the level of the City's required participation.

## 10.

## INSURANCE AND BONDING

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

- (a) Insurance.
  - (i) During the entire term of this Agreement, Construction Manager shall cause all Persons to maintain insurance required by the various Project Agreements, and to obtain such insurance on its own behalf in the event that its errors and omissions in the management of any of the work on the various Projects shall cause loss or expense to the City.
  - (ii) All companies providing insurance must be rated A- or better and be at least a financial category size IX or better, as rated by A. M. Best & Company. The ratings for each company must be indicated on the insurance certificate provided. Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia. Additionally, all bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company. If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will provide written notification. A new policy or bond must promptly be obtained by an insurer acceptable to City and submit to City evidence of its compliance with these conditions. Failure to comply with all insurance and bonding requirements will not relieve any liability under the agreement nor will it limit any indemnification obligations under the agreement.

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

- (1) Workers' Compensation and Employer's Liability Insurance to cover each employee who is or may be engaged in work under the agreement in the statutory limits of \$100,000 per accident, \$100,000 per employee with a \$500,000 policy limit; and
- (2) Commercial General Liability Insurance in an amount not less than \$1,000,000 per occurrence subject to a \$2,000,000 aggregate. The following specific extensions of coverage must be provided:
  - a) Contractual Liability Insurance;
  - b) Broad Form Property Damage;
  - c) Personal Injury;
  - d) Advertising Injury;
  - e) Fire Legal Liability;
  - f) Premises - Operations;
  - g) Products - Completed Operations; and
  - h) Independent Contractors and Subcontractors; and,
- (3) Commercial Automobile Liability Insurance in an amount not less than **\$500,000** Bodily Injury and Property Damage combined single limit.
  1. Comprehensive Form and
  2. Owned, Hired, Leased and Non-owned vehicles to be covered.

If Contractor/Consultant does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Contractor/Consultant's personal automobile policy or the Comprehensive General Liability coverage (c) required under this Appendix B.
- (4) Property Insurance covering all forms of risk on any and all interests related to this contract, including inventory, supplies, and other property of Contractor/Consultant located at said premises, insuring against the perils of fire, lightning, extended coverage, perils vandalism, malicious mischief, glass breakage and sprinkler leakage, in an amount equal to the full replacement value of any and all interests of Contractor/Consultant in or about said premises.

- (iv) The **City of Atlanta** must be named as certificate holder. The City also must be covered as Additional Insured under all required insurance and such insurance must be primary with respect to the Additional Insured, vesting with City all rights under the insurance policies that the primary insured has. Confirmation of this must unconditionally appear on the insurance certificate. Additionally, evidence of such must be provided in the form of an Additional Insured endorsement for each policy of insurance under which it is required. The City shall not have liability for any premiums charged for such coverage.
- (v) The cancellation of any policy of insurance required by this Contract shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Official Code of Georgia Annotated. As such, the City must, without exception, be given not less than thirty (30) days prior written notice of the proposed cancellation of any required insurance or bonds for other than non-payment of premium or material change in any insurance or bond. City must, without exception, be given not less than ten (10) days prior written notice of the proposed cancellation of any required insurance or bonds due to non-payment of premium. Confirmation of these mandatory notice requirements must appear on the insurance certificate and bonds. The City will not accept any insurance certificate that contains language similar in intent to the following: "Should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail \_\_\_ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." If the underlying policy does not contain such compliant cancellation notice requirements, and endorsement evidencing City's rights to unconditional notice of a policy cancellation is required to amend the policy to comply.
- (vi) At the time of the execution of any contract to be paid from funds allocated by this Agreement, Construction Manager agrees to cause each Person to furnish to the City a Certificate of Insurance showing required coverage.
- (vii) Construction Manager agrees to indemnify the City from any losses arising from its failure to obtain and keep in force any policy of insurance or the failure of any Person to obtain and keep in force any policy of insurance. The purchase of insurance for errors and omissions in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.

## (b) Bonding for Construction Contracts or Agreements

- (i) At the time of the execution of any construction contract to be paid from any of the funds allocated by this Agreement, Construction Manager agrees to cause each Person to furnish the City with a performance bond equal to 100% of the contract price and a payment bond equal to 110% of the contract price. If the bond amount required by GDOT is greater than 100%, of the contract price, the Construction Manager agrees to cause each Person to furnish the City with a performance bond or payment bond equal to the amount required by GDOT.
- (ii) Each payment and performance bond obtained by any party providing construction materials or construction services under this Agreement shall name the City of Atlanta as a co-obligee.
- (iii) All performance bonds and payment bonds required under the Project Agreement shall be in a form acceptable to the City and shall be approved by the City's Risk Manager prior to the execution of any construction contract with any Person.
- (iv) The Person executing the performance bonds and payment bonds on behalf of the surety will file with the bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney and certified by an official of the surety.
- (v) Construction Manager agrees to indemnify the City from any losses arising from the failure of any construction contractor to obtain and keep in force any payment or performance bond. The purchase of insurance for errors and omissions or the purchase of a surety bond in favor of the City in amounts deemed appropriate by the City's Risk Manager shall be sufficient for the purposes of this indemnification.

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

11.

CITY'S RIGHT OF INSPECTION

Prior to the later of: (i) the City's acceptance of the Scope of Work; or (ii) the completion of any audit required by the City, which shall begin within 180 days of the City's acceptance of the Scope of Work, the City shall have the right to inspect any part of the work which is the subject of this Agreement, at any time. Within this specified time period, inspectors or designees from the City are given the right of entry to all work sites at any time and all office sites during business hours and upon reasonable notice to conduct inspections of the Project and the associated records as deemed necessary. Construction Manager shall provide in all contracts or agreements relating to the Project that the right of entry and inspection given by Construction Manager in this Agreement shall be binding on all sub-contractors of whatever tier, regardless of whether such sub-contractor has a direct contract with Construction Manager. Within this specified time period, this right of entry and inspection shall include the right to inspect and audit all books and records of Construction Manager or of any sub-contractors, which reasonably relate to this Agreement.

12.

#### PAYMENT OF INVOICES

- (a) Construction Manager agrees that the City shall only contribute funds in the amount set forth in Paragraph 5.
- (b) The Construction Manager shall submit to the City a monthly report (based on calendar months) which describes the progress which was accomplished in the previous month, anticipated work to be done during the next month and any problems encountered or anticipated (the "Monthly Report").
  - (i) The preparation and presentation of the Monthly Report, which shall contain all invoices to be paid, if applicable, is the sole responsibility of Construction Manager and shall be transmitted to the City no later than the 30<sup>th</sup> of every month or the next business day thereafter in the event that the 30<sup>th</sup> falls on Saturday, Sunday or a legal holiday.
- (c) Construction Manager agrees and understands that the City will only pay, if applicable, in proportion to the percentage of work completed for each phase of the work and will only make such payments after the receipt and review of the Monthly Report.
- (d) Construction Manager acknowledges and agrees that the City will only make a final payment, if applicable, with regard to this Agreement if the Construction Manager agrees that the acceptance of the final payment is in full and final settlement of all claims arising against the City for work

319732v2

done, materials furnished, costs incurred or other matters arising from the Project. Construction Manager further acknowledges and agrees that the acceptance of the final payment shall release the City from any and all further claims of whatever nature, whether known or unknown, for and account of this Agreement and for any and all work done, and labor and materials furnished, in connection with the Project.

13.

### INDEMNIFICATION

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

- (a) Construction Manager acknowledges and agrees that the general indemnity required of Persons employed through a contract to perform any work on any of the various Project Agreements shall specifically include a provision that such indemnity shall survive termination of the contract and this Agreement.
- (b) The requirement that this general assumption of obligation and responsibility and general indemnity is to be included in the contracts of the Persons employed by the Construction Manager shall not be construed to waive or supersede any previous language of this Agreement which specified that the Construction Manager shall be obligated to the City for any loss or expense which results from the negligence of the Construction Manager in the administration of this Agreement.

14.

### NOTICES TO THE PARTIES

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

Richard Mendoza  
Commissioner of Public Works

319732v2

Atlanta City Hall  
55 Trinity Avenue, S.W, Suite 4700,  
Atlanta, GA, 30335  
404-330-6240

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

Ed McBrayer  
PATH Foundation, Inc.  
1601 West Peachtree Street  
Atlanta, Georgia 30309  
404-875-7284

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

15.

## COMPLIANCE WITH CITY ORDINANCES

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

16.

## PERMITS AND LICENSES

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

17.

## GENERAL PROVISIONS OF THIS AGREEMENT

- (a) The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference, and shall be disregarded in the construction of this Agreement.
- (b) No failure of either party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other party with this Agreement, and terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.
- (c) This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia.
- (d) Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions, and provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.
- (e) The termination of this Agreement shall not operate to cut off any claims or causes of action in favor of either party which occurred or arose prior to the effective date of such termination.

319732v2

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

18.

#### ENTIRE AGREEMENT

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

**SIGNED ON NEXT PAGE**

IN WITNESS WHEREOF, the City and Contractor have affixed the signatures of their duly authorized officers, as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007

**CITY OF ATLANTA:**

**PATH FOUNDATION:**

\_\_\_\_\_  
Municipal Clerk (Seal)

\_\_\_\_\_  
President/Vice President  
ATTEST:

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Secretary/Asst. Secretary  
(affix corporate seal)

**RECOMMENDED:**

\_\_\_\_\_  
Chief Operating Officer

\_\_\_\_\_  
Commissioner, Department of Planning &  
Community Development

\_\_\_\_\_  
Commissioner, Department of  
Public Works

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

\_\_\_\_\_  
Chief Procurement Officer

**APPROVED:**

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

**APPROVED AS TO FORM:**

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

Attachment: GDOT MOU for GA 400 Trail (13-R-3320 : MOU with GDOT for GA 400 Trail Project)

**13-R-**

(Do Not Write Above This Line)

**A RESOLUTION BY CITY UTILITIES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR, OR HIS DESIGNEE, TO EXECUTE A MEMORANDUM OF UNDERSTANDING AGREEMENT WITH THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR PRELIMINARY ENGINEERING AND CONSTRUCTION SERVICES FOR THE GEORGIA 400 TRAIL PROJECT; AND AUTHORIZING THE PATH FOUNDATION, INC. TO ACT AS THE CITY'S AGENT AND CONSTRUCTION MANAGER FOR THE GEORGIA 400 TRAIL PROJECT; AND FOR OTHER PURPOSES.

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1<sup>ST</sup> ADOPT 2<sup>ND</sup> READ & REFER
- PERSONAL PAPER REFER

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

**First Reading**

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

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

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

**FINAL COUNCIL ACTION**  
 2<sup>nd</sup>  1<sup>st</sup> & 2<sup>nd</sup>  3<sup>rd</sup>  
Readings  
 Consent  V Vote  RC Vote

**CERTIFIED**

**MAYOR'S ACTION**

