06-O -1364

AN ORDINANCE BY
FINANCE AND EXECUTIVE COMMITTEE

AN ORDINANCE AUTHORIZING THE TRANSFER OF APPROPRIATIONS IN THE AMOUNT OF FIFTY FIVE THOUSAND DOLLARS AND NO CENTS ($55,000.00) FROM FUND, ACCOUNT, AND CENTER NUMBER 1C28 (GENERAL GOVERNMENT CAPITAL OUTLAY FUND) 792001 (RESERVED DESIGNATED) M11X04519985 (DEVELOPMENTAL IMPACT FEES-TRANSPORTATION) TO FUND, ACCOUNT, AND CENTER NUMBERS 1C28 (GENERAL GOVERNMENT CAPITAL OUTLAY FUND) 574001 (FACILITIES OTHER THAN BUILDINGS) M23F04259985 (PRELIMINARY DESIGN AND CONSTRUCTION COSTS HERMI'S BRIDGE PROJECT) ($51,667.00) AND 1C28 (GENERAL GOVERNMENT CAPITAL OUTLAY FUND) 524001 (FACILITIES OTHER THAN BUILDINGS) M23F04259985 (CONSULTANT/PROFESSIONAL SERVICES) ($3,333.00) FOR THE PURPOSE OF PARTICIPATING IN THE HERMI'S BRIDGE RESTORATION PROJECT; AND FOR OTHER PURPOSES.

WHEREAS, the Hermi's Bridge is located within the jurisdiction of the City of Atlanta ("City"); and

WHEREAS, the Hermi's Bridge has fallen into severe disrepair and is unsafe for pedestrian use; and

WHEREAS, the Atlanta Regional Commission (ARC) has agreed to fund a Project to rehabilitate the Hermi's Bridge with $320,000.00 in federal funds with a required $80,000.00 local match; and

WHEREAS, the City Council desires that the City be a participant in the Hermi's Bridge Restoration Project with Cobb County and the Path Foundation Inc. as set forth in substantial form attached hereto as Exhibit "A"; and

WHEREAS, the City's monetary contribution to the Project shall be in the amount of fifty five thousand dollars and no cents ($55,000.00).

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

SECTION 1: That the Chief Financial Officer is hereby authorized to make the following transfer:

TRANSFER FROM APPROPRIATIONS

1C28 792001 M11X04519985	Reserve Designated, Development Impact Fees-Transportation	$55,000.00

TRANSFER TO APPROPRIATIONS

1C28 574001 M23F04259985	Preliminary Design, Hermi's Bridge Project	$25,000.00
1C28 574001 M23F04259985	Construction Costs, Hermi's Bridge Project	$26,667.00
1C28 524001 M23F04259985	Consultant/Professional Services, Hermi's Bridge Project	$3,333.00

TOTAL: $55,000.00

Section 2: That all ordinances and parts of ordinances in conflict herewith are hereby waived to the extent of the conflict.

EXHIBIT "A"

Memorandum of Agreement
for
The Hermi's Bridge Restoration Project
Between
Cobb County, the City of Atlanta, and the PATH Foundation

This Memorandum of Agreement ("MOA") is entered into this ___ day of _____, 2006, by and between Cobb County, a political subdivision of the State of Georgia ("Cobb"), the City of Atlanta, a municipal corporation located in Fulton County, Georgia ("Atlanta"), and the PATH Foundation, Inc., a non-profit corporation whose principle offices are located at 1601 W. Peachtree Street, Atlanta, Georgia 30309. ("PATH");

WHEREAS, Hermi's Bridge is located on or about Paces Ferry Road in Cobb and Fulton Counties, and spans the Chattahoochee River. Prior to the erection of the current roadway bridge, Hermi's Bridge served as the connector of the two counties across the Chattahoochee River. Subsequent to the erection of the existing roadway bridge, Hermi's Bridge became a pedestrian bridge but has fallen into disrepair, such that today it is likely unsafe for use and has been barricaded; and

WHEREAS, in an attempt to restore Hermi's bridge, on or about the year 2000, Fulton County requested funding from the Atlanta Regional Commission ("ARC") to develop a project to rehabilitate Hermi's Bridge. ARC funded the project ($320,000 of federal funds with a required $80,000 local match) and the Project is designated as ARC project number FN-193, Federal Project Number CM-0004-00(512), and GDOT P.I. Number 0004512 (the "Project"); and

WHEREAS, Fulton County has requested to withdraw from further participation in the Project because the project lays within the city limits of Atlanta and not within the jurisdiction of Fulton County, and will provide to Cobb and Atlanta the results of the preliminary geotechnical and bridge investigations already performed; and

WHEREAS, Cobb County has agreed to take over sponsorship of the Project with support from the Georgia Department of Transportation, Atlanta, and PATH to complete the Preliminary Engineering and for construction of the Project; and

WHEREAS, it is the intent of the parties that this MOA establish the roles, responsibilities, and obligations of the parties related to the Project.

NOW, THEREFORE, for and in consideration of the mutual obligations of and benefits to each of the parties, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

EXHIBIT "A"

SECTION 1: PURPOSE

This MOA is intended to provide a framework for continuing, cooperative planning, design and rehabilitation of the Project.

SECTION 2: ORGANIZATIONAL ROLES AND RESPONSIBILITIES

A. Cobb, Atlanta, and PATH

The foregoing entities shall be responsible for the following:

1. Preliminary Engineering. Provide funding, in equal shares, for the Preliminary Engineering of the Project, to include preliminary investigations and concept plans for the design of the Project, and complete rehabilitation plans for the Project. The estimated contribution for each entity is $25,000.00 for the completion of preliminary engineering. After full execution of this MOA, the City and PATH, within 30 days after being invoiced, shall make payment to Cobb County in the amount of $25,000.00 each, deliverable to the Director of the Cobb County Department of Transportation at the address shown in Section 7. The County shall place such funds in a designated account. The expenditure of funds for Preliminary Construction Engineering fee in excess of this amount will require pre-approval by the Project Steering Committee and shall likewise be shared equally between the parties. In the event the Preliminary Engineering costs are less than $75,000.00, the County shall reimburse the City and PATH their pro rata share of such savings.
2. Construction (Local Match). Provide funding, in equal shares, for the local match (Rehabilitation) for the Project. $80,000.00 is the required match for federal funds programmed for the Project, so each party shall be obligated to pay $26,667.00. . After full execution of this MOA, the City and PATH, within 30 days after being invoiced, shall make payment to Cobb County in the amount of $26,667.00 each, deliverable to the Director of the Cobb County Department of Transportation at the address shown in Section 7. The County shall place such funds in a designated account. The expenditure of funds for Construction costs in excess of this amount will require pre-approval by the Project Steering Committee and shall likewise be shared equally between the parties. In the event the Construction costs are less than $80,000.00, the County shall reimburse the City and PATH their pro rata share of such savings.
3. Construction Inspection. Provide funding, in equal shares for the Construction Inspection Services that will be provided by a consultant hired by Cobb County. In no event shall the City or PATH be responsible to contribute any more than $3333.00 towards Construction Inspection Services. Prior to construction, the Cobb County Department of Transportation will provide to the City and PATH an estimate of the construction inspection costs. At that time, the City and PATH, within 30 days after being invoiced, shall make payment to Cobb County for one-

third of this amount, each deliverable to the Director of the Cobb County Department of Transportation at the address shown in Section 7. The County shall place such funds in a designated account. The expenditure of funds for Construction Inspection costs in excess of this amount will require pre-approval by the Project Steering Committee and shall likewise be shared equally between the parties. In the event the Construction costs are less than estimated, the County shall reimburse the City and PATH their pro rata share of such savings.

4. Provide other assistance as mutually agreed upon in writing by the parties.
5. Preliminary Engineering, Construction and Construction Inspection shall all be completed no later than July 15, 2007. The City of Atlanta shall not contribute any amounts beyond Fifty-Five Thousand ($55,000.00) Dollars in the aggregate under this MOU for the total combined costs of Preliminary Engineering, Construction and Construction Inspection.

B. Cobb County

Cobb County shall be specifically responsible for the following:

1. Assuming the role of SPONSOR for the Project.
2. Selecting an engineering firm and providing oversight of the Preliminary Engineering services for the Project.
3. Processing, approving and paying invoices for the design consultant.
4. Coordinating with the Georgia Department of Transportation in adherence of their Plan Development Process.
5. On a scheduled basis, communicate to the City and Path the Project status, and significant Project issues and funding issues that result from the Preliminary Engineering.
6. Issuance of bid advertisement for selection of construction contractor and overseeing (in concert with the design consultant), the rehabilitation of the Project, as well as construction management during the lifetime of the Project.
7. Processing, reviewing, and paying of invoices for the Contractor.
8. On a scheduled basis, communicate to the City and PATH the Project status, and significant Project issues and funding issues that result from the rehabilitation.
9. Developing and coordinating issues with the Project Steering Committee.

SECTION 3: POLICY DEVELOPMENT AND COORDINATION

A Project Steering Committee will be formed to make policy decisions regarding the Project not otherwise herein delegated to the County. The Project Steering Committee will be made up of 3 representatives with the County, the City, and PATH each having one appointment.

SECTION 4: COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS; SEVERABILITY

All parties shall comply with all applicable local, state, and federal laws and regulations. Nothing in this MOA alters, or seeks to alter, the existing statutory authority of either party under state or federal law. If any of the provisions of this MOA are held to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 5: EFFECTIVE DATE; TERM; TERMINATION

This MOA shall become effective upon execution by all parties and remain in effect until the completion of the Project or termination by any party as provided below.

Subject to the provisions of Section 10 herein, any party may terminate this MOA for cause by providing at least sixty (60) days' written notice to the other parties. Parties shall provide 30 days prior written notice to a party in breach, if any, during which period said breaching party may cure any such default. Reasons for default shall include but not be limited to:

1) Performs work that fails to conform to the requirements of this Agreement;
2) Fails to comply with any term of the Agreement;
3) Fails to make progress so as to endanger performance of this Agreement;
4) Engages in behavior that is dishonest, fraudulent, or constitutes a conflict of interest with the partys' obligations under this Agreement;

SECTION 6: AMENDMENTS AND MODIFICATIONS

Any party may request changes to this MOA at any time by written notice to the other parties. Such changes as are mutually agreed upon by and between the parties shall be incorporated in written amendments to this MOA executed in the same manner and with the same approval process as this original MOA. This MOA may only be modified by an instrument in writing executed by all parties signatory of this MOA. All parties agree to cooperate with each other by executing such documents as may be necessary to evidence such mutually agreeable amendment and modifications.

SECTION 7: NOTICES/PAYMENTS

All notices required under this Agreement shall be directed to the offices of the signatories to this agreement and to the following:

Cobb County Department of Transportation
Director
1890 County Services Parkway
Marietta, Georgia 30008

City of Atlanta
Commissioner Steven R. Cover
Dept. of Planning

55 Trinity Avenue, S.W., Suite 1450
Atlanta, Georgia 30303-0310

With a copy to:

City of Atlanta Law Dept.
Attn: Deputy City Atty. Serena Sparks
68 Mitchell Street
Atlanta, GA 30303-0310

The PATH Foundation, Inc.
President
1601 W. Peachtree Street
Atlanta, Georgia 30309

All payments and reimbursements due hereunder shall be mailed to the addresses listed above.

SECTION 8: GOVERNING LAW/VENUE

This MOA shall be governed in all respects by the laws of the State of Georgia in a court of competent jurisdiction located in the State of Georgia.

SECTION 9: ENTIRE AGREEMENT

The terms and conditions contained herein supersede all prior oral or written understandings between the parties and constitute the entire agreement between them concerning the subject matter of this MOA. This MOA shall not be modified or amended except by a writing signed by authorized representatives of the parties.

SECTION 10: DISPUTES

Any claim, controversy or dispute, related directly or indirectly to this Agreement, shall be resolved by a court of competent jurisdiction located in the State of Georgia. Prior to instituting any legal action or terminating this MOA, the parties agree in good faith to participate in a non-binding mediation process if requested by any one or more of the parties. The laws of the State of Georgia shall govern the interpretation and any claims arising out of this Agreement.

SECTION 11: ORIGINALS

The parties hereto understand and agree that this MOA may be executed in counterparts.

SECTION 12: HEADINGS

EXHIBIT "A"

Division of this Agreement into sections and the use of headings is for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement, or any provision hereof.

[The remainder of this page is intentionally left blank.]

EXHIBIT "A"

In witness whereof, the parties hereto have executed this Memorandum of Agreement, on the dates as indicated below.

Attest:

Cobb County

_____

_____

Samuel S. Olens, Chairman
Cobb County Board of Commissioners

Date _____ *seal*

EXHIBIT "A"

The parties, acting by and through their duly authorized officers, have caused their hands to be hereunto affixed, as of the date and year first written above.

CITY OF ATLANTA **INSERT FIELD**

By: _____
Mayor

Attest:

_____
Municipal Clerk

Recommended:

_____
Chief Operating Officer

_____
Chief Financial Officer

_____
Commissioner of Planning

Approved as to Form:

_____
City Attorney

EXHIBIT "A"

Attest:

PATH Foundation

_____

_____

President

Date _____ *seal*