AN ORDINANCE
BY: COUNCILMEMBER ANNE FAUVER

03-O -0450

AN ORDINANCE AMENDING THE 2003 (INTERGOVERNMENTAL GRANT FUND) BUDGET, DEPARTMENT OF PARKS, RECREATION AND CULTURAL AFFAIRS, BY ADDING TO ANTICIPATIONS AND APPROPRIATIONS IN THE AMOUNT OF $525,000 FOR THE PURPOSE OF MAKING IMPROVEMENTS IN CANDLER PARK; AND FOR OTHER PURPOSES

WHEREAS, the City of Atlanta Department of Parks, Recreation and Cultural Affairs, applied for and accepted a grant offer in the amount of $525,000.00 from the U.S. Environmental Protection Agency (USEPA) administered by the Environmental Protection Division, Department of Natural Resources of the State of Georgia; and

WHEREAS, The USEPA requires a non-federal match of 40% of the grant offer in the amount of $350,000.00 which has been identified in the 1994 Referendum General Obligation Bond Candler Park account #1C33 574001 M22I030992BC; and

WHEREAS, these funds will be used to make improvements in Candler Park as per the contract agreement dated January 29, 2003 between GA EPD and the City of Atlanta; and

WHEREAS, the Budget Commission of the City of Atlanta, Georgia has recommended increasing estimated receipts in the Intergovernmental Grant Fund by Five Hundred Twenty Five dollars ($525,000.00).

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

Section 1: That the 2003 (Intergovernmental Grant Fund) Budget, Department of Parks, Recreation and Cultural Affairs, be and is amended hereby as follows:

ADD TO ANTICIPATIONS

1B02 J53X0210BPE0		Environmental Protection Division, Department of Natural Resources, State of Georgia, Section 319(h) FY01 Grant **Candler Park**	
	631101	Federal Grant/Entitlement	$525,000.00

ADD TO APPRORIATIONS

1B02	N12D1130BPE0	Candler Park	
	77****	Ground and Site Improvements	$525,000.00

Section 4: That all ordinances and parts of ordinances in conflict herewith be and the same are repealed hereby.

CONTRACT

WITH

CITY OF ATLANTA

FOR

FEB 14 2003
BY

Candler Park Brook – Peavine Creek Watershed Restoration Project

SECTION 319(h) FY 01 GRANT - ELEMENT 01

STATE OF GEORGIA

COUNTY OF FULTON

THIS CONTRACT is made and entered into as of this 29TH day of JANUARY, ~~2002~~ 2003 by and between the Environmental Protection Division of the Department of Natural Resources, State of Georgia (hereinafter called the "Division") and the City of Atlanta (hereinafter called the "Contractor"), whose address is 8th Floor City Hall East, 675 Ponce de Leon Ave., NE, Atlanta, Georgia 30308-1829. The persons executing this Contract on behalf of the Contractor have authority to bind the Contractor to the terms of this Contract. The Director of the Division is authorized by law to execute this Contract.

W I T N E S S E T H:

WHEREAS, the Division is acting pursuant to the Georgia Water Quality Control Act, O.C.G.A. §§12-2-4, 12-2-6, and 12-2-7, and;

WHEREAS, the Division desires to engage the Contractor to render certain technical professional services hereafter described in connection with an undertaking (hereinafter referred to as the "Project") which is expected to be partially financed under Section 319(h) of the Federal Water Pollution Control Act Amendments of I987.

NOW, THEREFORE, for and in consideration of the valuable and mutual benefits flowing to each party as hereinafter appear below, the parties mutually agree as follows:

1. Employment of Contractor. The Division hereby agrees to engage the Contractor and the Contractor hereby agrees to provide the services hereafter set forth in connection with the Project of the Division under the Environmental Protection Agency Grant.

2. Scope of Service. The Contractor shall perform in a satisfactory and proper manner, as determined by the Division, the scope of services identified in Appendix A, hereby made a part of this Contract by reference.

3. Data to be Furnished to the Contractor. All information, data, reports, records, and maps as are existing, available, and necessary for the carrying out of the work shall be furnished to the Contractor without charge by the Division, and the Division shall cooperate with the Contractor in every way possible in carrying out the work.

4. Personnel.

(a) The Contractor represents that it has, or will secure all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Division or any State Agency.

(b) All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.

(c) None of the work or services covered by this Contract shall be subcontracted without the prior approval of the Contract Administrator.

5. Time of Performance. The services of the Contractor are to commence as soon as practicable after the effective date of this agreement and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Contract, but in any event all the services hereunder shall be completed by December 31, 2007.

6. Compensation. The Division agrees to pay the Contractor a sum not to exceed five hundred twenty five thousand ($525,000.00) dollars total.

7. In-kind Match. The Contractor will contribute a minimum of $350,000.00 in services or cash contributions toward the performance of services described in Appendix A to this contract.

8. Maintenance of Records and Semiannual Reports. The Contractor agrees to be responsible for directing and accounting for the participating parties contributions. The Contractor shall record costs incurred in performing the services described in Appendix A to this contract and shall record all in-kind services for submission to the Division. The Contractor shall submit a semiannual accounting of costs and matching funds to the Contract Administrator, which will consist of canceled checks, paid bills, payrolls, time and attendance records, contract and subcontract award documents, etc.

9. Method of Payment. The Division will pay to the Contractor the amount set forth in Paragraph 6, which shall constitute full and complete compensation for the Contractor's services herein. Such sum will be paid in the manner set forth in Appendix B, hereby made a part of this Contract by reference, subject to receipt of an invoice from the Contractor and a brief progress report specifying that it has performed the work under this Contract in conformance with the Contract and that it is entitled to receive the amount requisitioned under the terms of the Contract.

It is expressly understood and agreed that in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed the maximum sum of $525,000.00 for all the services required herein.

10. Termination of Contract for Cause. If, through any cause, the Contractor shall fail to fulfill in timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Division shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least 15 days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models,

photographs, and reports prepared by the Contractor under this Contract shall, at the option of the Division, become the property of the Division and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. Notwithstanding the above, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of any breach of the Contract by the Contractor, and the Division may withhold any payments to the Contractor for the purpose of set off until such time as the exact amount of damages due the Division from the Contractor is determined.

11. Termination for Convenience of Either Party. Either party may terminate this Contract at any time for good reason by giving written notice to the other party of such termination and specifying the effective date thereof, at least 15 days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described in Paragraph 10 above shall, at the option of the Division, become its property. If this Contract is terminated by either party as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made. Provided, however, that if less than 69 percent of the services covered by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed, in addition to the above payment for that portion of the actual out-of-pocket expenses, not otherwise reimbursed under this Contract, incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the Contractor, Paragraph 10 hereof relative to termination shall apply.

12. Changes. The Division may, from time to time, require changes including any increases or decreases in the amount of Contractor's compensation, which are mutually agreed upon by and between the Division and the Contractor, and shall be incorporated in written amendments to this Contract.

13. Assignability. The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same, whether by assignment or novation, without the prior written consent of the Contract Administrator.

14. Interest of Contractor. The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance required under the Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed or contracted with.

15. Identification of Documents and Projects. All construction or demonstration projects, reports, maps, and other documents completed as a part of this Contract, other than documents exclusively for internal use within the Division shall give the Contractor recognition and carry the following notation on a conspicuous sign or the front cover or a title page (or in the case of maps, in the same block) containing the name of the Division:

> "The preparation of this report, map, document, project, etc., was financed in part through a grant from the U.S. Environmental Protection Agency under the Provisions of Section 319(h) of the Federal Water Pollution Control Act, as amended."

together with the month and year the document was prepared and credit being given to the Environmental Protection Division of the Department of Natural Resources, State of Georgia.

16. Copyright. No reports, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor.

17. General Conditions. All covenants, agreements and stipulations in Part 31 Appendix A of Subchapter B, Title 40, Code of Federal Regulations, are incorporated herein by reference. The parties acknowledge those general grant conditions and intend that all those covenants, agreements and stipulations between the U.S. Environmental Protection Agency and the Division are applicable

to and enforceable against the Contractor. Allowable costs will be determined in accordance with the cost principles in OMB Circular A-87.

18. Applicable Law. The parties agree that this agreement and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.

19. The failure of the Division at any time to require performance by the Contractor of any provision hereof, shall in no way affect the right of the Division thereafter to enforce that same provision or any part of the Contract, nor shall the failure of the Division to enforce any breach of any provision hereof be taken or held to be a waiver of such provision, or as a waiver, modification or rescission of the Contract itself.

20. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this Contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.

21. If the Contractor is a nonprofit contractor as defined in O.C.G.A. Section 50-20-2, then the Contractor agrees to comply with the provisions of O.C.G.A. Sections 50-20-1 through 50-20-8, and in particular the requirements of O.C.G.A. Section 50-20-3, and with such further instructions as the State of Georgia may subsequently require in the implementation of said provisions.

22. In carrying out its obligations under this Contract, the Contractor is acting as an independent contractor and is responsible for full performance in accordance with the Contract terms and conditions.

23. The parties to this Agreement certify that the provisions of law prohibiting full and part-time appointive officials and employees of the State from engaging in certain transactions affecting the State contained in O.C.G.A. Sections 45-10-20 through 45-10-28 have not and will not be violated in any respect in regard to this Agreement.

24. The Contract represents the sole and complete understanding of the terms of this agreement between the parties hereto and may be amended, changed or modified only by a written document signed by the parties hereto.

25. This contract is being funded with a grant from the U.S. Environmental Protection Agency (USEPA). It is the policy of the USEPA to ensure to the fullest extent possible that at least a negotiated "Fair Share" percentage of federal funds awarded to prime and subcontractors in support of USEPA programs be made available to Disadvantaged Business Enterprises (DBE).

The Contractor agrees to ensure to the fullest extent possible that at least 4.75% Minority Business Enterprise (MBE) and 1% Women Business Enterprises (WBE) of federal funds for contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black college and universities.

The Contractor agrees to include in its bid documents this 4.75% and 1% "Fair Share" percentage.

To evaluate compliance with the "Fair Share" policy, the Contractor agrees to comply with the following six affirmative steps as appropriate:

1) Including qualified minority women's businesses on solicitation lists;

2) Assuring that minority and women's businesses are solicited whenever they are potential sources;

3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of minority and women's businesses;

4) Establishing delivery schedules, where the requirements of the work permit, which will encourage the participation by minority and women's businesses;

5) Using the services and assistance of the U.S. Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce;

6) Requiring each party to a subagreement to take the affirmative steps outlined in paragraphs 1 through 6 of this section.

The documentation of the six steps must be detailed in order to allow for satisfactory review

and should document the efforts of solicitation taken such as; the name and address of MBEs/WBEs solicited, if advertised in newspaper show proof and indicate name of paper.

The Contractor is required to submit semiannual reports of total contract expenditures to the Division, which includes a separate total for MBE/WBE utilization. This information should be mailed to the following address:

Anne Italiano, Contract Administrator
Nonpoint Source Program
Georgia Environmental Protection Division
4220 International Parkway, Suite 101
Atlanta, Georgia 30354

26. Drug Free Workplace.

(a). If Contractor is an individual, he or she hereby certifies that he or she will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance, or marijuana during the performance of this contract.

(b). If the Contractor is an entity other than an individual, it hereby certifies that: 1. A drug-free workplace will be provided for the Contractor's employees during the performance of this; and 2. It will secure from any subcontractor hired to work in a drug-free workplace the following written certification: "As part of the subcontracting agreement with (contractor's name, subcontractor's name) certifies to the contractor that a drug-free workplace will be provided to the subcontractor's employees during the performance of this contract pursuant to paragraph 7 of subsection B of Code Section 50-24-3".

IN WITNESS WHEREOF, the parties have hereunto, and to a duplicate hereof of like tenor and effect, acting by and through their duly authorized officers or agents, set their hands the day and year first above written.

ENVIRONMENTAL PROTECTION DIVISION

BY: _____
Harold F. Reheis
Director

_____
Notary Public

MY COMMISSION EXPIRES 2/28/06

CITY OF ATLANTA

BY: _____
Mayor

_____
Notary Public

Notary Public, Fulton County, Georgia
My Commission Expires March 6, 2004