

**DEKALB COUNTY**ITEM NO. **BOARD OF COMMISSIONERS**

HEARING TYPE

Action

**BUSINESS AGENDA / MINUTES****MEETING DATE:** October 28, 2003

ACTION TYPE

Resolution

**SUBJECT:** Extension of Master Agreement with the PATH Foundation to Build Multi-Use Trails  
Commission Districts - Countywide

DEPARTMENT: Public Works - Transportation

PUBLIC HEARING:  YES  NOATTACHMENT:  YES  No

INFORMATION Ted Rhinehart

CONTACT: John Gurbal

PAGES: 

PHONE NUMBER: 404-371-4778 / 404-508-3660

PURPOSE:

To consider amending Contract 98-7276 with the PATH Foundation to extend the term an additional five (5) years to October 15, 2008.

And

To consider authorizing the Chief Executive Officer to execute all necessary documents pertaining to this project.

NEED/IMPACT:

On October 15, 1998, a Master Agreement was executed with the PATH Foundation for the construction of multi-use trails in DeKalb County. The agreement set the terms under which PATH could perform design and construction services on behalf of the County. The agreement has been utilized for several projects on the Stone Mountain–Atlanta and Arabia Mountain Trails. This productive partnership with PATH has allowed the County to utilize approximately \$2.6 million in GDOT Transportation Enhancement funds for these projects, while allowing PATH to manage the designs and bid the projects to construction. On a typical project, PATH pays for the survey, design, construction management and half of the local share of construction. PATH also maintains the trails after construction. The current agreement has a maximum five (5) year term that expires October 15, 2003.

RECOMMENDATION(S):

To amend Contract 98-7276 with the PATH Foundation to extend the term an additional five (5) years to October 15, 2008.

And

To authorize the Chief Executive Officer to execute all necessary documents pertaining to this project.



MASTER AGREEMENT TO BUILD TRAILS

THIS AGREEMENT, made this 15<sup>th</sup> day of October, 1998, by and between DEKALB COUNTY, a political subdivision of the State of Georgia (hereinafter referred to as the "County") and the PATH Foundation, Inc. (hereinafter referred to as "PATH"), shall constitute the terms and conditions of a Master Agreement under which PATH shall provide for the planning, designing, building and/or maintaining of greenway trails in DeKalb County, Georgia.

WHEREAS, the DeKalb County Board of Commissioners has determined that the introduction of a greenway trail network throughout DeKalb County will provide an alternative transportation system which will enhance the air quality, reduce highway congestion, reduce fossil fuel consumption, promote health and public safety, and generally improve the quality of life in DeKalb County.

WHEREAS, the DeKalb County Board of Commissioners has further determined that the introduction of a greenway trail system will promote economic growth, appreciation of property values, and tourism in the County

WHEREAS, the PATH Foundation is a non-profit 501(c)3 corporation organized by Atlanta area residents for the purpose of planning, designing, building and maintaining a network of greenway trails in Atlanta and other Georgia communities.

NOW THEREFORE, for and in consideration of the mutual covenants and agreements set forth herein, the value and sufficiency of which are hereby acknowledged, the County and PATH hereby agree as follows:

ARTICLE I. MASTER AGREEMENT

This Agreement is a master agreement that sets forth the basic terms and conditions pursuant to which PATH shall perform work for the County. The particular terms for each project must be agreed to by both parties and set forth on a Project Agreement that shall be subject to the terms of this Agreement. As to any Project, the terms and conditions of the Project Agreement pertaining thereto shall govern and control in the event of a discrepancy or inconsistency with the terms and conditions of this Agreement.

ARTICLE II. CONTRACT TIME

a. The term of this Master Agreement shall commence upon the execution of this Agreement and shall expire at midnight on the first date on which all Project Agreements have expired or terminated; provided however that in no event shall the term of this Master Agreement exceed five (5) years from the date of execution.

b. If at any time this Master Agreement is determined by a court of competent jurisdiction to be subject to the provisions of O.C.G.A. § 36-60-13, then the term of this Master Agreement shall revert to an annual term subject to automatic renewal unless terminated by the County by thirty (30) days written notice to PATH.

c. The parties hereto agree that to the extent that the term of any Project Agreement exceeds one (1) year, then the Project Agreement shall comply with the provisions of O.C.G.A. § 36-60-13.

### ARTICLE III. PAYMENT

County shall pay PATH for basic services based on the schedule set forth in the Project Agreement.

PATH shall submit monthly reports and invoices to County which indicate items with unit cost, percentage of work completed to date, amount previously billed and current month's invoice.

In case of termination of this Agreement or any Project Agreement before the completion of the work, PATH will be paid only for work completed as of the date of termination as determined by the County.

### ARTICLE IV. SCOPE OF WORK

#### A. Obligations of PATH.

PATH agrees to provide all services necessary to:

1. Assist County personnel in seeking and obtaining federal funding for trail projects.
2. Provide expertise and guidance to County during all phases of greenway trail development, including maintenance.
3. Act as single point source of responsibility, including construction management, as County designee, acting under the supervision of a County Representative, during the development of greenway trails and sidewalks.
4. Provide adequate staff to effectively supervise all phases of trail development.
5. Use its best efforts to furnish concrete to all trail and sidewalk projects at approximately one-half the cost charged to the public by area concrete suppliers.

6. Act as a vehicle for tax deductible contributions from the public to the project thereby reducing the funding requirements from the County.

**B. Obligations of County.**

County agrees to:

1. Identify staff members from planning, parks, public works, attorney's office, etc. and allocate time for them to represent County during the development of trails.
2. Make County maps, studies, plans, etc. available to the design team at no charge during the development of trails provided however that County makes no representations or warranties as to the accuracy of said maps, studies, plans, etc.
3. Make County owned right-of-way available for the development of greenway trails, subject to review and approval of the route by the appropriate authority at the County.
4. Provide facilities for and co-host public meetings, as required, during the planning and design of the trail system.
5. Provide in-kind services to the design and construction team. These services to include: Plan review, permits and inspections, dumping fees at the County owned facilities, pick up of vegetative debris at road-side, street signs and striping, and water and/or sewer tap fees if irrigation and restrooms are installed.
6. If applicable, furnish funding for the project as set forth on the Project Agreement.
7. If applicable, provide for maintenance or maintenance funding as set forth on the Project Agreement.

ARTICLE V. GENERAL CONDITIONS

A. Accuracy of Work. PATH shall be responsible for the accuracy of the work and any error and/or omission made by PATH in any phase of the work under this Agreement.

B. Additional Work. If PATH is asked by the County to perform work beyond the scope of this Agreement or any individual the Project Agreement for which payment is desired, PATH shall notify the County in writing, state that the work is considered outside the basic scope of work of this Agreement, give a proposed cost for the additional work, and obtain the approval in writing from the County prior to performing the additional work for which it is to be paid. The County shall in no way be held liable for any work performed under this section which has not first been approved in writing by the County.

C. Ownership of Documents. Absent an agreement to the contrary in a Project Agreement, all documents are and remain the property of the County, and PATH agrees that the County may reuse any and all documents described herein in its sole discretion without first obtaining permission of PATH and without any payment of any monies to PATH therefor. However, any reuse of the documents by the County on a different site shall be at its risk and PATH shall have no liability where such documents are reused.

D. Successors and Assigns. The County and PATH each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither the County nor PATH shall assign, sublet, subcontract, or transfer its interest in this Agreement without the written consent of the other.

Nothing herein shall be construed as creating any personal liability on the part of any officers or agents of the County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

E. Licenses, Standards, and Qualifications. PATH shall meet any and all licensing requirements, standards and/or other qualifications necessary to perform the work described in Article III herein.

G. Termination of this Agreement. The County or PATH may unilaterally terminate this Agreement, in whole or in part, for either of their convenience, or because of failure of either of them to fulfill the obligations herein in any respect. The termination of this Agreement shall have no effect on the term of any and all Project Agreements provided that the County may unilaterally terminate any or all Project Agreements, in whole or in part, for its convenience, or because of PATH's failure to fulfill its obligations therein in any respect. The County or PATH shall terminate by delivering to the other, with at least thirty (30) days notice, a Notice of Termination specifying the nature, extent, and effective date of termination. PATH shall be paid for services rendered up to the date of termination. The written notice shall be sent to PATH and the County, addressed as follows:

**PATH:**  
PATH Foundation, Inc.  
P.O. Box 14237  
Atlanta, Georgia 30324

**COUNTY:**  
Liane Levetan, Chief Executive Officer  
DeKalb County  
The Maloof Building  
1300 Commerce Drive  
Decatur, Georgia 30303

All notices sent to the above address shall be binding upon PATH unless said address is changed by PATH in writing to the County.

H. Indemnification Agreement. In the event that a claim is brought against the County by a person who is not a party to this Agreement, then PATH shall be responsible to the County for any damage, loss, or injury, including death, of any kind or nature whatever to person or property, including employees and property of the County, caused by or resulting from any error, omission of PATH, or the negligent act of PATH or its subcontractors or any of their officers, agents, servants, or employees arising from services under this Agreement. PATH shall defend, indemnify, and hold harmless the County and all of its officers, agents, servants, or employees from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury. PATH expressly agrees to defend against any claims brought or actions filed against the County, where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

I. Insurance. At the time of execution of this Agreement, PATH shall furnish Certificates of Insurance from companies doing business in Georgia or written evidence of self-insurance that is acceptable to the County covering:

- (1) Statutory Workers' Compensation Insurance, or proof that PATH is not required to provide such coverage under State law. PATH agrees to confirm that all subcontractors likewise carry statutory Workers' Compensation Insurance, and to provide confirmation of such to County.
- (2) Professional liability insurance on the services in this Agreement with limit of one million dollars (\$1,000,000).

(3) Comprehensive liability insurance covering all operations and automobiles:

(a) With limits of \$100,000/\$300,000 bodily injury; and

(b) With limits of \$100,000 property damage.

Certificates of insurance must be executed in accordance with the following provisions:

(1) Certificates to contain policy number, policy limits and policy expiration date of all policies issued in accordance with this Agreement;

(2) Certificates to contain the location and operations to which the insurance applies;

(3) Certificates to contain the following clause:

"Re: Change or Cancellation. Policy will not be changed or cancelled without ten (10) days prior notice to DeKalb County, as evidenced by return receipts of registered or certified letters."

(4) Certificates to contain endorsement incorporating indemnification agreement assumed by PATH further agrees as follows:

(a) On the front of the certificate, the certificate to contain the following clause:

"Re: Indemnification Agreement. Contract liability is included. See Indemnification Agreement Clause on the reverse side of the certificate.";

and

(b) Type the above stated indemnification agreement on the reverse side of the certificate.

J. Georgia Laws Govern. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.

K. Venue. This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

L. Modification. This Agreement may be modified by mutual consent at anytime, but no modification or alteration of this Agreement will be valid or effective unless such modification is made in writing and signed by both parties and affixed to this instrument; provided, however, that this Agreement may be unilaterally modified or amended by the County to reduce the scope of work, as described in Article IV, upon seven (7) days written notice to PATH; the written notice shall be sent to PATH addressed as follows:

PATH Foundation, Inc.  
P.O. Box 14237  
Atlanta, Georgia 30324

All notices sent to PATH at the address indicated herein shall be binding upon PATH unless said address is changed by PATH in writing to the County.

M. County Representative. The County may designate a representative through whom PATH will contact the County. In the event of such designation, said representative shall be consulted and his written recommendation obtained before any request for additional work is presented to the DeKalb County Board of Commissioners. All payments to PATH must be submitted to and approved by said representative in accordance with the payment provisions set forth herein.

N. PATH's Status. The relationship between County and PATH shall be that of owner and independent contractor. Nothing contained in this Agreement shall be construed to constitute PATH or any of its employees, agents or subcontracts as a partner, employee or agent of the County or as the County's exclusive contractor for greenway trail development.

O. Sole Agreement. This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendments or modifications of this Agreement or any Project Agreement shall be enforceable unless approved by action of the Board of Commissioners of DeKalb County. All Project Agreements must be approved by action of the Board of Commissioners of DeKalb County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on the day and date hereinabove written.

PATH FOUNDATION, INC.

DEKALB COUNTY, GEORGIA

By: Ed McBrayer (SEAL)  
Signature

By: Liane Levetan (SEAL)

Liane Levetan  
Chief Executive Officer  
DeKalb County, Georgia

ED MCBRAYER  
Name (Typed or Printed)

EX DIRECTOR  
Title

DeKalb County  
Contract No. 98-7276

ATTEST:

ATTEST:

Mary Kathleen Kelly  
Signature

Michael Bell  
Michael Bell  
Ex Officio Clerk of the  
Board of Commissioners of  
DeKalb County, Georgia

MARY KATHLEEN KELLY  
Name (Typed or Printed)

SECRETARY  
Title

APPROVED AS TO FORM:

Robert A. Citterden  
County Attorney  
Asst.