

Rev: September 13, 2010

**RIGHT OF WAY MOWING AND MAINTENANCE AGREEMENT**

**By and Between**

**THE**

**GEORGIA DEPARTMENT OF TRANSPORTATION**

**AND**

**CITY OF SANDY SPRINGS**

**THIS AGREEMENT** made and entered into this 18<sup>th</sup> day of February, 2010 by and between the **DEPARTMENT** of Transportation, an agency of the State of Georgia, hereinafter alternately referred to as “**DEPARTMENT**” or “**LICENSOR**”, and the CITY OF SANDY SPRINGS hereinafter referred to as “**LICENSEE**”.

**WHEREAS**, the **DEPARTMENT** desires to enter into a public/private partnership to perform certain services relating to mowing and maintenance within **DEPARTMENT’S** right of way, hereinafter called the “**PROJECT**”, and

**WHEREAS**, the **LICENSEE** has represented to the **DEPARTMENT** that, if such permission is granted to the **LICENSEE**, **LICENSEE** shall bear all costs and liability associated with the **PROJECT**; and

**WHEREAS**, the **LICENSEE** has represented to the **DEPARTMENT** that they are qualified and experienced to provide such services and the **DEPARTMENT** has relied upon such representations;

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants as herein contained, it is agreed by and between the parties hereto that:

**ARTICLE I**  
**SCOPE OF PROJECT**

The **DEPARTMENT** shall permit the **LICENSEE** to perform or cause to be performed, the **PROJECT** consisting of certain services related to maintaining an identified section of the **DEPARTMENT'S** rights of way.

This permission shall be granted by the means of this Agreement for the entire scope of the **PROJECT**, as set forth herein.

The maintenance duties and responsibilities of the **LICENSEE** are defined and set forth in Article XI – **MAINTENANCE WORK PLAN** of this Agreement, and further enumerated and described in Exhibit 'A' – Application and Permit for Special Encroachment with approved drawings or final working drawings for a Department-approved construction **PROJECT**. Exhibit 'A' is attached hereto and incorporated by reference as if fully set out herein. The **PROJECT** location shall be defined or delineated as part of Exhibit 'A'. The required Special Encroachment Permit and/or the construction **PROJECT** final working drawings are to be approved or issued by the **DEPARTMENT**.

Should the **LICENSEE** desire that these maintenance services be performed by a third party, **LICENSEE** and the third party shall enter into subsequent agreement, whereby the **LICENSEE** shall assume all responsibility of repayment to the third party for those services to be rendered as set forth in Article XI - **MAINTENANCE WORK PLAN**. The Agreement between **LICENSEE** and any third parties to this Agreement, shall meet all operational and administrative requirements, including the provisions of liability insurance, set forth by the **DEPARTMENT**, and all liability associated with the **PROJECT** shall be borne by **LICENSEE** and any third parties, as set forth in Article VIII, herein.

**ARTICLE II**  
**EXECUTION OF CONTRACT AND AUTHORIZATION**  
**TIME OF PERFORMANCE**

Time is of the essence in this agreement. The **LICENSEE** shall execute this Agreement and return it to the **DEPARTMENT** within thirty (30) days after receipt of contract forms from the **DEPARTMENT**.

The **LICENSEE** shall begin work on the **PROJECT** under this Agreement immediately after receiving a signed and executed copy of the Agreement (unless noted otherwise in Exhibit A or upon **PROJECT** construction completion).

Subject to the terms and conditions set forth in this Agreement, and upon execution of this Agreement, the **DEPARTMENT** grants the right to the **LICENSEE** to mow, edge, and maintain, as set forth in Article XI- **MAINTENANCE WORK PLAN**, that specific section of right-of-way identified in this Agreement, and herein defined as the **PROJECT**.

The duration of this Agreement shall not exceed fifty years from the date above first written unless terminated sooner by the **DEPARTMENT** or **LICENSEE**.

**ARTICLE III**  
**SUBSTANTIAL CHANGES**

If, prior to the satisfactory completion of the services under this Agreement, any party materially alters the scope, character or complexity of the services from those required under the Agreement, a Supplemental Agreement shall be executed between the parties. It is understood, however, that **LICENSEE** shall not engage in any activities or conduct any work which would be considered to be outside the scope of the permission granted to **LICENSEE** by the **DEPARTMENT**. Minor changes in the work which do not involve increased compensation, extensions of time or changes in the goals and objectives of the work may be made by written notification of such change by any party with written approval by the other parties.

**ARTICLE IV  
ASSIGNMENT**

It is understood by the **LICENSEE** that the work is considered personal and, except as provided for in Article I, **LICENSEE** agrees not to assign, sublet or transfer any or all of their interest in this Agreement without prior written approval of the **DEPARTMENT**.

**ARTICLE V  
CONTRACT DISPUTES**

This Agreement shall be deemed to have been executed in   Fulton   County, Georgia, without reference to its choice of law doctrine, and all questions of interpretation and construction shall be governed by the laws of the State of Georgia. Any litigation arising out of this contract shall be commenced within the State of Georgia. The foregoing provisions shall not be construed as waiving any immunity to suit or liability, including without limitation, sovereign immunity which may be available to the Department.

**ARTICLE VI  
INSURANCE**

Prior to beginning work, the **LICENSEE** shall obtain and certify to the **DEPARTMENT** that it has the following minimum amounts of insurance coverage for anyone that will be working on the right of way:

- (a) Workmen's Compensation Insurance in accordance with the laws of the State of Georgia.
- (b) Public Liability Insurance in an amount of not less than one hundred thousand dollars (\$100,000) for injuries, including those resulting in death to any one person, and in an amount of not less than three hundred thousand dollars (\$300,000) on an account of any one occurrence, or proof of self insurance.

(c) Property Damage Insurance in an amount of not less than fifty thousand dollars (\$50,000) from damages on account of any occurrence, with an aggregate limit of one hundred thousand dollars (\$100,000), or proof of self insurance.

(d) Valuable Papers Insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the **PROJECT**.

(e) Insurance shall be maintained in full force and effect during the life of the **PROJECT**.

The **LICENSEE** shall furnish upon request to the **DEPARTMENT**, certificates of insurance evidencing such coverage. These certificates **shall** also provide that the insurance will not be modified or canceled without a 30 day prior written notice to the **DEPARTMENT**. Failure by the **LICENSEE** to procure and maintain the insurance as set forth above shall be considered a default and cause for termination of this Agreement and forfeiture of the Performance and Payment Bonds. The **LICENSEE** shall, at least fifteen (15) days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with the **DEPARTMENT**.

## **ARTICLE VII COMPENSATION**

It is agreed that **LICENSEE** shall conduct all work at no cost to the **DEPARTMENT**, and without compensation from the **DEPARTMENT**. It is further agreed that any **and all** issues relating to compensation and payment shall be resolved by and between **LICENSEE** and any successors, subcontractors, or assigns thereto.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** be required to conduct any inspections and/or supervision of the **PROJECT** beyond that which would normally occur in the ordinary course of the **DEPARTMENT'S** maintenance activities, **LICENSEE** shall reimburse the **DEPARTMENT** for such inspection and supervision. The rate of reimbursement for the **DEPARTMENT'S** inspection and supervision shall in no case exceed a rate determined to be reasonable by the parties.

Should **LICENSEE** and the **DEPARTMENT** desire to change this agreement at a later date to provide for compensation to **LICENSEE**, or any successors or assigns thereto, such

change shall only be permitted by a supplemental agreement as set forth in Article III herein. Any supplemental agreements involving compensation shall be subject to the **DEPARTMENT** review and approval.

**ARTICLE VIII**  
**RESPONSIBILITY FOR CLAIMS AND LIABILITY**  
**LICENSEE NOT AGENT OF DEPARTMENT**

**LICENSEE**, and all successors and assigns thereto, shall save harmless the **DEPARTMENT**, its officers, agents, and employees from all suits, claims, actions or damages of any nature whatsoever resulting from the performance of work assigned to **LICENSEE** under this Agreement. **LICENSEE** further agrees that they shall be fully responsible for injury or damage to landscaping, landscape related items, and any other non-standard and decorative elements installed by or for the **LICENSEE** within the right of way, and for any damage to the **DEPARTMENT'S** signs, structures, or roadway fixtures, if **LICENSEE** causes the damage. These indemnities shall not be limited by reason of the listing of any insurance coverage.

It is further understood and agreed that **LICENSEE**, or any successor or assigns thereto, in the conduct of any work involved in the **PROJECT**, shall not be considered the agent of the **DEPARTMENT** or of the State of Georgia.

**ARTICLE IX**  
**TERMINATION OF CONTRACT**

The **DEPARTMENT** may terminate this contract for just cause at any time by giving of thirty (30) days written notice of such termination. Upon receipt of such notice of termination, **LICENSEE** shall discontinue and cause all work under this contract to terminate upon the date specified in the said notice. In the event of such termination, the **DEPARTMENT** shall be paid for any amounts as may be due it as specified in Article VII up to and including the specified date of termination. **LICENSEE** shall have the right to terminate this contract at any time, provided that such termination is first approved by the **DEPARTMENT**, and that the **DEPARTMENT** is reimbursed in full for all services rendered pursuant to Article VII.

The **DEPARTMENT** and **LICENSEE** further agree that, should the **DEPARTMENT** allow the **LICENSEE** to terminate the agreement, the termination, unless determined otherwise in writing by the **DEPARTMENT**, shall be contingent upon the following:

- A. The **LICENSEE**, at the discretion of the **DEPARTMENT**, removing the planted landscaping, landscape related items, and any other non-standard and decorative elements that were installed by or for the **LICENSEE** at no cost to the **DEPARTMENT**.
- B. The **LICENSEE** restoring the removed landscape areas to their original condition or a condition that meets federal standards and is acceptable to the **DEPARTMENT**.
- C. The **LICENSEE** restoring the removed non-standard and decorative elements with standard **DEPARTMENT** elements that meet federal and state requirements.
- D. The **LICENSEE** reimbursing the **DEPARTMENT** in full any state and/or federal funds used to purchase and install the landscaping, landscape related items, and other non-standard and decorative elements that are no longer to be maintained by the **LICENSEE**.
- E. No reimbursal is required for termination of agreements for Mowing Only.

The **DEPARTMENT** and the **LICENSEE** agree that, should the **LICENSEE** fail to perform the maintenance, as set forth in Article XI - **MAINTENANCE WORK PLAN**, the **DEPARTMENT** may require the **LICENSEE** to remove, restore, and reimburse according to items "A", "B", "C", and "D" above, as applicable, and then terminate the agreement.

## **ARTICLE X**

### **COMPLIANCE WITH APPLICABLE LAW**

The undersigned certify that:

- A. This Agreement is subject to applicable state and federal laws, standards, and rules and regulations.
- B. The provisions of Sections 45-10-20 through 45-10-28 of the Official Code of Georgia Annotated relating to Conflict of Interest and State Employees and Officials Trading with the State have been complied with in full.
- C. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the "Drug-Free Workplace Act" have been complied with in full.

**ARTICLE XI**  
**MAINTENANCE WORK PLAN**

1. Mow, edge, and trim the entire area within the interchanges, including the ramps and drainage swales that are not currently being maintained by adjacent landowners at a frequency of once per month during dormant months and once per week during growing season.
2. Grassed and landscaped areas must be cleaned of debris or trash prior to edging and mowing.
3. Make reasonable effort to police and remove cigarette butts and trash at intersections.
4. Maintain grass at the recommended height for the type of grass present.
5. Edge all walks, drives, curb, and planting beds. The planting beds shall maintain a smooth contour.
6. Trim all trees, posts, walls, guardrails and other elements in the area in a safe manner. Maintain a mulched safe zone around tree bases for protection where required.
7. Blow sidewalks and curbs on a weekly basis after litter and debris removal.
8. Clean up all debris, trash, and litter, including grass clippings for proper disposal.
9. Report and assist with repair of damaged property of the City due to graffiti or vandalism.
10. Prune trees and shrubs regularly to maintain the form and healthy growth of the plant. Use standard landscaping schedules and methods to achieve proper appearance. Remove all dead or discolored foliage.
11. Maintain all planting beds owned and to be maintained by the City so as to not have or allow excessive weeds to intrude. Frequency of bed maintenance shall be no less than once per month.
12. Use pre and post emergence herbicides as needed to control areas along walls, guardrails, fence lines, tree wells, and building edges as long as the dead appearance is minimized.

**EXHIBIT 'A'**

(Attach the working drawings for a Department-approved construction)

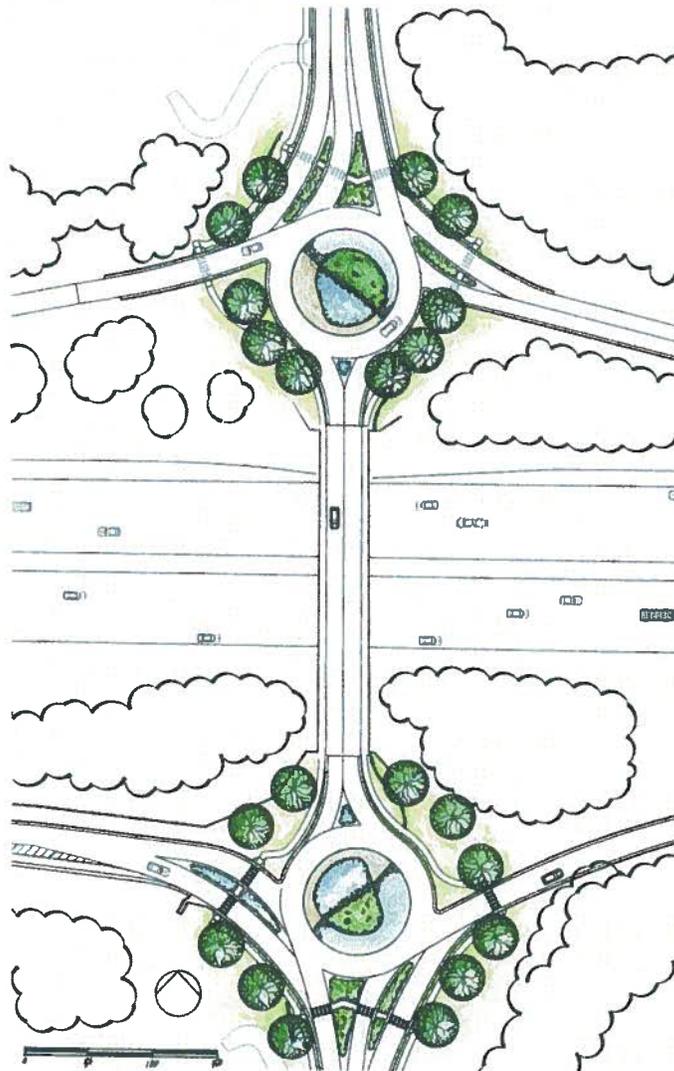
## Recalling Riverside

Design for Interchanges at Riverside Drive at I-285

### Project Description:

The landscape design for two new rotaries at the intersection of Riverside Drive and I-285 calls attention to the qualities of the nearby Chattahoochee River. Thick plantings of blue grasses recall water and the shoreline is represented by a variety of shrubs and groundwork of stone.

This project conforms to all GDOT design requirements including horizontal and vertical clearances. The \$500,000 budget includes \$437,00 for grading, plantings, stonework, cobble paving, colored concrete, and \$63,000 for lighting.



The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

GEORGIA DEPARTMENT OF TRANSPORTATION

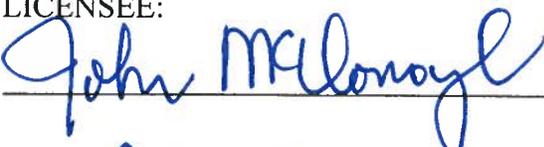
  
Commissioner or designee

ATTEST:

  
Angela Whitworth, Treasurer



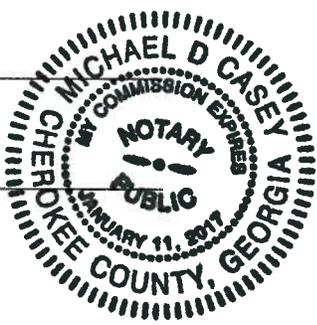
LICENSEE:

  
\_\_\_\_\_  
(Title) City Manager

Sworn to before me this  
29<sup>TH</sup> day of JANUARY, 2015

  
NOTARY PUBLIC

My Commission expires JAN. 11, 2017



**MEMORANDUM OF UNDERSTANDING**

By and Between

**GEORGIA DEPARTMENT OF TRANSPORTATION**

And

**CITY OF SANDY SPRINGS**

Regarding

**0010925, FULTON COUNTY, I-285 @ CR 209/RIVERSIDE DRIVE**

<sup>2015</sup>  
~~4~~ THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this 12 day of January 2014, by and between the Georgia Department of Transportation ("GDOT"), a department within the executive branch of government of the State of Georgia, whose address is 600 W. Peachtree Street, NW., Atlanta, Georgia 30308, and the City of Sandy Springs ("COSS"), a body corporate and politic of the State of Georgia, whose address is 7840 Roswell Road, Building 500, Sandy Springs, Georgia 30350, hereinafter sometimes collectively referred to as the "parties".

WHEREAS, the COSS has represented to the GDOT a desire to improve the transportation facility described in Exhibit A, attached and incorporated herein by reference and hereinafter referred to as the "PROJECT"; and

WHEREAS, the COSS has represented to the GDOT a desire to participate in certain activities including the funding of certain portions of the PROJECT and the GDOT has relied upon such representations; and

WHEREAS, the COSS has represented to the GDOT a desire to accept the short term nature of improvements to the transportation facility provided by the PROJECT; and

WHEREAS, the GDOT has expressed a willingness to participate in certain activities of the PROJECT as set forth in the Agreement; and

NOW THEREFORE, the GDOT and COSS, governmental entities of the State of Georgia, pursuant to the provisions of Article IX, Section III, Paragraph I(a) of the Constitution of 1983, are authorized to enter into this Agreement and in consideration of the mutual promises made and of the benefits to flow from one to the other, the GDOT and COSS hereby agree as follows:

The parties agree to undertake the following PROJECT:

1. **Description**

P.I. No. 0010925, Fulton County, I-285 @ CR 209/Riverside Drive – The Design-Build safety PROJECT proposes to convert the two existing signalized intersections at each ramp terminal to single lane roundabouts. The PROJECT also includes routine rehabilitation of the existing bridge consisting of replacement of the joints at bent 2 and abutments 1 and 5. All construction joints will be resealed and the bridge deck will be sealed with a two-part polymer overlay. Concrete spalling will be repaired on bents 3 & 4 and abutment 5. The PROJECT is approximately 0.5 mile length.

2. **Responsibilities.** The Parties agree to the following roles and responsibilities for the development of the Projects.

**a. GDOT Responsibilities:**

1. Through its procurement process, hire Consultants and Contractors, as needed, to provide engineering and construction activities to support Design-Build implementation of the PROJECT.
2. Manage all aspects of planning, concept development, preliminary design, design review and approval, procurement of Design-Build contract, construction inspection, testing, and requests for information of the PROJECT.
3. Perform operations and maintenance on facilities once open to traffic which are consistent with typical GDOT practices or to assign this responsibility to the local entity.
4. Assume PROJECT costs as indicated in Exhibit A.

**b. COSS Responsibilities:**

1. Participate in project development, coordination, and implementation meetings. Provide input relative to scoping, design, budgeting, scheduling, procurement, public outreach, and communication activities. However, notwithstanding the foregoing, GDOT retains the final decision making authority regarding these project implementation activities.
  2. Provide technical support to GDOT and its consultant as needed for the development of the PROJECT.
  3. Assume PROJECT costs as indicated in Exhibit A.
  4. Per the temporary signal permit, should the roundabouts project not move forward for any reason, the COSS will be responsible for installing right turn lanes, pedestrian accommodations, and all other requirements of the original signal permit. Should these requirements not be met, the temporary signal must be removed and returned to a stop sign condition.
3. **Commencement Date and Term.** The responsibilities set out in this MOU shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2014, (hereinafter referred to as the "Commencement Date") and shall expire eight (8) years from the Commencement Date or 12 months after completion of the project, whichever occurs first; unless otherwise extended by mutual agreement of the parties.
4. **Funding.** GDOT will fund the PROJECT from the Highway Safety Improvement Program for intersection improvement based on historical crash data.
5. **Termination.** Prior to the award of any construction bid either party may terminate this MOU for cause or without cause upon thirty (30) days written notice to the other.

6. **Amendments.** This MOU may not be amended except by mutual consent in writing by the parties.
7. **Assignment.** This MOU shall not be assigned by any party to any other person or entity whatsoever unless agreed to by the parties.
8. **Notices.** Any notices, requests, demands and other communications which may be required hereunder shall be in writing and shall either be mailed or transmitted by either first class United States certified mail, return receipt requested; delivery by carrier or personally delivered to the appropriate party; or facsimile transmission, immediately followed by a telephone call to confirm delivery to:

Georgia Department of Transportation  
600 W. Peachtree Street, NW  
Atlanta, Georgia 30308  
ATTN: Chief Engineer

The City of Sandy Springs  
7840 Roswell Road, Building 500  
Sandy Springs, Georgia 30350  
ATTN: Director of Public Works

The date on which such notice is delivered will be deemed the date thereof. Either party may from time to time, by five (5) days' prior notice to the other party in writing, specify a different address to which notices will be sent. Rejection or refusal to accept a notice or inability to deliver a notice because of a changed address of which no notice was given will be deemed a delivery of the notice on the date when postmarked.

9. **Interpretation.** The parties stipulate that for good business reasons, each party has determined to negotiate, and each party has had significant voice in the preparation of this MOU. Should any provision of this MOU require judicial interpretation, it is agreed that the Court interpreting or construing it shall not construe the MOU more strictly against either party because it drafted a particular provision, or the provision was for the party's benefit, or the party enjoyed a superior bargaining position.
10. **No Third Party Beneficiaries.** Nothing contained herein shall be construed as conferring upon or giving to any person, other than the parties hereto, any rights or benefits under or by reason of this MOU.
11. **Risk Allocation.** Each party shall conduct its own functions under this MOU in accord with state law at its sole cost, risk and responsibility.
12. **Severability.** If any provision of this MOU is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
13. **Governing Law.** This Agreement is made and entered into in Fulton County, Georgia, and shall be governed and construed under the laws of the State of Georgia.

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**EXHIBIT "A"**  
**P.I. No: 0010925, Fulton County I-285 @ CR 209/Riverside Drive**

Project (PI#, Project #, Description)	Preliminary Engineering		Right of Way		Construction		Utility Relocation		
	Funding	PE Activity by	Funding of Real Property	Acq. By	Acq. Fund by	Funding	Activity by	Utility Funding by	Railroad Funding by
P.I. No: 0010925, Fulton County I-285 @ CR 209/Riverside Drive	(20%) State (80%) Federal (\$962,138) Estimate Source: Highway Safety Improvement Program Funds		(20%) State (80%) Federal (\$310,000) Estimate Source: Highway Safety Improvement Program Funds			(20%) State (80%) Federal (\$4,166,072.91) Estimate Source: Highway Safety Improvement Program Funds	GDOT	Covered by Construction Funding	NA
	> (\$962,138) Total Estimate (20%) State (80%) Federal		>(\$310,000) Total Estimate (20%) State (80%) Federal	GDOT	GDOT	>(\$4,166,072.91) Total Estimate (20%) State (80%) Federal			
						Lighting/Landscaping Upgrades			
						(100%) Local (\$500,000) Estimate Source: Local Funds	COSS/GDOT		
						>(\$500,000) Total Estimate (100%) COSS			

The covenants herein contained shall, except as otherwise provided, accrue to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, said parties have hereunto set their hand and affixed their seals the day and year above first written.

Georgia Department of Transportation

City of Sandy Springs

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Director of Public Works

Attest:

  
\_\_\_\_\_  
Treasurer

  
\_\_\_\_\_  
Witness

