

04-R-0395

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXTEND A RETAINER AGREEMENT WITH THE LAW FIRM OF AUSTON & BIRD, LLP, TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH THE CASES STYLED RUTH YARDUM v. CITY OF ATLANTA, CIVIL ACTION FILE NO. 2000-CV-20096, AND LANDMARK ENVIRONMENTAL INDUSTRIES, INC. v. CITY OF ATLANTA, CIVIL ACTION FILE NO 2001-CV-32729; TO AUTHORIZE EXPENDITURES FOR THAT PURPOSE IN AN AMOUNT NOT TO EXCEED \$75,000 TO BE CHARGED TO AND PAID FROM FAC 1A01-524001-T31001 (CONSULTANT SERVICES-NON DEPARTMENTAL); AND FOR OTHER PURPOSES.

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION:

James Y. Abrams
 DEPUTY CITY ATTORNEY
 SPACEY V. ABRAMS
 MAR 15 2004

ADOPTED BY

- DEPUTY CITY ATTORNEY
- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred To _____

PSL Committee

3-9-2004

Chair

Action
 Fav, Adv, Hold (see rev. side)
 Other

Members

Blud
C. J. Marks

Mary Leonard

Hans Stark

Carla Stark

Refer 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

Committee

Date

Chair

Action
 Fav, Adv, Hold (see rev. side)
 Other

Members

Refer To

Refer To

FINAL COUNCIL ACTION

2nd

1st & 2nd

3rd

Consent

V Vote

RC Vote

CERTIFIED

MAR 15 2004

MAR 15 2004

James Y. Abrams
 MUNICIPAL CLERK

MAYOR'S ACTION

MAR 22 2004

Andrey Stronck
 MAYOR

04- R -0395

**A RESOLUTION
BY PUBLIC SAFETY/LEGAL ADMINISTRATION :**

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXTEND A RETAINER AGREEMENT WITH THE LAW FIRM OF ALSTON & BIRD, LLP, TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH THE CASES STYLED RUTH YARDUM v. CITY OF ATLANTA, CIVIL ACTION FILE NO. 2000-CV-20096, AND LANDMARK ENVIRONMENTAL INDUSTRIES, INC. V. CITY OF ATLANTA, CIVIL ACTION FILE NO. 2001-CV-32729; TO AUTHORIZE EXPENDITURES FOR THAT PURPOSE IN AN AMOUNT NOT TO EXCEED \$75,000 TO BE CHARGED TO AND PAID FROM FAC 1A01-524001-T31001 (CONSULTANT SERVICES-NONDEPARTMENTAL); AND FOR OTHER PURPOSES.

Whereas, in February, 2003, judgments totaling approximately \$7.3 million were entered against the City of Atlanta in the Superior Court of Fulton County in favor of Ruth Yardum and Landmark Environmental Industries, Inc., after a jury determined that damage to Mrs. Yardum's property at 2100 Spinks Street, N.W., and to Landmark's business at that location was caused by a leaking City of Atlanta sewer; and

Whereas, the City Attorney determined that, due to the particularized expertise and resources pertaining to environmental law, in order to pursue post-trial remedies, outside counsel would be necessary; and

Whereas, the City Attorney determined it appropriate to engage the legal services of the law firm of Alston & Bird LLP as outside counsel as provided in Section 2-407 of the Code of Ordinances; and

Whereas, Alston & Bird has assisted the Law Department in planning and drafting its motion for a new trial and motion for judgment notwithstanding the verdict, and in consulting about the issues involved; and

Whereas, Alston & Bird has incurred fees and expenses totaling \$50,000 in addressing these issues; and

Whereas, thereafter, on February 4, 2004, Judge Joel J. Fryer, the presiding judge in the cases, denied the City's motion for a new trial or for judgment notwithstanding the verdict, with the exception that he deleted attorney fees awarded by the jury; and

Whereas, in the opinion of the City Attorney, it is in the best interests of the City that the cases be appealed to the Court of Appeals of Georgia; and

Whereas, the City Attorney has determined that the law firm of Alston & Bird, LLP, has both the specialized practice skills as well as the considerable legal resources necessary to augment the expertise in the City Law Department.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the City Attorney be and is authorized to extend its retention agreement with the law firm of Alston & Bird, LLP, to serve as outside counsel to the City Attorney in connection with the City's appeal of the cases styled *Ruth Yardum v. City Of Atlanta*, Civil Action File No. 2000-Cv-20096, And *Landmark Environmental Industries, Inc. v. City Of Atlanta*, Civil Action File No. 2001-Cv-32729, in the Superior Court of Fulton County.

BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to incur legal fees, costs and expenses related to this matter in an amount not to exceed \$50,000.00.

BE IT FINALLY RESOLVED that the Chief Financial Officer is hereby authorized to remit payment of all legal fees, expenses and costs due for legal services rendered by the law firm of Alston & Bird, LLP, in connection with forgoing matters, once approved for payment by the City Attorney, in an amount not to exceed \$75,000.00 to be paid from Fund Account and Center Number 1A01-524001-T31001 (Consultant Services-Nondepartmental).

A true copy,

Municipal Clerk, CMC

ADOPTED by the Council
APPROVED by the Mayor

March 15, 2004
March 23, 2004

Whereas, Alston & Bird has assisted the Law Department in planning and drafting its motion for a new trial and motion for judgment notwithstanding the verdict, and in consulting about the issues involved; and

Whereas, Alston & Bird has incurred fees and expenses totaling \$50,000 in addressing these issues; and

Whereas, thereafter, on February 4, 2004, Judge Joel J. Fryer, the presiding judge in the cases, denied the City's motion for a new trial or for judgment notwithstanding the verdict, with the exception that he deleted attorney fees awarded by the jury; and

Whereas, in the opinion of the City Attorney, it is in the best interests of the City that the cases be appealed to the Court of Appeals of Georgia; and

Whereas, the City Attorney has determined that the law firm of Alston & Bird, LLP, has both the specialized practice skills as well as the considerable legal resources necessary to augment the expertise in the City Law Department.

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BE IT FURTHER RESOLVED that the City Attorney be and is hereby authorized to incur legal fees, costs and expenses related to this matter in an amount not to exceed \$50,000.00.

BE IT FINALLY RESOLVED that the Chief Financial Officer is hereby authorized to remit payment of all legal fees, expenses and costs due for legal services rendered by the law firm of Alston & Bird, LLP, in connection with forgoing matters, once approved for payment by the City Attorney, in an amount not to exceed \$75,000.00 to be paid from Fund Account and Center Number 1A01-524001-T31001 (Consultant Services-Nondepartmental).