

CITY COUNCIL
ATLANTA, GEORGIA

04-R-0602

A RESOLUTION

BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO ENTER INTO A SETTLEMENT WITH A CONDEMNEE IN THE MATTER OF THE CITY OF ATLANTA vs. D & S ACQUISITION GROUP, L.L.C., CIVIL ACTION FILE NO. 2001-CV-36502 PENDING IN THE SUPERIOR COURT OF FULTON COUNTY; TO AUTHORIZE THE PAYMENT IN AN AMOUNT NOT TO EXCEED \$7,725.00, TO BE PAID FROM FAC 1C33 74001 M22I031692BC (1994 REFERENDUM G.O. BOND FUND) OAKLAND CEMETERY WALL RESTORATION; TO RESCIND CONFLICTING RESOLUTIONS; AND FOR OTHER PURPOSES.

WHEREAS, D & S Acquisitions, L.L.C. (hereinafter referred to as owner) owns property known as 563 Memorial Drive, Atlanta, Georgia 30312 (the property); and

WHEREAS, the City sought to acquire 0.040 acres (1,742.40 square feet) the property under its eminent domain authority for the Memorial Drive/ Boulevard Project of the Oakland Wall Collapse Project; and

WHEREAS, a Petition for Condemnation and Declaration of Taking was filed by the City of Atlanta in the matter of *City of Atlanta vs. D & S Acquisition Group, L.L.C.*, which is now pending in the Superior Court of Fulton County as Civil Action File No. 2001-CV-36502; and

WHEREAS, the City has already deposited \$26,550.00 into the registry of the court pursuant to the Declaration of Taking; and

WHEREAS, the owner will agree to a settlement of all claims in this action for the amount of \$34,275.00, or an additional payment by the City of \$7,725.00, for the property taken in the condemnation action; and

WHEREAS, the compromise amount has been determined by the City Attorney to be justified due to the fact that the owner holds a valid sales contract for \$7,275.00 more than what the owner is now requesting from the City; and

WHEREAS, this settlement amount exceeds 20% above the initial estimated just compensation for the affected property that is authorized under Ordinance 95-O-0504, City Council authorization is necessary to conclude this action.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the City Attorney is authorized to settle the civil action of the *City of Atlanta vs. D & S Acquisition Group, L.L.C.*, which is now pending in the Superior Court of Fulton County as Civil Action File No. 2001-CV-36502 for the amount of \$34,275.00, by depositing an additional \$7,725.00 as further compensation for the property taken in this condemnation action.

BE IT FURTHER RESOLVED that the Chief Financial Officer be and is authorized to pay, upon presentation and approval by the City Attorney, an amount not to exceed \$7,725.00 to be expended from Fund Account Center No. 1C33 74001 M22I031692BC (*1994 Referendum G.O. Bond Fund*) *Oakland Cemetery Wall Restoration*.

BE IT FINALLY RESOLVED that all resolutions in conflict herewith are hereby rescinded.

TRANSMITTAL FORM FOR LEGISLATION

To Mayor's Office: Greg Pridgeon

From: Originating Dept. Law
Committee of Purview: Public Safety
Committee Meetings: 3/30/04

Contact: Jennifer Tetrick, 404-209-4128
Committee Deadline: 3/26/04
City Council Meeting: 4/19/04

CAPTION:

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO CONTINUE THE RETAINER AGREEMENT WITH THE LAW FIRM OF JONES, DAY, REAVIS & POGUE TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH THE LAWSUIT FILED AGAINST THE CITY OF ATLANTA AND OTHERS IN FEDERAL COURT, IN THE NORTHERN DISTRICT OF GEORGIA, ENTITLED ARRIVAL STAR INC. VS. DELTA AIR LINES, INC. ET AL., CASE NUMBER 1:02-CV-2543; TO AUTHORIZE EXPENDITURE FOR THAT PURPOSE IN AN AMOUNT NOT TO EXCEED \$100,000.00, TO BE PAID FROM FUND ACCOUNT AND CENTER NUMBER 2H01 524001 T31001; AND FOR OTHER PURPOSES.

BACKGROUND/DISCUSSION: A federal lawsuit was filed against fifteen different defendants, including the City of Atlanta, and alleges that the Defendants were infringing upon Arrival Star's patents. Patent law is a specialized area of the law and no attorneys in the Law Department possess an expertise in the area of tax law. The law firm of Jones, Day, Reavis & Pogue employs attorneys who specialize in the area of patent law. The most efficient and effective way to represent the City in this dispute is for the attorneys handling the matter to have an expertise in the area of patent law.

FINANCIAL IMPACT:

SOURCE:

Mayor's Staff Only:

Received by Mayor's Office: _____
(Date)

Reviewed: _____
(Initials) (Date)

Submitted to Council: _____

Action by Committee: _____ Approved _____ Adversed _____ Held _____ Amended
_____ Substitute _____ Referred _____ Other

RCS# 5628
4/19/04
6:31 PM

Atlanta City Council

Regular Session

04-R-0602

SETTLE W/CONDEMNEE CITY VS D&S
ACQUISITION GROUP \$7,725.00
FILE

YEAS: 13
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 3
EXCUSED: 0
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	Y Martin	NV Norwood
Y Young	Y Shook	Y Maddox	Y Willis
NV Winslow	Y Muller	Y Boazman	NV Woolard

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(Do not write over this)

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FILED BY
CITY COUNCIL

APR 19 2001

- 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 H. Lewis Willis
Referred To _____

Committee

Date

Chair

Action

Fav. Adv. Hold (see rev. side)

Other

Members

Members

Action

Fav. Adv. Hold (see rev. side)

Other

Members

Refer To

Refer To

Committee

Date

Chair

Action

Fav. Adv. Hold (see rev. side)

Other

Members

Refer To

Refer To

Refer To

- FINAL COUNCIL ACTION
- 2nd
 - 1st & 2nd
 - 3rd
 - Consent
 - V Vote
 - RC Vote

CERTIFIED

CERTIFIED
APR 19 2001

COUNCIL PRESIDENT PROTEM

CERTIFIED
APR 19 2001
Municipal Clerk

MAYOR'S ACTION