

AN AMENDED RESOLUTION
BY COUNCILMEMBER H. LAMAR WILLIS

04-R-0161

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXTEND A RETAINER AGREEMENT WITH THE LAW FIRM OF SUTHERLAND ASBILL & BRENNAN, LLC TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH LEGAL MATTERS RELATED TO THE DEFERRED COMPENSATION PLANS; TO AUTHORIZE EXPENDITURES FOR THAT PURPOSE IN AN AMOUNT NOT TO EXCEED \$150,000 TO BE CHARGED TO AND PAID FROM FAC 1A01 - 524001-T31001 (CONSULTANT SERVICES-NONDEPARTMENTAL); AND FOR OTHER PURPOSES.

Whereas, the Internal Revenue Service (the "IRS") initiated an audit of the City of Atlanta Deferred Compensation Plans (the "Plan") in April 2003; and

Whereas, pursuant to that Audit, the City of Atlanta was required to provide documentation responsive to the Audit, including but not limited to a copy of all documents constituting the Plan; and

Whereas, the documents constituting or related to the Plan included the plan document, amendments to the Plan, annuity contracts with vendors, as well as materials given to employees notifying them of the Plan, enrollment forms, election forms and other related materials; and

Whereas, the IRS, upon review of these documents, determined that the City of Atlanta had failed to timely amend the pension plans as required by law and to seek the requisite determination from the IRS for amendments to the Plan; and

Whereas, Revenue Procedure 2003-44 provides that when a Plan is under examination, Plan language deficiencies must be corrected under the Audit Closing Agreement Procedures of the Department of the Treasury; and

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Whereas, the City Attorney determined that, due to the particularized expertise and resources needed to properly advance the interests of the City of Atlanta and respond to the requirements of the Audit, outside counsel would be necessary; and

Whereas, given the sensitive nature of the IRS audit and the disclosures required thereunder, the City Attorney determined it appropriate to engage the legal services of the law firm of Sutherland Asbill & Brennan, LLC as outside counsel as provided in Section 2-407 of the Code of Ordinances; and

Whereas, Sutherland Asbill & Brennan has successfully addressed several of the issues for which the firm was engaged, including the preparation of composite documents that reflect the current state of the City's ordinances governing each Defined Benefit Plan, reviewing Georgia state law limiting changes to governmental pension plans and drafting legislation amending the Defined Benefit Plans to comply with applicable Internal Revenue Code and state law requirements; and

Whereas, Sutherland Asbill & Brennan has incurred fees and expenses totaling \$50,000 in addressing these issues; and

Whereas, there remain outstanding legal issues related to IRS Audit that require the City to prepare the documentation necessary to submit the Defined Benefit Plans to the IRS for a favorable recommendation, to negotiate further changes to the Defined Benefit Plans that may be requested by the IRS during the determination letter process, to negotiate a closing agreement with the IRS concluding its audit of the plans, and, in connection with the IRS audit of the Deferred Compensation Plan, to restate the current plan to incorporate recent changes in the applicable law, which require intense supervision and legal analysis by the law firm of Sutherland Asbill & Brennan, the City Attorney and her staff in order to protect the City's position in this transaction; and

Whereas, the City Attorney has determined that the law firm of Sutherland Asbill & Brennan, LLC 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 Sutherland Asbill & Brennan, LLC to serve as outside counsel to the City Attorney on legal matters related to the IRS Audit of the Deferred Compensation Plans.

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 \$150,000.00.

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 Sutherland Asbill & Brennan, LLC in connection with forgoing matters, once approved for payment by the City Attorney, in an amount not to exceed \$150,000.00 to be paid from Fund Account and Center Number 1A01 -524001-T31001 (Consultant Services-Nondepartmental).

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A true copy,

Phonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED as amended by the Council
APPROVED by the Mayor

FEB 02, 2004
FEB 10, 2004

2-02-4 Council Meeting	
ITEMS ADOPTED ON CONSENT	ITEMS ADOPTED ON CONSENT
<ul style="list-style-type: none"> 1. 04-O-0033 2. 04-O-0037 3. 04-O-0151 4. 04-O-0159 5. 04-O-0153 6. 04-R-0176 7. 04-R-0133 8. 04-R-0178 9. 04-R-2123 10. 04-R-0135 11. 04-R-0136 12. 04-R-0137 13. 04-R-0138 14. 04-R-0139 15. 04-R-0145 16. 04-R-0146 17. 04-R-0147 18. 04-R-0148 19. 04-R-0149 20. 04-R-0150 21. 04-R-0154 22. 04-R-0160 23. 04-R-0161 24. 04-R-0162 25. 04-R-0164 26. 04-R-0184 27. 04-R-0140 28. 04-R-0170 29. 04-R-0076 30. 04-R-0077 31. 04-R-0078 32. 04-R-0079 33. 04-R-0080 34. 04-R-0081 35. 04-R-0082 36. 04-R-0083 37. 04-R-0084 38. 04-R-0085 39. 04-R-0086 40. 04-R-0087 	<ul style="list-style-type: none"> 41. 04-R-0088 42. 04-R-0089 43. 04-R-0090 44. 04-R-0091 45. 04-R-0092 46. 04-R-0093 47. 04-R-0094 ITEMS ADVERSE ON CONSENT 48. 04-R-0096 49. 04-R-0097 50. 04-R-0098 51. 04-R-0099 52. 04-R-0100 53. 04-R-0101 54. 04-R-0102 55. 04-R-0103 56. 04-R-0104 57. 04-R-0105 58. 04-R-0106 59. 04-R-0107 60. 04-R-0108 61. 04-R-0109 62. 04-R-0110 63. 04-R-0111 64. 04-R-0112 65. 04-R-0113 66. 04-R-0114 67. 04-R-0115 68. 04-R-0116 69. 04-R-0117 70. 04-R-0118 71. 04-R-0119 72. 04-R-0120 73. 04-R-0121 74. 04-R-0122 75. 04-R-0123 76. 04-R-0124

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ADOPTED BY

FEB 02 2004

COUNCIL

- 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 _____

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

Refer To

FINAL COUNCIL ACTION

2nd

1st & 2nd

3rd

Consent

V Vote

RC Vote

CERTIFIED

FEB 02 2004

CERTIFIED

FEB 02 2004

Rod Douglas Adams
MUNICIPAL CLERK

MAYOR'S ACTION
APPROVED

FEB 10 2004

MAYOR