CITY COUNCIL
ATLANTA, GEORGIA

AN AMENDED RESOLUTION
BY FINANCE/ EXECUTIVE COMMITTEE

05-R-0502

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE A SEVERANCE BENEFITS INCENTIVE AGREEMENT WITH BENJAMIN R. DECOSTA, AVIATION GENERAL MANAGER, AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta, through proven leadership of its Aviation General Manager, Benjamin R. DeCosta, (the "Aviation General Manager"), currently is engaged in an ambitious and much needed expansion program for Hartsfield Jackson Atlanta International Airport (the "Airport") called the Hartsfield Jackson Development Program (the "Development Program"); and

WHEREAS, the Aviation General Manager, through his past performance, has proven himself to be highly competent in the exercise of his job duties, and has served in a role of critical importance to the growth and development of the Airport;

WHEREAS, the proper administration and continued development of the Airport is of utmost importance to the City's future;

WHEREAS, the proper administration and continued development of the Airport (heralded as the busiest airport in the world) is critical and absolutely necessary to the successful operation of the National Air Transportation System of the United States;

WHEREAS, the Aviation General Manager, because of his proven abilities and experience, is a highly respected and sought after manager in the airport administration industry;

WHEREAS, the City believes that stability in the Aviation General Manager position is crucial to the Airport's future success (including, but not limited to the current Development Program); and

WHEREAS, the City desires to offer the Aviation General Manager the Executive Severance Benefits Incentive Agreement attached to this Resolution to entice him to remain employed by the City in the position of Aviation General Manager for the Airport for a period from the date of said resolution for a period of two years.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA:

SECTION 1: The Mayor is hereby authorized to execute and enter in to the attached Executive Severance Benefits Incentive Agreement with Benjamin R. DeCosta, Aviation General Manager, with a base salary at $240,000 with annual four percent (4%) increments and

certain other incentives and benefits. In the event that other employees receive a different amount, it does not impact the 4% stated in this Agreement. Said salary shall become effective upon the effective date of this Resolution. The term of the Agreement shall begin upon the effective date of this Resolution and run for two years following the execution of the agreement.

SECTION 2: That the severance benefits authorized by this Resolution pursuant to the terms in the attached Executive Severance Benefits Incentive Agreement shall not be payable if the Executive's appointment is terminated for cause as defined by the Agreement.

SECTION 3: That the Executive Severance Benefits Incentive Agreement shall not become binding upon the City, and the City shall incur no obligation or liability there under until the same has been approved as to form by the City Attorney and signed by the Mayor and delivered to Benjamin R. DeCosta.

A true copy,

Rhonda Daughtin Johnson

Municipal Clerk

ADOPTED as amended by the City Council **March 21, 2005**
APPROVED by the Mayor **March 25, 2005**

EXECUTIVE SEVERANCE BENEFITS INCENTIVE AGREEMENT

This **EXECUTIVE SEVERANCE BENEFITS INCENTIVE AGREEMENT** is made and entered into this ____ day of _____, 2005, by and between the **CITY OF ATLANTA**, ("City" or "Employer"), and **BENJAMIN R. DECOSTA**, a Georgia resident ("Executive").

BACKGROUND AND PURPOSE:

The Executive is currently employed by the City in the position of General Manager for Hartsfield Jackson Atlanta International Airport (the "Airport"). Both the City and the Executive desire to continue their employment relationship.

WHEREAS the City, in large part through the Executive's leadership, is currently engaged in an ambitious and much needed expansion program for the Airport;

WHEREAS the Executive, through his past performance, has proven himself to be highly competent in the exercise of his job duties, and has served a role of critical importance to the growth and development of the Airport;

WHEREAS the proper administration and continued development of the Airport is of utmost importance to the City's future;

WHEREAS the proper administration and continued development of the Airport (heralded as the busiest airport in the United States) is critical and absolutely necessary to the successful control and operation of air traffic in the United States;

WHEREAS the Executive, because of his proven abilities and value in the marketplace has other career opportunities; and

WHEREAS the City believes that stability of the General Manager position is crucial to the Airport's future success (including but not limited to the current expansion program).

The City hereby agrees to provide the Executive the incentives set forth below to entice him to remain employed by the City in the position of General Manager for Hartsfield for a period of two (2) years from March ___, 2005, following the full execution of this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the premises, mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Employment and Salary.** The City agrees to continue to employ the Executive for a period from the date and year first above written for a period of two (2) years, subject to the following terms: a base salary of $240,000 a year, with annual 4% increments, a $10,000.00 annual contribution to the City's deferred compensation program, and twenty-five (25) days of annual leave a year for the term of this agreement. Furthermore, the Executive will be subject to the same terms which governed his past and present employment with the City, including employment-at-will, with the exception that the City agrees to pay Executive the severance benefits as set forth below in the event that the City decides in the future to involuntarily terminate Executive's employment.

2. **Severance Incentive.** In the event that the City terminates for no cause the Executive's employment within one (1) year of the signing of this Agreement, the City agrees to pay the Executive in addition to any other severance benefits owed by the City, a one time payment of one (1) year's salary at the Executive's then existing rate of pay plus the remaining months of the year in which the termination occurs.

   In the event that the City terminates the Executive's employment outside of one (1) year of the signing of this Agreement, the City agrees to pay the Executive in addition to any other severance benefits owed by the City, one time payment of the remaining months of the year in which the termination occurs at the Executive's then existing rate of pay.

3. **Exception for Cause Termination.** The provisions of the preceding paragraph shall not be applicable in the event that termination of the Executive is warranted due to gross negligence in performance of his job duties or if the Executive is convicted of a crime.

4. **Termination by Executive.** Nothing in this Agreement should be construed and limiting in any way the Executive's right to terminate his at-will employment with the City. Upon such termination, however, whether it occurs during or following the employment period mentioned (post this agreement), Executive shall not be entitled to any severance benefits mentioned hereinabove.

5. **Miscellaneous.**

   (a) This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the parties hereto. No waiver, termination or discharge of this Agreement, or any of the terms or provisions hereof, shall be binding upon either party hereto unless confirmed in writing. This Agreement may not be

modified or amended, except by a writing executed by both parties hereto. No waiver by either party hereto of any term or provision of this Agreement or of any default hereunder shall effect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

(c) Executive may not assign this Agreement, in whole or in part, without the prior written consent of the City, and any attempted assignment not in accordance herewith shall be null and void and of no force or effect.

(d) This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(e) The headings contained herein are for the convenience of the parties only and shall not be interpreted to limit or affect in any way the meaning of the language contained in this Agreement.

(f) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such party.

(g) If any provision of this Agreement shall be held void, voidable, invalid, or inoperative, no other provision of this Agreement shall be affected as a result thereof, and accordingly, the remaining provisions of this Agreement shall remain in full force and effect as though such void, voidable, invalid or inoperative provision had not been contained herein.

(h) This Agreement shall not be construed more strongly against either party hereto, regardless of which party is responsible for its preparation.

(i) Upon reasonable request of the other party, each party hereto agrees to take all actions, including, without limitation, the execution of certificates, documents or instruments, necessary or appropriate to give effect to the terms and conditions set forth in this Agreement.

(j) This Agreement shall not become binding upon the City, and the City shall incur no obligation or liability there under until same has been executed by the Mayor and Benjamin R. DeCosta.

IN WITNESS WHEREOF, the parties hereto have executed, or caused their duly authorized representatives to execute, this Agreement as of the day and year first above written.

THE CITY OF ATLANTA

By: _____ _____
MAYOR Date

By: _____ _____
BENJAMIN R. DECOSTA Date

APPROVED AS TO FORM:

_____
City Attorney

RCS# 6559
3/21/05
2:26 PM

Atlanta City Council

Regular Session

CONSENT I

CONSENT I PG 4-16 EXCEPT
05-R-0499 04-O-2111
ADOPT

YEAS:	13
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	2

Y Smith	Y Archibong	Y Moore	Y Mitchell
Y Starnes	Y Fauver	B Martin	Y Norwood
Y Young	Y Shook	Y Maddox	Y Willis
Y Winslow	Y Muller	B Sheperd	NV Borders

05-R-0502
(Do Not Write Above This Line)

A RESOLUTION

BY: FINANCE/EXECUTIVE COMM.

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AND EXECUTE A SEVERANCE BENEFITS INCENTIVE AGREEMENT WITH BENJAMIN R. DECOSTA, AVIATION MANAGER; AND FOR OTHER PURPOSES

ADOPTED BY
MAR 2 1 2005
COUNCIL

AS AMENDED

- ☐ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred
Referred To:
Date Referred
Reffe-red To:
Date Referred
Referred To:

First Reading
Committee
Date
Chair
Referred To

Committee	Committee
FINANCE / EXECUTIVE	
Date 3/16/5	Date
Chair Deba M Stains	Chair
Action Fav, Adv, Hold (see rev. side) Other As Amended	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

Committee	Committee
Date	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION
☐ 2nd ☐ 1st & 2nd ☐ 3rd
Readings
☑ Consent ☐ V Vote ☑ RC Vote

CERTIFIED

MAR 2 1 2005

CERTIFIED

MAYOR'S ACTION