

11-R-1570

(Do Not Write Above This Line)

A RESOLUTION BY  
FINANCE/EXECUTIVE COMMITTEE

A RESOLUTION ON BEHALF OF THE DEPARTMENT OF AVIATION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO "OPERATIONS AND MAINTENANCE CONTRACT AUTOMATED GUIDEWAY TRANSIT SYSTEM AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT" WITH BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC. INCREASING THE MANAGEMENT FEE IN AN AMOUNT NOT TO EXCEED A CUMULATIVE TOTAL OF \$3,895,705 OVER THE FINAL FOUR YEARS OF THE INITIAL TERM OF THE CONTRACT NECESSITATED BY THE EXTENSION OF THE AUTOMATED GUIDEWAY TRANSIT SYSTEM TO THE MAYNARD HOLBROOK JACKSON, JR. INTERNATIONAL TERMINAL, ADJUSTING THE LABOR BURDEN RATE PER THE TERMS OF THE CONTRACT, AND CLARIFYING THE METHODOLOGY USED TO CALCULATE SYSTEM AVAILABILITY; ALL CONTRACTED WORK TO BE CHARGED TO AND PAID FROM FDOA 5501 (AIRPORT REVENUE FUND) 180314 (AVIATION TRANSIT SYSTEM) 5213001 (CONSULTING PROFESSIONAL SERVICES - TECHNICAL) 7563001 (AIRPORT); AND FOR OTHER PURPOSES.

NOV 07 2011

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

First Reading

Committee \_\_\_\_\_  
 Date \_\_\_\_\_  
 Chair \_\_\_\_\_  
 Referred To \_\_\_\_\_

Committee  
*Finance/Executive*

Date  
*11-2-11*

Chair  
*[Signature]*

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

Members  
*[Signatures]*

Refer To  
*[Signature]*

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 \_\_\_\_\_

Committee \_\_\_\_\_

Date \_\_\_\_\_

Chair \_\_\_\_\_

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

Members \_\_\_\_\_

Refer To \_\_\_\_\_

FINAL COUNCIL ACTION

- 2nd       1st & 2nd
- Readings
- Consent     V Vote     RC \

CERTIFIED

CERTIFIED

NOV 07 2011

ATLANTA CITY COUNCIL PRESIDENT

*[Signature]*

CERTIFIED

NOV 07 2011

*[Signature]*  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

NOV 16 2011

WITHOUT SIGNATURE  
BY OPERATION OF LAW



**A RESOLUTION BY  
FINANCE/EXECUTIVE COMMITTEE**

**A RESOLUTION ON BEHALF OF THE DEPARTMENT OF AVIATION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO "OPERATIONS AND MAINTENANCE CONTRACT AUTOMATED GUIDEWAY TRANSIT SYSTEM AT HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT" WITH BOMBARDIER TRANSPORTATION (HOLDINGS) USA, INC. INCREASING THE MANAGEMENT FEE IN AN AMOUNT NOT TO EXCEED A CUMULATIVE TOTAL OF \$3,895,705 OVER THE FINAL FOUR YEARS OF THE INITIAL TERM OF THE CONTRACT NECESSITATED BY THE EXTENSION OF THE AUTOMATED GUIDEWAY TRANSIT SYSTEM TO THE MAYNARD HOLBROOK JACKSON, JR. INTERNATIONAL TERMINAL, ADJUSTING THE LABOR BURDEN RATE PER THE TERMS OF THE CONTRACT, AND CLARIFYING THE METHODOLOGY USED TO CALCULATE SYSTEM AVAILABILITY; ALL CONTRACTED WORK TO BE CHARGED TO AND PAID FROM FDOA 5501 (AIRPORT REVENUE FUND) 180314 (AVIATION TRANSIT SYSTEM) 5213001 (CONSULTING PROFESSIONAL SERVICES – TECHNICAL) 7563001 (AIRPORT); AND FOR OTHER PURPOSES.**

**WHEREAS**, the Automated Guideway Transit System ("AGTS") at Hartsfield-Jackson Atlanta International Airport ("Airport") is a proprietary system originally designed, fabricated, installed, operated and maintained within the Central Passenger Terminal Complex under a contract between the City of Atlanta ("City") and Westinghouse Electric Corporation ("Westinghouse"), dated April 26, 1977; and

**WHEREAS**, since the initial construction of the AGTS, the Department of Procurement has designated Westinghouse and its successors in interest as sole source providers of Operations and Maintenance services for the AGTS pursuant to section 2-1191 of the City Code; and

**WHEREAS**, the AGTS is currently operated and maintained by Bombardier Transportation (Holdings) USA, Inc. ("Bombardier"), a successor in interest to Westinghouse, under a Contract titled "Operations and Maintenance Contract Automated Guideway Transit System At Hartsfield-Jackson Atlanta International Airport" (the "Contract"), dated, July 1, 2005, and authorized by City Council Resolution 05-R-1118; and

**WHEREAS**, the Contract has an initial term of ten years and is subject to up to two consecutive five-year extensions; and

**WHEREAS**, the AGTS is being extended to support the Maynard H. Jackson, Jr. International Terminal ("MHJIT") which is scheduled to open at the Airport in the Spring of 2012; and



**WHEREAS**, Section 3.2 of Part A of the Contract envisions that the AGTS would expand when and if the City constructed MHJIT, and that the compensation provided to Bombardier under the Contract would have to be modified accordingly; and

**WHEREAS**, as contemplated in the Contract, the extension of the AGTS will require Bombardier to perform additional services and incur additional costs necessitating an increase in Bombardier's Management Fee which has been negotiated by the parties and which the Aviation General Manager believes to be fair and reasonable; and

**WHEREAS**, the Contract provides that after the fifth Contract year, the labor burden rate shall be adjusted to reflect Bombardier's actual, historical labor burden costs; and

**WHEREAS**, Bombardier documented to the City's satisfaction, its actual, historical labor burden costs and has agreed to a new labor burden rate; and

**WHEREAS**, the parties have for some time disputed the interpretation of the methodology contained in the Contract by which system availability, and the associated adjustment to Bombardier's Management Fee based thereon, was calculated; and

**WHEREAS**, Bombardier filed a lawsuit in the United States District Court for the Northern District of Georgia, Civil Action File No. 1:11-CV-015610SOJ, styled Bombardier Transportation (Holdings) USA Inc. v. City of Atlanta (the "Litigation") seeking to resolve these issues; and

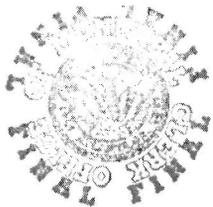
**WHEREAS**, as the result of good faith discussions between the parties and the parties' agreement about the terms of the Amendment authorized by this resolution, Bombardier has dismissed the Litigation; and

**WHEREAS**, the Aviation General Manager and the Chief Procurement Officer have recommended that the Contract be amended as described herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, that the Mayor is authorized to execute on behalf of the City of Atlanta an Amendment to the Contract containing the following terms and conditions:

1. An increase in the Management Fee to be paid to Bombardier during Contract years 7, 8, 9 and 10 in a cumulative amount not to exceed \$3,895,705 allocated as follows:

|  |   |                    |
|--|---|--------------------|
| • FY 2012 (Year 7) Management Fee Increase | = | \$1,055,705        |
| • FY 2013 (Year 8) Management Fee Increase | = | \$ 900,000         |
| • FY2014 (Year 9) Management Fee Increase  | = | \$ 950,000         |
| • FY2015 (Year 10) Management Fee Increase | = | <u>\$ 990,000</u>  |
| <b>Total</b>                               |   | <b>\$3,895,705</b> |



2. An adjustment to the labor burden rate for Contract years 7, 8, 9 and 10 from 31.1% to 36.38% which shall be applied to actual overtime costs at a rate of 18.62%, as opposed to the original contractual rate of 16.95%; and
3. A clarification to the methodology used to calculate system availability as previously agreed upon by the parties.
4. Such incidental Contract modifications necessary to implement the items listed above deemed appropriate by the Aviation General Manager.

**BE IT FURTHER RESOLVED**, that all contracted work will be charged to and paid from FDOA 5501 (Airport Revenue Fund) 180314 (Aviation Transit System) 5213001 (Consulting Professional Services – Technical) 7563001 (Airport).

**BE IT FURTHER RESOLVED**, that the City Attorney is directed to prepare an appropriate Amendment for execution by the Mayor.

**BE IT FINALLY RESOLVED**, that the Amendment shall not become binding upon the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved by the City Attorney as to form and delivered to Bombardier.

A true copy,

A handwritten signature in black ink, appearing to be "K. [unclear]".

Deputy Municipal Clerk

**ADOPTED by the Atlanta City Council**  
**APPROVED as per City Charter Section 2-403**

**Nov. 07, 2011**  
**Nov. 16, 2011**

RCS# 1513  
11/07/11  
3:15 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

CONSENT AGENDA SECTION I  
NOVEMBER 7, 2011  
ADOPT

YEAS: 12  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 2

|           |             |           |             |
|-----------|-------------|-----------|-------------|
| Y Smith   | Y Archibong | Y Moore   | Y Bond      |
| Y Hall    | Y Wan       | Y Martin  | Y Watson    |
| B Young   | Y Shook     | B Bottoms | Y Willis    |
| Y Winslow | NV Adrean   | Y Sheperd | NV Mitchell |

CONSENT I