A RESOLUTION BY
FINANCE EXECUTIVE COMMITTEE

05-R-05-R-1195

A RESOLUTION AUTHORIZING THE CITY ATTORNEY TO EXTEND A RETAINER AGREEMENT WITH THE LAW FIRM OF KILPATRICK STOCKTON, LLP TO SERVE AS OUTSIDE COUNSEL TO THE CITY OF ATLANTA IN CONNECTION WITH THE MATTERS OF GSC ATLANTA, INC. VS. THE CITY OF ATLANTA, FULTON COUNTY SUPERIOR COURT, CIVIL ACTION FILE NO. 2005CV99011, GSC ATLANTA, INC. VS. THE CITY OF ATLANTA, FULTON COUNTY SUPERIOR COURT, CIVIL ACTION FILE NO. 2005CV101691, AND THE APPEAL OF GSC ATLANTA, INC. BEFORE THE PROCUREMENT HEARING OFFICER OF THE CITY OF ATLANTA; TO AUTHORIZE EXPENDITURES FOR THOSE PURPOSES IN AN AMOUNT NOT TO EXCEED $100,000 TO BE CHARGED TO AND PAID FROM FUND ACCOUNT AND CENTER NUMBER 2J01 (WATERSHED)-524001 (CONSULTANT PROFESSIONAL SERVICES)-H11001 (CITY ATTORNEY); AND FOR OTHER PURPOSES.

WHEREAS, the City entered into a Consent Decree with the United States Environmental Protection Agency ("EPA"), the Georgia Environmental Protection Division ("EPD") and other plaintiffs committing the City to remedy water quality violations caused by combined sewer overflows ("CSOs"); and

WHEREAS, the Consent Decree required the City to develop and implement a Remedial Action Plan to bring its Combined Sewer Overflow ("CSO") Control Facilities into compliance with the Clean Water Act and other current regulations; and

WHEREAS, the Custer Avenue CSO Storage and Dechlorination Facility Project (hereinafter "Custer Avenue Project") is one of the CSO projects of the Consent Decree and Remedial Action Plan; and

WHEREAS, the Custer Avenue Project has interim milestones and deadlines pursuant to the Consent Decree and the Remedial Action Plan; and

WHEREAS, GSC Atlanta, Inc. (hereinafter "GSC") submitted a bid in response to the City's invitation to bid on the contract for the Custer Avenue Project; and

WHEREAS, the City determined that GSC's bid was noncompliant with the requirements of the City's Equal Business Opportunity Ordinance and GSC filed an administrative appeal of that determination; and

WHEREAS, the City's decision concerning GSC's bid was affirmed by the City's Office of Contract Compliance Hearing Officer; and

WHEREAS, GSC initiated a Petition for Certiorari in the Fulton County Superior Court to appeal the Hearing Officer's decision; and

WHEREAS, to comply with milestones and deadlines established in the Consent Decree and the Remedial Action Plan, the City accepted the bid of Gunther-Nash, Inc. (hereinafter "Gunther-Nash") and awarded the contract for the Custer Avenue Project to Gunther-Nash; and

WHEREAS, GSC filed a protest with the City's Chief Procurement Officer concerning the award of the Custer Avenue Project contract to Gunther-Nash; and

WHEREAS, the Chief Procurement Officer denied GSC's protest and GSC has filed an administrative appeal; and

WHEREAS, GSC also initiated a Complaint for Temporary Restraining Order and Other Declaratory and Injunctive Relief against the City in Fulton County Superior Court seeking to enjoin the City's contract with Gunther-Nash; and

WHEREAS, the City Attorney has determined that a court order enjoining the City's contract with Gunther-Nash would cause the City to fail to meet the milestones and deadlines established in the Consent Decree and the Remedial Action Plan, thereby subjecting the City to stipulated penalties, including substantial fines; and

WHEREAS, the City Attorney has determined it appropriate and necessary to engage the legal services of the law firm of Kilpatrick Stockton, LLP as outside counsel in defense of GSC's Administrative Appeal of the Chief Procurement

Officer's denial of its protest, Complaint for Temporary Restraining Order and Other Declaratory and Injunctive Relief, and Petition for Certiorari as provided in Section 2-407 of the Code of Ordinances; and

WHEREAS, Kilpatrick Stockton, LLP has successfully assisted the City Law Department in defending the aforementioned matters to date; and

WHEREAS, Kilpatrick Stockton, LLP has incurred fees and expenses totaling $50,000 in defense of these matters; and

WHEREAS, the aforementioned matters are still pending, and thus require Kilpatrick Stockton, LLP's continued assistance to the City Law Department; and

WHEREAS, the City Attorney has determined that the law firm of Kilpatrick Stockton, LLP has both the litigation expertise as well as 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 Kilpatrick Stockton, LLP to serve as outside counsel to the City Attorney on the matters of GSC Atlanta, Inc. v. City of Atlanta, Civil Action File No. 2005CV99011, GSC Atlanta, Inc. v. City of Atlanta, Civil Action File No. 2005CV101691, and The Appeal of GSC Atlanta, Inc. before the Procurement Hearing Officer of the City of Atlanta.

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 $100,000.

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 Kilpatrick Stockton, LLP in connection with the foregoing matters, once approved for payment by the City Attorney, in an amount not to exceed $100,000.00 to be paid from Fund Account and Center Number 2J01 (WATERSHED)-524001 (CONSULTANT/PROFESSIONAL SERVICES)-H11001(CITY ATTORNEY).