02-R-2120

A SUBSTITUTE RESOLUTION NO. 2
AS AMENDED BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONSULTING SERVICES AGREEMENT WITH JOHN BOATRIGHT FOR ENGAGEMENT AS A PROGRAM OFFICER FOR THE HARTSFIELD DEVELOPMENT PROGRAM IN AN AMOUNT NOT TO EXCEED $223,944.00 PER YEAR; TO AUTHORIZE THE TERMS OF SUCH ENGAGEMENT; AND FOR OTHER PURPOSES.

WHEREAS, The passenger traffic at Hartsfield Atlanta International Airport reached 75.9 million during 2001, continuing its status as the world's busiest passenger airport; and

WHEREAS Hartsfield Atlanta International Airport has undertaken unprecedented construction and development in accordance with the Hartsfield Master Plan, also referred to as the Hartsfield Development Program, (the "HDP") a $5.4 Billion project to be implemented by 2010; and

WHEREAS, The readiness to proceed with critical projects is essential to Hartsfield Atlanta International Airport's viability given the forecast demand of 121 million passengers by 2015; and

WHEREAS, A new Fifth Runway, East International Terminal Project, Consolidated Rental Agency Complex, South Domestic Terminal Project, various Airfield Improvements and Support Facilities are the major components of the HDP; and

WHEREAS, the level of design, construction and development associated with the HDP will engender a myriad of process management issues that have never been handled in the City of Atlanta; and

WHEREAS, there are currently an array of qualified consulting firms engaged by the City to aid in the management, design, development and implementation of the HDP; and

WHEREAS, there is a Program Management Team, a Planning & Design Team, Construction Management Teams, as well as several Architectural & Engineering Teams, all engaged as necessary; and

WHEREAS, notwithstanding the aggregation of talent assembled to accomplish the H one of the largest public works undertakings in America, there remains the need for one exception qualified individual to perform the duty of managing the HDP; and

that airline's facilities worldwide, worked to develop best practices in procurement expenditures and aided in the development of several Airport Master Plans of national significance, including the City's, Boston Logan International Airport and the Port Authority of New York/New Jersey; and

WHEREAS, Boatright possesses unique construction management, human resources management, consultant synchronization, strategic planning, fiscal responsibility and procurement experience that is distinctively applicable to the City's $5.4 Billion HDP; and

WHEREAS, at the request of the Aviation General Manager, and upon consideration and investigation, the City's Purchasing Director has made a determination that a sole source designation of Boatright, as the HDP General Manager or Program Officer, is appropriate under Section 2-1191 of the City's Code of Ordinances, which determination is attached as Exhibit 1; and

WHEREAS, accordingly, the City desires to engage Boatright to provide the Services as the HDP Program Officer in connection with the HDP, more specifically defined in Exhibit 2 attached; and

WHEREAS, the City's Department of Aviation and Purchasing Director have recommended this Agreement be awarded to Boatright;

ACCORDINGLY, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the Mayor be and is authorized to enter into a Consulting Services Agreement with John Boatright as a Program Officer for Hartsfield Atlanta International Airport's $5.4 Billion Development Program.

BE IT FURTHER RESOLVED that the initial period of the engagement under the Consulting Services Agreement will be for one (1) year, commencing effective February 1, 2003, and will be renewable, after review of Boatright's performance by the Aviation General Manager, upon agreed terms and conditions, for the following, additional separate terms:

1. 1st Renewal Term (1 year term): Commencing February 1, 2004, and terminating January 31, 2005;

2. 2nd Renewal Term (1 year term): Commencing February 1, 2005, and terminating January 31, 2006;

3. 3rd Renewal Term (6 month term): Commencing February 1, 2006, and terminating August 31, 2006.

BE IT FURTHER RESOLVED THAT Boatright will compensated at a rate of $223,944 per year, paid in installments of $18,662 per month, to be paid from and charged to FAC 2H21 724001 R21001.

BE IT FURTHER RESOLVED that additional terms of Boatright's engagement will be contained in a Consulting Services Agreement in a form substantially similar to that attached as Exhibit 2 which shall be approved as to form by the City Attorney; and

BE IT FINALLY RESOLVED that the Consulting Services Agreement will not be binding on the City of Atlanta and the City will incur no liability under it until it is signed by the Mayor, sealed by the Municipal Clerk, approved by the City Attorney as to form and delivered to Boatright.

Exhibit 1

Exhibit 2

COMMITTEE AMENDMENT FORM

Committee Transportation **Page Number(s)** 2

Ordinance I.D.# _____ **Section(s)** _____

Resolution I.D.# 02-R-2120 **Paragraph** Caption

Date 1/15/03

Amendment:

Amend caption to add the following words, ~~after~~ "the Hartsfield Development Program"...

~~Insert the words:~~

"in an amount not to exceed $223,944 per year";

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ATLANTA AND JOHN BOATRIGHT

EFFECTIVE _____, 2003

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CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** ("Agreement") is entered into effective the ___ day of _____ 2003, between the city of Atlanta, a Georgia municipal corporation (the "City"), and John Boatright, an individual resident of Fayette County, Georgia ("Boatright") (the City and Boatright may be referred to individually as a "Party" or collectively as the "Parties").

BACKGROUND:

The passenger traffic at Hartsfield Atlanta International Airport ("Airport") reached 75.9 million during 2001, continuing its status as the world's busiest passenger airport; and

The Airport has undertaken unprecedented construction and development in accordance with the Hartsfield Master Plan, also referred to as the Hartsfield Development Program, (the "HDP") a $5.4 Billion project to be implemented by 2010; and

The readiness to proceed with critical projects is essential to the Airport's viability given the forecast demand of 121 million passengers by 2015; and

A new Fifth Runway, East International Terminal Project, Consolidated Rental Agency Complex, South Domestic Terminal Project, various Airfield Improvements and Support Facilities are the major components of the HDP; and

The level of design, construction and development associated with the HDP will engender a myriad of process management issues that have never been handled in the City of Atlanta; and

There are currently an array of qualified consulting firms engaged by the City to aid in the management, design, development and implementation of the HDP; and

There is a Program Management Team, a Planning & Design Team, Construction Management Teams, as well as several Architectural & Engineering Teams, all engaged as necessary; and

Notwithstanding the aggregation of talent assembled to accomplish the HDP, one of the largest public works undertakings in America, there remains the need for one exceptionally qualified individual to perform the duty of managing the HDP; and

John Boatright ("Boatright") was an employee of Delta Air Lines from 1972 through January 2003, during which time he managed the design and construction of that airline's facilities worldwide, worked to develop best practices in procurement expenditures and aided in

the development of several Airport Master Plans of national significance, including the City's, Boston Logan International Airport and the Port Authority of New York/New Jersey; and

Boatright possesses unique construction management, human resources management, consultant synchronization, strategic planning, fiscal responsibility and procurement experience that is distinctively applicable to the City's $5.4 Billion HDP; and

At the request of the Aviation General Manager, and upon consideration and investigation, the City's Purchasing Director has made a determination that a sole source designation of Boatright, as the HDP General Manager or Program Officer, is appropriate under Section 2-1191 of the City's Code of Ordinances, which determination is attached as Exhibit 1; and

Accordingly, the City desires to engage Boatright to provide the Services as the HDP Program Officer in connection with the HDP, more specifically defined in Exhibit 2 attached; and

The City's Department of Aviation and Purchasing Director have recommended this Agreement be awarded to Boatright; and

By resolution adopted by the City's Council on the ___ day of _____, 2003, and approved by the Mayor on the ___ day of _____, 2003, attached as Exhibit 3, the Mayor was authorized to enter into this Agreement with Boatright;

AGREEMENT:

Accordingly, the Parties mutually agree as follows:

1. **Provision of Consulting Services; Standard of Care**: Boatright agrees to render and the City retains Boatright to provide the Services outlined on Exhibit 2 attached. Boatright will render in a satisfactory and proper manner the Services, in keeping with the usual standard of care, degree of skill, efficiency and judgment expected of other professionals providing similar services in Boatright's normal course of business and at the locales of the HDP.

2. **Term of Services; Renewals:**

   2.1. The respective duties of the Parties to this Agreement will commence effective February 1, 2003, and terminate on January 31, 2004, unless the City renews this Agreement. The City will have the option of renewing this Agreement, after review of Boatright's performance by the Aviation General Manager, upon agreed terms and conditions, for the following, additional separate terms:

   2.1.1. 1st Renewal Term (1 year term): Commencing February 1, 2004, and terminating

January 31, 2005;

2.1.2. 2nd Renewal Term (1 year term): Commencing February 1, 2005, and terminating January 31, 2006;

2.1.3. 3rd Renewal Term (6 month term): Commencing February 1, 2006, and terminating August 31, 2006.

2.2. Renewals may be exercised by the City by its delivering written notice of the renewal to Boatright at least sixty (60) days prior to the expiration of the initial term of this Agreement or any renewal term; provided, however, that a renewal will not be effective unless the City has complied, to the extent applicable, with any legislative or budgetary requirements set forth in the City's Charter or Code of Ordinances in order to authorize the renewal and provide sufficient funding for it. Nothing in this Agreement will preclude the parties from extending the terms of this Agreement beyond the final Renewal Term upon agreement between the parties and compliance by the City with any legislative or budgetary requirements set forth in the City's Charter or Code of Ordinances. Boatright acknowledges that any amendments to this Agreement or renewals of it beyond its initial one (1) year term will require approval by the City's Council and Mayor.

3. **Responsibility for Services; Compliance with Applicable Laws:** It is understood and agreed that the City relies upon Boatright's expertise to satisfactorily complete the Services and that Boatright will be solely responsible for his compliance with all applicable professional, business, contractual and statutory laws, rules, regulations and policies necessary to provide the Services. Notwithstanding any review, approval, acceptance or payment for the Services by the City, Boatright will be responsible for the professional and technical accuracy of his Services.

4. **The City's Representative:** The City designates the City's Aviation Manager to be the sole Representative of the City in all dealings with Boatright.

5. **Responsibility For Permits And Licenses; Costs:** Boatright must obtain, at his own expense, all permits and licenses required by all municipal, state and federal authorities pertaining to the performance of the Services.

6. **Compensation; Medical Care Plan and Pension Plan; Insurance:**

6.1. **Compensation:** For the performance of the Services, the City will compensate Boatright at the rate of $223,944 per year. Compensation is to be paid monthly in installments of $18,662 per month ($952.95 per diem), upon the Aviation General Manager's approval of submitted invoices. The acceptance by Boatright of the last payment, plus any pro-rata earnings of any partial period paid on a per diem basis, for Services under this Agreement, or in the event of termination of this Agreement for

cause, will in each instance operate as and be a release of the City from all claims and liability to Boatright for everything done or furnished for or relating to the Services.

6.2. **Other Benefits:** Boatright acknowledges and agrees that this Agreement provides no additional payments for sick or vacation leave, and does not include any disability or medical care plan or pension plan for him, as he is acting as an Independent Contractor under this Agreement..

6.3. Services Requirements: During each 6-month period under this Agreement, Boatright agrees to provide to the City one hundred seventeen and one-half (117.5) days of Services, such Services days to be reflected on invoices submitted by Boatright to the City accordingly. If, during any 6-month period under this Agreement, Boatright renders less than 117.5 days of Services, a per diem deduction of $952.95 for each day less than 117.5 days will be made to the last invoice applicable to the 6th month period. Performance of Services by Boatright during any 6-month period under this Agreement in excess of 117.5 days will not entitle Boatright to any additional compensation.

6.4. **Insurance:** Boatright further acknowledges and agrees that the City is maintaining no insurance coverages naming Boatright as an insured or additional insured with respect to this Agreement, the HDP or the Services, except as provided for in the Clause entitled "Owner Controlled Insurance Program ("OCIP)"; and that Boatright is responsible for obtaining and maintaining the appropriate types of insurance coverages necessary to protect him with respect to this Agreement, to the extent not provided by the City.

7. **Provision of Office Space and Support Services:** The City agrees to provide Boatright with the reasonable use of office space, office equipment, including computers and all communications equipment, and secretarial and clerical assistance, as needed to provide the Services.

8. **City/HDP Information; Data And Documents:**

8.1. **Provision of Data and Documents by the City:** The City will furnish to Boatright all HDP related data and documents ("Data and Documents") readily available to the City that are necessary for the provision of the Services. In the event necessary Data and Documents are not readily available to the City, the City will cooperate with Boatright to obtain such Data and Documents in an expeditious manner.

8.2. **Title to Data and Documents:** The Parties agree that the City will retain title to all Data and Documents furnished to Boatright.

8.3. **Confidentiality/Proprietary Agreements:** Boatright agrees to be fully bound by any confidentiality or proprietary agreement imposed on the City with regard to Data and Documents and, if requested by the City, to enter into any reasonable confidentiality or

proprietary agreement proposed by the City before accepting receipt of confidential or proprietary Data and Documents.

8.4. **Redelivery of Possession of Data and Documents After Termination:** In the event of the termination of this Agreement for any reason, Boatright must immediately deliver to the City possession of all Data and Documents of which Boatright has possession, custody or control.

8.5. **Availability of Data and Documents for Inspection by the City:** Boatright agrees at any time during the performance of Services that all Data and Documents must be made available to the City, including all such data and documents created by Boatright in the performance of his duties.

8.6. **Maintenance of Confidentiality:** All Data and Documents, reports, work product, information, other data, or other documents, given to, prepared by or assembled by Boatright under this Agreement must be kept confidential and may not be made available to any individual or organization, with the exception of HDP, by Boatright without the prior approval of the Aviation General Manager.

9. **Independent Contractor:** Nothing contained in this Agreement will be deemed to create a partnership or joint venture between the City and Boatright or cause the City to be responsible for the debts or obligations of Boatright. Boatright is and will at all times be deemed to be an independent contractor. Boatright, consistent with his status as an independent contractor, further agrees that he will not hold himself out as, nor claim to be, an officer, agent, representative or employee of the City. Boatright will be responsible for all federal, state and local income, employment and other taxes, as well as all fees or other assessments made against Boatright as a result of this Agreement, the Services and payments by the City to Boatright of compensation under this Agreement.

10. **Termination:**

10.1. **For Cause:** The City may terminate this Agreement by giving 10 days prior written notice to Boatright if Boatright is in default in the performance of his obligations under this Agreement. Boatright is in default in the performance of his obligations under the Agreement if Boatright fails to cure the default within 10 days after receipt of written notice, or if such cure requires longer than 10 days to complete, Boatright fails to commence to cure within the 10-day period and complete the cure within a reasonable period of time. Boatright will have the same termination provisions as outlined for the City.

10.2. **Termination by the City For Convenience:** The City may terminate the Agreement for any reason by giving 90 days prior written notice to Boatright. Boatright will have the same termination provisions as outlined for the City.

10.3. **Immediate Termination:**

10.3.1. The Agreement will immediately terminate, without the requirement of any action on the City's part, if Boatright:

10.3.1.1. Voluntarily consents to an order for relief by filing a petition for relief under the laws of the United States codified as Title 11 of the United States Code;

10.3.1.2. Seeks, consents to or does not contest the appointment of a receiver, custodian or trustee for himself or for all or any part of its property;

10.3.1.3. Files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of any state or other competent jurisdiction;

10.3.1.4. Gives notice to any governmental body of insolvency or pending insolvency, or suspends operations;

10.3.1.5. Becomes insolvent as that term is defined under applicable bankruptcy, fraudulent transfer or conveyance laws; or

10.3.1.6. Makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

10.3.2. Boatright will have the same termination provisions as outlined for the City.

10.4. **Transition Period After Termination:** If the Agreement is terminated, all Services must continue to be provided by Boatright during a transitional period of up to 6 months, as directed by the City. During the transitional period, the terms and conditions of the Agreement will apply.

10.5. **Right to Compensation After Termination:** If this Agreement is terminated, all amounts earned by Boatright prior to the effective date of the termination remaining unpaid will be paid by the City to Boatright, subject to any deductions the City is entitled to make to such payment amounts under this Agreement or applicable law. If the effective date of a termination results in an invoiced pay period under this Agreement of less than one (1) month, amounts owing to Boatright as of the effective date of the termination will be calculated on a pro-rata, per diem basis.

11. **Owner Controlled Insurance Program ("OCIP"):**

11.1. **City Maintenance of OCIP:** The City, at its sole expense, will implement an OCIP to furnish certain insurance coverages for on-site activities of Boatright. The OCIP will be for the benefit of the City and Boatright; however, Boatright must provide his own insurance for off-site activities.

11.2. **Policies/Coverage Provided Under the OCIP:** The City will procure and pay premiums for the following insurance for Boatright:

11.2.1. **Workers' Compensation and Employer's Liability:** Statutory-Amount and coverage as required by law including any applicable provision for voluntary Worker's Compensation benefits as required by Labor Union Agreements and including the "All States" endorsement.

11.2.2. **Employer's Liability:** A minimum of $1,000,000 Each Accident, $1,000,000 each Employee, and $1,000,000 Policy Limit Disease.

11.2.3. **Commercial General Liability:** To cover Boatright from claims for damages for personal injury including accidental death as well as from claims for personal property damages which may arise from the Services. The City will procure insurance coverage with limits not less than those stated below:

11.2.3.1. Bodily Injury and Property Damage Liability, combined single limit-a minimum of $2,000,000 Per Each Occurrence;

11.2.3.2. Products and Completed Operations Aggregate Limit-a minimum of $2,000,000 Per Each Occurrence;

11.2.3.3. General Aggregate Limit Products and Completed Operations-$5,000,000 annual; coverage will continue for a period of three (3) years beyond termination and/or completion of the construction program

11.2.3.4. Personal and Advertising Injury Limit-minimum of $2,000,000 per occurrence;

11.2.3.5. Excess/Umbrella coverage will be provided with a minimum limit of $25,000,000, which also covers the Primary Liability Coverage-Employer's Liability, Public Liability, and Products and Completed Operations.

11.2.4. **Professional Liability:** The City will maintain Professional Liability coverage

for the duration of this Agreement. The policy will be written with at least a $10,000,000 limit of liability. The first $25,000 of any claim that stems from the Services provided by Boatright will be fully borne by him; provided, however, that if the City directed Boatright to proceed in a manner that conflicted with professional recommendations by Boatright to City, Boatright will not be required to bear the first $25,000 of any claim.

11.3. General Provisions:

11.3.1. **Certification and Policies:** All City furnished insurance coverages will be written by insurance companies authorized to do business in the State of Georgia by the Georgia Insurance Commissioner. The City will provide Boatright with appropriate certificates of insurance evidencing the coverages provided under the OCIP. The actual insurance policies will be available for inspection at a place to be designated by the City.

11.3.2. **Withholding of Claim Payments:** Boatright agrees that, in case of payment by the insurers arising out of damage to property caused by Boatright, the City will withhold from Boatright a sum equal to such payment, but not to exceed $1,000 for each occurrence, except that for gas, electrical, telephone, telegraph sewer and water utilities, the City will withhold $5,000 per utility for the first occurrence, $10,000 per utility for the second occurrence and $15,000 per utility for each occurrence after the second. Occurrence. The sum will be assessed against Boatright, as determined by the insurer, and will become the property of the City.

11.3.3. **City's Limited OCIP Obligations:** The City will have no responsibility whatsoever to Boatright with respect to any insurance coverage, its procurement or absence thereof, other than to:

11.3.3.1. procure the issuance of applicable policies naming Boatright as an Insured; and

11.3.3.2. procure, and pay all premiums for the policies of these Insurance Specifications.

11.3.4. **No Waiver of Boatright Obligations:** The policies of insurance procured and maintained by the City under the OCIP will not affect Boatright's liability to the City under this Agreement, except as noted above.

11.3.5. **Dividends and Refunds:** All dividends or refunds payable under any OCIP policies applicable to Boatright will belong to the City; Boatright, by his execution of this Agreement assigns those dividends or refunds to the City. Boatright, at the request of the City, must execute and deliver to the City any release, assignment,

direction, or authorization that the City or any insurance company may require for such purpose.

11.3.6. **Reporting; Duty to Cooperate:** Boatright must report, on forms to be provided by the City or any OCIP insurer, any accident and must assist in every manner reasonable in the investigation of any accident. Upon request, Boatright must cooperate with the City and the insurance company designated by the City in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for any claim or suit.

11.3.7. **Supply of Information:** Boatright must furnish the City and the insurance company designated by the City with information to issue any insurance policies to be provided under this Agreement.

11.3.8. **OCIP Meetings:** At the request of the City, Boatright must attend any meetings concerning the OCIP.

11.3.9. **Termination/Modification of the OCIP:** While it is the intent of the City to keep the OCIP in force throughout the term of this Agreement, the City reserves the right to terminate or modify the OCIP, or any portion of it. To exercise this option, the City will provide forty-five (45) days advance written notice to Boatright and Boatright will immediately be required to obtain replacement insurance coverage and the City will reimburse the reasonable cost of such replacement insurance. Written evidence of such insurance must be provided to the City prior to the effective termination date of the OCIP.

11.3.10. **Cancellation of OCIP:** The City will give Boatright thirty (30) days written notice of cancellation of any applicable OCIP policy or policies. In the event of such cancellation, the City shall, at its option, at least five (5) days prior to the date of cancellation:

11.3.10.1. procure alternative insurance coverage for the policy or policies canceled; or

11.3.10.2. require Boatright to procure and maintain alternate insurance coverage for the policy or policies canceled, the amounts, contents and carriers of which shall be satisfactory to the City. The City will reimburse Boatright for the actual net cost for Boatright's alternative insurance coverage.

11.3.11. **Cancellation by Boatright:** Boatright may not exercise any right to cancel any of the policies required to be maintained by him under this Agreement without the expressed written consent of the City and any attempted cancellation without the City's express written consent will be null and void.

11.4. Boatright's Insurance To Be Provided:

11.4.1. **Policies Required:** Boatright must, at his own expense, purchase and maintain with a company or companies authorized to do business in the State of Georgia by the Georgia Insurance Commissioner, and acceptable to City, such insurance as will protect Boatright and the City from claims of the type set forth below:

11.4.2. Automobile, Bodily Injury and Property Damage Liability Insurance covering all automobiles, whether owned, non-owned, leased or hired, with not less than the following limits, provided if the vehicles will be operated in construction active areas:

11.4.2.1. Bodily Injury-$1,000,000 per person and occurrence;

11.4.2.2. Property Damage-$1,000,000 per occurrence.

11.4.2.3. In accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of ten million ($10,000,000) combined single limit for personal injury and property damage. The City of Atlanta must be listed as an additional certificate holder.

11.4.3. Worker's Compensation and Employer's Liability Insurance-Off-Site Activities Only. Georgia Statutory Limits with All States Endorsement and minimum Employer's Liability Limits will be provided as follows:

11.4.3.1. $500,000 Each Accident-Bodily Injury by Disease

11.4.3.2. $500,000 Policy Limit-Bodily Injury by Disease

11.4.3.3. $500,000 Each Disease-Bodily Injury by Disease

11.4.4. Comprehensive General Liability Insurance-Off-site Activities Only. $300,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence or $300,000 Bodily Injury and $300,000 Property Damage. Coverage must include Bodily Injury and Property Damage including Premises/Operations; Elevators; Broad Form Contractual Liability; Broad Form Property Damage; Fire Legal Liability; Independent Contractors and Subcontractors Coverage; Products Liability and Completed Operations Coverage for not less than three years after the date of completion of all of the work; and Personal Injury (deleting employee and contractual exclusions) and, when indicated, coverage for explosion; collapse and

underground (X, C, U).

11.4.5. **City as Additional Insured:** The City and its agents must be included as additional insurers under these policies, if they are required under this Agreement.

11.4.6. **Certificates of Insurance:** Boatright must furnish certificates satisfactory to the City as to contents and carriers for the insurance required to be maintained by him under this Agreement containing the following provisions:

11.4.6.1. Thirty (30) days prior notice to the City of cancellation

11.4.6.2. The City Named as an Additional Insured.

11.5. **No Independent Obligation to Provide Legal Counsel:** Other than legal counsel that may be provided by an insurer to Boatright pursuant to indemnification and defense responsibilities under any applicable OCIP insurance policy, the City will have no independent responsibility to provide to Boatright legal counsel with respect to this Agreement or the Services.

12. **Indemnification; Limitation of Liability:** Boatright must indemnify, defend and hold harmless the City, its officers, agents and employees, from and against all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liabilities caused by, resulting from, or arising out of, the intentional or negligent acts, errors, or omissions of Boatright in the performance of the Services under this Agreement. Boatright further agrees that his agreement to indemnify and hold harmless the City, its officers, agents and employees, will not be limited to the limits of any liability insurance required under this Agreement or maintained by Boatright concerning this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Boatright's liability to the City under this Agreement will be limited to $50,000, cumulatively, exclusive of any insurance or bonding provided by Boatright or any other third party or entity (including Assignee)(including any deductibles) and any insurance and bonding (including deductibles) that the City may have protecting it from any event that may give rise to Boatright's liability to the City under this Agreement, regardless of the legal theory under which recovery or liability is asserted. The City will not be required to seek compensation from any insurance policy or bond (the City's, Boatright's or any other third party or entity [including Assignee]) or other source of remuneration prior to seeking recovery from Boatright. However, in no case will Boatright be required to indemnify the City and its officers, agents and employees to the extent any claims result from the City's own negligence or willful misconduct. Additionally, the failure of the City to follow recommended professional recommendations of Boatright or other HDP consultants relieves Boatright of all responsibilities for indemnification, to the extent the indemnification claim arises out of such failure.

13. **Successor And Assigns; Permitted Assignment:**

13.1. **Prior Written Approval of the City Required:** Boatright may not assign, subcontract, sell, transfer or otherwise dispose of any interest in, or Boatright's responsibilities and obligations under, this Agreement without the prior written approval of the City. Boatright may, however, without further written approval from the City, assign this Agreement to Boatright Aviation Consultants, Inc. (the "Assignee"), a corporation in which Boatright is the sole shareholder, officer and director, provided, however, that Assignee and Boatright execute an Assignment and Assumption Agreement in a form substantially similar to that attached as Exhibit 4.

13.2. **Covenant to Perform; Notice of Assignment:** Boatright acknowledges that the assignment to Assignee will not relieve Boatright of his obligations, responsibilities and liabilities under this Agreement. Boatright further agrees that the Assignee will have no other shareholders, officers, directors or employees other than Boatright and that the Assignee will, at all times, solely retain the individual services of Boatright to the perform Services under this Agreement on a sole source basis; no other individual may perform Services under this Agreement, other than Boatright. Boatright will provide written notice of the assignment to Assignee within three (3) days of the assignment and will include a copy of the fully executed Assignment and Assumption Agreement with that written notice.

13.3. **Insurance:** If Boatright assigns this Agreement to the Assignee, Boatright and the City will ensure that any insurance provided by them under this Agreement will name Assignee as an insured.

14. **Agreement Binding on Successors:** This Agreement will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns, but will not inure to the benefit of any third party or other person. Any third party or other person benefiting from this Agreement in any way will only be an incidental beneficiary.

15. **Nonwaiver:** No failure or wavier or successive failures or waivers on the part of the City in the enforcement of any condition, covenant, or article of this Agreement will operate as a discharge of any such condition, covenant or article nor render the same invalid, nor impair the right of the City to enforce the same in the event of any subsequent breaches by Boatright, his permitted successors or assigns. The failure of the City at any time to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement or at law or in equity, will not impair any such right or remedy or be deemed a waiver or relinquishment thereof.

16. **Notification:**

16.1. **Requirements of Notices; Addresses and Facsimile Numbers:** All notices required or permitted under this Agreement will be in writing and will be deemed sufficiently served if served by hand-delivery, first class mail, postage prepaid, or by facsimile, addressed and sent to the facsimile number, as applicable, as follows:

16.1.1. **To the City:** The City of Atlanta
Department of Aviation
P.O. Box 20509
Hartsfield Atlanta International Airport
Atlanta, Ga. 30320
Facsimile No. (404) 530-6635
Attention: Aviation General Manager

16.1.2. **With a copy to:** The City of Atlanta
Bureau of Purchasing and Real Estate
55 Trinity Street
Suite 1790
Atlanta, Ga. 30335
Facsimile No. (404) 658-7705
Attention: Director

16.1.3. **To Boatright:** John W. Boatright
145 Misty Forest Drive
Fayetteville, Ga. 30215
Facsimile No. (___) ___-____

16.2. **Changes of Address or Facsimile Number:** Any Party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change in accordance with this Section.

16.3. **Receipt of Notices:** Notices sent by mail will be deemed to be received three (3) days after deposit in the mail, properly addressed. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number. Notices delivered by hand-delivery will be deemed to be received upon hand-delivery to the respective Party or its agent at the proper address.

17. **Choice Of Law And Venue:** The laws of the State of Georgia will govern this Agreement. The Parties consent to jurisdiction and venue for any action brought pursuant to or in connection with this Agreement in Fulton County, Georgia.

18. **Compliance With The Law:** Boatright agrees to comply with all federal, state and local laws, rules, regulations, ordinances and administrative codes applicable to this Agreement, Boatright's provision of the Services, the HDP sites and jurisdictions in which Boatright conducts its business.

19. **Publicity:** During the term of this Agreement, including renewal terms, and for one year thereafter, Boatright may not release any information related to the Services, the HDP or this Agreement, nor publish any reports, articles, or documents, nor make any statements or releases to the media, without the prior approval of the Aviation General Manager.

20. **Exclusivity:** During the term of this Agreement, including renewal terms, Boatright may not offer his services to, or be employed by, any other individual or entity and agrees to provide Services solely to the City. Boatright agrees to provide the City the benefit of his special knowledge, skills, contacts, business and construction experience and will devote all of his business time, attention, ability and energy to the HDP, the business of the City and the rendition of Services under this Agreement.

21. **Ethics: Gratuities And Kickbacks:**

    21.1. **Compliance with City's Code of Ordinances.** Boatright agrees, in rendering Services and complying with the terms of this Agreement, to fully comply with all of the requirements contained in the City's Code of Ordinances, including, but not limited to, complying with it Ethics Provisions set forth in City Code of Ordinances Sections 2-801 through 2-284. Boatright acknowledges that he has been provided with a copy of such Ethics Provisions.

    21.2. **Gratuities and Kickbacks:** This Agreement may be terminated if Boatright, or any other representative of Boatright, gave or agreed to give, any employee or former employee of the City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or Subcontract, or to any solicitation or proposal for a contract or Subcontract.

    21.3. **Contingent Fees:** Boatright warrants that he has not employed or retained any company or Person, other than a bona fide employee working for Boatright, to solicit or secure this Agreement; and that Boatright has not paid or agreed to pay any company, association, corporation, firm or person, other than a bona fide employee working for Boatright, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, the City may terminate this Agreement and, at its discretion,

may recover the full amount of any fee, commission, percentage, gift or consideration.

21.4. **Rights and Remedies:** The rights and remedies of the City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

22. **Severability:** Any article or portion of this Agreement prohibited by, deemed unlawful or deemed unenforceable under any applicable law of any jurisdiction will be ineffective without affecting other articles of this Agreement.

23. **Exclusive Agreement:** This Agreement represents the entire and integrated agreement between the City and Boatright and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations or representations, written or oral, with respect to the HDP or the Services. The Parties expressly acknowledge that this Agreement is the product of mutual negotiations and intend that neither Party will be construed to be the primary drafter of this Agreement.

24. **Counterparts:** This Agreement may be executed in any number of original counterparts (including any number of multiple original counterpart signature pages attached to one original of this Agreement), each of which will be deemed an original with identical legal effect and which together will constitute a single instrument.

25. **Headings:** The headings of this Agreement are for convenience only and are not to be construed to limit or alter or define the meaning, content and legal effect of the provisions of this Agreement.

26. **Execution:** It is agreed and understood by the Parties that the execution of this Agreement and its binding effectiveness and liability upon the Parties is contingent upon being officially sealed by the Clerk of Council of the City; and executed by the Mayor of the City, and Boatright.

27. **Third-Party Beneficiary; Agreement Not Intended To Relieve Other Contractors And Consultant:** Boatright acknowledges that the City currently engages the services of a Program Manager, Construction Managers, architects and design consultants, and construction contractors, to ensure the effective progress of the HDP and that the Services provided by Boatright under this Agreement may overlap with certain components of the scopes of services these other parties are obligated to provide the City concerning the HDP. Nothing in this Agreement will be deemed to relieve any other individuals or entities providing services to the City concerning the HDP from any obligations contained in their written, verbal or implied contracts with the City, including the obligations of the Program Manager, Construction Managers, architects and design consultants, and construction contractors, engaged by the City, nor will any individual or entity be deemed to be a third-party beneficiary to this Agreement.

28. **Non-Compete:** Boatright recognizes that the relationship created between him and the City is one of trust. Boatright, therefore, covenants and agrees that, for a period beginning on the effective date of this Agreement and continuing for one (1) year subsequent to its expiration or earlier termination, unless the HDP has been completed or all work on the HDP has ceased, he shall not, either directly or indirectly, whether on his own behalf or on behalf of any individual or entity, become employed with or provide services to any individual or entity participating, directly or indirectly, in the HDP or business of Hartsfield International Airport.

29. **Airport Security:**

29.1. **Compliance with Security Requirements:** .5 Compliance..5 Compliance..5 Compliance..5 Compliance.{tc \l 222 ".5 Compliance."}Boatright must comply with the Transportation Security Administration ("TSA") and the City's security requirements for the Airport. Boatright must cooperate with the TSA and the City on all security matters and must promptly comply with any specific security arrangements established by the TAS or City for an HDP project.

29.2. **Preventing Unauthorized Access:** The Airport has been secured to prevent unauthorized access to the Air Operations Area ("AOA") and other controlled areas of the Airport. Boatright must cooperate to the fullest extent with the TSA and the City to maintain the integrity of the security system. Boatright must control his provision of Services so as to provide for the free and unobstructed movement of aircraft, aircraft operations personnel and equipment in the AOA and other controlled areas of the Airport.

29.3. **Transportation Security Administration/ Responsibility of Boatright:** In order to comply with the TSA and the City's Department of Aviation's security requirements, Boatright is responsible for informing himself as to current, ongoing and changing security requirements, and for remaining in compliance with those requirements throughout the term of this Agreement.

29.4. **Security Identification Display Area (SIDA):** The SIDA is defined in the Airport Security Program as any area that requires individuals to continuously display Airport issued or Airport approved identification badges. Boatright must display his SIDA badge at all times when in the SIDA.

29.5. **Expiration of Badge:** Boatright's badge will expire upon the happening of one (1) of the following events, whichever occurs first:

29.5.1. Expiration or earlier termination of the Agreement, unless extended by the City;
29.5.2. expiration of any Insurance coverages applicable to this Agreement; or
29.5.3. Boatright's driver's license expiration date; or
29.5.4. two (2) years from the issuance of the badge.

29.6. **Extension of Badge:** Boatright is responsible for making arrangements, ahead of time, to extend his badge, when necessary. A letter, directed to both the City's Department of Aviation's Assistant General Manager, Facilities, and Security Manager, explaining the reason(s) for the requested badge extension on Boatright's letterhead will be required. The City prior to the extension of his badge must approve any Boatright badge extension request in writing.

29.7. **Security Checkpoints:** Boatright acknowledges and agrees that all Security Checkpoints are now under Federal jurisdiction rather than privately contracted Security agents.

THE CITY OF ATLANTA

_____

MAYOR

ATTEST:

_____

MUNICIPAL CLERK (SEAL)

_____

JOHN BOATRIGHT

_____

AVIATION GENERAL MANAGER

_____

CHIEF FINANCIAL OFFICER

RECOMMENDED:

_____

CHIEF OPERATING OFFICER

APPROVED AS TO FORM:

_____

CITY ATTORNEY

APPROVED:

_____

CHIEF PROCUREMENT OFFICER

Exhibit 1; Sole Source Designation

Exhibit 2; Scope of Services

Boatright will be responsible for:

(1) Overseeing and managing the HDP on a comprehensive and overall basis, including the detailed and complex coordination of all components of the HDP, as well as performing complex problem solving tasks.

(2) Assisting the Aviation General Manager in the oversight of the HDP by attending the working meetings dealing with the progress of the HDP including, but not limited to, budgets, reports, scope of services and schedules.

(3) Reporting periodically and maintaining close contact with the Aviation General Manager on all aspects of the progress of the HDP.

(4) Making recommendations to the Aviation General Manager for decisions by him on all aspects of the HDP, including, but not limited to, budgets, staffing, costs, schedules, quality, goals and objectives of the HDP in a timely manner so as to ensure that the HDP remains within scope and within approved budgets, as they may be amended, and complying with all deadlines and milestones of the HDP schedule.

(5) Meeting with and communicating with any of the City's contractors, including, but not limited to, the Program Manager, Construction Managers, architects and design consultants, and construction contractors, as may be appropriate to ensure the effective progress of the HDP.

(6) Providing all other necessary services that ordinarily accompany and are associated with the specific types of Services provided under this Agreement.

Exhibit 3; Legislation

Exhibit 4; Assignment and Assumption Agreement

ASSIGNMENT AND ASSUMPTION AGREEMENT

This **Assignment and Assumption Agreement** ("Agreement") is entered into between John Boatright ("Boatright"), an individual resident of Fayette County, Georgia, and Boatright Aviation Consultants, Inc. ("BAC"), a Georgia corporation, this ___ day of _____, 2003.

Background:

Boatright is currently a signatory to that certain Consulting Services Agreement (the "City Agreement") with the City of Atlanta (the "City"), dated effective February 1, 2003, concerning the provision by Boatright to the City of certain Services related to the Hartsfield Development Program; a copy of the Agreement is attached as Exhibit 1; and

Accordingly, Boatright desires to effectuate that assignment by entering into this Agreement with BAC;

Agreement:

Accordingly, Boatright and BAC agree as follows:

1. **Assignment and Assumption:** Boatright assigns to BAC the City Agreement and BAC assumes all of Boatright's obligations, responsibilities and liabilities under the City Agreement, a copy of which is attached as Exhibit 1 and the provisions of which are incorporated into this Agreement by reference. Boatright and BAC acknowledge and agree that this assignment and assumption does not relieve Boatright of his obligations, responsibilities and liabilities under the City Agreement. Boatright and BAC agree that, in the event the City and Boatright amend or modify the City Agreement, BAC will be bound by the terms of such modification or amendment, without the need to amend or modify this Agreement.

2. **City's Third-Party Beneficiary Status:** Boatright and BAC agree that the City is an intended third-party beneficiary of this Agreement, fully vested with the right to assert against Boatright or BAC all remedies available at law, in equity, under the City Agreement or this Agreement in the event of a breach by Boatright or BAC of the terms of this Agreement or the City Agreement. The City will not be required to assert any remedies it may have against Boatright as a pre-condition to asserting remedies against BAC.

3. **Organization of BAC; Sole Source Services:** Boatright and BAC agree that the BAC will have no other shareholders, officers, directors or employees, other than Boatright, and that the BAC will, at all times, solely retain the individual services of Boatright to the perform

Services under the City Agreement on a sole source basis; no other individual may perform Services under the City Agreement, other than Boatright.

4. **Successor And Assigns:** This Agreement may not be assigned, sold or transferred to any individual or entity; any such attempt will be void.

5. **Choice Of Law And Venue:** The laws of the State of Georgia will govern this Agreement. The Parties consent to jurisdiction and venue for any action brought pursuant to or in connection with this Agreement in Fulton County, Georgia.

6. **Severability:** Any article or portion of this Agreement prohibited by, deemed unlawful or deemed unenforceable under any applicable law of any jurisdiction will be ineffective without affecting other articles of this Agreement.

7. **Exclusive Agreement:** This Agreement represents the entire and integrated agreement between Boatright and BAC and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations or representations, written or oral between Boatright and BAC.

8. **Headings:** The headings of this Agreement are for convenience only and are not to be construed to limit or alter or define the meaning, content and legal effect of the provisions of this Agreement.

9. **Further Acts:** Boatright and BAC agree to perform such further acts and to execute such further documents necessary to carry out the provisions and effectuate the intent of this Agreement and the City Agreement.

10. **Modifications:** This Agreement may only be altered or amended in whole or in part only by a written instrument executed by Boatright and BAC setting forth the alterations or amendments.

_____

JOHN BOATRIGHT

BOATRIGHT AVIATION CONSULTANTS, INC.

_____

By: John Boatright, President

ATTEST:

_____

By: John Boatright, Secretary (Seal)

02-R-2120

A SUBSTITUTE RESOLUTION
BY TRANSPORTATION COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONSULTING SERVICES AGREEMENT WITH JOHN BOATRIGHT FOR ENGAGEMENT AS A PROGRAM OFFICER FOR THE HARTSFIELD DEVELOPMENT PROGRAM; TO AUTHORIZE THE TERMS OF SUCH ENGAGEMENT; AND FOR OTHER PURPOSES.

WHEREAS, The passenger traffic at Hartsfield Atlanta International Airport reached 75.9 million during 2001, continuing its status as the world's busiest passenger airport; and

WHEREAS, Hartsfield Atlanta International Airport has undertaken unprecedented construction and development in accordance with the Hartsfield Master Plan, also referred to as the Hartsfield Development Program, (the "HDP") a $5.4 Billion project to be implemented by 2010; and

WHEREAS, The readiness to proceed with critical projects is essential to Hartsfield Atlanta International Airport's viability given the forecast demand of 121 million passengers by 2015; and

WHEREAS, A new Fifth Runway, East International Terminal Project, Consolidated Rental Agency Complex, South Domestic Terminal Project, various Airfield Improvements and Support Facilities are the major components of the HDP; and

WHEREAS, the level of design, construction and development associated with the HDP will engender a myriad of process management issues that have never been handled in the City of Atlanta; and

WHEREAS, there are currently an array of qualified consulting firms engaged by the City to aid in the management, design, development and implementation of the HDP; and

WHEREAS, there is a Program Management Team, a Planning & Design Team, Construction Management Teams, as well as several Architectural & Engineering Teams, all engaged as necessary; and

WHEREAS, notwithstanding the aggregation of talent assembled to accomplish the HDP, one of the largest public works undertakings in America, there remains the need for one exceptionally qualified individual to perform the duty of managing the HDP; and

WHEREAS, John Boatright ("Boatright") was an employee of Delta Air Lines from 1972 through January 2003, during which time he managed the design and construction of that airline's facilities worldwide, worked to develop best practices in procurement expenditures and aided in the development of several Airport Master Plans of national significance, including the City's, Boston Logan International Airport and the Port Authority of New York/New Jersey; and

WHEREAS, Boatright possesses unique construction management, human resources management, consultant synchronization, strategic planning, fiscal responsibility and procurement experience that is distinctively applicable to the City's $5.4 Billion HDP; and

WHEREAS, at the request of the Aviation General Manager, and upon consideration and investigation, the City's Purchasing Director has made a determination that a sole source designation of Boatright, as the HDP General Manager or Program Officer, is appropriate under Section 2-1191 of the City's Code of Ordinances, which determination is attached as Exhibit 1; and

WHEREAS, accordingly, the City desires to engage Boatright to provide the Services as the HDP Program Officer in connection with the HDP, more specifically defined in Exhibit 2 attached; and

WHEREAS, the City's Department of Aviation and Purchasing Director have recommended this Agreement be awarded to Boatright;

ACCORDINGLY, THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA HEREBY RESOLVES that the Mayor be and is authorized to enter into a Consulting Services Agreement with John Boatright as a Program Officer for Hartsfield Atlanta International Airport's $5.4 Billion Development Program.

BE IT FURTHER RESOLVED that the initial period of the engagement under the Consulting Services Agreement will be for one (1) year, commencing effective February 1, 2003, and will be renewable, after review of Boatright's performance by the Aviation General Manager, upon agreed terms and conditions, for the following, additional separate terms:

1. 1st Renewal Term (1 year term): Commencing February 1, 2004, and terminating January 31, 2005;

2. 2nd Renewal Term (1 year term): Commencing February 1, 2005, and terminating January 31, 2006;

3. 3rd Renewal Term (6 month term): Commencing February 1, 2006, and terminating August 31, 2006.

BE IT FURTHER RESOLVED THAT Boatright will compensated at a rate of $223,943 per year, paid in installments of $18,662 per month, to be paid from and charged to FAC 2H21 724001 R21001.

BE IT FURTHER RESOLVED that additional terms of Boatright's engagement will be contained in a Consulting Services Agreement in a form substantially similar to that attached as Exhibit 2 which shall be approved as to form by the City Attorney; and

BE IT FINALLY RESOLVED that the Consulting Services Agreement will not be binding on the City of Atlanta and the City will incur no liability under it until it is signed by the Mayor, sealed by the Municipal Clerk, approved by the City Attorney as to form and delivered to Boatright.

Exhibit 1

Shirley Franklin
MAYOR

CITY OF ATLANTA
55 Trinity Avenue, SW, Suite 1790
Atlanta, GA 30303-0307
(404) 330-6204 * Fax (404) 658-7705
Internet Home Page: www.ci.atlanta.ga.us

DEPARTMENT OF
ADMINISTRATIVE SERVICES

Deborah Scott Brooks
Acting Commissioner

BUREAU OF PURCHASING
& REAL ESTATE

Felicia Strong-Whitaker
Purchasing Agent

November 18, 2002

SOLE SOURCE PROCUREMENT CERTIFICATION

Having conducted a thorough investigation of source availability regarding the materials, goods and or services stipulated herein, per the City of Atlanta Code of Ordinances §2-1191 Sole Source Procurement. I have determined that Mr. John Boatright, is uniquely qualified to provide Project Officer services for the Hartsfield Development Program (HDP) for the $5.4 billion expansion and redevelopment plan.

I, Felicia Strong-Whitaker, by authority vested in me (§2-1137), do hereby approve, direct and authorize sole source procurement for Mr. John Boatright as the Project Officer.

Felicia Strong-Whitaker, Director
Bureau of Purchasing and Real Estate

Shirley Franklin
MAYOR

CITY OF ATLANTA
55 Trinity Avenue, SW, Suite 1790
Atlanta, GA 30303-0307
(404) 330-6204 * Fax (404) 658-7705
Internet Home Page: www.ci.atlanta.ga.us

DEPARTMENT OF
ADMINISTRATIVE SERVICES

Deborah Scott Brooks
Acting Commissioner

BUREAU OF PURCHASING
& REAL ESTATE

Felicia Strong-Whitaker
Purchasing Agent

November 18, 2002

MEMORANDUM

TO: Benjamin DeCosta, General Manager
Department of Aviation

FROM: Felicia Strong-Whitaker

RE: Sole Source Designation

I am in receipt of your request for sole source designation for John Boatright to act as the Project Officer for the Hartsfield Development Program (HDP), in which Mr. Boatright would be dedicated solely to management of the Capital Management Program. Mr. Boatright is imminently qualified to provide these services based upon his background and experience both in the airline industry and airport matters, including construction management, coordination of consultants, strategic planning and procurement. The $5.4 billion expansion and redevelopment plan is imperative to the future growth of the Airport.

After conducting a good faith review of the available resources, I have determined that your request meets the provisions of §2-1191, Sole Source Procurement, and that Mr. John Boatright possesses the experience, history and knowledge of the airport and airline industry required to provide the Project Officer services needed at this critical time.

If you have any questions please give me a call at (404) 330-6988.

CITY OF ATLANTA

SHIRLEY FRANKLIN
MAYOR

DEPARTMENT OF AVIATION
HARTSFIELD ATLANTA INTERNATIONAL AIRPORT
6000 NORTH TERMINAL PARKWAY
SUITE 4000 - ATRIUM
P.O. BOX 20509
ATLANTA, GEORGIA USA 30320
TEL: (404) 530-6600
FAX: (404) 530-6603

BENJAMIN R. DeCOSTA
AVIATION GENERAL MANAGER

MEMORANDUM

TO: Felicia Strong-Whitaker
Purchasing Agent

FROM: Ben R. DeCosta
Aviation General Manager

DATE: November 18, 2002

SUBJECT: Request for Sole Source Designation

The purpose of this memorandum is to request a sole source designation pursuant to City Code Section 2-1191 for the hiring of a Project Officer for the Hartsfield Development Program (HDP). As you are aware, the City of Atlanta's Hartsfield International Airport has embarked on its $5.4 billion expansion and redevelopment plan. As the General Manager, in addition to the City current staff, I have attempted to engage the services of the best consulting firms to aid in the management, design, development and implementation of the Airport Capital Expansion Program. We have engaged the services of the Program Management Team, Planning and Design Team, Construction Management Teams and several on-Call A&E teams to ensure the success of the program. I, in conjunction with the Mayor and her staff, have now determined that there is a need to have someone dedicated solely to the management of the Capital Management Program. To that end, I have made a determination that it would be in the City's best interest to employ the services of John Boatright to fill this position.

I have determined that Mr. Boatright is the only person who is imminently qualified to fill this position based upon his background and experience in airline and airport matters, including, but not limited to construction management, management of employees and consultants, strategic planning and procurement. Mr. Boatright was employed by Delta Airlines from 1972 to November 2002. I believe that Mr. Boatright is uniquely qualified, as his positions with Delta have afforded him the opportunity to view construction projects from both an owner, as well as, from an Airport's perspective. During his thirty years with Delta Airlines, he managed the design and construction of Delta's facilities worldwide, worked to develop best practices in procurement expenditures, and aided in the development of several airport Master Plans, including Hartsfield, Logan and the Port

Authority of NY/NJ. Moreover, he has an in depth understanding of what it takes to ensure that projects are completed on time and within the allotted budget. He has also served as the Chairperson of the Airline Airport Affairs Committee.

Additionally, as you are aware, there are many contractors and consultants who specialize in airport construction, construction management and program management throughout the country. As a result of managing Delta's construction program, he has had working relationships with many of these contractors and/or consultants.

I have attached a copy of his resume for your review. Please let me know if you need any additional information in making your determination.

BRD/mlb

Attachment

Exhibit 2

DRAFT; FOR DISCUSSION PURPOSES ONLY

CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF ATLANTA AND JOHN BOATRIGHT

EFFECTIVE FEBRUARY 1, 2003

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CONSULTING SERVICES AGREEMENT

This **CONSULTING SERVICES AGREEMENT** ("Agreement") is entered into effective the 1st day of ~~February,~~February 2003, between the city of Atlanta, a Georgia municipal corporation (the "City"), and John Boatright, individual resident of _____ County, Georgia ("Boatright") (the City and Boatright may be referred to individually as a "Party" or collectively as the "Parties").

BACKGROUND:

The passenger traffic at Hartsfield Atlanta International Airport reached 75.9 million during 2001, continuing its status as the world's busiest passenger airport; and

Hartsfield Atlanta International Airport has undertaken unprecedented construction and development in accordance with the Hartsfield Master Plan, also referred to as the Hartsfield Development Program, (the "HDP") a $5.4 Billion project to be implemented by 2010; and

The readiness to proceed with critical projects is essential to Hartsfield Atlanta International Airport's viability given the forecast demand of 121 million passengers by 2015; and

A new Fifth Runway, East International Terminal Project, Consolidated Rental Agency Complex, South Domestic Terminal Project, various Airfield Improvements and Support Facilities are the major components of the HDP; and

The level of design, construction and development associated with the HDP will engender a myriad of process management issues that have never been handled in the City of Atlanta; and

There are currently an array of qualified consulting firms engaged by the City to aid in the management, design, development and implementation of the HDP; and

There is a Program Management Team, a Planning & Design Team, Construction Management Teams, as well as several Architectural & Engineering Teams, all engaged as necessary; and

Notwithstanding the aggregation of talent assembled to accomplish the HDP, one of the largest public works undertakings in America, there remains the need for one exceptionally qualified individual to perform the duty of managing the HDP; and

John Boatright ("Boatright") was an employee of Delta Air Lines from 1972 through January 2003, during which time he managed the design and construction of that airline's

facilities worldwide, worked to develop best practices in procurement expenditures and aided in the development of several Airport Master Plans of national significance, including the City's, Boston Logan International Airport and the Port Authority of New York/New Jersey; and

Boatright possesses unique construction management, human resources management, consultant synchronization, strategic planning, fiscal responsibility and procurement experience that is distinctively applicable to the City's $5.4 Billion HDP; and

At the request of the Aviation General Manager, and upon consideration and investigation, the City's Purchasing Director has made a determination that a sole source designation of Boatright, as the HDP General Manager or Program Officer, is appropriate under Section 2-1191 of the City's Code of Ordinances, which determination is attached as Exhibit 1; and

Accordingly, the City desires to engage Boatright to provide the Services as the HDP Program Officer in connection with the HDP, more specifically defined in Exhibit 2 attached; and

The City's Department of Aviation and Purchasing Director have recommended this Agreement be awarded to Boatright; and

By resolution adopted by the City's Council on the ___ day of _____, 2003, and approved by the Mayor on the ___ day of _____, 2003, attached as Exhibit 3, the Mayor was authorized to enter into this Agreement with Boatright;

AGREEMENT:

Accordingly, the Parties mutually agree as follows:

1. **Provision of Consulting Services; Standard of Care**: Boatright agrees to render and the City retains Boatright to provide the Services outlined on Exhibit 2 attached. Boatright will render in a satisfactory and proper manner the Services, in keeping with the usual standard of care, degree of skill, efficiency and judgment expected of other professionals providing similar services in Boatright's normal course of business and at the locales of the HDP.

2. **Term of Services; Renewals:**

   2.1. The respective duties of the Parties to this Agreement will commence effective February 1, 2003, and terminate on January 31, 2004, unless the City renews this Agreement. The City will have the option of renewing this Agreement, after review of Boatright's performance by the Aviation General Manager, upon agreed terms and conditions, for the following, additional separate terms:

2.1.1. 1st Renewal Term (1 year term): Commencing February 1, 2004, and terminating January 31, 2005;

2.1.2. 2nd Renewal Term (1 year term): Commencing February 1, 2005, and terminating January 31, 2006;

2.1.3. 3rd Renewal Term (6 month term): Commencing February 1, 2006, and terminating August 31, 2006.

2.2. Renewals may be exercised by the City by its delivering written notice of the renewal to Boatright at least sixty (60) days prior to the expiration of the initial term of this Agreement or any renewal term; provided, however, that a renewal will not be effective unless the City has complied, to the extent applicable, with any legislative or budgetary requirements set forth in the City's Charter or Code of Ordinances in order to authorize the renewal and provide sufficient funding for it. Nothing in this Agreement will preclude the parties from extending the terms of this Agreement beyond the final Renewal Term upon agreement between the parties and compliance by the City with any legislative or budgetary requirements set forth in the City's Charter or Code of Ordinances.

3. **Responsibility for Services; Compliance with Applicable Laws:** It is understood and agreed that the City relies upon Boatright's expertise to satisfactorily complete the Services and that Boatright will be solely responsible for his compliance with all applicable professional, business, contractual and statutory laws, rules, regulations and policies necessary to provide the Services, including, but not limited to, complying with the City's Code of Ordinances and its Ethics Provisions set forth in City Code of Ordinances Sections 2-801 through 2-284. Notwithstanding any review, approval, acceptance or payment for the Services by the City, Boatright will be responsible for the professional and technical accuracy of his Services.

4. **The City's Representative:** The City- designates the City's Aviation Manager to be the sole Representative of the City in all dealings with Boatright.

5. **Responsibility For Permits And Licenses; Costs:** Boatright must obtain, at his own expense, all permits and licenses required by all municipal, state and federal authorities pertaining to the performance of the Services.

6. **Compensation; Sick Leave and Medical Leave; Medical Care Plan and Pension Plan; Insurance:**

6.1. **Compensation:** —For the performance of the Services, the City will compensate Boatright at the rate of $223,942 per year. Compensation is to be paid monthly upon the Aviation General Manager's approval of submitted invoices. The acceptance by Boatright of the last payment for Services under this Agreement, or in the event of termination of this Agreement for cause, will in each instance operate as and be a release

of the City from all claims and liability to Boatright for everything done or furnished for or relating to the Services.

6.2. **Sick and Vacation Leave; Other Benefits:** Boatright acknowledges and agrees that this Agreement provides no additional payments for sick or vacation leave, and does not include any disability or medical care plan or pension plan for him, as he is acting as an Independent Contractor under this Agreement. Boatright will be entitled, during each 6-month term of this Agreement, to take, as personal, sick, vacation or other leave ("Leave Day[s]"), ____ (___) days.

6.3. **Insurance:** Boatright further acknowledges and agrees that the City is maintaining no insurance coverages naming Boatright as an insured or additional insured with respect to this Agreement, the HDP or the Services, except as provided for in the Clause entitled "Owner Controlled Insurance Program ("OCIP)"; and that Boatright is responsible for obtaining and maintaining the appropriate commercial, professional or other types of insurance coverages necessary to protect him with respect to this Agreement to the extent not provided by the City.

7. **Provision of Office Space and Support Services:** The City agrees to provide Boatright with the reasonable use of office space, office equipment, including computers and all communications equipment, and secretarial and clerical assistance, as needed to provide the Services.

8. **City/HDP Information; Data And Documents:**

8.1. **Provision of Data and Documents by the City:** The City will furnish to Boatright all HDP related data and documents ("Data and Documents") readily available to the City that are necessary for the provision of the Services. In the event necessary Data and Documents are not readily available to the City, the City will cooperate with Boatright to obtain such Data and Documents in an expeditious manner.

8.2. **Title to Data and Documents:** The Parties agree that the City will retain title to all Data and Documents furnished to Boatright.

8.3. **Confidentiality/Proprietary Agreements:** Boatright agrees to be fully bound by any confidentiality or proprietary agreement imposed on the City with regard to Data and Documents and, if requested by the City, to enter into any reasonable confidentiality or proprietary agreement proposed by the City before accepting receipt of confidential or proprietary Data and Documents.

8.4. **Redelivery of Possession of Data and Documents After Termination:** In the event of the termination of this Agreement for any reason, Boatright must immediately deliver to the City possession of all Data and Documents of which Boatright has possession, custody or control.

8.5. **Availability of Data and Documents for Inspection by the City:** Boatright agrees at any time during the performance of Services that all Data and Documents must be made available to the City, including all such data and documents created by Boatright in the performance of his duties.

8.6. **Maintenance of Confidentiality:** All Data and Documents, reports, work product, information, other data, or other documents, given to, prepared by or assembled by Boatright under this Agreement must be kept confidential and may not be made available to any individual or organization, with the exception of HDP, by Boatright without the prior approval of the Aviation General Manager.

9. **Independent Contractor:** Nothing contained in this Agreement will be deemed to create a partnership or joint venture between the City and Boatright or cause the City to be responsible for the debts or obligations of Boatright. Boatright is and will at all times be deemed to be an independent contractor. Boatright, consistent with his status as an independent contractor, further agrees that he will not hold himself out as, nor claim to be, an officer, agent, representative or employee of the City. Boatright will be responsible for all federal, state and local income, employment and other taxes, as well as all fees or other assessments made against Boatright as a result of this Agreement, the Services and payments by the City to Boatright of compensation under this Agreement.

10. **Termination:**

10.1. **For Cause:** The City may terminate this Agreement by giving 10 days prior written notice to Boatright if Boatright is in default in the performance of his obligations under this Agreement. Boatright is in default in the performance of his obligations under the Agreement if Boatright fails to cure the default within 10 days after receipt of written notice, or if such cure requires longer than 10 days to complete, Boatright fails to commence to cure within the 10-day period and complete the cure within a reasonable period of time. Boatright will have the same termination provisions as outlined for the City.

10.2. **Termination by the City For Convenience:** The City may terminate the Agreement for any reason by giving 90 days prior written notice to Boatright.

10.3. **Immediate Termination:**

10.3.1. The Agreement will immediately terminate, without the requirement of any action on the City's part, if Boatright:

10.3.1.1. Voluntarily consents to an order for relief by filing a petition for relief under the laws of the United States codified as Title 11 of the United States

Code;

10.3.1.2. Seeks, consents to or does not contest the appointment of a receiver, custodian or trustee for himself or for all or any part of its property;

10.3.1.3. Files a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of any state or other competent jurisdiction;

10.3.1.4. Gives notice to any governmental body of insolvency or pending insolvency, or suspends operations;

10.3.1.5. Becomes insolvent as that term is defined under applicable bankruptcy, fraudulent transfer or conveyance laws; or

10.3.1.6. Makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

10.3.2. Boatright will have the same termination provisions as outlined for the City.

10.4. **Transition Period After Termination:** If the Agreement is terminated, all Services must continue to be provided by Boatright during a transitional period of up to 6 months, as directed by the City. During the transitional period, the terms and conditions of the Agreement will apply.

10.5. **Right to Compensation After Termination:** If this Agreement is terminated by the City for cause, all earned but unpaid compensation payable to Boatright as of the notice of the effective date of the termination will be paid to Boatright. If this Agreement is terminated for convenience or is immediately terminated, all amounts earned by Boatright or Assignee, as applicable, prior to the effective date of the termination remaining unpaid will be paid by the City to Boatright or Assignee, as applicable, subject to any deductions the City is entitled to make to such payment amounts under this Agreement or applicable law.

11. **Owner Controlled Insurance Program ("OCIP"):**

11.1. **City Maintenance of OCIP:** The City, at its sole expense, will implement an OCIP to furnish certain insurance coverages for on-site activities of Boatright. The OCIP will be for the benefit of the City and Boatright; however, Boatright must provide his own insurance for off-site activities.

11.2. **Policies/Coverage Provided Under the OCIP:** The City will procure and pay premiums for the following insurance for Boatright:

11.2.1. **Workers' Compensation and Employer's Liability:** Statutory-Amount and coverage as required by law including any applicable provision for voluntary Worker's Compensation benefits as required by Labor Union Agreements and including the "All States" endorsement.

11.2.2. **Employer's Liability:** A minimum of $1,000,000 Each Accident, $1,000,000 each Employee, and $1,000,000 Policy Limit Disease.

11.2.3. **Commercial General Liability:** To cover Boatright from claims for damages for personal injury including accidental death as well as from claims for personal property damages which may arise from the Services. The City will procure insurance coverage with limits not less than those stated below:

11.2.3.1. Bodily Injury and Property Damage Liability, combined single limit-a minimum of $2,000,000 Per Each Occurrence;

11.2.3.2. Products and Completed Operations Aggregate Limit-a minimum of $2,000,000 Per Each Occurrence;

11.2.3.3. General Aggregate Limit Products and Completed Operations-$5,000,000 annual; coverage will continue for a period of three (3) years beyond termination and/or completion of the construction program

11.2.3.4. Personal and Advertising Injury Limit-minimum of $2,000,000 per occurrence;

11.2.3.5. Excess/Umbrella coverage will be provided with a minimum limit of $25,000,000, which also covers the Primary Liability Coverage-Employer's Liability, Public Liability, and Products and Completed Operations.

11.2.4. **Professional Liability:** The City will maintain Professional Liability coverage for the duration of this Agreement. The policy will be written with at least a $10,000,000 limit of liability. The first $25,000 of any claim that stems from the Services provided by Boatright will be fully borne by him; provided, however, that if the City directed Boatright to proceed in a manner that conflicted with professional recommendations by Boatright to City, the City will compensate Boatright for the first $25,000 of any claim.

11.3. General Provisions:

11.3.1. **Certification and Policies:** All City furnished insurance coverages will be written by insurance companies authorized to do business in the State of Georgia by

the Georgia Insurance Commissioner. The City will provide Boatright with appropriate certificates of insurance evidencing the coverages provided under the OCIP. The actual insurance policies will be available for inspection at a place to be designated by the City.

11.3.2. **Withholding of Claim Payments:** Boatright agrees that, in case of payment by the insurers arising out of damage to property caused by Boatright, the City will withhold from Boatright a sum equal to such payment, but not to exceed $1,000 for each occurrence, except that for gas, electrical, telephone, telegraph sewer and water utilities, the City will withhold $5,000 per utility for the first occurrence, $10,000 per utility for the second occurrence and $15,000 per utility for each occurrence after the second. Occurrence. The sum will be assessed against Boatright, as determined by the insurer, and will become the property of the City.

11.3.3. **City's Limited OCIP Obligations:** The City will have no responsibility whatsoever to Boatright with respect to any insurance coverage, its procurement or absence thereof, other than to:

11.3.3.1. procure the issuance of a policy naming Boatright as an Insured; and

11.3.3.2. procure, and pay all premiums for the policies of these Insurance Specifications.

11.3.4. **No Waiver of Boatright Obligations:** The policies of insurance procured and maintained by the City under the OCIP will not affect Boatright's liability to the City under this Agreement, except as noted above.

11.3.5. **Dividends and Refunds:** All dividends or refunds payable under any OCIP policies applicable to Boatright will belong to the City; Boatright, by his execution of this Agreement assigns those dividends or refunds to the City. Boatright, at the request of the City, must execute and deliver to the City any release, assignment, direction, or authorization that the City or any insurance company may require for such purpose.

11.3.6. **Reporting; Duty to Cooperate:** Boatright must report, on forms to be provided by the City or any OCIP insurer, any accident and must assist in every manner reasonable in the investigation of any accident. Upon request, Boatright must cooperate with the City and the insurance company designated by the City in the handling of any claim by securing and giving evidence and obtaining the attendance of witnesses as required for any claim or suit.

11.3.7. **Supply of Information:** Boatright must furnish the City and the insurance company designated by the City with information to issue any insurance policies to

be provided under this Agreement.

11.3.8. **OCIP Meetings:** At the request of the City, Boatright must attend any meetings concerning the OCIP.

11.3.9. **Termination/Modification of the OCIP:** While it is the intent of the City to keep the OCIP in force throughout the term of this Agreement, the City reserves the right to terminate or modify the OCIP, or any portion of it. To exercise this option, the City will provide forty-five (45) days advance written notice to Boatright and Boatright will immediately be required to obtain replacement insurance coverage and the City will reimburse the reasonable cost of such replacement insurance. Written evidence of such insurance must be provided to the City prior to the effective termination date of the OCIP.

11.3.10. **Cancellation of OCIP:** The City will give Boatright thirty (30) days written notice of cancellation of any applicable OCIP policy or policies. In the event of such cancellation, the City shall, at its option, at least five (5) days prior to the date of cancellation:

11.3.10.1. procure alternative insurance coverage for the policy or policies canceled; or

11.3.10.2. require Boatright to procure and maintain alternate insurance coverage for the policy or policies canceled, the amounts, contents and carriers of which shall be satisfactory to the City. The City will reimburse Boatright for the actual net cost for Boatright's alternative insurance coverage.

11.3.11. **Cancellation by Boatright:** Boatright may not exercise any right to cancel any of the policies required to be maintained by him under this Agreement without the expressed written consent of the City and any attempted cancellation without the City's express written consent will be null and void.

11.4. Boatright's Insurance To Be Provided:

11.4.1. **Policies Required:** Boatright must, at his own expense, purchase and maintain with a company or companies authorized to do business in the State of Georgia by the Georgia Insurance Commissioner, and acceptable to City, such insurance as will protect Boatright and the City from claims of the type set forth below:

11.4.2. Automobile, Bodily Injury and Property Damage Liability Insurance covering all automobiles, whether owned, non-owned, leased or hired, with not less than the following limits, provided if the vehicles will be operated in construction active areas:

11.4.2.1. Bodily Injury-$500,000 per person and occurrence;

11.4.2.2. Property Damage-$500,000 per occurrence.

11.4.2.3. In accordance with Section 22-181(b) of Chapter 22, Code of Ordinances of the City of Atlanta, all vehicles requiring access to the restricted areas of the airport must be covered by an automobile liability policy in the minimum amount of ten million ($10,000,000) combined single limit for personal injury and property damage. The City of Atlanta must be listed as an additional certificate holder.

11.4.3. Worker's Compensation and Employer's Liability Insurance-Off-Site Activities Only. Georgia Statutory Limits with All States Endorsement and minimum Employer's Liability Limits will be provided as follows:

11.4.3.1. $500,000 Each Accident-Bodily Injury by Disease

11.4.3.2. $500,000 Policy Limit-Bodily Injury by Disease

11.4.3.3. $500,000 Each Disease-Bodily Injury by Disease

11.4.4. Comprehensive General Liability Insurance-Off-site Activities Only. $300,000 Combined Single Limit for Bodily Injury and Property Damage per occurrence or $300,000 Bodily Injury and $300,000 Property Damage. Coverage must include Bodily Injury and Property Damage including Premises/Operations; Elevators; Broad Form Contractual Liability; Broad Form Property Damage; Fire Legal Liability; Independent Contractors and Subcontractors Coverage; Products Liability and Completed Operations Coverage for not less than three years after the date of completion of all of the work; and Personal Injury (deleting employee and contractual exclusions) and, when indicated, coverage for explosion; collapse and underground (X, C, U).

11.4.5. **City as Additional Insured:** The City and its agents must be included as additional insurers under these policies, if they are required under this Agreement.

11.4.6. **Certificates of Insurance:** Boatright must furnish certificates satisfactory to the City as to contents and carriers for the insurance required to be maintained by him under this Agreement containing the following provisions:

11.4.7. Thirty (30) days prior notice to the City of cancellation

11.4.8. The City Named as an Additional Insured.

11.5. **No Independent Obligation to Provide Legal Counsel:** Other than legal counsel that may be provided by an insurer to Boatright pursuant to indemnification and defense responsibilities under any applicable OCIP insurance policy, the City will have no independent responsibility to provide to Boatright legal counsel with respect to this Agreement or the Services.

12. **Indemnification; Limitation of Liability:** Boatright must indemnify, defend and hold harmless the City, its officers, agents and employees, from and against all claims, suits, actions, judgments, demands, losses, costs, expenses, damages and liabilities caused by, resulting from, or arising out of, the intentional or negligent acts, errors, or omissions of Boatright in the performance of the Services under this Agreement. Boatright further agrees that his agreement to indemnify and hold harmless the City, its officers, agents and employees, will not be limited to the limits of any liability insurance required under this Agreement or maintained by Boatright concerning this Agreement. Notwithstanding anything to the contrary contained in this Agreement, Boatright's liability to the City under this Agreement will be limited to $$50,000, cumulatively, exclusive of any insurance or bonding provided by Boatright or any other third party or entity (including Assignee)(including any deductibles) and any insurance and bonding (including deductibles) that the City may have protecting it from any event that may give rise to Boatright's liability to the City under this Agreement, regardless of the legal theory under which recovery or liability is asserted. The City will not be required to seek compensation from any insurance policy or bond (the City's, Boatright's or any other third party or entity [including Assignee]) or other source of remuneration prior to seeking recovery from Boatright. However, in no case will Boatright be required to indemnify the City and its officers, agents and employees to the extent any claims result from the City's own negligence or willful misconduct. Additionally, the failure of the City to follow recommended professional recommendations of Boatright or other HDP consultants relieves Boatright of all responsibilities for indemnification.

13. **Successor And Assigns:**

13.1. **Prior Written Approval of the City Required:** Boatright may not assign, subcontract, sell, transfer or otherwise dispose of any interest in, or Boatright's responsibilities and obligations under, this Agreement without the prior written approval of the City. Boatright may, however, without further written approval from the City, assign this Agreement to a corporation (the "Assignee") in which Boatright is the sole shareholder, officer and director in order to accomplish certain desired tax effects, subject, however, to the following limitations:

13.1.1. The Assignee executes an Assignment and Assumption Agreement in a form substantially similar to that attached as Exhibit 4, in which the Assignee assumes all of Boatright's obligations, responsibilities and liabilities under this Agreement;

13.1.2. The Assignment and Assumption Agreement specifically names the City as an intended third-party beneficiary of it and specifically provides the City remedies and rights of enforcement against Boatright or the Assignee in the event of a breach by either of them of the terms of the Assignment and Assumption Agreement;

13.1.3. The assignment and assumption effectuated by the Assignment and Assumption Agreement does not relieve Boatright of his obligations, responsibilities and liabilities under this Agreement, in the event that the Assignee is in breach of the Assignment and Assumption Agreement and, consequently, in breach of its assigned and assumed obligations, responsibilities and liabilities under this Agreement;

13.1.4. That the Assignment and Assumption Agreement specifically require that the Assignee must retain the individual services of John Boatright to perform the Services under this Agreement on a sole source basis.

13.2. **Covenant to Perform:** Boatright agrees to ensure that such Assignment and Assumption Agreement contains the foregoing terms and will perform the obligations relating to those terms.

13.3. **Agreement Binding on Successors:** This Agreement will be binding upon and inure to the benefit of the Parties, their successors and permitted assigns, but will not inure to the benefit of any third party or other person. Any third party or other person benefiting from this Agreement in any way will only be an incidental beneficiary.

13.4. **Nonwaiver:** No failure or wavier or successive failures or waivers on the part of the City in the enforcement of any condition, covenant, or article of this Agreement will operate as a discharge of any such condition, covenant or article nor render the same invalid, nor impair the right of the City to enforce the same in the event of any subsequent breaches by Boatright, his permitted successors or assigns. The failure of the City at any time to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy under this Agreement or at law or in equity, will not impair any such right or remedy or be deemed a waiver or relinquishment thereof.

14. **Notification:**

14.1. **Requirements of Notices; Addresses and Facsimile Numbers:** All notices required or permitted under this Agreement will be in writing and will be deemed sufficiently served if served by hand-delivery, first class mail, postage prepaid, or by facsimile, addressed and sent to the facsimile number, as applicable, as follows:

14.1.1. **To the City:** The City of Atlanta

Department of Aviation
P.O. Box 20509
Hartsfield Atlanta International Airport
Atlanta, Ga. 30320
Facsimile No. (404) 530-6635
Attention: Aviation General Manager

14.1.2. **With a copy to:** The City of Atlanta
Bureau of Purchasing and Real Estate
55 Trinity Street
Suite 1790
Atlanta, Ga. 30335
Facsimile No. (404) 658-7705
Attention: Director

14.1.3. **To Boatright:** John W. Boatright
145 Misty Forest Drive
Fayetteville, Ga. 30215
Facsimile No. (___) ___-____

14.2. **Changes of Address or Facsimile Number:** Any Party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change in accordance with this Section.

14.3. **Receipt of Notices:** Notices sent by mail will be deemed to be received three (3) days after deposit in the mail, properly addressed. Notices sent by facsimile will be deemed to be received upon successful transmission to the proper facsimile number. Notices delivered by hand-delivery will be deemed to be received upon hand-delivery to the respective Party or its agent at the proper address.

15. **Choice Of Law And Venue:** The laws of the State of Georgia will govern this Agreement. The Parties consent to jurisdiction and venue for any action brought pursuant to or in connection with this Agreement in Fulton County, Georgia.

16. **Compliance With The Law:** Boatright agrees to comply with all federal, state and local laws, rules, regulations, ordinances and administrative codes applicable to this Agreement, Boatright's provision of the Services, the HDP sites and jurisdictions in which Boatright conducts its business.

17. **Publicity:** During the term of this Agreement, including renewal terms, and for one year thereafter, Boatright may not release any information related to the Services, the HDP or this Agreement, nor publish any reports, articles, or documents, nor make any statements or releases to the media, without the prior approval of the Aviation General Manager.

18. **Exclusivity:** During the term of this Agreement, including renewal terms, Boatright may not offer his services to, or be employed by, any other individual or entity and agrees to provide Services solely to the City. Boatright agrees to provide the City the benefit of his special knowledge, skills, contacts, business and construction experience and will devote all of his business time, attention, ability and energy to the HDP, the business of the City and the rendition of Services under this Agreement.

19. **Ethics: Gratuities And Kickbacks:**

19.1. **Gratuities and Kickbacks:** This Agreement may be terminated if Boatright, or any other representative of Boatright, gave or agreed to give, any employee or former employee of the City a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or Subcontract, or to any solicitation or proposal for a contract or Subcontract.

19.2. **Contingent Fees:** Boatright warrants that he has not employed or retained any company or Person, other than a bona fide employee working for Boatright, to solicit or secure this Agreement; and that Boatright has not paid or agreed to pay any company, association, corporation, firm or person, other than a bona fide employee working for Boatright, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this warranty, the City may terminate this Agreement and, at its discretion, may recover the full amount of any fee, commission, percentage, gift or consideration.

19.3. **Rights and Remedies:** The rights and remedies of the City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

20. **Severability:** Any article or portion of this Agreement prohibited by, deemed unlawful or deemed unenforceable under any applicable law of any jurisdiction will be ineffective without affecting other articles of this Agreement.

21. **Exclusive Agreement:** This Agreement represents the entire and integrated agreement between the City and Boatright and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations or representations, written or oral, with respect to the HDP or the Services. The Parties expressly acknowledge that this Agreement is the product of mutual negotiations and intend that neither Party will be construed to be the primary drafter of this Agreement.

22. **Counterparts:** This Agreement may be executed in any number of original counterparts (including any number of multiple original counterpart signature pages attached to one original of this Agreement), each of which will be deemed an original with identical legal effect and which together will constitute a single instrument.

23. **Headings:** The headings of this Agreement are for convenience only and are not to be construed to limit or alter or define the meaning, content and legal effect of the provisions of this Agreement.

24. **Execution:** It is agreed and understood by the Parties that the execution of this Agreement and its binding effectiveness and liability upon the Parties is contingent upon being officially sealed by the Clerk of Council of the City; and executed by the Mayor of the City, and Boatright.

25. **Third-Party Beneficiary; Agreement Not Intended To Relieve Other Contractors And Consultant:** Boatright acknowledges that the City currently engages the services of a Program Manager, Construction Managers, architects and design consultants, and construction contractors, to ensure the effective progress of the HDP and that the Services provided by Boatright under this Agreement may overlap with certain components of the scopes of services these other parties are obligated to provide the City concerning the HDP. Nothing in this Agreement will be deemed to relieve any other individuals or entities providing services to the City concerning the HDP from any obligations contained in their written, verbal or implied contracts with the City, including the obligations of the Program Manager, Construction Managers, architects and design consultants, and construction contractors, engaged by the City, nor will any individual or entity be deemed to be a third-party beneficiary to this Agreement.

26. **Non-Compete:** Boatright recognizes that the relationship created between him and the City is one of trust. Boatright, therefore, covenants and agrees that, for a period beginning on the effective date of this Agreement and continuing for one (1) year subsequent to its expiration or earlier termination, unless the HDP has been completed or all work on the HDP has ceased, he shall not, either directly or indirectly, whether on his own behalf or on behalf of any individual or entity, become employed with or provide services to any individual or entity participating, directly or indirectly, in the HDP or business of Hartsfield International Airport.

THE CITY OF ATLANTA

_____

MAYOR

ATTEST:

_____

MUNICIPAL CLERK (SEAL)

_____

JOHN BOATRIGHT

_____

AVIATION GENERAL MANAGER

_____

CHIEF FINANCIAL OFFICER

RECOMMENDED:

_____

CHIEF OPERATING OFFICER

APPROVED AS TO FORM:

_____

CITY ATTORNEY

APPROVED:

_____

DIRECTOR, BUREAU OF PURCHASING AND REAL ESTATE

Exhibit 1; Sole Source Designation

Exhibit 2; Scope of Services

Boatright will be responsible for:

(1) Overseeing and managing the HDP on a comprehensive and overall basis, including the detailed and complex coordination of all components of the HDP, as well as performing complex problem solving tasks.

(2) Assisting the Aviation General Manager in the oversight of the HDP by representing the Aviation General Manager in the working meetings dealing with the progress of the HDP including, but not limited to, budget, reports, scope and schedules.

(3) Reporting periodically and maintaining close contact with the Aviation General Manager on all aspects of the progress of the HDP.

(4) Making recommendations to the Aviation General Manager for decisions by him on all aspects of the HDP, including, but not limited to, budgets, staffing, costs, schedules, quality, goals and objectives of the HDP in a timely manner so as to ensure that the HDP remains within scope and within approved budgets, as they may be amended, and complying with all deadlines and milestones of the HDP schedule.

(5) Meeting with and communicating with any of the City's contractors, including, but not limited to, the Program Manager, Construction Managers, architects and design consultants, and construction contractors, as may be appropriate to ensure the effective progress of the HDP.

(6) Providing all other necessary services that ordinarily accompany and are associated with the specific types of Services provided under this Agreement.

Exhibit 3; Legislation

Exhibit 4; Assignment and Assumption Agreement

A RESOLUTION
BY

02- -2120

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH JOHN BOATRIGHT FOR ENGAGEMENT AS A PROJECT OFFICER FOR THE HARTSFIELD DEVELOPMENT PROGRAM; TO AUTHORIZE THE TERMS OF SUCH ENGAGEMENT; AND FOR OTHER PURPOSES.

Whereas, the passenger traffic at Hartsfield Atlanta International Airport reached 75.9 million during 2001, continuing its status as the world's passenger airport; and

Whereas, Hartsfield Atlanta International Airport has undertaken unprecedented construction and development in accordance with the Hartsfield Master Plan, a $5.4 Billion project to be implemented by 2010; and

Whereas, the readiness to proceed with critical projects is essential to Hartsfield Atlanta International Airport's viability given the forecast demand of 121 million passengers by 2015; and

Whereas, a new Fifth Runway, Concourse E International Terminal Project, Consolidated Rental Car Facility, South Domestic Terminal Expansion, various Airfield Improvements and Support Facilities are the major components of the Plan; and

Whereas, that level of design, construction and development will engender a myriad of process management issues that have never been handled in the City of Atlanta; and

Whereas, there are currently an array of qualified consulting firms engaged by the City to aid in the management, design, development and implementation of the Airport Capital Expansion Program; and

Whereas, there is a Program Management Team, a Planning & Design Team, Construction Management Teams, as well as several Architectural & Engineering Teams engaged as necessary; and

Whereas, notwithstanding the aggregation of talent assembled to accomplish one of the largest public works undertakings in America, there remains the need for one exceptionally qualified individual to perform the duty of managing the Airport Capital Expansion Program; and

Whereas, the Aviation General Manager and the Mayor have discovered that there is one individual who is uniquely and singularly qualified to perform the exact service needed to accomplish the Hartsfield Atlanta International Airport's $5.4 Billion Capital Expansion Program with the diligence, focus, acumen and momentum necessary to ensure that the economic engine of the southeastern United States remains efficient, competitive and effective; and

Whereas, John Boatright was an employee of Delta Airlines from 1972 to November 2002, during which time he managed the design and construction of that airline's facilities worldwide, worked to develop best practices in procurement expenditures and aided in the development of several Airport Master Plans of national significance, including Atlanta's, Boston Logan International Airport and the Port Authority of New York/New Jersey; and

Whereas, Boatright possesses unique construction management, human resource management, consultant synchronization, strategic planning, fiscal responsibility and procurement experience which is distinctively applicable to Atlanta's $5.4 Billion Capital Expansion Program; and

Whereas, at the request of the Aviation General Manager, and upon consideration and investigation, the Purchasing Director has made a determination that a sole source designation is appropriate under Section 2-1191 of the City of Atlanta Code of Ordinances, which determination is attached hereto as Exhibit "A".

THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA· HEREBY RESOLVES that the Mayor be and is authorized to enter into a contract with John Boatright as a Project Officer for Hartsfield Atlanta International Airport's $5.4 Billion Capital Expansion Program.

BE IT FURTHER RESOLVED that the period of the engagement shall be in 12 month renewable terms from the date of legislative approval through June 30,

2006, at a rate of $223,943 per year, paid in installments of $18,662 per month to be paid from and charged to FAC 2H21 _____.

BE IT FURTHER RESOLVED that additional terms of the engagement shall be contained in a contractual agreement similar to that attached hereto as Exhibit "B" which shall be approved as to form by the City Attorney; and

BE IT FINALLY RESOLVED that the contract shall not be binding on the City of Atlanta and the City shall incur no liability there under until it shall be signed by the Mayor, sealed by the Municipal Clerk and delivered to the contracting party.

CITY OF ATLANTA

SHIRLEY FRANKLIN
MAYOR

DEPARTMENT OF AVIATION
HARTSFIELD ATLANTA INTERNATIONAL AIRPORT
6000 NORTH TERMINAL PARKWAY
SUITE 4000 - ATRIUM
P.O. BOX 20509
ATLANTA, GEORGIA USA 30320
TEL: (404) 530-6600
FAX: (404) 530-6603

BENJAMIN R. DeCOSTA
AVIATION GENERAL MANAGER

MEMORANDUM

TO: Felicia Strong-Whitaker
Purchasing Agent

FROM: Ben R. DeCosta
Aviation General Manager

DATE: November 18, 2002

SUBJECT: Request for Sole Source Designation

The purpose of this memorandum is to request a sole source designation pursuant to City Code Section 2-1191 for the hiring of a Project Officer for the Hartsfield Development Program (HDP). As you are aware, the City of Atlanta's Hartsfield International Airport has embarked on its $5.4 billion expansion and redevelopment plan. As the General Manager, in addition to the City current staff, I have attempted to engage the services of the best consulting firms to aid in the management, design, development and implementation of the Airport Capital Expansion Program. We have engaged the services of the Program Management Team, Planning and Design Team, Construction Management Teams and several on-Call A&E teams to ensure the success of the program. I, in conjunction with the Mayor and her staff, have now determined that there is a need to have someone dedicated solely to the management of the Capital Management Program. To that end, I have made a determination that it would be in the City's best interest to employ the services of John Boatright to fill this position.

I have determined that Mr. Boatright is the only person who is imminently qualified to fill this position based upon his background and experience in airline and airport matters, including, but not limited to construction management, management of employees and consultants, strategic planning and procurement. Mr. Boatright was employed by Delta Airlines from 1972 to November 2002. I believe that Mr. Boatright is uniquely qualified, as his positions with Delta have afforded him the opportunity to view construction projects from both an owner, as well as, from an Airport's perspective. During his thirty years with Delta Airlines, he managed the design and construction of Delta's facilities worldwide, worked to develop best practices in procurement expenditures, and aided in the development of several airport Master Plans, including Hartsfield, Logan and the Port

Authority of NY/NJ. Moreover, he has an in depth understanding of what it takes to ensure that projects are completed on time and within the allotted budget. He has also served as the Chairperson of the Airline Airport Affairs Committee.

Additionally, as you are aware, there are many contractors and consultants who specialize in airport construction, construction management and program management throughout the country. As a result of managing Delta's construction program, he has had working relationships with many of these contractors and/or consultants.

I have attached a copy of his resume for your review. Please let me know if you need any additional information in making your determination.

BRD/mlb

Attachment

Shirley Franklin
MAYOR

CITY OF ATLANTA
55 Trinity Avenue, SW, Suite 1790
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DEPARTMENT OF
ADMINISTRATIVE SERVICES

Deborah Scott Brooks
Acting Commissioner

BUREAU OF PURCHASING
& REAL ESTATE

Felicia Strong-Whitaker
Purchasing Agent

November 18, 2002

SOLE SOURCE PROCUREMENT CERTIFICATION

Having conducted a thorough investigation of source availability regarding the materials, goods and or services stipulated herein, per the City of Atlanta Code of Ordinances §2-1191 Sole Source Procurement. I have determined that Mr. John Boatright, is uniquely qualified to provide Project Officer services for the Hartsfield Development Program (HDP) for the $5.4 billion expansion and redevelopment plan.

I, Felicia Strong-Whitaker, by authority vested in me (§2-1137), do hereby approve, direct and authorize sole source procurement for Mr. John Boatright as the Project Officer.

Felicia Strong-Whitaker, Director
Bureau of Purchasing and Real Estate

Shirley Franklin
MAYOR

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Purchasing Agent

November 18, 2002

MEMORANDUM

TO: Benjamin DeCosta, General Manager
Department of Aviation

FROM: Felicia Strong-Whitaker

RE: Sole Source Designation

I am in receipt of your request for sole source designation for John Boatright to act as the Project Officer for the Hartsfield Development Program (HDP), in which Mr. Boatright would be dedicated solely to management of the Capital Management Program. Mr. Boatright is imminently qualified to provide these services based upon his background and experience both in the airline industry and airport matters, including construction management, coordination of consultants, strategic planning and procurement. The $5.4 billion expansion and redevelopment plan is imperative to the future growth of the Airport.

After conducting a good faith review of the available resources, I have determined that your request meets the provisions of §2-1191, Sole Source Procurement, and that Mr. John Boatright possesses the experience, history and knowledge of the airport and airline industry required to provide the Project Officer services needed at this critical time.

If you have any questions please give me a call at (404) 330-6988.