STATE OF GEORGIA
COUNTY OF FULTON

A RESOLUTION APPOINTING AND AUTHORIZING SPECIAL COUNSEL TO REPRESENT THE CITY TO OBTAIN A LOCAL OPTION SALES TAX ("L.O.S.T.") DISTRIBUTION CERTIFICATION AS REQUIRED UNDER THE LAWS OF THE STATE OF GEORGIA; TO AUTHORIZE SAID COUNSEL TO ASSIST IN THE PREPARATION, PRESENTATION AND LITIGATION OF THE CITY'S CASE; REPEAL INCONSISTENT PROVISIONS; AND FOR OTHER PURPOSES

WHEREAS, the City of Sandy Springs ("City") is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

WHEREAS, the City wishes to cooperate with its fellow Fulton County cities in litigation and work jointly with and through Special Counsel to achieve a fair distribution of L.O.S.T. proceeds in accordance with the L.O.S.T. enactment; and

WHEREAS, the Mayor and City Council in the exercise of their sound judgment and discretion, after giving thorough thought to all implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined it to be in the best interest of the citizens of the City, that this Resolution be adopted.

THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANDY SPRINGS, GEORGIA, AS FOLLOWS:

1. Retention of Special Counsel. The City hereby retains Andrew J. (Andy) Welch, III, and the law firm of Smith Welch Webb & White ("Special Counsel") to represent the City jointly with other cities which adopt a like Resolution (collectively, the "Joint Cities"). Special Counsel may be asked by the Mayor or by a majority of the City Council to appear and provide an update on the status of the litigation to the City Council as a whole in accordance with the Open Meetings Act. The City acknowledges that the legal fees, costs and other expenses incurred from such an appearance and update will not be apportioned to the other Joint Cities, but rather will be solely paid by the City.

2. Authorization to Special Counsel. The City hereby authorizes Special Counsel to acknowledge service on behalf of the City; to represent the City jointly with other Joint Cities to litigate for a judicially-determined L.O.S.T. distribution certification with Fulton County in accordance with the laws of the State of Georgia; to negotiate settlement, determine litigation strategy, and to prepare, file and conduct litigation, as needed.

3. Representation of City to Special Counsel. The City represents that it will pay its portion of legal fees, expert witness fees, and all other costs and expenses of litigation incurred by Special Counsel in accomplishing the intent of this Resolution.

4. Designated Representation of the City. The Mayor, or his/her designee, is hereby designated and authorized to serve as the City's designated representative for L.O.S.T. litigation, including settlement negotiations. The City Attorney should be the City's point of contact for all communications between Special Counsel and the City.

5. Best/Final Offer and Settlement. Special Counsel agrees that the best and final offer pursuant to O.C.G.A. § 48-8-89(d)(4)(B) or (C) or non-judicial entry into a L.O.S.T. distribution certificate with Fulton County shall be subject to and conditioned upon a final approval by majority vote of the Mayor and City Council.

6. Joint Representation and Waiver of Confidentiality. The City acknowledges that Special Counsel will represent it jointly with the other Joint Cities to represent their interest in litigation and settlement negotiations of a L.O.S.T. Apportionment Agreement and Certification with Fulton County. The City warrants that its governing body has read the joint-representation letter dated November 5, 2012 to the City and attached hereto and incorporated herein as Exhibit "A" and no conflict of interest exists at this time between the City and any other Joint Cities with respect to the joint representation contemplated in this Resolution. Should a conflict of interest arise, the City agrees to promptly notify Special Counsel in writing and allow Special Counsel to continue representation so long as continued representation does not violate the Georgia Rules of Professional Conduct. The City has had the opportunity to discuss the terms of this Resolution with its attorney of choice and hereby waives its right to confidentiality with Special Counsel and the other Joint Cities with respect to Special Counsel performing the representation contemplated in this Resolution. The City agrees, represents and warrants that it shares a common interest with the other Joint Cities in litigating the L.O.S.T. distribution to Fulton County under a new distribution certificate and further agrees that it shall at no point perform any action that is adversarial to such common interest during the course of the subject litigation or prior to the filing or entry of a new distribution certificate. The City waives the attorney-client privilege to the extent, but only to the extent, that the privilege might otherwise require Special Counsel to preserve in confidence information disclosed by the City (to Special Counsel) from any of the other Joint Cities. The Mayor is hereby authorized to execute the Acknowledgment of joint representation, which includes a waiver of confidentiality and conflict identification as contemplated herein.

7. Reservation of Rights. Notwithstanding any other provisions contained herein, including Exhibit "A" hereof, the City hereby expressly reserves its right to elect "absent municipality" status. Such right shall not be deemed waived unless the Mayor and Council approve by majority vote either: (i) a best and final offer pursuant to O.C.G.A. § 48-8-89(d)(4)(B) or (C), as applicable, which is adopted by the judge in the subject litigation as the allocation of tax proceeds for the new distribution certificate and entered in the final order pursuant thereto; or (ii) a non-judicial entry into a new distribution certificate with Fulton County meeting the requirements set forth in O.C.G.A. § 48-8-80, et seq., which is accepted by the Commissioner of the Department of Revenue and effective as the new distribution certificate. If the City decides to elect absent municipality status or withdraws from joint representation by Special Counsel, the City waives any objection it may have to Special Counsel's continued joint representation of all other Cities.

8. Additional Documents. The City Council authorizes the Mayor to execute any documents, including those necessary for negotiation, mediation and litigation, which may be necessary to effectuate this Resolution.

9. Attestation. The City Council does hereby authorize the City Clerk to attest the signature of the Mayor appearing on this Resolution and any related documents, to affix the official seal of the City thereto, as necessary, and to place this Resolution and an executed copy of any related documents among the official records of the City for future reference.

10. Severability. To the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.

11. Repeal of Conflicting Provisions. All provisions of City resolutions inconsistent with this Resolution are hereby repealed.

12. Effective Date. This Resolution shall take effect immediately.

RESOLVED this the 6th day of November, 2012.

Approved:

Eva Galambos, Mayor

Attest:

Michael Casey, City Clerk

(Seal)

Ernest M. Smith (1911-1992)
A. J. Welch, Jr., PC
John P. Webb, PC
William A. White, PC
Andrew J. Welch, III, PC (NY & GA)
Byrd Garland
C. Walter Pendergrass, III
Pandora E. Palmer, PC (HI & GA)
L. Scott Mayfield
Marc A. Avidano (FL & GA)
David M. Waldroup
Andrew J. Gebhardt

SMITH WELCH
WEBB & WHITE, LLC

ATTORNEYS AT LAW

TRUSTED SERVICE FOR A LIFETIME

Lindsay M. Hodgson
Santana T. Flanigan (WI & GA)
Katherine E. Fagan
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November 5, 2012

Mayor Eva Galambos
City of Sandy Springs
Sandy Springs City Hall
7840 Roswell Road
Sandy Springs, Georgia 30337

RE: Local Option Sales Tax (L.O.S.T.) – Fulton County
Representation of Special Counsel

Dear Mayor Galambos:

The Cities of Alpharetta, Chattahoochee Hills, College Park, East Point, Fairburn, Hapeville, Johns Creek, Milton, Mountain Park, Palmetto, Roswell, Sandy Springs and Union City exclusive of Atlanta, (hereinafter referred to as "Cities") all of Fulton County, Georgia, have requested that this firm represent them all collectively as Special Counsel in the above referenced Local Option Sales Tax ("L.O.S.T.") mediation and litigation, if necessary ("Dispute"). Our engagement as Special Council presents certain ethical issues requiring your understanding and consent. Set forth below are the proposed terms for our joint representation of you and the cities in connection with the Dispute.

I. Introduction

We appreciate that you would like us to represent the City of Sandy Springs as Special Counsel. Although we do not believe that representation of you in the Dispute precludes us from representing any other City of Fulton County, we must take steps required by the Georgia Rules of Professional Conduct to address any potential conflict that may arise between you and other Cities as a result of the transaction. The potential problem that lies here is that we have been retained as Special Counsel to represent you and other Cities in the Dispute. As you can see, there are multiple parties being represented by Special Counsel in this matter.

At the outset, you should know that, in analyzing whether it is appropriate to represent more than one City, the test is <u>not</u> whether there is a "conflict of interests." Although we all frequently use that term, a more detailed analysis is appropriate when considering joint representation of multiple parties.

II. The Applicable Rules of Conduct.

The Georgia Rules of Professional Conduct, Rule 1.7, utilize a test that involves the question of whether the professional judgment of an attorney is likely to be adversely affected, which involves four steps for compliance. First, we must consult with potential Cities client's representatives concerning this issue after you all have read this letter. Second, all Cities must receive written disclosure of the material risks of the representation, which are addressed in this letter. Third, all Cities must receive an opportunity to consult with independent counsel. (Please let this letter serve as your notice that you may discuss this issue with another lawyer of your choosing). Fourth, all Cities must consent to this joint representation. (The consent must be given by action of the governing body of your City.)

III. Full Disclosure

In order to fully comply with Rule 1.7(b), we must disclose the material risks involved in our representation. First, with respect to the attorney-City privilege, we advise you that any information disclosed by jointly represented Cities to us in connection with this engagement will not be protected by the privilege in a subsequent legal proceeding asserted by or against you involving any jointly represented City. Moreover, we believe we cannot effectively represent you if information disclosed to us by any jointly represented City must be preserved by us in confidence from the other. If we are to represent all parties, it will only be on the express understanding that each jointly represented City has waived the attorney-City privilege to the extent, but only to the extent, that the privilege might otherwise require us to preserve in confidence information disclosed by one jointly represented City to us from another in this Dispute.

The second material risk would be that any one of the parties could disclose information learned of the other parties in the course of this representation to Fulton County or some third party. This may be resolved through the execution of a confidentiality agreement. By execution of this letter of understanding and your adoption of the related Resolution, you are agreeing to maintain all information obtained in the course of this representation in the strictest of confidence, and not to disclose such information to any third party without the prior written consent of the authorized representative of each jointly-represented City.

Another material risk would be that negotiations towards settlement of the Dispute, may result in terms that are more or less advantageous to Sandy Springs as compared to any other City. The risk is negligible because the L.O.S.T. statute establishes a statutory minimum to be guaranteed for each city which opts to not participate (i.e. an "absent qualified municipality") in the Dispute litigation. See O.C.G.A. § 48-8-89(b). A conflict does not exist if the Cities agree that no City will be required to accept a percentage of L.O.S.T. proceeds less than its absent municipal share or the governing body for a City votes to waive such right to such a minimum distribution. By executing the Acknowledgment enclosed and approving the associated Resolution, City of College Park accepts the above agreement and understanding of waiver. If said understanding and agreement is not acceptable, then a conflict may arise and if so prevent our continued

our continued representation of any and all Cities. The potential for conflict is also minimized because a best and final offer should be approved by your governing body.

By signing the Acknowledgement attached hereto, the City of Alpharetta warrants that no conflict of interest exists at this time between it and any other city with respect to the joint representation contemplated in this letter. Should a conflict of interest arise, you agree to promptly notify Special Counsel in writing and allow Special Counsel to continue representation so long as continued representation does not violate the Georgia Rules of Professional Conduct; and otherwise consent to Special Counsel's withdrawal.

You should be aware that Special Counsel will work diligently to achieve the respective goals of the group and obtain a L.O.S.T. distribution certificate with Fulton County. Furthermore, it is the understanding of the parties that the legal fees and costs of litigation incurred in this matter shall be billed to the City in accordance with the City's current percentage of LOST distribution or at the percentage later agreed to by all Cities.

IV. Fees.

City agrees to pay Attorney for representation of City at the following rates:

Position	In Office Rate	Out of Office Rate
Partner Buddy Welch	$350 per hour	$450 per hour
Partner Andy Welch	$250 per hour	$300 per hour
Associate Attorney	$175 per hour	$175 per hour
Paralegal/Secretary	$95 per hour	N/A

City agrees to pay any and all expenses incurred by Attorney or his representative on City's behalf as the same accrue, including, but not limited to, court costs, official fees, depositions and investigations at percentage of the total costs and fees incurred, which will be submitted to Attorney within fourteen (14) days of this letter. The City agrees to pay five percent (5%) of all charges as an administrative fee, which includes but is not limited to copying fees, fax fees, postage, etc.

Attorney agrees to maintain complete and accurate records of time spent in the representation of City and to send City regular periodic billings, describing the services rendered by Attorney on City's behalf during the period following the last such billing and showing the amounts earned as fees.

Attorney shall bill City approximately once a month. City agrees to pay all sums due and owing for legal fees and expenses within ten (10) days of the receipt of each statement for services rendered with a balance due. In the event City fails or refuses to pay amounts due and owing, and fails to make payment arrangements satisfactory to Attorney within ten (10) days of the receipt by City of any bill for services or expenses, City consents to the withdrawal by Attorney as counsel for City upon notice as provided in Uniform Superior Court Rule 4.3. In the event it is necessary to pursue legal means to obtain payment for professional services or expenses, City agrees to pay the amounts owed plus fifteen percent, as attorney fees, and all costs of collection.

In the event City maintains a balance which is more than thirty (30) days past due, Attorney shall have the right to charge interest on that past due balance at the rate of one and one-half (1.5) percent per month or eighteen (18%) percent per annum until paid.

If the Court should award City fees and expenses of litigation to be paid by the adverse party for Attorney's representation of City, then that award, when paid over to Attorney, will be applied to the total fee earned by Attorney and the expenses incurred. City is responsible for the payment of any deficiency between the total fees and the amount of the award. If the award or the deposit already paid by City exceeds the total of the fees and expenses, plus any additional amounts previously paid to Attorney by City, City shall be entitled to a refund of the excess.

City understands that Attorney has not represented nor guaranteed that the fees earned by Attorney in representing City are limited in amount, except as to the hourly rates set forth in this Contract. City understands that the total fee to be earned pursuant to this Contract will be calculated by multiplying the total number of hours or fraction thereof spent by Attorney by the appropriate rates as set forth above.

V. Conclusion

So that we can continue this engagement, please acknowledge your agreement with the terms of this letter on the Acknowledgement form attached to this letter and return it to me at your earliest convenience. I look forward to working with you on this matter.

With kindest regards,

SMITH WELCH WEBB & WHITE

Andrew J. Welch III

Enclosure

AJWIII:ap

ACKNOWLEDGMENT

On behalf of the City of Sandy Springs, I have reviewed the foregoing letter regarding joint representation dated November 5, 2012, and acknowledge that the City of Sandy Springs has been given an opportunity to ask any questions to its satisfaction and to hire its own lawyer to represent it in the Dispute. The City of Sandy Springs realizes that there are areas where its interests and objectives may differ from others in the Dispute, and that there may be areas of potential conflicts of interest in the joint representation of it and other cities in the Dispute. After careful consideration, the City of Sandy Springs requests that you represent it jointly and in accordance with the above letter and the associated Resolution retaining Special Counsel. The City of Sandy Springs also understands and agrees that communications and information that you receive from us relating to this matter are not privileged as to the cities jointly-represented by Special Counsel in the Dispute, and agrees to hold the communications and information it obtains from such other cities concerning this Dispute in the strictest of confidence.

Done this 6th day of November, 2012.

Eva Galambos, Mayor

Attest:

Clerk/Administrator

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