

CITY OF SOUTH FULTON, GEORGIA
South Fulton Service Center Auditorium, 5600 Stonewall Tell Road
Friday, March 6, 2018 9:00am



The Honorable William “Bill” Edwards, Mayor (present)
The Honorable Mark Baker, District 7, Mayor Pro Tem (present)
The Honorable Catherine F. Rowell, District 1, Councilmember (present)
The Honorable Carmalitha Gumbs, District 2 Councilmember (present)
The Honorable Helen Z. Willis, District 3 Councilmember (present)
The Honorable Naeema Gilyard, District 4 Councilmember (present)
The Honorable Rosie Jackson, District 5 Councilmember (present)
The Honorable khalid kamau, District 6 Councilmember (present)

SPECIAL CALLED MEETING MINUTES

1. Call to Order/Roll Call

**The meeting was called to order by Mayor Edwards at 9:02 am.
Following the roll call, a quorum was present.**

Mayor Edwards made a request to move Item 3 up for discussion and then go into Executive Session. Councilmember khalid questioned the reasoning for Executive Session, Mayor Edwards indicated, for personnel to discuss salaries. Item 3 was moved up for discussion.

It was noted that the City Attorney was not present; therefore the Mayor requested the City Council to recess to allow time for her arrival.

There was a recess at 9:05am.

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At 9:42pm the Mayor called the Meeting back to order.

A motion was made by Councilmember Willis and seconded by Councilmember Gilyard to recess for a Closed Executive Session regarding personnel. Councilmembers Rowell, Willis and Gilyard voted yea. Mayor Pro Tem Baker, Councilmembers Gumbs, Jackson and khalid voted no. Therefore, the motion failed, 3-4-0.

The City Council moved forward in open session to discuss the City Manager's Agreement.

- 2. Discussion of a Resolution permitting the City Manager to enter into agreements less than \$25,000.00 annually.**

Councilmember khalid indicated that he will introduce a Resolution at the March 20, 2018 Regular Meeting originally proposed by Ruth Jones, the previous Interim City Manager. He further indicated that the Resolution will be available prior to March 20th for Councilmembers reviewing.

- 3. Consideration of a contract for the permanent City Manager**

The City Attorney presented a Professional Services Agreement that she recommended the Mayor and City Council consider.

- a. A motion was made by Councilmember Jackson and seconded by Councilmember Willis to approve/accept the provision of Section 6.(a), (Termination by the City 'For Cause') with one exception that the City Attorney include a process for providing notice, before utilizing the Council's availability of Section 2.16(b)(1) of the City Charter. The motion passed unanimously, 7-0-0.**
- b. A motion was made by Councilmember Rowell and seconded by Councilmember Gumbs to add to the last sentence of Sections 4 (Professional Development) and 5 (Dues and Subscriptions) the**

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language: "said expenses shall be subject to budget limitations and City travel policies, as approved by the City." The motion passed unanimously, 7-0-0.

- c. A motion was made by Councilmember khalid and seconded by Mayor Pro Tem Baker to review the City Manager Agreement, Section by Section, from the beginning starting with Section 1. Mayor Pro Tem Baker, Councilmembers Rowell, Gumbs, Willis, Jackson and khalid voted yea. Mayor Edwards and Councilmember Gilyard voted no. Therefore, the motion passed 6-2-0.
- d. Mayor Edwards proposed a \$200,000.00 annual base salary, pursuant to the City Charter. A motion was made by Councilmember Willis and seconded by Councilmember Rowell to accept the recommendation of the base salary in Section 3.(a), (Compensation, Base Salary) at \$200,000.00. Councilmembers Rowell, Willis and Gilyard voted yea. Mayor Pro Tem Baker, Councilmembers Gumbs, Jackson and khalid voted no. Therefore, the motion failed, 3-4-0.

A motion was made by Councilmember khalid to move the previous question, (ending debate). There was no second. Therefore, the motion failed.

A motion was made by Councilmember Willis to table the discussion on base salary, review the remainder of the Contract, and revisit Section 3.(a) later. There was no second. Therefore, the motion failed.

- e. A motion was made by Councilmember khalid and seconded by Councilmember Jackson to set the base salary, Section 3.(a), (Compensation, Base Salary) at \$180,000.00. Mayor Pro Tem Baker made a friendly amendment to set it at \$182,000.00. Councilmember khalid did not accept the friendly amendment. Councilmembers Gumbs, Jackson and khalid voted yea. Mayor Pro Tem Baker, Councilmembers Rowell, Willis and Gilyard voted no. Therefore, the motion failed, 3-4-0.

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- f. A motion was made by Councilmember Gumbs and seconded by Councilmember Willis to set the base salary, Section 3.(a) at \$195,000.00. Councilmembers Rowell, Gumbs, Willis and Gilyard voted yea. Mayor Pro Tem Baker, Councilmembers Jackson and khalid voted no. Therefore, the motion passed 4-3-0.**
- g. A motion was made by Councilmember Rowell and seconded by Councilmember Gilyard to approve Section 3.(b), (Relocation Payment) at \$10,000.00. Mayor Pro Tem Baker, Councilmembers Rowell, Willis and Gilyard voted yea. Councilmembers Gumbs, Jackson and khalid voted no. Therefore, the motion passed, 4-3-0.**
- h. A motion was made by Councilmember Gilyard and seconded by Councilmember Rowell to omit the current language in Section 3.(c), (Bonus Compensation) and replace it with: "Annually, the Council and the Manager will set clear expectations and agree on specific goals. Goals and expectations should relate to and be built on strategic goals and objectives for the community that the Council sets. Annually, the City Council will review how effective the Manager is in accomplishing those goals, and the municipality, to advance the Mission of the City". Mayor Pro Tem Baker, Councilmembers Rowell, Gilyard and Jackson voted yea. Councilmembers Gumbs, Willis and khalid voted no. Therefore, the motion passed, 4-3-0.**

A motion was made by Councilmember khalid to give the City Manager \$1,000.00 per accomplished strategic goal by the end of this Fiscal Year using five (5) Budget Priorities established by the City Council in December 2017, which he e-mailed to the Council. There was no second. Therefore, the motion failed.

- i. A motion was made by Mayor Pro Tem Baker and seconded by Councilmember Rowell to move the previous question (ending debate). Mayor Pro Tem Baker, Councilmembers Rowell, Gumbs, Gilyard and Jackson voted yea. Councilmembers Willis and khalid voted no. Therefore, the motion passed, 5-2-0.**

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A motion was made by Councilmember Willis to reconsider voting on Councilmember khalid's proposal, based on the five (5) priorities established by the City Council in December 2017. There was no second. Councilmember Willis was ruled out of order, because she was not on the prevailing side of the previous vote.

- j. A motion was made by Mayor Pro Tem Baker and seconded by Councilmember Rowell to accept Section 3.(d), (Benefits, and Other Compensation), as presented. The motion passed unanimously, 7-0-0.**
- k. A motion was made by Councilmember Rowell and seconded by Mayor Pro Tem Baker (Termination 'For Cause') to add/amend language for Section 6.(a), (Termination 'For Cause'): "if terminated for cause, COBRA for 6 months from date of termination". Mayor Pro Tem Baker, Councilmembers Rowell, Gumbs, Willis and khalid voted yea. Councilmembers Gilyard and Jackson did not vote. Therefore, the motion passed, 5-2-0.**

A motion was made by Councilmember khalid to reduce the terms from 18 months to 9 months. There was no second. Therefore, the motion failed.

- l. A motion was made by Councilmember Rowell and seconded by Councilmember khalid to include six (6) months severance, Section 6.(b), (Termination by the City 'For Other Cause'). Councilmembers Rowell, Gumbs, Jackson and khalid voted yea. Mayor Pro Tem Baker, Councilmembers Willis and Gilyard did not vote. Therefore, the motion passed, 4-3-0.**
- m. A motion was made by Councilmember Willis and seconded by Councilmember Rowell to include six (6) months of COBRA payment, if terminated for cause, for him and his family, Section 6.(b), (Termination by the City 'For Other Cause'). Mayor Pro Tem Baker, Councilmembers Rowell, Willis, Gilyard, Jackson and khalid voted yea. Councilmember Gumbs did not vote. Therefore, the motion passed, 6-1-0.**

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A motion was made by Councilmember Willis and seconded by Councilmember khalid to approve in Section 6.(c), (Termination by Death or Disability) twelve (12) months severance in the event of disability or death and six (6) months of COBRA. No vote was taken on this motion.

- n. A motion was made by Councilmember khalid and seconded by Mayor Pro Tem Baker to amend the previous motion to be six (6) months COBRA and six (6) months severance in the event of disability or death. Mayor Pro Tem Baker, Councilmembers Rowell, Gumbs, Gilyard, Jackson and khalid voted yea. Councilmember Willis did not vote. Therefore, the motion passed, 6-1-0.**
- o. A motion was made by Councilmember Rowell and seconded by Councilmember Gilyard to replace Section 6.(d), (Termination by Donald) with the following language: "Donald may terminate this Agreement at any time by providing the City with notices of such termination, not later than sixty (60) days prior to the effective date of termination. If Donald voluntarily terminates this Agreement, pursuant to this paragraph, Donald shall be entitled to receive all compensation earned and all benefits and reimbursements due to the effective date of termination, including any accrued vacation or sick leave. Upon such notice, Council at its discretion, may hire a replacement City Manager or suspend Donald's performance of duties by and through the effective termination date. The City shall thereafter have no financial obligation to Donald pursuant to this Agreement". The motion passed unanimously, 7-0-0.**

The City Attorney suggest striking Section 6.(e), that Section requires that he gives sixty (60) day notice.

A motion was made by Councilmember Rowell to require a minimum of thirty (30) days notice. There was no second. Therefore, the motion failed.

- p. A motion was made by Councilmember khalid and seconded by Councilmember Gilyard to keep the sixty (60) days notice and**

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strike the thirty (30) days notice requirement for voluntary termination. Mayor Pro Tem Baker, Councilmembers Gumbs, Willis, Gilyard, Jackson and khalid voted yea. Councilmember Rowell did not vote. Therefore, the motion passed, 6-1-0.

The City Attorney informed Council that Sections 6.(e) & (f) now no longer exists because of Council's prior approvals. Section 6.(g) remains, but with current approved terms. Section 6.(h) remains as presented.

The City Attorney noted that Section 7. Binding Effect; Section 8. Complete Agreement: Waiver; Amendment; and Section 9. Indemnification to remain as presented.

Section 10. Notices: the City Attorney should insert Attn: City Clerk, 5440 Fulton Industrial Blvd. and With a copy to the City Attorney: Emilia C. Walker, Esq., Fincher Denmark, LLC

- q. A motion was made by Councilmember Gumbs and seconded by Councilmember Gilyard to strike Section 11. Severability. Councilmembers Rowell, Gumbs, Willis, Gilyard, Jackson and khalid voted yea. Mayor Pro Tem Baker did not vote. Therefore, the motion passed, 6-1-0.**

Section 12. Jointly Drafted; Section 13. Charter Compliance; and Section 14. Governing Law, will remain as presented.

A motion was made by Councilmember Willis to reconsider his base salary from \$195,000.00 to \$200,000.00. There was no second. Then Councilmember khalid seconded the motion. No vote was taken.

A friendly amendment was made by Councilmember Gumbs to reconsider his base salary and include performance based incentives. Councilmember Willis rescinded her motion. Councilmember khalid recommended going back to the \$182,000.00 base salary. Mayor Pro Tem Baker seconded the proposal. No vote was taken.

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- r. A motion was made by Councilmember Gumbs and seconded by Councilmember khalid to reconsider his base salary. Mayor Pro Tem Baker, Councilmembers Gumbs, Jackson and khalid voted yea. Councilmembers Rowell, Willis and Gilyard voted no. Therefore, the motion passed, 4-3-0.**

Councilmember Rowell suggested to set a thirty (30) day period for Council to sit with the City Manager to determine the expectation of performance measurements.

- s. A motion was made by Councilmember Gumbs and seconded by Councilmember khalid to reconsider the base salary from \$195,000.00 to \$182,000.00 and add performance measure incentives to get up to the \$200,000.00. Councilmember Gumbs rescinded/withdrew her motion.**
- t. A motion was made by Councilmember Willis and seconded by Councilmember Rowell to offer a contract, as previously approved today. Councilmembers Rowell, Willis and Gilyard voted yea. Mayor Pro Tem Baker, Councilmembers Gumbs, Jackson and khalid did not vote. Therefore, the motion failed, 3-4-0.**
- u. A motion was made by Councilmember Willis and seconded by Councilmember Rowell to authorize the City Attorney to revise and offer the Agreement, as previously approved today. Councilmembers Rowell, Willis, Gilyard, and Jackson voted yea. Mayor Pro Tem Baker, Councilmembers Gumbs and khalid voted no. Therefore, the motion passed, 4-3-0.**

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Councilmember khalid requested the City Clerk to do a roll call vote on motion u.:

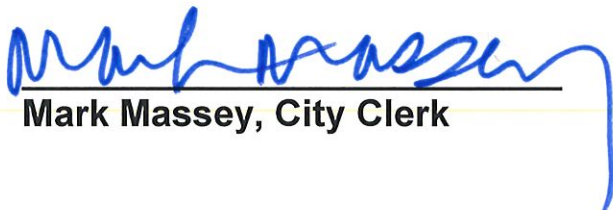
Edwards	Not Voting
Baker	No
Rowell	Yea
Gumbs	No
Willis	Yea
Gilyard	Yea
Jackson	Yea
khalid	No

The motion passed, 4-3-0.

4. Adjournment

A motion was made by Mayor Pro Tem Baker and seconded by Councilmembers Gumbs and Gilyard to adjourn the Meeting. Hearing no objections, the meeting adjourned.

The meeting adjourned at 12:04pm.


Mark Massey, City Clerk

PROFESSIONAL SERVICES AGREEMENT

This professional services agreement (referred to herein as "Agreement") is made and entered into by and between the City of South Fulton, Georgia, (referred to herein as the "City"), and Odie Donald (referred to herein as "Donald").

RECITALS

WHEREAS, the duly elected governing authority of the City are the Mayor and Council (referred to herein as "City Council");

WHEREAS, the City Council wishes to employ Donald as the City Manager for the City, and the City and Donald wish to document the terms of such arrangement; and

NOW, THEREFORE, in consideration of the foregoing, the mutual and dependent promises hereinafter set forth, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective (referred to herein as the "Effective Date") upon: 1) the Agreement being adopted by the City Council and 2) Donald emailing or hand delivering a copy of the Agreement executed by him to Mark Massey (email: Mark.Massey@cityofsouthfultonga.gov). The City may withdraw this Agreement at any time prior to the Effective Date. This Agreement shall commence on the Effective Date and continue thereafter for an indefinite term until terminated by the City or Donald as set forth herein.

2. **Position and Duties.** The City hereby employs Donald as its City Manager, who shall have such responsibilities, duties, and authorities as are prescribed by the City charter (referred to herein as "Charter"), laws of the State of Georgia, federal law and the City's code of ordinances, and such other lawful duties and responsibilities as are assigned to him by the City Council. Donald agrees to fulfill such duties and responsibilities to the best of his abilities, in a professional and competent manner and in compliance with the policies, practices, laws and regulations that govern the City's operation and administration. Unless Donald is utilizing paid time off, he shall dedicate no less than 40 hours per week in the performance of his duties under this Agreement.

3. **Compensation.** For all services rendered by Donald, the City shall compensate Donald as follows:

- (a) ***Base Salary.*** As of the Effective Date, the gross annual salary payable to Donald shall be One Hundred Ninety-Five Thousand Dollars and 00/100 Cents (\$195,000.00) per year payable on a regular basis in accordance with the City's standard payroll procedures, but not less than monthly (referred to here as the "Base Salary"). The Base Salary shall be subject to adjustment by the Council from time-to-time in its discretion, but in no event shall the Base Salary be lowered unless consented to in writing, by Donald.

- (b) *Relocation Payment.* Donald shall be entitled to a one time relocation payment of Ten Thousand Dollars (\$10,000.00). The Relocation Payment shall be paid to Donald by the City within ten (10) business days after the Effective Date of this Agreement.
- (c) *Bonus Compensation.* Annually, the Council and the manager will set clear expectations and agree on specific goals. Goals and expectations should relate to and be built on the strategic goals and objectives for the community that council sets. Annually, Council will review how effective the manager is in accomplishing these goals and the municipality to advance the mission of the City.
- (d) *Benefits and Other Compensation.* Donald and his dependents shall be entitled to participate in and receive benefits under any qualified or supplemental retirement plan, health plan, deferred compensation plan, vision plan, dental plan, disability plan and life insurance plan or arrangement made available by the City during Donald's active employment to its most senior officials, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements.

4. **Professional Development.** The City agrees to pay for reasonable and customary travel and subsistence expenses of Donald for City approved professional and official travel and training necessary to continue his professional development and for his performance of duties under this Agreement. Said expenses shall be subject to budget limitations and City travel policies, as approved by the City.

5. **Dues and Subscriptions.** The City agrees to pay for the reasonable professional memberships, dues and subscriptions deemed by the City and Donald as necessary for his participation in local, state, regional and national organizations and desirable for his continued professional advancement. All reimbursable expenses shall be appropriately documented in reasonable detail by Donald upon submission of any request for reimbursement, and in a format and manner consistent with the City's expense reporting policies and applicable federal and state tax recordkeeping requirements, as approved by the City.

6. **Termination: Rights on Termination.** This Agreement may be terminated in any of the following ways:

- (a) *Termination by the City "For Cause."* The City may terminate this Agreement and Donald's employment "For Cause" consistent with the procedures set forth in Section 2.16 of the Charter. "For Cause" shall mean those grounds for removal set forth in Section 2.16 of the Charter. Prior to the commencement of any action against Donald, by the City or a council member, pursuant to Section 2.16 of the Charter, the City shall provide Donald with notice of the ground(s) upon which he is sought to be removed with sufficient specificity and detail so that he may reasonably ascertain the accusations made against him. Donald shall be provided an opportunity within 30 days of such notice to address the City Council on the same. If an action pursuant to Section 2.16 of the Charter is thereafter commenced, the date of termination shall be the date of the affirmative vote of five councilmembers in approval of the termination, as set forth under Section 2.16(b)(1) of the Charter. In the event of Donald's termination For Cause, Donald shall continue to receive his salary until the termination date. Additionally, upon request, Donald and his qualified dependents shall be eligible for continued coverage under the City's health insurance plan, pursuant to COBRA, at Donald's cost, so long as Donald or his dependents are eligible for

COBRA coverage.

- (b) *Termination by the City "For Other Cause."* The City may terminate this Agreement and Donald's employment "For Other Cause" consistent with the procedures set forth in Section 3.23 of the Charter. "For Other Cause" shall mean any grounds for removal, other than those set forth in Section 2.16 of the Charter. In the event Donald's employment is terminated For Other Cause, Donald shall continue to receive his salary until the effective date of a final resolution of removal as set forth in Section 3.23 of the Charter, which shall also constitute the termination date. In the event of Donald's termination For Other Cause, upon request, Donald and his qualified dependents shall be eligible for continued coverage under the City's health insurance plan, pursuant to COBRA, at the City's cost, for six months. Additionally, Donald shall be entitled to a severance payment of a lump sum amount equal to the monthly Base Salary for six months, calculated from the date of Donald's termination.
- (c) *Termination by Death or Disability.* This Agreement shall terminate automatically upon Donald's death. The City may terminate this Agreement on the basis of a disability suffered by Donald, in accordance with State and Federal law. As part of the decision-making on disability, Donald and the City agree to engage in discussion about any and all possible accommodations. Upon termination of this Agreement on the basis of death, Donald's qualified dependents shall be eligible for continued coverage under the City's health insurance plan, pursuant to COBRA, at the City's cost, for six months. Upon termination of this Agreement on the basis of disability, Donald shall be entitled to a severance payment of a lump sum amount equal to the monthly Base Salary for six months, calculated from the date of termination.
- (d) *Termination by Donald.* Donald may terminate this Agreement at any time by providing the City with notice of such termination not later than sixty days (60) prior to the effective date of termination. If Donald voluntarily terminates this Agreement pursuant to this paragraph, Donald shall be entitled to receive all compensation earned and all benefits and reimbursements due through the effective date of termination, including any accrued vacation or sick leave. Upon such notice, the City, at its discretion, may hire a replacement city manager and/or suspend Donald's performance of duties by and through the effective termination date. Upon the termination date, the City shall have no further financial obligation to Donald pursuant to this Agreement.
- (e) *Provisions that Survive Termination or Expiration of Agreement.* All rights and obligations of the City and Donald under this Agreement shall cease as of the effective date of termination or expiration of this Agreement, except that the City's payment obligations under the paragraphs in this section shall survive such termination or expiration in accordance with their terms.

7. **Binding Effect.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties and their respective heirs, legal representatives, successors, and assigns.

8. **Complete Agreement; Waiver; Amendment.** The City and Donald have no oral representations, understandings, or agreements with the other covering the same subject

any part hereof.

12. **Jointly Drafted.** The parties and their respective counsel have participated jointly in the negotiation and drafting of this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

13. **Charter Compliance.** This Agreement shall be subject to compliance with all provisions of the Charter. The Charter shall control in any instances where this Agreement and the Charter are inconsistent.

14. **Governing Law.** This Agreement shall in all respects be governed by and construed, including for venue purposes, in accordance with the laws of the State of Georgia.

[Signatures Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as follows:

CITY OF SOUTH FULTON, GEORGIA:

By: William "Bill" Edwards, Mayor



Attested to by:


Mark Massey, City Clerk



CITY SEAL

ODIE DONALD:

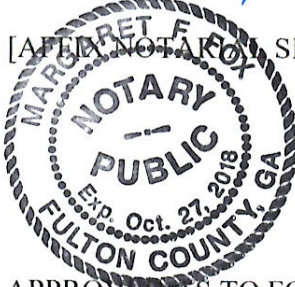

Odie Donald

Notary Public

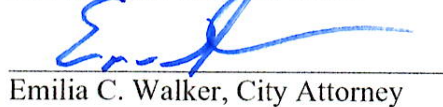

Commission Expiration Date:

October 27, 2018

[~~AFTER~~ NOTARY SEAL]



APPROVED AS TO FORM:


Emilia C. Walker, City Attorney

ITEM# Ag2018-012 DATE 03/07/2018