STATE OF GEORGIA
COUNTY OF FULTON
CITY OF SOUTH FULTON

RESOLUTION NO. 2017-055

A RESOLUTION APPROVING THE AGREEMENT FOR TRANSFER OF MUNICIPAL COURT JURISDICTION AND FOR MUNICIPAL COURT SERVICES BETWEEN FULTON COUNTY, GEORGIA AND THE CITY OF SOUTH FULTON, GEORGIA

WHEREAS, Fulton County, Georgia (the "County") is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of South Fulton (the "City") is a municipal corporation duly organized and existing under the laws of the State of Georgia; and

WHEREAS, City residents are County residents, and the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions; and

WHEREAS, the City Council is authorized by O.C.G.A. § 36-32-1, *et seq.* to establish and maintain a municipal court having jurisdiction over the violation of City ordinances and over such other matters as are by general law made subject to the jurisdiction of municipal court;

WHEREAS, pursuant to City Charter Sections 5.10 and 5.13, the City is authorized to create a municipal court for the purpose of serving the City by punishing violations of the City Charter, City ordinances, and other such violations as provided by law;

WHEREAS, Section 7.16(d) of the City Charter provides that, absent to an agreement to the contrary, the Municipal Court has limited jurisdiction during the twenty-four month transition period;

WHEREAS, the City requests that the County transfer all necessary court jurisdiction to the Municipal Court of South Fulton on September 1, 2017, prior to the expiration of the twenty-four month transition period;

WHEREAS, the County agrees to convey all necessary court jurisdiction to the Municipal Court of South Fulton on September 1, 2017;

WHEREAS, the City desires to use the County's Magistrate Judges to provide municipal court services for the City's Municipal Court pursuant to O.C.G.A. § 15-10-151 *et seq.*;

WHEREAS, the County desires to offer the City the services of the County's Magistrate Judges to provide municipal court services for the City's Municipal Court pursuant to O.C.G.A. § 15-10-151 *et seq.*;

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement for the County to provide municipal court services within the boundaries of South Fulton for a period not to exceed April 30, 2019; and

WHEREAS, the City finds it to be in the public interest and for the health, safety, welfare, and well-being of the City and its inhabitants to establish a municipal court to hear such matters;

BE IT HEREBY RESOLVED by the Mayor and City Council that:

1. The aforesaid recitals are not mere recitals, but are material portions of this Resolution.

2. The Mayor is authorized to enter into the following Intergovernmental Agreement for the Provision of Certain Services between Fulton County, Georgia and The City of South Fulton, Georgia, which has been negotiated by the Interim City Manager and the Interim City Attorney and is attached as an exhibit to this resolution.

The foregoing Resolution No. **2017-055** adopted on **October 10, 2017,** was offered by **Mayor Pro Tem Rowell,** who moved its approval. The motion was seconded by Councilmember **Willis,** and being put to a vote, the result was as follows:

	AYE	NAY
William "Bill" Edwards, Mayor		
Catherine Foster Rowell, Mayor Pro Tem	√	
Carmalitha Lizandra Gumbs	√	
Helen Zenobia Willis	√	
Gertrude Naeema Gilyard	√	
Rosie Jackson		√
khalid kamau		√
Mark Baker		√

THIS RESOLUTION adopted this **10th** day of **October 2017. CITY OF SOUTH FULTON, GEORGIA**

WILLIAM "BILL" EDWARDS, MAYOR

ATTEST:

MARK MASSEY, CITY CLERK

CITY OF SOUTH FULTON SEAL 2017 GEORGIA

APPROVED AS TO FORM:

JOSH BELINFANTE, INTERIM CITY ATTORNEY

AGREEMENT FOR TRANSFER OF MUNICIPAL COURT JURISDICTION AND FOR MUNICIPAL COURT SERVICES between FULTON COUNTY, GEORGIA and THE CITY OF SOUTH FULTON, GEORGIA

THIS AGREEMENT FOR THE TRANSFER OF MUNICIPAL COURT JURISDICTION AND FOR MUNICIPAL COURT SERVICES ("Agreement"), by and between Fulton County, Georgia ("County") and the City of South Fulton, Georgia ("City") entered into effective as of the _____day of _____, 2017.

WHEREAS, the City is a municipality created by the 2016 General Assembly pursuant to House Bill 514 ("H.B. 514"); and

WHEREAS, the County is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, Section 5.10 of H.B. 514 establishes a Municipal Court of South Fulton; and

WHEREAS, Section 7.16(d) of H.B. 514 provides that, absent an agreement to the contrary, the Municipal Court has limited jurisdiction during the twenty-four month transition period; and

WHEREAS, Section 7.16(d) of H.B. 514 provides that, upon agreement of the City and County, the County may confer "regulatory authority and the appropriate court jurisdiction to the City" prior to the expiration of the twenty-four month transition period; and

WHEREAS, the City requests that the County transfer all necessary court jurisdiction to the Municipal Court of South Fulton on November 1, 2017, prior to the expiration of the twenty-four month transition period; and

WHEREAS, the County agrees to convey all necessary court jurisdiction to the Municipal Court of South Fulton on November 1, 2017; and

WHEREAS, the City desires to use the County's Magistrate Judges to provide municipal court services for the City's Municipal Court pursuant to O.C.G.A. § 15-10-151 *et seq.*; and

WHEREAS, the County desires to offer the City the services of the County's Magistrate Judges to provide municipal court services for the City's Municipal Court pursuant to O.C.G.A. § 15-10-151 *et seq.*; and

WHEREAS, both the County and the City, through their governing authorities, agree to the terms and obligations set forth herein.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

PURPOSE AND INTENT

1.1 The purpose of this Agreement is to transfer all regulatory authority and the appropriate court jurisdiction to the City as set forth in Section 7.16(d) of H.B. 514 and to allow County Magistrate Court Judges to provide municipal court services to the City's Municipal Court.

1.2 The County and City shall each cooperate with the other to the fullest extent necessary to fully effectuate the intent and purpose of this Agreement, and shall, upon reasonable request, make available to each other for review or inspection any and all documents, accounts, and other records necessary for the performance of this Agreement.

POWERS AND DUTIES

In furtherance of the public purposes of this Agreement, the County and City hereby represent and warrant to each other the following:

2.1 Authority. Each party hereto expressly represents and warrants that (i) it has the power to make, deliver and perform this Agreement, and has taken all necessary action to authorize the execution, delivery and performance of this Agreement; (ii) this Agreement when executed will be legally binding upon the parties and enforceable in accordance with the terms hereof; and (iii) no further consent or approval of any other party not specifically mentioned herein is required in connection with the execution, delivery, performance, validity and enforcement of this Agreement, unless where required by law. Without limiting the generality of the foregoing, each party hereby expressly acknowledges and represents that it has officially adopted and otherwise approved this Agreement at a meeting of its governing authority in accordance with the Constitution and laws of the State of Georgia, to include, without limitation, the Georgia Open Meetings Act, O.C.G.A. § 50-14-1 et seq., O.C.G.A. § 31-3-1 et seq., and H.B. 514. To the knowledge of the County and the City, there are no actions, suits or proceedings pending or threatened, in any court or before any governmental authority, domestic or foreign against, by or affecting the County or City which affect or question the validity or enforceability of this Agreement or of any action taken by the County or the City under this Agreement.

2.2 Public Purpose. This Agreement and the services contemplated herein are for the public welfare and benefit and are undertaken in accordance with the laws and Constitution of the State of Georgia. Without limiting the foregoing, the parties specifically and expressly warrant and represent, and do hereby find, that this Agreement (i) pertains to the provision of services and activities which the parties are by law authorized to undertake and provide; (ii) does not authorize the creation of new debt as contemplated by Ga. Const. of 1983, Art. IX, Sec. V. Par. I(a); and (iii) does not violate O.C.G.A. § 36-30-3(a) or otherwise prevent free legislation by any

party in matters of government, and shall be binding and enforceable against the parties and their successors during the term hereof in accordance with its terms.

2.3 No Conflicting Agreements. The execution, delivery and performance of this Agreement will not violate or contravene any contract, undertaking, instrument or other agreement to which the County or the City is a party or which purports to be binding upon said parties. Furthermore, the execution, delivery and performance of this Agreement does not violate the provisions of any party's enabling legislation or Code of Ordinances, or any statutory or decisional laws of the State of Georgia regarding similarly situated boards of health in the State of Georgia or political subdivisions of said State. The representations and warranties contained in this Article shall be true and correct as of the date hereof and such representations and warranties, and the obligation of the County and the City to perform their respective obligations under this Agreement shall be expressly conditioned upon said representations and warranties being true and correct on the date hereof. Furthermore, each party hereto specifically acknowledges and agrees that it shall be forever estopped from making any claim, counterclaim, assertion, or other argument of any kind against the other party contrary to the representations and warranties set forth in this section.

TRANSFER OF REGULATORY AUTHORITY AND JURISDICTION

3.1 Effective at midnight on November 1, 2017 (the "Transfer Date"), all County regulatory authority and jurisdiction under Section 7.16(d) of H.B. 514 remaining with the County, shall, to the full extent allowed by law, transfer to the City and the City Municipal Court.

3.2 Beginning on the Transfer Date, the City Municipal Court may exercise all jurisdiction, authority, and powers granted to it under the law including, but not limited to, that jurisdiction, authority, and power granted in Sections 5.11, 5.12, 5.13, and 5.15 of H.B. 514.

3.3 Beginning on the Transfer Date, all citations for violation of laws over which the City Municipal Court has jurisdiction shall be issued on citation books provided by the City at the City's expense. The City shall have sole responsibility for ensuring the citations contain all necessary information related to the ordinance violation, hearing date, hearing location, payment information, or any other information required by law.

3.4 The City Municipal Court shall have full jurisdiction as allowed by law to adjudicate any violation of law that occurs within its jurisdiction on or after the Transfer Date.

3.5 Notwithstanding any provision contained herein to the contrary, any jurisdiction that is transferred in this Agreement is limited to the jurisdiction that may be asserted by the City Municipal Court. Nothing contained herein is intended to expand or alter the jurisdiction of the City Municipal Court beyond that allowed by law or H.B. 514.

3.6 Notwithstanding anything contained herein to the contrary, the County shall retain all jurisdiction and authority to adjudicate any violation of law that occurred prior to the Transfer

Date.

ARTICLE 4

[INTENTIONALLY DELETED]

ARTICLE 5

MUNICIPAL COURT SERVICES AND COMPENSATION

5.1. After the Transfer Date, the County shall provide Magistrate Judges to preside as the City's Municipal Court Judges for up to forty (40) hours per week upon a schedule set by the Chief Judge of Fulton County Magistrate Court.

5.2. Any County Magistrate Judge assigned to the City Municipal Court under this Agreement shall preside as a City Municipal Court Judge and shall have all the powers and authority of a City Municipal Court Judge as set forth in Section 5.12 of H.B. 514 and in O.C.G.A. § 36-32-1 *et seq.*

5.3. The Chief Judge of Fulton County Magistrate Court shall have the sole discretion to choose from among any of the County Magistrate Judges to preside as a Municipal Court Judge under this Agreement.

5.4. Any County Magistrate Judge assigned to preside as a Municipal Court Judge shall, while presiding as a Municipal Court Judge, be styled as a judge of the City's Municipal Court and all pleadings, process, and papers of the City Municipal Court shall be styled as such pursuant to O.C.G.A. § 15-10-153.

5.5. The dockets and other records of the City Municipal Court shall be kept separately from those of the County Magistrate Court.

5.6. Each assigned County Magistrate Judge will remain a full-time, regular employee or, where applicable, independent contractor of the County, will remain on the County's payroll, will remain subject to the County's general personnel administration, and will continue to receive compensation and benefits from the County.

5.7. The City shall compensate the County at an hourly rate of eighty-nine and 00/100 dollars ($89.00) per hour for municipal court services provided by County Magistrate Judges. Compensation for the municipal court services shall include, but not be limited to, the Magistrate Judges' time traveling to and from court proceedings, engaging in legal research, presiding over hearings and trials, and drafting orders and judgments.

5.8. After the Transfer Date, the County shall provide the City with clerk-related services sufficient to provide for a functioning Clerk's Office supporting the City's Municipal Court. The City shall compensate the County at a monthly rate of $17,637.00 per month to provide staffing for a Clerk's Office and provide clerk-related services to the City after the Transfer Date. In addition to the fee for staffing, the City shall also compensate the County for any document- and

file-management services at a rate of $250 per "user" accessing the document management system on behalf of the City,

5.9. After the Transfer Date, the County, through the Office of the Solicitor General, shall provide a solicitor or solicitors to prosecute violations of city ordinance or other laws before the City's Municipal Court. The City shall compensate the County at an hourly rate not to exceed $89 per hour for the services of a solicitor. The Solicitor General of the County shall have the sole discretion to choose for among any of the Fulton County assistant solicitors to provide services under this provision.

5.10. The Chief Judge of Fulton County Magistrate Court will provide a monthly invoice to the City on or before the fifteenth (15th) day of the month following the month on which services set forth herein were provided. The invoice shall be paid in full within thirty (30) days of receipt by the City.

ARTICLE 6

TERM FOR MUNICIPAL COURT SERVICES

The term of the Municipal Court Services as set forth in Article 5 of this Agreement shall begin on the Transfer Date and shall terminate on or before December 31, 2017 (the "Expiration Date"). Prior to the Expiration Date, the City may extend the term of the Municipal Court Services for thirty-day increments by providing at least thirty days' written notice to the Chief Judge of Fulton County Magistrate Court. In no event, however, shall the term of the Municipal Court Services extend past November 30, 2018.

ARTICLE 7

FINES, FEES, ASSESSMENTS, AND FORFEITURES

7.1 Any fines, fees, assessments, and forfeitures ordered for violations that occurred prior to the Transfer Date shall be payable to the County. Any fines, fees, assessments, and forfeitures ordered for violations that occurred on or after the Transfer Date shall be payable to the City.

ARTICLE 8

AMENDMENTS

This Agreement may be modified at any time during the term by mutual written consent of both parties.

ARTICLE 9

RELATIONSHIP TO OTHER AGREEMENTS

Nothing contained in this Agreement shall amend, alter, or modify any other Agreements entered into between the County and City.

ARTICLE 10

NOTICES

All required notices shall be given by first class mail, except that any notice of termination shall be mailed via U.S. Mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Richard Anderson, County Manager
141 Pryor Street, SW,
Suite 1000
Atlanta, Georgia 30303
404-612-8335
404-612-0350 (facsimile)

With copies to: Patrise Perkins-Hooker, County Attorney
141 Pryor Street, SW,
Suite 4038
Atlanta, Georgia 30303
404-612-0246 (telephone)
404-730-6324 (facsimile)

The Honorable Cassandra Kirk
Chief Judge of Fulton County Magistrate Court
185 Central Ave., Suite T-1605
Atlanta, Georgia 30303
(404) 613-5014 (telephone)
(404) 612-1333 (facsimile)

If to the City: Ruth Jones, City Manager
5440 Fulton Industrial Boulevard
Atlanta, GA 30336
City of South Fulton

With a copy to: Josh Belinfante, City Attorney
Robbins Ross Alloy Belinfante Littlefield LLC
999 Peachtree Street NE Suite 1120
Atlanta, GA 30309
City of South Fulton

ARTICLE 11

NON-ASSIGNABILITY

Neither party shall assign any of the obligations or benefits of this Agreement.

ARTICLE 12

ENTIRE AGREEMENT

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement.

ARTICLE 13

SEVERABILITY

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision, were not part of this Agreement.

ARTICLE 14

BINDING EFFECT

This Agreement shall insure to the benefit of, and be binding upon, the respective parties' successors.

ARTICLE 15

MISCELLANEOUS

15.1 Cooperation. The parties agree to cooperate and coordinate the creation and the submittal to each other of any necessary reports, data or records that may be needed by each to carry out its essential functions and to comply with any reporting or auditing requirements of any regulatory agency. Each party shall have the right to assert, retain and protect the confidential and/or proprietary nature of any documents created by it.

15.2 Governing Law. This Agreement and each provision hereof shall be construed under and governed by the laws of the State of Georgia.

15.3 Captions. The captions in this Agreement are for purposes of convenient reference only and form no part hereof.

15.4 Drafting of Agreement. This Agreement shall be construed without regard to the party or parties responsible for its preparation and shall be deemed as having been prepared jointly by the parties. Any ambiguity or uncertainty existing in this Agreement shall not be interpreted or construed against any party hereto. The parties hereto agree that no representations except those

contained herein that have been made by any party to induce the execution of this Agreement by any other party.

15.6 Relationship of Parties. Notwithstanding anything in this Agreement to the contrary, neither shall have the power to bind or obligate the other except as expressly set forth in this Agreement.

15.7 No Third-Party Beneficiaries. This Agreement is made between and limited to the County and City, and is not intended, and shall in no event be construed to be, for the benefit of any person or entity other than the County and the City, and no other person or entity shall be considered a third-party beneficiary of this Agreement or otherwise entitled to enforce the terms of this Agreement for any reason whatsoever.

ARTICLE 16

COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.

FULTON COUNTY, GEORGIA

ATTEST:

Bob Ellis
Vice-Chairman
Fulton County Board of Commissioners

Tonya Grier
Interim Clerk to the Commission

SEAL

Approved as to Form:

Patrise Perkins-Hooker
Fulton County Attorney

Approved as to Substance:

Cassandra Kirk
Chief Judge of Fulton County Magistrate Court

CITY OF SOUTH FULTON, GEORGIA

William "Bill" Edwards, Mayor

Mark Massey, City Clerk

SEAL

Approved as to Form

Josh Belinfante, Interim City Attorney

RECEIVED
OCT 10 2017
City of South Fulton