

Agreement 024

**CITY OF SOUTH FULTON, GEORGIA AGREEMENT**

THIS AGREEMENT is made and entered into this 9 day of July, 2019, by and between the City of South Fulton, Georgia, a municipal corporation (hereinafter "the City") and Fincher Denmark LLC (hereinafter "Consultant"). Both entities are on occasion referred to as "the Parties."

WHEREAS, Consultant is in the business, among other things, of providing financial consulting services to governmental entities in the State of Georgia, including municipalities in said State, for the purpose of assisting such entities in capturing and collecting tax revenues, occupational license fees, service fees and charges, intergovernmental assessments, and other fees, expenses, charges, and entitlements, and Consultant is furthermore in the business of advising and assisting such entities in identifying and implementing cost and operational savings and efficiencies (the services of Consultant are hereinafter referred to as "Services"); and,

WHEREAS, the City desires and intends to retain and employ Consultant for the purpose of providing these Services to the City in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are herein acknowledged, the Parties do agree as follows:

1.

**Services**

Upon approval of the City Manager as set forth below, Consultant shall provide to the City all Services as set forth in the attached Schedule "A" and such other similar Services as may be subsequently agreed. The Services include, but are not limited to, those reviews, analyses, studies and examinations as identified in said Exhibit's "OPPORTUNITY AREA" and the objective of the Services is as specified in the Exhibit's "OBJECTIVES/SCOPE." In performing the required Services, the Consultant shall, upon request, make detailed presentations to the City Manager and its governing authorities regarding the Services, including the conclusions and findings of the Consultant, and the Consultant shall provide such written reviews, analyses, briefings, and other reports as the City Manager of the City may reasonably require. In the event Consultant identifies an opportunity to enhance the City's revenue, or effectuate a cost savings for the City, Consultant shall present to the City Manager for approval or rejection a proposed Task Order in such form as the City Manager may require. The Task Order shall (at a minimum) identify with specificity the proposed opportunity; the revenue (if any) currently generated from, or the cost incurred as a consequence of, the activity or property in question; the nature and extent of the anticipated revenue enhancement or costs savings; and, the proposed schedule for generating the enhanced revenue or reduction in costs. A condition precedent for any obligations

of payment to Consultant for Services shall be the prior written approval by the City Manager of the applicable Task Order.

2.

### **Compensation and Term**

As full and complete compensation for all Services performed by Consultant, Consultant shall be paid by the City contingent fees in accordance with the terms and conditions of Schedule "A." The basis for the fees charged is as set forth in the Schedule's "BASIS FOR FEE CHARGE" and the applicable percentages charged are as set forth in the Exhibit's "FEE PERCENTAGES." It is expressly agreed that the fees payable to Consultant are strictly contingent upon payment to the City, and receipt by the City, of the enhanced revenues and/or cost savings quantified and realized as identified in the applicable approved Task Order. The term of this Agreement is one (1) year commencing upon the date of execution of this Agreement by both Parties. This Agreement will automatically renew for a one year term on January 1 of each successive year thru January 1 2025, provided that the City may, before 60 days prior to any renewal date, send notice that it will not renew. At the end of the Term(s) of the Agreement if enhanced revenues and/or cost savings identified by the Consultant prior to the end of the Term have not then yet been received or realized by the City, the fees earned by the Consultant will be paid once the enhanced revenues and/or cost savings identified by the Consultant have been realized. For the purpose of calculating fees due Consultant, it is expressly agreed and understood that Consultant will be paid the applicable FEE PERCENTAGES as set forth above based on the enhanced revenues collected and/or cost savings realized for a period of seven (7) years commencing from the period that the revenue enhancement or cost savings first became effective. In no event, unless otherwise agreed by the parties on a written task order shall fees be paid to the Consultant beyond Seven (7) years from the date of this Agreement. Unless otherwise agreed by the parties on a written task order to the extent Consultant incurs or pays any cost or expense of any kind or nature relating to, or arising out of, the performance of any of its obligations under this Agreement, including the cost and expense of any experts, attorneys, accountants or other professionals retained by Consultant, all such cost and expense shall be paid by Consultant and shall not be an obligation of, nor reimbursed by, the City. Consultant will not provide any services that would be litigation services as part of any approved Task Order, and litigation costs, if any, required to pursue and collect any revenues or realize any cost savings would be first approved by the City and would not be included in the Consultant fee. Any such litigation costs would not, however, reduce the amount of enhanced revenue or cost savings from which the Consultant's fee is calculated.

3.

**Independent Contractor**

For all purposes of this Agreement, the Consultant, and its employees, officers, and agents shall be deemed and considered independent contractors and none are employees, officers, or agents of the City.

4.

**Indemnification**

Consultant shall indemnify and hold the City harmless from any and all claims, losses, costs, expenses, and liabilities of every kind and nature, including attorneys' fees and costs of litigation or arbitration, arising out of, or relating to, any breach of this Agreement by Consultant or arising out of or relating to any negligent or other wrongful act or omission of Consultant. The rights of the City to indemnification as set forth herein shall be in addition to all other rights and remedies of the City as provided by contract, law or equity.

5.

**Other Engagements**

The City acknowledges and agrees that Consultant has the unconditional right to provide services to other governmental entities, companies, agencies, or individuals and such engagements are not limited in any way by this Agreement; provided, however, Consultant agrees that such engagements will not conflict with the obligations of Consultant to the City as set forth herein. To the extent, if any, Consultant has acquired confidential or proprietary information from other clients of Consultant, Consultant shall not utilize any such information in the performance of its duties under this Agreement. Consultant represents and warrants that it has not entered into any confidentiality or non-compete agreements that would prevent, restrict, or impair Consultant from fully and faithfully performing the terms of this Agreement.

6.

**Confidential and Proprietary Information**

The City and Consultant each acknowledge that it may be given access to the other's confidential and proprietary information and trade secrets. The Parties respectively agree that they will not disclose the other's trade secrets or proprietary information to any third party except with express written permission or as required by applicable law. If such disclosure is necessary in order for the Consultant to perform the Services required herein, the City will not unreasonably withhold its consent to disclosure. All information claimed to be confidential or proprietary, or claimed to constitute a trade secret, shall be identified in writing by the party making such claim at or before the time such information is disclosed to the other party.

7.

Notices

All notices provided for or required by this Agreement shall be in writing and shall be delivered personally to the designated party, or mailed by certified or registered mail, return receipt requested, or delivered by a recognized national courier service, as follows:

If to the Consultant: Fincher Denmark LLC, 8024 Fair Oaks Court, Jonesboro, Georgia 30236; Telephone (770) 478-9950; Facsimile (770) 471-9948. Attn: Steven M. Fincher

If to the City: City of South Fulton, 5440 Fulton Industrial Blvd. SW, Atlanta, Georgia 30336; Attention City Manager: Telephone (470) 809-7700.

The addresses set forth above may be changed by either party provided such change of address is delivered as required herein. Notices delivered shall be deemed received at the time of personal delivery (if personally delivered); or within three (3) days after depositing such notice in the mail (if mailed as set forth hereinabove); or one (1) business day after delivery of the notice to the courier (if by overnight courier service).

8.

Termination

In the event of a material breach of this Agreement, the Agreement may be terminated for cause by the non-breaching party upon three (3) days prior written notice. The right to terminate for cause shall be in addition to all other rights and remedies of the party terminating the Agreement including all rights and remedies provided by herein, by law, or by equity. Either party may terminate the Agreement for convenience upon thirty (30) days prior written notice. In the event of termination for convenience, Consultant shall be paid, as its sole and exclusive remedy, such compensation earned and payable based on the calculations pursuant to Section 2 **Compensation and Term** as of the date of termination.

9.

Dispute Resolution

Any claim, controversy, or dispute between the Parties arising out of, or relating to, this Agreement shall, upon the request of either party, be submitted to a panel consisting of one (1) representative of each party who shall have authority to enter into an agreement to resolve the claim, controversy or dispute; provided, however, Consultant recognizes and agrees that any such resolution may be subject to final approval by the governing authority of the City. If the representatives of the Parties are unable to reach agreement, or if an agreement is not approved by the governing authority of the City, either party may require that the matter be submitted to non-binding mediation with a mutually selected mediator. If the Parties are unable to agree on

the selection of a mediator, the mediation shall be conducted by the American Arbitration Association and the mediator selected or appointed in accordance with its rules and procedures. The cost and expense of any mediation shall be borne equally by the Parties. Nothing contained herein shall preclude the institution of legal proceedings as either party may deem necessary to protect its legal or equitable interest.

10.

Miscellaneous Provisions

- (a) This Agreement, including the attached Schedule "A" which is incorporated herein by reference, contains the entire agreement and understanding of the Parties concerning the subject matter hereof. No waiver, termination or discharge of this Agreement, or of any of the terms or provisions of same, shall be binding upon either party unless confirmed in writing. This Agreement may not be modified or amended except by a writing executed by both Parties. No waiver by either Party of any term or provision of the Agreement, or of any default hereunder, shall affect such Party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of default;
- (b) This Agreement shall be governed and construed in accordance with the laws of the State of Georgia. If any provisions of the Agreement shall be declared invalid or unenforceable, the remaining provisions shall be in full force and effect provided the essential intent and objectives of the Agreement can be otherwise fulfilled;
- (c) The Consultant may assign this Agreement without the prior written consent of the City. Upon prior written notice to Consultant, the City may assign the Agreement without Consultant's consent;
- (d) This Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and permitted assigns;
- (e) This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed, or caused their duly authorized representatives to execute, this Agreement, executed under seal, as of the month of \_\_\_\_\_ and the \_\_\_ day and year first above written.

Fincher Denmark LLC

BY:  (SEAL)

TITLE: Emilie Walker  
partner

The City of South Fulton, Georgia

BY: [Signature] (SEAL)

TITLE CITY MANAGER

ATTEST: [Signature]



CITY OF SOUTH FULTON, GEORGIA  
SCHEDULE A

OPPORTUNITY AREA	OBJECTIVES/SCOPE	REVENUE IMPACT	BASIS FOR FEE CHARGE	FEE PERCENTAGES	FEE TERM LIMIT FOR FDM	BENEFICIAL IMPACT HORIZON FOR THE CITY
Review of Property Assessments						
Personal Property/Digest Value Comparisons	Review of assessments and jurisdictional integrity	Recurring potential revenue	Increase in assessed values resulting from contract scope efforts	One third (33 1/3%) of amounts collected related to years preceding the Agreement or current year; twenty five percent (25%) thereafter for the Fee Term Limit	Seven (7) years	FOR AS LONG AS ADJUSTED FMV REMAINS IN DIGEST AND IMPACTS GO FORWARD
Real Property/Digest Value Comparisons						
Parking Lots Assessment Review						
Cell Towers Inventory and Assessment Review						
Utility Digest Calculation Review						
Personal Property Compared to Occupation Tax Registration File						
Billboard Assessments						
Review of Use of Right of Way						
Telecommunication Companies	Review of payments for use of right of way by all users obligated to do so	Recurring potential revenue	Increase in revenues based on discoveries	One third (33 1/3%) of amounts collected related to years preceding the Agreement or current year; Order: twenty five percent (25%) thereafter for the Fee Term Limit	Seven (7) years	FOR AS LONG AS CONTRACTS WITH USERS ARE IN FORCE
Franchise Agreement Reviews						
Proprietary Public Water and Sewer Infrastructure						
Pipeline Companies						
Municipal Revenues						
LOST Distribution	Review of compliance with sharing agreements and equitable payment terms	Recurring potential revenue	Increase in revenues based on discoveries	One third (33 1/3%) of amounts collected related to years preceding the Agreement or current year; Order: twenty five percent (25%) thereafter for the Fee Term Limit	Seven (7) years	FOR AS LONG AS CONTRACTS ARE IN FORCE
TAVT Distribution						
Timing of Franchise Payments (Quarterly v. Yearly)						
Government and Enterprise Operations						
Property Tax Billing and Collection	Review of options to operate enterprise and other operations in-house	Expansion of local revenues and cost savings	Increase in revenues based on enterprise functions and cost savings	One third (33 1/3%) of amounts collected related to years preceding the Agreement or current year; Order: twenty five percent (25%) thereafter for the Fee Term Limit	Seven (7) years	FOR AS LONG AS MUNICIPAL GOVERNMENT OPERATES
Water and Sewer Retail Operations						
Intergovernmental Agreement Cost Analysis						

**CITY OF SOUTH FULTON, GEORGIA REVENUE ENHANCEMENT AND COST SAVINGS PROJECT**

**CONSULTANT TASK ORDER AND AUTHORIZATION PURSUANT TO SECTION 1. SERVICES**

**AGREEMENT DATED**

**TASK ORDER NUMBER**

**Description of Opportunity:**

**Current Revenue Generated from Activity:**

**Nature and Extent of Anticipated Revenue Enhancement:**

**Records, as applicable, will be requested:**

**Nature and Extent of Cost Savings:**

**City Department Impacted:**

**Department Contact:**

**Documents Requested:**

**Task Order Submission Date:**

**Task Order Action:**

**Date Approved \_\_\_\_\_ By: \_\_\_\_\_**

**Date Rejected \_\_\_\_\_ By: \_\_\_\_\_**





FINCHER DENMARK LLC  
ATTORNEYS



8024 FAIROAKS COURT JONESBORO, GA 30236  
T. 770.961.4100 F. 770.471.9948  
WWW.FINCHERDENMARK.COM

**PARTNERS**

STEVEN M. FINCHER  
WINSTON A. DENMARK  
EMILIA C. WALKER  
SENIOR COUNSEL  
SERENA L. NOWELL

**ASSOCIATES**

EUGENE P. SMITH  
LEONID M. FELGIN  
JOHN T. O'NEAL  
DANIELLE M. MATRICARDI  
CHRISTA L. FREEMAN

WRITER'S LINE  
770.478.9950  
[vburton@fincherdenmark.com](mailto:vburton@fincherdenmark.com)

December 20, 2018

The Honorable William "Bill" Edwards, Mayor  
Councilwoman Catherine Foster-Rowell, District 1  
Councilwoman Carmalitha Gumbs, District 2  
Councilwoman Helen Willis, District 3  
Councilwoman Naeema Gilyard, District 4  
Councilwoman Rosie Jackson, District 5  
Councilman khalid kaman, District 6  
Councilman Mark Baker, District 7  
City of South Fulton, Georgia  
5440 Fulton Industrial Blvd.  
Atlanta, Georgia 30336

**Re: Proposal to Provide Special Services**

Dear Mayor Edwards and Members of the City of South Fulton City Council:

In connection with recent conversations with several members of City Council, I discussed the Revenue Enhancement and Expenditure Reduction Services offered by our Firm. I suggested that I would prepare proposal information for review and consideration by the Mayor and governing authority and the following is presented related to that suggestion. I have also attached a proposed contract related to the special services.

Our Firm, Fincher Denmark LLC, has developed a particular expertise in assisting municipal clients with identification of revenue enhancement opportunities and expenditure reduction options: We have found, through providing general legal and litigation services to our municipal clients that newer cities entering into long-term intergovernmental and/or other

contractual agreements which may impact the municipal revenue streams, operating and capital expenditures is a wide-spread practice. We have also found that the resources required to properly inventory, update, control, and verify compliance with terms of such agreements are often not identified as an essential activity within the governmental staffing plan.

The failure to dedicate the proper resources to the activities that are listed above has often resulted in taxpayers paying too much for municipal services and our clients realizing less revenue and payments for facilities and equipment than the terms of intergovernmental or other agreements actually provide. Intergovernmental agreements, as you know, can be for periods up to fifty (50) years. The development and blending of personnel to process, account for and manage critical tasks requires that consideration be given to the revenue, operating and capital expenditure model that may produce the best outcomes. Our experience providing special services to municipal clients sets us apart and allows us to close the gap that exists between limited internal resources and the need for greater resources.

We have saved our clients millions of dollars through our external review of these types of documents. And, just as important, we then establish an inventory of the agreements to facilitate on-going compliance with terms of the agreements as well as for use as a training reference.

The external forensic reviews for our clients have resulted in the reduction in intergovernmental sewer service and capital charges, an increase in invoicing and collection of occupation, liquor-by-the-drink taxes and other municipal revenues, expansion of assessment of taxable real and personal property, and reductions in debt service payment requirements. In addition, this approach to serving our clients has resulted in our identifying debt refunding opportunities, Federal and State grants, hotel/motel tax rate increase options, increases in franchise fees and use of right of way fees, additional 911 revenues, and savings related to insurance and pension program costs.

The forensic engagements that we have conducted and are conducting for our clients have resulted in some significant revenue and expense reduction impacts. All of the engagements are part of the public record and we have listed certain details related to such engagements to provide you with some perspective regarding our efforts and successes:

<b>Client</b>	<b>Scope of Services</b>	<b>Results*</b>
City of Lake City, GA	Review of proceeds from abandoned vehicle sales by towing operations	\$100,000+
City of College Park, GA	Review of sewer surcharges and water rates related to a major contract	\$600,000+
City of College Park, GA	Review of real property assessments for taxable airport parcels located in the City; occupation tax payments by vendors located in recently annexed areas	\$450,000+
City of Hapeville, GA	Review of personal property digests and assessments for utilities, real property	\$1,900,000+
City of Chamblee, GA	Ongoing review related to property assessments and occupation taxes related to Peachtree DeKalb Airport operations	\$ TBD

\*The amounts indicated as Results reflect the impact related to the initial discovery and does not reflect the recurring financial impact related to the discovery.

Matters that may be included in the scope of services for the City of South Fulton include the following:

- Review of Property Assessments and Exemptions
  - Personal Property
  - Real Property
- Cell Tower and Antenna Inventory and Assessment Review
- Utility Digest Calculation Review
- Franchise Agreement Review
- Use of ROW Review and Analysis

- Federal and State Grant Opportunity Review
- Abandoned Vehicles Recovery Opportunity
- Review of Billboard and Other Income Property Assessments
- Pension and Insurance Cost Reduction Analysis
- Review of 911 Charges and Expenditures
- Review of Interpleaded and Foreclosure Recoveries
- Review of Opportunity to Assess Public Property Used for Proprietary Purposes
- Review of Contracted Services Cost
- Review of the Determination of Capital Cost and Values Related to the IGA with Fulton County
- Review of TAVT and LOST Allocation and Distribution Calculations

For many of these items, if not all, success will mean a stream of revenues/savings well into the future. Thus, while the revenues/savings for any given year may be small, the cumulative amount over the time horizon could be quite significant. For that reason, we believe it is appropriate to use the "at risk" fee model to recognize this dynamic.

For example, if we discover municipal revenue that should have been collected by the City in prior years and that amount has accumulated to \$50,000 by the time of our discovery, with an estimated annual impact of \$10,000 per year going forward, our proposed "at risk" fee arrangement would yield us \$16,666 (33 1/3% of \$50,000) plus \$2,500 (25% of \$10,000) over the following seven years. Thereafter the City would realize the full amount of the discovery.

The total fees in the example above would be \$34,166 and the City would have realized \$85,834 through year seven. That calculates to a fee percentage of 28% for a 7 year horizon, 23% for a 10 year horizon of realization and 14% for a 20 year horizon of realization.

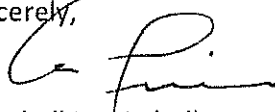
We have/are successfully executed projects using this type of fee arrangement with the City of Hapeville, City of Chamblee, and the City of College Park. We are also in discussions with other cities regarding these special services including the City of Jonesboro and the City of Forest Park. We have experience quantifying the results of our forensic efforts so that it is clear what the recoveries of prior years' revenues and expenses are and what the recurring impact of

our effort will be. In some cases, our work will yield results that will structurally change the revenue and expense model for the City and, therefore, yield benefits for as long as the basic underlying activities occur in the City.

Accordingly, we propose an "at risk" percentage fee as described on the proposed contract documents to be applied based on prior year impacts, enhanced revenues, contract savings and operational cost reductions, together with a period of time such fees would be payable for "recurring" revenues, savings and cost reductions. Fees would only be payable when enhanced revenues, savings and cost reductions are realized. Litigation costs, if any, required to pursue and collect any amounts would not be included in this fee.

We would certainly appreciate the opportunity to assist the City of South Fulton with this matter and look forward to hearing from you. We are available to start this project on a full scale basis as soon as we receive authorization to execute the same and a Task Order is approved.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Mitchell", written over the word "Sincerely,".

Marshall L. Mitchell  
Forensic Accountant and Project Manager

**The motion was approved 6-1. Councilmember khalid voted in opposition.**

---

16. Council Approval of Agreement for South Fulton Revenue Enhancement  
(Finance)

Motion (Approve): Councilmember Rowell

Second: Councilmember Gilyard

[Motion Approved]

Yea: 6 Baker, Gilyard, Gumbs, Jackson, khalid , Rowell

Nay: 1 Willis

Abstain: 0

Not Voting: 0

Minutes:

**A motion was made to approve Agreement for South Fulton Revenue Enhancement.**

**The motion was approved 6-1. Councilmember Willis voted in opposition.**

---

17. Council Approval of Resolution for Census Task Force (**Edwards and Willis**)

Motion (Hold): Councilmember Willis

Second: Councilmember Gumbs

[Motion Approved]

Yea: 7 Baker, Gilyard, Gumbs, Jackson, khalid , Rowell, Willis

Nay: 0

Abstain: 0

Not Voting: 0

Minutes:

**A motion was made to hold Resolution for Census Task Force until July 23, 2019 meeting.**

**The motion was approved unanimously.**

---

18. Council 1st Reading of Amending Ordinance Title 8 Traffic and Vehicles  
(**Willis and Edwards**)

Minutes:

**First Read Only.**

---

19. Council 1st Reading of Ordinance Amending Section 2.14 Compensation and  
Expenses (**Council**)

Minutes:

**First Read Only.**

---