

STATE OF GEORGIA
COUNTY OF CHEROKEE

AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2016, (“Effective Date”) by and between the City of Canton, Georgia, a Georgia Municipal Corporation (hereinafter referred to in this Agreement as “City”), and Cherokee County, Georgia, a political subdivision of the State of Georgia, acting by and through its governing authority, the Cherokee County Board of Commissioners (hereinafter referred to in this Agreement as “County”), and consented to by the Cherokee County Tax Commissioner, (hereinafter referred to in this Agreement as “Commissioner”), collectively referred to herein as the “Parties.”.

WITNESSETH THAT:

WHEREAS, City desires for the Commissioner’s office to prepare the City’s tax digest; assess and collect municipal ad valorem tax payments in the same manner as Cherokee County’s ad valorem taxes are assessed and collected; and invoke permitted remedies for collection of such taxes; and

WHEREAS, Cherokee County is agreeable to the Commissioner performing these services for the City as hereinafter outlined and upon the terms and conditions herein set forth;

WHEREAS, this Agreement is entered into pursuant to the authority granted in the Georgia Constitution, Article IX, Section 3, Paragraph I and O.C.G.A. 48-5-359.1(a)(2); and

WHEREAS, this Agreement applies to the collection of the City’s Taxes only upon properties located within the corporate limits of Cherokee County.

NOW, THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good and adequate consideration, the sufficiency of which is hereby acknowledged, it is hereby agreed between the Parties as follows:

1. Covenants and Agreements of Cherokee County and the City of Canton:
 - A. Cherokee County agrees that the Commissioner will, beginning on the date of execution above, and ending on December 31, 2017 (subject to the renewal provisions set forth below):
 - i. Prepare the tax digest for the City for the City’s Taxes, as that term is defined below;
 - ii. Assess, bill and collect municipal ad valorem real and personal property taxes owed to the City (“Taxes”) in the same manner as County taxes; and

- iii. For the purpose of collecting such Taxes, invoke any remedy permitted for collection of the Taxes. City is entitled to penalties and interest on the unpaid balance of municipal ad valorem real and personal property taxes authorized per state law. Cherokee County will collect municipal ad valorem penalties and interest and remit to City, when collected.
- B. City shall pay to Cherokee County a fee of two dollars (\$2.00) for each parcel of real estate and each personal property account for which a bill for Taxes is issued by the Commissioner to an owner of such property within the City of Canton. The Parties agree that this amount substantially approximates the cost to Cherokee County of providing to the City the services described herein. Such payment shall be paid by the City to Cherokee County within thirty (30) days of the City's receipt from Cherokee County of an invoice stating the number of tax bills issued by the Commissioner and the total amount due to Cherokee County. The Parties acknowledge that the County will be allowed to change the above referenced fee only as approved in writing by the Mayor and City Council of Canton.
- C. Cherokee County shall ensure that the Commissioner assesses and bills each owner of property located within all portions of the City of Canton for Taxes in accordance with the City's millage rate as set by the Mayor and City Council. Cherokee County shall ensure that the Commissioner supplies to the City a list of all property owners assessed and the amount to be billed at the time the tax digest is prepared and shall remit to the City all Taxes collected by the Commissioner on a monthly basis.
- D. Cherokee County shall ensure that the Commissioner furnishes and maintains adequate and competent equipment to generate and store necessary billing documents for the performance of its obligations under this Agreement.
- E. Cherokee County shall ensure that the Commissioner employs and equips adequate staff capable of performing the duties assigned to them by Cherokee County pursuant to this Agreement.
- F. Cherokee County shall ensure that the Commissioner maintains adequate records of Taxes, penalties and interest, showing each billed taxpayer's address and the amount of billing and collection, and makes the same available to the City for review for it to determine the accuracy of billing and collection by the Commissioner.

2. Mutual Agreements:

- A. The City agrees that the Commissioner shall have the authority to invoke any remedy permitted for the collection of the City Taxes, penalties and interest.
- B. The Mayor and Council of the City of Canton shall have the sole authority to set the millage rate for ad valorem taxes for the City of Canton. However, the yearly millage rate must be set by the City by July 31 of each calendar year and must be

provided to the Commissioner prior to August 1 of each calendar year so as to not delay the Commissioner's mailing of tax notices. Additionally, the City shall provide to the Commissioner, in a timely fashion, all information and documentation that the Commissioner may reasonably request in the performance of duties and obligations under this Agreement. The Parties acknowledge and agree that this Agreement is contingent upon and shall not become effective unless the City adopts its millage rate in accordance with applicable laws and deadlines and on a timely basis so as to not delay the Commissioner's mailing of tax notices.

3. Schedule, Completion Date, and Term of Agreement:

The County warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the services contemplated in this Agreement. This Agreement shall commence as of the date first written above. If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the Term [☐ unless this box is checked, in which case the Agreement shall terminate absolutely and without further obligation on the part of the County at the end of the County's fiscal year each year of the Term], and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year [☐ unless this box is checked, in which case the Agreement shall automatically renew on the first day of each subsequent County fiscal year of the Term] unless either Party provides to the other Party written notice of non-renewal to City at least five (5) days prior to the end of the then current calendar year [or fiscal year, as applicable]. In no event shall the term of this Agreement exceed fifty (50) years.

4. Indemnification:

The City agrees, to the extent, if any, allowed by law, to indemnify Cherokee County, the Commissioner, and their respective officers, boards, commissions, elected and appointed officials, employees, servants, volunteers and agents (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all loss, damages, liability, claims, suits, costs and expenses, fines, charges or penalties whatsoever, including reasonable attorney's fees and costs of defense ("Liabilities"), regardless of the merit or outcome of any such claim or suit, arising from or in any manner related to the services provided under this Agreement by Cherokee County and the Commissioner; provided that this indemnity obligation shall not apply to the extent Liabilities are caused solely by the negligence, recklessness, or intentionally wrongful conduct of the County or persons employed or utilized by County. The obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

5. Insurance:

Cherokee County agrees to require any subcontractor engaged to perform any portion of this Agreement to carry liability insurance covering any and all wrongful or negligent acts or omissions in an amount equaling or exceeding \$1,000,000.00. Cherokee County further agrees to ensure that such insurance is in place at all times relevant to this Agreement, and to provide proof of such insurance to the City upon request.

6. Assignment or Transfer:

The rights, privileges and obligations under this Agreement shall not be assigned or transferred by either Party.

7. Entire Agreement:

This Agreement supersedes all prior negotiations, discussions, statements and agreements among the Parties and constitutes the full, complete and entire agreement between the Parties with respect to the subject of this Agreement; no member, officer, employee, representative or agent of either Party has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying, adding to, deleting from, or changing the terms and conditions of this Agreement. No modification of or amendment to this Agreement shall be binding on either Party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Parties.

8. Authority to Enter Into Agreement:

Each of the individuals who executes this Agreement agrees and represents that he or she is authorized to execute this Agreement on behalf of the respective Party and further agrees and represents that this Agreement has been duly passed upon by the required governmental agency or council in accordance with all applicable laws and spread upon the minutes thereof. The Parties hereto agree that this Agreement is an intergovernmental contract and is entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia 1983. Accordingly, each Party waives and releases any right to contest the enforceability of this Agreement based upon the execution and/or approval thereof.

9. No Third Party Rights:

This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

10. General Provisions:

- 10.1 *Headings.* The brief capitalized and underlined headings or titles preceding each paragraph are for purposes of identification, convenience and ease of reference only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement, and such headings or titles shall be disregarded in the construction of this Agreement.
- 10.2 *Waiver.* No failure of either Party hereto to exercise any right or power granted under this Agreement, or to insist upon strict compliance by the other Party with this Agreement, and no custom or practice of either Party at variance with the terms and conditions of this Agreement, shall constitute a waiver of a Party's right to demand exact and strict compliance by the other Parties hereto with the terms and conditions of this Agreement.
- 10.3 *Governing Law.* This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of Georgia. If any disputes or issues arise in connection with this Agreement which cannot be resolved amicably, then either Party shall have the right to request the other Party participate in non-binding mediation. The mediator shall be mutually agreed upon, and the costs of the mediator shall be shared equally between the Parties. In the event there is no request for mediation or mediation efforts fail, then any dispute or issues shall be resolved through litigation. In the event mediation is unsuccessful or deemed futile, the City and County shall each be entitled to pursue all available remedies at law or equity; provided that any action or suit related to this Agreement shall be brought in the Superior Court of Cherokee County, Georgia, or the Northern District of Georgia – Atlanta Division, as applicable, and the Parties hereby submit to the jurisdiction and venue of such court.
- 10.4 *Interpretation.* The Parties hereto have cooperated in the preparation of this Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the Parties that the court interpreting or construing the same shall not apply a presumption that the terms, conditions and provisions hereof shall be more strictly construed against one Party by reason of the rule of construction that an instrument is to be construed more strictly against the Party who prepared the same.
- 10.5 *Counterparts.* This Agreement may be executed in two (2) or more counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the others.
- 10.6 *Severability.* Should any portion, clause, term, article or other provision of this Agreement be declared invalid, illegal, void or otherwise unenforceable by a court of competent jurisdiction, the validity of the remaining sections shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular clause or provision held to be invalid.

11. E-verify and Title VI:

Each Party agrees that it will comply with all E-Verify and Title VI requirements and execute any documents reasonably required related to such compliance. Further, each

Party agrees that any contracts let for work completed on the Premises shall contain all required E-verify and Title VI requirements under applicable law.

12. Force Majeure:

Neither the County nor City shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

13. Records:

Each Party shall maintain records relating to matters covered by this Agreement as required by Georgia law. Such records shall be maintained for a minimum of three years following the termination of this Agreement.

14. Notices:

All notices given pursuant to this Agreement shall be in writing and shall be deemed received, and shall be effective when: (i) personally delivered, or (ii) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (iii) upon actual delivery when sent via national overnight commercial carrier to the Party at the address given below, or at a substitute address previously furnished to the Party by written notice in accordance herewith:

To Cherokee County:

Cherokee County, Georgia

ATTN: County Manager

To City of Canton:

City of Canton, Georgia

ATTN: City Manager

Either Party shall have the right, from time to time, to change the address to which notices to it shall be sent by giving to the other Party at least ten (10) days prior notice of the changed address.

15. Sovereign Immunity:

Nothing contained in this Agreement shall be construed to be a waiver of either Party's sovereign immunity or any individual's qualified good faith or official immunities.

IN WITNESS WHEREOF the City and Cherokee County have caused these presents to be signed by their proper authorities, and the City and County seals to be affixed hereto as of the day and year first above written.

Cherokee County Board of Commissioners:

Canton Mayor and City Council:

Chairman, Board of Commissioners

Mayor

Attest:

Attest:

County Clerk

City Clerk

[Affix County Seal]

[Affix City Seal]

Consented to by:

County Tax Commissioner:

Sonya Little