

**Action Requested/Required:**

- ☒ Vote/Action Requested
☐ Discussion or Presentation Only
☐ Public Hearing
Report Date: _____
Hearing Date: _____
Voting Date: 12/5/24

Department: City Manager **Presenter(s) & Title:** Billy Peppers
City Manager

Agenda Item Title:

Approval of Update Municipal Services Agreement with Cherokee County for First Appearance Hearings

Summary:

Service Delivery Strategy requires the City of Canton and Cherokee County to enter into agreements when services are provided by one party on behalf of the other. Cherokee County provides First Appearance Hearings on behalf of the City of Canton through the County Magistrate's Office. Beginning January 1, 2025, a new Cherokee County Magistrate Judge will be seated following the retirement of the current judge and an election for the office. The agreement is through June 30, 2028 to coincide with the existing Service Delivery Agreement.

Budget Implications:

Budgeted? ☐ Yes ☐ No ☒ N/A

Total Cost of Project: Check if Estimated ☐

Fund Source: General Fund ☐ Water & Sewer ☐ Sales Tax ☐ Other:

Staff Recommendations:

Staff recommends a motion to approve the Municipal Services Agreement with Cherokee County for First Appearance Hearings.

Reviews:

Has this been reviewed by Management and Legal Counsel, if required? ☐ Yes ☐ No

Attachments:

Updated Municipal Services Agreement First Appearance Hearings with Cherokee County

**MUNICIPAL SERVICES AGREEMENT BY AND BETWEEN
CHEROKEE COUNTY, GEORGIA AND THE CITY OF CANTON, GEORGIA**

STATE OF GEORGIA
COUNTY OF CHEROKEE

“First Appearance Hearings”

This MUNICIPAL SERVICES AGREEMENT (hereinafter “Agreement”) is entered into by and between 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 “County”), and the CITY OF CANTON, GEORGIA, a municipal corporation, acting by and through its governing authority, the Mayor and the Canton City Council (hereinafter “City”), with both said entities existing under the laws of the State of Georgia (with each entity collectively being referred as “the Parties”).

WHEREAS, City currently operates the City of Canton Municipal Court, which adjudicates misdemeanor criminal, traffic, and city ordinance cases; and

WHEREAS, as part of the services provided, the City of Canton Municipal Court provides first appearance bond hearings on criminal matters (hereinafter “Hearings”); and

WHEREAS, the purpose of said Hearings are to notify arrested persons of the charge(s) being brought against them and to allow a Judge to consider bail and whether to impose any conditions of release; and

WHEREAS, City is required to provide such Hearings in an expedited manner; and

WHEREAS, because the City employs part-time Judges to oversee such Hearings, the scheduling of the Hearings in a timely manner can be onerous in the City of Canton Municipal Court; and

WHEREAS, the Magistrate Court of Cherokee County regularly conducts similar Hearings and employs full-time Judges to oversee such matters, thereby allowing for easier scheduling of such Hearings; and

WHEREAS, City and County hereby wish to enter into this Agreement for the Magistrate Court of Cherokee County to assist the City of Canton Municipal Court with the conducting of first appearance bond hearings on criminal matters; and

WHEREAS, pursuant to O.C.G.A. § 15-10-150 and O.C.G.A. § 15-10-151, the governing authority of any county may contract with the governing authority of any municipality corporation for the Magistrate Court of the County to provide municipal court services; and

WHEREAS, any such agreement is subject to the written approval of the governing authority of the County, as well as the written approval of the Chief Magistrate Judge of said County; and

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants, promises, agreements, representations and warranties contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby covenant, promise, agree, represent and warrant as follows:

1. Municipal Court Services to be Provided by the Magistrate Court of Cherokee County.
The Cherokee County Board of Commissioners and the Chief Magistrate Judge of the Magistrate Court of Cherokee County hereby agree, as authorized by O.C.G.A. § 15-10-150 and O.C.G.A. § 15-10-151, to provide certain, specified municipal court services to the City. Specifically, County and the Chief Magistrate Judge of the Magistrate Court of Cherokee County agree to provide assistance on an as-needed basis to the City of Canton Municipal Court in conducting first appearance bond hearings on criminal cases subject to adjudication in the City of Canton Municipal Court for inmates being held for the City of Canton at the Cherokee County Adult Detention Center. Nothing herein shall limit the City of Canton Municipal Court from continuing to conduct first appearance bond hearings. The Magistrate Court of Cherokee County shall simply provide assistance to the City by conducting said first appearance hearings as needed and as requested by the City, subject to the availability of Magistrate Court personnel and facilities. The Chief Magistrate Judge of the Magistrate Court of Cherokee County shall have the sole discretion regarding the availability of Magistrate Court personnel to assist with any request submitted by the City of Canton Municipal Court.
2. Authority of Cherokee County Magistrate County Personnel. Pursuant to O.C.G.A. § 15-10-152, the judges of the Magistrate Court of Cherokee County shall have full authority under this Agreement to act as judges of the Municipal Court of the City. In addition, all

other officers and personnel of the Magistrate Court of Cherokee County shall have full authority to act as officers and personnel of the Municipal Court of the City.

Furthermore, pursuant to O.C.G.A. § 15-10-153, when acting as officers of the Municipal Court of the City under this Agreement, all judges and other officers of the Magistrate Court of Cherokee County shall be styled as judges and officers of the Municipal Court of the City. In addition, all pleadings, process, and papers of the Municipal Court of the City shall be styled as such and not as pleadings, process, and papers of the Magistrate Court of Cherokee County. The dockets and other records of the Municipal Court of the City shall be kept separately from those of the Magistrate Court of Cherokee County.

3. Effective Date of Agreement. This Agreement shall have an effective date as of _____ 20__ and shall continue in full force and through **June 30, 2028**. Thereafter, this Agreement shall be automatically renewed for successive one (1) year terms unless otherwise terminated pursuant to the terms of this Agreement.
4. Termination of Agreement. This Agreement may be terminated for convenience by either Party when that Party gives notice to the other Party in writing at least sixty (60) days prior to its intended withdrawal from this Agreement. In addition, pursuant to O.C.G.A. § 15-10-151, this Agreement shall not extend beyond the term of the undersigned Chief Magistrate Judge of the Magistrate Court of Cherokee County.
5. Execution Powers. Each of the individuals executing this Agreement on behalf of his or her respective Party agrees and represents to the other Party that he or she is authorized to do so and further agrees and represents that this Agreement has been duly passed upon by the required governmental agency or board in accordance with all applicable laws and spread upon the minutes thereof.
6. Notice. All notices, requests, demands, and other communications provided for in this Agreement shall be in writing and shall be sent either by first class United States certified mail, return receipt requested, delivered by overnight carrier, or personally delivered to the applicable party at the following addresses:

For County:

Cherokee County, Georgia
ATTN: County Manager
1130 Bluffs Parkway
Canton, Georgia 30114

and

Chief Magistrate Judge
90 North Street, Suite 150
Canton, Georgia 30114

For City:

City of Canton, Georgia
ATTN: City Manager
110 Academy Street
Canton, Georgia 30114

and

Municipal Court Clerk
110 Academy Street
Canton, Georgia 30114

7. Force Majeure. Neither Party shall be liable for any loss or damage suffered by the other Party, directly or indirectly, as a result of the first Party's failure to perform, or delay in performing, any of its obligations contained in this Agreement (except any obligations to make payments hereunder), where such failure or delay is caused by circumstances beyond the first Party's control or which makes performance commercially impracticable, including but not limited to fire, flood, storm or other natural disaster, explosion, accident, war, riot, civil disorder, government regulations or restrictions of any kind or any acts of any government, judicial action, power failure, acts of God or other natural circumstances.
8. Choice of Law/Venue. This Agreement shall be governed by the laws of the State of Georgia. The Parties agree that jurisdiction and venue for any dispute arising under this Agreement shall be in any court of competent jurisdiction located in Cherokee County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and among 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.
9. Amendments. This Agreement may be modified at any time during the term by mutual written consent of both Parties, and upon the consent of the Chief Magistrate Judge of

Cherokee County. No waiver, release or similar modification of this Agreement shall be established by conduct, custom or course of dealings, but solely by a document in writing duly executed and delivered by a duly authorized official of the City and/or the County.

10. Relationship to Other Agreements. Nothing contained in this Agreement shall amend, alter, or modify any other agreements entered into between the County and the City.
11. Assignability. Neither Party shall assign any of the obligations or benefits of this Agreement.
12. Entire Agreement. The Parties acknowledge that the terms of this Agreement constitute the entire understanding and agreement of the Parties regarding the subject matter of this Agreement.

[this portion intentionally left blank; signature page to follow]

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to hereunto set their hands and affix their respective seals as of the day and year first above written.

APPROVED by the Cherokee County Board of Commissioners
this ____ day of _____, 20____.

Signed On Behalf of Cherokee County, Georgia:

By: _____
HARRY JOHNSTON, Chairman Date _____

Attest: _____
CHRISTY BLACK, County Clerk Date _____

APPROVED by the City Council of Canton
this ____ day of _____, 20____.

Signed On Behalf of City of Canton, Georgia:

By: _____
BILL GRANT, Mayor Date _____

Attest: _____
ANNIE FORTNER, City Clerk Date _____

CONSENTED TO BY:

HONORABLE JACK “TREY” GOODWIN III
Chief Judge of the Magistrate Court of Cherokee County, Georgia

Date