



Fulton County Board of Commissioners
Agenda Item Summary

14-0830

BOC Meeting Date
10/15/2014

Requesting Agency

Board of Registration and Elections

Commission Districts Affected

7,

Requested Action *(Identify appropriate Action or Motion, purpose, cost, timeframe, etc.)*

Request approval of contract agreement to conduct the Special Election for the City of Fairburn on November 4, 2014.

Requirement for Board Action *(Cite specific Board policy, statute or code requirement)*

Under the provision of the Georgia Election Code Section 21-2-45(c)(2), City may, by ordinance, authorize the County to conduct such election.

Is this Item Goal Related? *(If yes, describe how this action meets the specific Board Focus Area or Goal)*

No

Is this a purchasing item?

No

Summary & Background

(First sentence includes Agency recommendation. Provide an executive summary of the action that gives an overview of the relevant details for the item.)

The City of Fairburn has requested Fulton County to conduct its Special Referendum Election on November 4, 2014.

Contract & Compliance Information

(Provide Contractor and Subcontractor details.)

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Solicitation Information	NON-MFBE	MBE	FBE	TOTAL
No. Bid Notices Sent:				
No. Bids Received:				
Total Contract Value	.			
Total M/FBE Values	.			
Total Prime Value	.			
Fiscal Impact / Funding Source	(Include projected cost, approved budget amount and account number, source of funds, and any future funding requirements.)			
.				
Exhibits Attached	(Provide copies of originals, number exhibits consecutively, and label all exhibits in the upper right corner.)			
Source of Additional Information	(Type Name, Title, Agency and Phone)			

Agency Director Approval		County Manager's Approval
Typed Name and Title	Phone	
Signature	Date	

Revised 03/12/09 (Previous versions are obsolete)

Procurement**Contract Attached:**

.

Previous Contracts:

.

Solicitation Number:

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Submitting Agency:

.

Staff Contact:

.

Contact Phone:

.

Description:.**FINANCIAL SUMMARY****Total Contract Value:**

Original Approved Amount: .

Previous Adjustments: .

This Request: .

TOTAL: .

MBE/FBE Participation:

Amount: . %: .

Amount: . %: .

Amount: . %: .

Amount: . %: .

Grant Information Summary:

Amount Requested: .

☐

Cash

Match Required: .

☐

In-Kind

Start Date: .

☐

Approval to Award

End Date: .

☐

Apply & Accept

Match Account \$: .

Funding Line 1:

.

Funding Line 2:

.

Funding Line 3:

.

Funding Line 4:

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KEY CONTRACT TERMS**Start Date:**

.

End Date:

.

Cost Adjustment:

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Renewal/Extension Terms:

.

ROUTING & APPROVALS

(Do not edit below this line)

X	Originating Department:	Barron, Richard L.	Date: 9/15/2014
.	County Attorney:	.	Date: .
.	Purchasing/Contract Compliance:	.	Date: .
.	Finance/Budget Analyst/Grants Admin:	.	Date: .
.	Grants Management:	.	Date: .
X	County Manager:	O'Connor, Patrick	Date: 10/9/2014

July 2014

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF ELECTION SERVICES
BETWEEN
FULTON COUNTY, GEORGIA and
THE CITY OF FAIRBURN, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this _____ day of _____, 20____, between Fulton County, Georgia ("County"), a political subdivision of the State of Georgia, and the City of Fairburn, Georgia ("City"), a municipal corporation lying wholly or partially within the County.

WHEREAS, the parties to this Agreement are both governmental units; and

WHEREAS, 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, both parties are interested in serving the needs of the citizens of the City by the County providing for the services of conducting all elections required and permitted by law; and

WHEREAS, the City desires to contract with the County to conduct all municipal elections for the citizens of the City pursuant to the applicable laws of the State of Georgia; and

WHEREAS, the City and the County are authorized by Art. IX, Sec. III, Par. I of the Constitution of the State of Georgia to contract for any period not exceeding fifty (50) years for the provision of facilities or services which they are authorized by law to provide, including an agreement for the conduct of the City elections; and

WHEREAS, O.C.G.A. § 21-2-45(c) authorizes the governing authority of any municipality to contract with the county within which that municipality wholly or partially lies to conduct any or all elections; and

WHEREAS, pursuant to O.C.G.A. § 21-2-45(c), a municipality may by ordinance authorize a county to conduct such election(s), and the City has adopted such an ordinance; and

WHEREAS, the Fulton County Board of Registration and Elections ("BRE") has jurisdiction over the conduct of primaries and elections and the registration of electors in the County; and

WHEREAS, the BRE, among other things, is responsible for the selection and appointment of the elections Superintendent, who selects, appoints, and trains poll workers for elections;

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

**ARTICLE 1
CONDUCT OF ELECTIONS**

1.1 This Agreement will govern the conduct of any and all elections which the City requests the County to conduct, including any and all runoffs which may be necessary. It is the intent of the parties that City elections be conducted in compliance with all applicable federal, state and local legal requirements.

1.2 For each City election, City, at its sole option, shall submit to County a request in the form attached hereto as Exhibit A. Requests must be made in conformance with O.C.G.A § 21-2-540, now and as it may be amended hereafter, to the address specified in the Notice Section below. If a timely request is not made, the County shall have no obligation to conduct the City election which was the subject of the request.

1.3 In the event any special City election becomes necessary, the City and the County shall confer and determine a mutually convenient date as allowed by law to conduct any such election.

**ARTICLE 2
TERM OF AGREEMENT**

This Agreement shall commence on the date that it is executed by or on behalf of the governing authority of Fulton County, Georgia and will terminate on December 31, 2024, unless otherwise terminated as set forth herein.

**ARTICLE 3
DUTIES AND RESPONSIBILITIES**

Pursuant to this Agreement, each party shall provide the following enumerated services:

3.1 Upon receipt of request to perform a City election, and the agreement to conduct a City election, the County through the Superintendent, or their designee(s) shall be responsible for:

- a) Designating early and advance voting sites and hours;
- b) Placing the City's candidate(s) on the electronic and printed ballots for City elections after qualifying;
- c) Placing the City's referendum question(s) on the ballot for a City election after timely written notice from the City is received by the County (which such notice shall include all necessary details and information);
- d) Hiring, training, supervising and paying poll officers and absentee ballot clerks;
- e) Preparing and submitting to the City Clerk, as required by state law O.C.G.A. § 21-2-224(e), now and as it may be amended hereafter, a list of electors.

- f) Performing duties of election Superintendent, and absentee ballot clerk for City elections;
- g) Performing logic and accuracy testing as required by Sections 183-1-12-.02 and .07 of the Official Compilation of Rules and Regulations of the State of Georgia, now and as they may be hereafter amended;
- h) Providing staff, equipment and supplies for conducting City elections at City polling places on City election days and for conducting recounts as may be required;
- i) Certifying City election returns as required by state law O.C.G.A. § 21-2-493, now and as it may be amended hereafter, and submitting certified City election returns to the Georgia Secretary of State and City Clerk or as otherwise directed;
- j) Upon a change in City precincts or voter districts, notifying City residents of any change in voting districts and/or municipal precincts; and

3.2 The City shall be responsible for:

- a) Adopting Election resolutions pursuant to O.C.G.A. § 21-2-45(c), now and as it may be amended hereafter, and calls for special City elections as required by O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- b) Preparing qualifying materials for potential candidates and performing qualifying of candidates, including any write-in candidates, for City elections as required by state law, specifically O.C.G.A. § 21-2-130 *et seq.*, now and as it may be amended hereafter;
- c) Placing advertisements in the City's legal organ regarding calls for special City elections, as required by state law O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- d) Fixing and publishing the qualifying fee as required by state law under O.C.G.A. § 21-2-131, now and as it may be amended hereafter;
- e) Collecting and retaining the qualifying fee as required by state law O.C.G.A. § 21-2-131, now and as it may be amended hereafter;
- f) Performing filing officer duties as required by the Georgia Government Transparency and Campaign Finance Commission for any and all state reports filed by the candidates or committees in conjunction with City elections to ensure compliance with Title 21, Chapter 5 of the Official Code of Georgia;
- g) Not less than 30 days prior to Election Day, verify the accuracy of the voter list(s) for City residents;

- h) Providing the County with a detailed map showing the City's municipal boundaries and voting district boundaries;
- i) For all aspects related to the issuance of bonds by the City, except for City referendum election duties specifically requested of the County as provided herein;
- j) Notifying the County immediately of the need for a special City election including election races and/or ballot referendum questions;
- k) Provide the County the ballot language for any election, including election races and/or ballot referendum questions, seventy-five (75) days before Election Day for an election that contains a federal contest and sixty (60) days before Election Day for all other elections;
- l) Providing the County with an electronic copy of referendums that must be placed on a ballot;
- m) Providing the County, via electronic mail or facsimile, affidavits and listing of candidates immediately after close of qualifying;
- n) Reviewing ballot proofs and notifying County of corrections or approval within twenty-four (24) hours of receiving proofs for candidate listings; and
- o) Otherwise cooperating with the County in the performance of this Agreement and providing the County such documentation and information as it may reasonably request to facilitate the performance of its duties under this Agreement.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 Pursuant to this Agreement and O.C.G.A. § 21-2-2-45(c) now and as it may be amended hereafter, the City shall pay to the County all costs incurred in performing the functions agreed upon herein. City agrees to pay County the actual costs incurred by County in conducting City elections as stated on the County's invoice. City shall remit said funds to County within thirty (30) days of receipt of invoice.

4.2 For City elections that are to be conducted contemporaneously with a countywide election, the City will pay a base charge of \$1,000, plus a 10% administrative fee of the actual election and runoff costs based on the municipality's pro-rata share of the number of electors in the municipality versus the total number of electors in the County.

i) An estimate of the City's pro-rata share of the election and runoff costs based on past similar elections will be provided to the City and 75% of that amount is due to the County ninety (90) days prior to Election Day.

ii) Following the election and runoff, the actual costs of the election and runoff will be determined, as well as the City's pro-rata share of the actual costs.

iii) If based on the estimated election and runoff costs a refund is due to the City said refund will issue within ninety (90) days after the election and runoff election.

iv) If based on the estimated election and runoff costs the City owes the County an additional amount for the election and runoff, the County will issue an invoice for that amount which is due and payable within thirty (30) days of receipt.

4.3 For City elections that are not conducted contemporaneously with a countywide election, the City will pay the actual cost of such election and runoff based on a budget prepared in accordance with the form attached hereto as Exhibit B.

i) The City will pay the County the sum determined in Exhibit B for the election and runoff to be maintained in a separate election account. Said amount is due ninety (90) days prior to Election Day.

ii) Following the election and runoff, the actual costs of the election and runoff will be determined.

iii) If based on the payment made in compliance with Exhibit B a refund is due to the City said refund will issue within ninety (90) days after the election and runoff election.

iv) If based on the payment made in compliance with Exhibit B the City owes the County an additional amount for the election and runoff, the County will issue an invoice for that amount which is due and payable within thirty (30) days of receipt.

4.4 Failure to timely remit the funds owed will result in a 10% per month penalty.

ARTICLE 5 LEGAL RESPONSIBILITIES

5.1 The City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any City election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registration and Elections, and the County Election Superintendent in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs, including, but not limited to, court costs and attorney fees for the County Attorney or outside counsel, incurred by the County as a result of any such claim or litigation. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.

5.2 In the event that a City election is contested, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any contested City election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and the County Election Superintendent in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs incurred in responding to the election challenge, including, but not limited to, attorney's fees for the County Attorney or outside counsel and all expenses associated with the election challenge and any appeals thereafter. The City shall make payment of such

reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County. If a second election is required, such election will constitute a City Election under this Agreement and shall be conducted in accordance with the terms of this Agreement.

5.3 To the extent allowed by law, the City agrees to defend and hold harmless the County with respect to any claim, demand, action, damages, judgment, cost and/or expenses (including, without limitation, reasonable attorney's fees and legal expenses) to which the County may be subjected as a consequence of or as a result of any error, omission, tort, intentional tort, willful misconduct, or any other negligence on the part of the City and/or its employees.

5.4 To the extent allowed by law, the County agrees to defend and hold harmless the City with respect to any claim, demand, action, damages, judgment, cost and/or expenses (including, without limitation, reasonable attorney's fees and legal expenses) to which the City may be subjected as a consequence of or as a result of any error, omission, tort, intentional tort, willful misconduct, or any other negligence on the part of the County and/or its employees.

5.5 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law.

5.6 Should it be necessary to comply with legal requirements that any of the County's personnel shall be sworn in as a temporary officer or employee of the City, such formality shall be observed without limitation.

ARTICLE 6 EMPLOYMENT STATUS

6.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including, but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

6.2 All County personnel assigned under this Agreement are and will continue to be part of the Fulton County Department of Registration and Elections and under the supervision of the Superintendent.

6.3 All City personnel assigned under this Agreement are and will continue to be employees of the City.

ARTICLE 7 RECORDKEEPING AND REPORTING

7.1 The County Registration and Elections Department is the central repository for all departmental records and makes available public records as defined and required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, O.C.G.A. § 21-2-51 and O.C.G.A. § 21-2-72, now and as they may be amended hereafter. During the term of this Agreement, the County will continue to comply with the applicable provisions of the Georgia Open Records Act and the Georgia Election Code.

7.2 Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

**ARTICLE 8
TERMINATION AND REMEDIES**

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever by notice in writing to the other party delivered at least thirty (30) days prior to the effective date of the termination.

**ARTICLE 9
NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non binding duplicate facsimile notice. Future changes in address shall be effective upon written notice being given by the City to the County Elections Superintendent or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Fulton County Board of Registration and Elections
 Attn: Director
 130 Peachtree St SW, Suite 2186
 Atlanta, Georgia 30303

With a copy to: Fulton County Office of the County Attorney
 Attn: County Attorney
 141 Pryor Street SW, Suite 4038
 Atlanta, Georgia 30303

If to the City: City Manager

With a copy to: City Attorney

**ARTICLE 10
NON-ASSIGNABILITY**

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

**ARTICLE 11
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. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 12
SEVERABILITY, VENUE AND ENFORCEABILITY**

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. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of Fulton County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 13
BINDING EFFECT**

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

**ARTICLE 14
COUNTERPARTS**

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

SIGNATURES APPEAR ON THE 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

APPROVED AS TO SUBSTANCE:

(Seal)

Chair, Board of Commissioners

Attest: _____
Clerk to Commission


Date: _____

ATTEST:

APPROVED AS TO FORM:

Fulton County Attorney's Office

APPROVED AS TO SUBSTANCE:



Richard Barron
Director, Fulton County Board of Registrations and Elections

SIGNATURES APPEAR ON THE FOLLOWING PAGE

CITY OF FAIRBURN, GEORGIA

M. B. [Signature] (SEAL)

Mayor

Date: August 14, 2014

APPROVED AS TO FORM:

[Signature]

City Attorney

Brenda B. James 8/14/14

Municipal Clerk

(SEAL)

APPROVED AS TO SUBSTANCE:

[Signature]

City Manager

EXHIBIT A

As per the Agreement executed on 8/14/2014, THE CITY OF Fairburn hereby requests that Fulton County conduct its 2014 Special Election on Nov. 4, 2014. The last day to register to vote in this election is October 6, 2014. The absentee poll will be located at _____.

This 14th day of August, 2014.

Grenda B. James (SEAL)
Municipal Clerk

The Fulton County Board of Registrations and Elections agrees to conduct the CITY OF Fairburn Special Election on Nov. 4, 2014.

This 11th day of September 2014.

Mary Cable Cooney
Elections Superintendent
Fulton County Board of Registrations and
Elections



EXHIBIT B

Budget Form

**City of Fairburn
City Clerk's Office
56 Malone Street-P.O. Box 145
Fairburn, Georgia 30213-1341
770-964-2244
Attn: Ms. Brenda James**

Packet Page -504-

1 STATE OF GEORGIA
2 COUNTY OF FULTON
3
4

RESOLUTION 2014-D8

5 A RESOLUTION FOR THE CALL OF A SPECIAL ELECTION IN
6 THE CITY OF FAIRBURN NOVEMBER 4, 2014
7
8

9 WHEREAS, the duly elected governing authority of the City of Fairburn,
10 Georgia is the Mayor and Council thereof; and

11 WHEREAS, the City of Fairburn, by a resolution on July 14, 2014 called for a
12 Special Election on Tuesday, November 4, 2014 to present a question to the voters of the
13 City of Fairburn; and

14 WHEREAS, the resolution contained herein would benefit the good government,
15 peace, safety, security, health, happiness, protection, convenience, good order and dignity
16 of the City of Fairburn and its citizens.


17 BE IT THEREFORE RESOLVED that the governing authority of the City of
18 Fairburn, Georgia calls for a Special Election to be held on November 4, 2014.

19 SO RESOLVED, this 14th day of July, 2014.

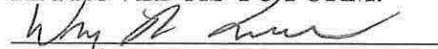
20 CITY OF FAIRBURN, GEORGIA
21

22
23
24 
25 Mario B. Avery, Mayor

26 ATTEST:

27 
28 Brenda B. James, City Clerk
29
30

31
32 APPROVED AS TO FORM:

33 
34 William R. Turner, City Attorney

2014-17

STATE OF GEORGIA
COUNTY OF FULTON

AN ORDINANCE

AN ORDINANCE BY THE MAYOR AND COUNCIL OF THE CITY OF FAIRBURN, GEORGIA, TO ADOPT AND ENTER INTO A CONTRACT WITH FULTON COUNTY TO CONDUCT A SPECIAL ELECTION ON NOVEMBER 4, 2014.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF FAIRBURN AND IT IS HEREBY ORDAINED BY THE AUTHORITY OF SAME THAT.

Whereas, Under Georgia Election Code Section 21-2-45(c) it provides for a municipality to authorize any county within which that municipality wholly or partially lies to conduct any or all elections held pursuant to this chapter.

Whereas, Fulton County has presented a contract to the City of Fairburn for the Special Election with an estimated pro rata expense and administrative fee of \$9,873.79.

Now therefore, the governing authority of the City of Fairburn hereby authorizes Fulton County to conduct the Special Election on November 4, 2014. The Mayor is authorized to sign the contract presented on behalf of the City of Fairburn and the City Clerk is authorized to attest the signature and to affix the seal of the City of Fairburn.

This ordinance shall become effective upon approval of the Mayor and Council.


This ordinance having been properly considered and adopted by the Mayor and Council of the City of Fairburn, this 28th day of July 2014.

City of Fairburn, Georgia

Attest:


Brenda B. James, City Clerk


William R. Turner, City Attorney


Mario B. Avery, Mayor