

**AGREEMENT FOR THE PROVISION OF JUDICIAL IN REM TAX FORECLOSURE  
SERVICES CONCERNING MUNICIPAL CODE ENFORCEMENT LIENS**

This Agreement is entered into as of the Effective Date by and between the City of Atlanta, Georgia (the "City"), a municipal corporation duly organized by the State of Georgia; Fulton County, Georgia (the "County"), a political subdivision of the State of Georgia; and Arthur E. Ferdinand (the "Tax Commissioner"), in his official capacity as the Fulton County Tax Commissioner (the City, the County and the Tax Commissioner hereinafter referred to, collectively, as the "Parties"), each of whom is duly authorized by Georgia law to enter into this Agreement.

**WITNESSTH**

**WHEREAS**, Article IX, Section 3, Paragraph 1 of the Georgia Constitution of 1983 (the "Intergovernmental Contracts Clause") empowers the County and the City to contract with one another for, among other things, joint services or the provisions of services for periods not to exceed fifty (50) years and as authorized by law; and

**WHEREAS**, the City is authorized to assess and collect annual ad valorem taxes on non-exempt property located within its corporate boundaries; and

**WHEREAS**, the City is authorized to enforce violations of its code enforcement regulations that occur on property located within its corporate boundaries and to assess penalties and fines for such violations; and

**WHEREAS**, the County is authorized to assess and collect annual, ad valorem taxes on non-exempt property located within its geographic boundaries; and

**WHEREAS**, the Tax Commissioner holds the constitutionally created, elected office charged with ad valorem tax collection for the County; and

**WHEREAS**, in accordance with the Intergovernmental Contracts Clause and O.C.G.A. § 48-5-359.1, the Parties entered a written Agreement (the "Collection Agreement"), effective January 1, 2003, under which the Tax Commissioner was tasked with the billing and collection on behalf of the City of municipal ad valorem taxes and annual sanitation fees assessed on property located within its corporate boundaries; and

**WHEREAS**, the Parties amended the Collection Agreement, effective January 1, 2013, to provide the contractual term was the earlier of: (1) the end of the current Tax Commissioner's tenure in office; or (2) fifty years after the effective date of the amendment, December 31, 2063; and

**WHEREAS**, the Collection Agreement, as amended, remains in full force and, under its provisions, the Tax Commissioner presently continues to bill and collect municipal ad valorem taxes and solid waste fees on behalf of the City in addition to his ad valorem tax collection for the County; and

**WHEREAS**, in performing the aforesaid services for the City under the Collection Agreement, the Tax Commissioner employs the nonjudicial foreclosure procedure (the “Nonjudicial Foreclosure Method”) authorized under O.C.G.A. §§ 48-3-3, 48-5-127(a)(6), and 48-5-161(c)(1) to enforce delinquent City ad valorem tax and annual sanitation fees; and

**WHEREAS**, under the Nonjudicial Foreclosure Method, the Tax Commissioner issues liens for delinquent ad valorem taxes and annual sanitation fees and a public sale of the subject property ultimately is held to satisfy those liens, such activities lawfully occurring with no judicial involvement; and

**WHEREAS**, in 1995, the State of Georgia enacted O.C.G.A. §§ 48-4-75 to 48-4-81 (the “Act”)(effective April 7, 1995) that created an alternative collection avenue, the Judicial In Rem Foreclosure Method, by which local governments may enforce delinquent ad valorem taxes; and

**WHEREAS**, O.C.G.A. § 48-4-75 includes the following findings: the failure to pay ad valorem taxes creates a significant barrier to neighborhood and urban revitalization; tax delinquency, in many instances, results in properties that present health and safety hazards to the public; and the Judicial In Rem Foreclosure Method is an effective means of eliminating such hazards by promptly putting certain delinquent tax delinquent properties back on the tax rolls and into productive use; and

**WHEREAS**, under the Judicial In Rem Foreclosure Method, the local government may petition the Superior Court to enter a judgment finding there are delinquent ad valorem taxes owed on a property and ordering the public sale of the property to satisfy the debt and, once the public sale occurs, the pre-sale owner has a statutory right to redeem the property that automatically terminates sixty days after the sale; and

**WHEREAS**, O.C.G.A. § 48-4-76(a) provides that, as condition precedent to the use by a county or a municipality within its boundaries of the Judicial In Rem Foreclosure Method, the governing body of the county must enact an ordinance or resolution authorizing the use of the Judicial In Rem Foreclosure Method; and

**WHEREAS**, in compliance with O.C.G.A. § 48-4-76(a), the County’s Board of Commissioners (the “BOC”) at its June 21, 1995 Recess Meeting adopted a “Resolution Enabling Fulton County to Undertake Judicial In Rem Tax Foreclosures” (Agenda Item Number 95-0759) that authorized the County and the municipalities located within its boundaries to employ the Judicial In Rem Foreclosure Method; and

**WHEREAS**, pursuant to O.C.G.A. § 41-2-8 to § 41-2-17 and Article VI of the City of Atlanta Housing Code of 1987 (the “Housing Code”), the City may bring an in rem action (the “Abatement Action”) in the City of Atlanta Municipal Court (the “Municipal Court”) seeking the repair, closure or demolition of a dwelling, building or structure located within its corporate boundaries that fails to comply with the applicable building provisions or that creates a safety, fire or other unsanitary or dangerous condition to the public; and

**WHEREAS**, where the property owner fails to comply with an order in the Abatement Action to remedy the dissatisfactory condition of the dwelling, building or structure, the City is authorized to remediate the situation on its own; and

**WHEREAS**, pursuant to O.C.G.A. §§ 41-2-9(a)(7) & (b)(1) and § 56 of the Housing Code, the aforesaid remediation costs as well as the costs to the City in bringing the Abatement Action shall constitute a lien in the City's favor and, upon recordation with the Fulton County Superior Court Clerk, shall attach to the subject property (the "Code Enforcement Lien"); and

**WHEREAS**, O.C.G.A. § 41-2-9(b)(3) permits the inclusion of all amounts due on a Code Enforcement Lien in a proceeding under the Act to enforce delinquent ad valorem taxes; and

**WHEREAS**, under O.C.G.A. § 41-2-9(b)(2), a county tax commissioner, who is collecting and enforcing municipal ad valorem taxes for a city, may also collect and enforce a Code Enforcement Lien where the county and the city have contracted for such services pursuant to O.C.G.A. § 48-5-359.1; and

**WHEREAS**, to the extent permitted by law, the City desires to collect and enforce certain Code Enforcement Liens through the Judicial In Rem Foreclosure Method, and the County and the Tax Commissioner desire to assist the City to undertake this activity.

**NOW THEREFORE**, in consideration of the mutual obligations recited herein and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree to the following:

## **I. DEFINITIONS**

The following terms used in this Agreement shall have the meanings set forth below.

*"Abatement Action"* shall mean any in rem proceeding brought by the City, pursuant to the Georgia Nuisance Statutes and/or the Housing Code, in the Municipal Court that seeks the repair, closure, or demolition of a dwelling, building or structure located on a Parcel that fails to comply with the applicable building or construction regulations, that creates a safety or fire hazard, or that creates an unsanitary or dangerous condition for the public.

*"Agreement"* shall mean the instant Agreement for the Provision of Judicial In Rem Foreclosure Services Concerning Municipal Code Enforcement Liens.

*"City"* shall mean the City of Atlanta, Georgia and all officials, employees, attorneys, agents officially acting on its behalf.

*"Collection Contract"* shall mean the written Agreement (including all amendments thereto enacted as of the Effective Date or thereafter) between the Parties, effective January 1, 2003, concerning the Tax Commissioner's billing and collection on behalf of the City of municipal ad valorem taxes and annual solid waste fees assessed on Parcels, said Agreement having been approved by the County's Board of Commissioners on May 2, 2003 as Agenda Item Number 03-

0657 and having been authorized by Resolution 02-R-2111 as adopted by the City's Council on December 2, 2002 and as approved by the City's Mayor on December 10, 2002 and as amended on January 1, 2013.

*"County"* shall mean Fulton County, Georgia and all officials, employees, attorneys, agents officially acting on its behalf.

*"Effective Date"* shall mean the date upon which the last of the following events occurs: (1) the County's Board of Commissioners, by resolution or ordinance, approves the entry of the Agreement by the County; (2) the City's Council, by resolution or ordinance, approves the entry of the Agreement by the City and the City's Mayor signs such resolution or ordinance into law; and (3) the Tax Commissioner formally enters the Agreement.

*"Georgia Nuisance Statutes"* shall mean the regulations contained in O.C.G.A. § 41-2-7 to § 41-2-17 that are in effect as of the Effective Date and include any subsequent amendments thereto enacted by the State of Georgia during the Term of the Agreement.

*"Housing Code"* shall mean the regulations contained in Article V of the City of Atlanta Housing Code of 1987 that are in effect as of the Effective Date and include any subsequent amendments thereto enacted by the City during the Term of the Agreement.

*"Judicial In Rem Foreclosure Procedures"* shall mean the procedures authorized in O.C.G.A. § 48-4-75 to § 48-5-81 and § 56 of the Housing Code.

*"Municipal Code Enforcement Lien"* shall mean the certified copy of the Municipal Court's order in an Abatement Action requiring the repair, closure or demolition of the Parcel as recorded and indexed in the official real estate records and on the general execution docket of the Fulton County Superior Court Clerk.

*"Municipal Court"* shall mean the City of Atlanta Municipal Court.

*"Notice of Final Determination of Costs"* shall mean a report prepared by the City showing, as authorized by O.C.G.A. § 41-2-9(a)(7) and § 56(a) of the Housing Code, the costs of demolition, including all court costs, appraisal fees, administrative fees, administrative costs incurred by the City in bringing an Abatement Action and all other costs necessarily associated with the Abatement Action, including restoration to grade of the subject Parcel after demolition.

*"Parcel"* shall mean a tract of Real Property as identified in the official real estate records of the Fulton County Superior Court Clerk and/or the official records of the Fulton County Board of Assessors that is located within the corporate boundaries of the City and the geographic boundaries of the County. For purposes of this Agreement, the term "Property" does not include any tract of Real Property that is located within the corporate boundaries of City and outside the geographic boundaries of Fulton County.

*"Parcels"* shall mean two or more Parcels.

*“Real Property”* shall mean all lands and the buildings thereon, all things permanently attached to the land or to the buildings thereon, and any interest existing in, issuing out of, or dependent upon land or the buildings thereon.

*“Tax Commissioner”* shall mean the duly elected individual holding the constitutional office of the Fulton County Tax Commissioner. The term also includes any employee, attorney, agent of the County working in the Office of the Fulton County Tax Commissioner or officially acting on the Tax Commissioner’s behalf.

*“Tax Delinquent Parcel”* shall mean a Parcel for which ad valorem taxes assessed by the City are past due and remain unpaid as of January 1 of the year following the last outstanding tax bill.

*“Term of the Agreement”* shall mean the Effective Date through the fiftieth (50th) anniversary of the Effective Date, subject to termination as outlined in Section III Paragraph B of this Agreement.

## **II. PURPOSE AND INTENT**

The purpose of this Agreement is to delineate the Parties’ respective duties and obligations for the provision to the City by the County and the Tax Commissioner of certain collection and enforcement services concerning a Municipal Code Enforcement Lien issued against a Tax Delinquent Parcel via the use of the Judicial In Rem Foreclosure Procedures.

## **III. TERM**

(A) **Maximum Term.** Pursuant to the Intergovernmental Contracts Clause, the Term of the Agreement commences on the Effective Date and expires on the date that is the fiftieth (50th) anniversary of the Effective Date, subject to the limitations stated in Paragraph (B) of this Section.

(B) **Right to Terminate.** The City or the County shall have the unilateral right to terminate this Agreement at any time by giving written, dated notice to the Parties of its intent to terminate the provision of the services required herein. Such termination shall be effective three (3) months from the date contained in the written notice.

## **IV. REPRESENTATIONS OF THE PARTIES**

(A) **Reliance.** The Parties acknowledge that they have reasonably relied upon the representations of each other contained in this Section as the basis for entering this Agreement.

(B) **The City.** The City makes the following representations to the County and the Tax Commissioner:

1. The City is a municipal corporation duly organized by the State of Georgia;

2. The governing authority of the City is the Atlanta City Council, which is lawfully authorized to approve the Mayor entering this Agreement and to perform the obligations imposed on the City in the Agreement;
3. Upon its full execution by the Parties, this Agreement will be a valid, binding and enforceable obligation of the City;
4. The City is authorized under the Georgia Nuisance Statutes and the Housing Code to bring an Abatement Action in the Municipal Court to remedy a vacant, abandoned substandard dwelling, building or structure located on a Parcel; upon non-compliance by the owner with a judicial remediation order, to independently repair or demolish said improvements; and to obtain a Municipal Code Enforcement Lien in the amount of its remediation costs (as well as its expenses in filing the Abatement Action) that, upon proper recordation with the Fulton County Superior Court Clerk, attaches as a lien to the subject Parcel.

(C) **The County.** The County makes the following representations to the City and the Tax Commissioner:

1. The County is a political subdivision duly created under the Constitution of the State of Georgia;
2. The governing authority of the County is the Fulton County Board of Commissioners, which is lawfully authorized to enter this Agreement and to perform the obligations imposed on the County in this Agreement;
3. Upon its full execution by the Parties, this Agreement will be a valid, binding and enforceable obligation of the County.

(D) **The Tax Commissioner.** The Tax Commissioner makes the following representations to the City and the County:

1. The Tax Commissioner is the duly elected Constitutional officer charged with the billing, collection and enforcement of ad valorem taxes assessed by the County on Real Property located within the County's geographic boundaries; and
2. Pursuant to the Collection Agreement, the Tax Commissioner is authorized to bill, collect and enforce ad valorem taxes and annual sanitation fees assessed by the City on Parcels;
3. Under the powers assigned to his Constitutional office by Georgia law, the Tax Commissioner is authorized to enter this Agreement and to perform the obligations imposed upon him in this Agreement; and
4. Upon its full execution by the Parties, this Agreement will be a valid, binding and enforceable obligation of the Tax Commissioner.

## **V. DUTIES OF THE CITY**

(A) The City shall have the sole responsibility to bring an Abatement Action against a Parcel and, in pursuing an Abatement Action, to ensure full compliance with all applicable provisions of the laws of the Federal Government, the State of Georgia and the City (including, but not limited to, the Georgia Nuisance Statutes and the Housing Code).

(B) The City shall have the sole responsibility for the repair, demolition or any other remedial actions for a Parcel that is the subject of an Abatement Action.

(C) The City shall have the sole responsibility to prepare the Notice of Final Determination of Costs and to create and maintain records that document all expenses set forth in that item.

(D) The City shall have the sole responsibility to submit to the Fulton County Superior Court Clerk a certified copy of the Municipal Court's order in an Abatement Action and to ensure completion of all requirements under O.C.G.A. § 41-2-9(b)(1) and § 56(b) of the Housing Code to create a Municipal Code Enforcement Lien.

(E) The City shall have the sole discretion to determine if the resulting Municipal Code Enforcement Lien should be enforced through the Judicial In Rem Enforcement Procedures. Such discretion shall extend only to a Municipal Code Enforcement Lien that attaches to a Tax Delinquent Parcel. A Parcel that does not meet the definition of a Tax Delinquent Parcel shall not be eligible for the Judicial In Rem Enforcement Procedures under this Agreement.

(F) Where the City determines a Municipal Code Enforcement Lien should be enforced through the Judicial In Rem Enforcement Procedures, the City shall inform the Tax Commissioner of that determination by delivering to him a copy of the following items: (1) the Notice of Final Determination of Costs; and (2) the Municipal Court's order in the Abatement Action that bears the recordation stamp of the Fulton County Superior Court Clerk. Such items shall be delivered to the Tax Commissioner within ninety (90) days of the completed demolition and remediation of the Tax Delinquent Parcel.

(G) The City shall have the sole responsibility to defend against and respond to any allegation, claim or cause of action that: (1) challenges the validity of a Municipal Code Enforcement Lien; (2) asserts the proceedings occurring in an Abatement Action violated the United States Constitution, the Georgia Constitution, the Georgia Nuisance Statutes, the Housing Code or any other provision of federal or state law; (3) challenges the amount(s) of the cost stated in a Notice of Final Determination of Costs; or (4) raises any other challenge contesting the validity or the propriety of a Municipal Code Enforcement Lien.

(H) Upon the request of the Tax Commissioner, the City shall promptly deliver to the Tax Commissioner all other records and documentation used to bring or prosecute the Abatement Action. Such documentation may include, but is not limited to, a copy of all orders issued by the Municipal Court in the Abatement Action, all certificates of title (based on a 50-year title search) of the Tax Delinquent Parcel in the City's possession, and all title commitments (based on a 50-year title search) for the Tax Delinquent Parcel in the City's possession.

## **VI. DUTIES OF THE TAX COMMISSIONER**

(A) Upon review of the items provided to him by the City under Subsections (F) and (H) of Section V of this Agreement, the Tax Commissioner shall have the sole discretion to determine if he wishes to enforce a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures. Such determination may be based on any of the following criteria:

- (1) The Parcel that is encumbered by the Municipal Code Enforcement Lien is not a Tax Delinquent Parcel;
- (2) The items provided to him by the City under Subsections (F) and (G) of Section V of the Agreement do not adequately show the City fully complied with all applicable provisions of the laws of the Federal Government, the State of Georgia and the City (including, but not limited to, the Georgia Nuisance Statutes and the Housing Code) in bringing and prosecuting the Abatement Action;

- (3) The Notice of Final Determination of Costs and related documents do not adequately show the City's authorized costs;
- (4) The Tax Delinquent Parcel is listed as a non-exempt asset of the bankruptcy estate in a pending Chapter 7, Chapter 11, or Chapter 13 proceeding in a federal bankruptcy court;
- (5) The Tax Delinquent Parcel is subject to pending year's support request brought in a Georgia Probate Court (of competent venue) pursuant to O.C.G.A. §§ 53-3-1 to 53-3-21;
- (6) The Tax Commissioner determines that the Municipal Code Enforcement Lien has been divested and is no longer enforceable against the Tax Delinquent Parcel pursuant to an Order entered in a Quiet Title action;
- (7) Within two years prior to the presentment to the Tax Commissioner by the City of the items identified in Subsections (F) and (H) of Section V, the Tax Delinquent Parcel was sold at a public sale (pursuant to O.C.G.A. §§ 48-3-3-, 48-5-127(a)(6) and 48-5-161(c)(1)) to satisfy delinquent County and/or City ad valorem taxes or municipal solid waste fees;
- (8) At the time of the presentment by the City of the items identified in Subsections (F) and (H) of Section V, the Tax Commissioner had administratively coded the Tax Delinquent Parcel as being a real estate parcel that is the subject of a pending condemnation action, interpleader suit, or quiet title action, or any other pending civil or criminal suit brought at law or in equity;
- (9) At the time of the presentment by the City of the items identified in Subsections (F) and (H) of Section V, the record owner of the Tax Delinquent Parcel had reached an agreement with the Tax Commissioner to satisfy any outstanding ad valorem taxes, demolition liens, and/or annual solid waste fees assessed on that property and the record owner has fulfilled all current payment obligations imposed on it;
- (10) The items provided by the City under Subsections (F) and (G) of Section V of the Agreement raise reasonable concerns about the accuracy of the information contained therein as to the lawful ownership of the Tax Delinquent Parcel;
- (11) The items provided by the City under Subsections (F) and (G) of Section V of the Agreement raise reasonable concerns about the accuracy of the information contained therein describing the Tax Delinquent Parcel, including (but not limited to) the actual existence of such tract;
- (12) The Tax Commissioner has reasonable concerns that the enforcement of the Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures would be an action take outside the scope of the authority delegated to him by this Agreement, Georgia law, or the County's laws and procedures; or
- (13) Any other ground upon which the Tax Commissioner has reasonable concerns that the enforcement of the Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures would violate federal law, Georgia law or the County's laws and procedures.

(B) In the event the Tax Commissioner declines to enforce a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures, the Tax Commissioner shall inform the City of that decision no later than 90 days after his receipt of the all items provided to him under Subsections (F) and (G) of Section V of this Agreement. Such notice shall inform the City of the ground(s) for which the Tax Commissioner declines to enforce the Municipal Code



Enforcement Lien. The City shall have the right to attempt to remedy the Tax Commissioner's concerns and to resubmit the requisite documentation with such action constituting a new submission for purposes of the deadlines stated in this Section.

(C) In the event the Tax Commissioner decides to enforce a Municipal Code Enforcement Lien, the Tax Commissioner shall process the City's request to pursue the Judicial In Rem Foreclosure Procedures as soon as practicable and shall commence suit under the Judicial In Rem Foreclosure Procedures no later than 180 days after his receipt of the all items provided to him under Subsections (F) and (G) of Section V of this Agreement.

(D) In the event the Tax Commissioner decides to enforce a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures, the Tax Commissioner shall have the sole discretion to enforce in such action all outstanding ad valorem taxes assessed by the City and/or the County on the Tax Delinquent Parcel and/or all outstanding annual solid waste fees assessed by the City on that Parcel.

(E) At the conclusion of an action brought under the Judicial In Rem Foreclosure Procedures, the Tax Commissioner shall remit to the City all amounts collected in the proceeding that are due under the Notice of Final Determination of Costs (including any applicable interest, penalties and fees).

## **VII. DUTIES OF THE COUNTY**

(A) The County shall employ, through contract or otherwise, any additional staff that, in its sole discretion upon input from the Tax Commissioner, it deems necessary to fulfill duties imposed upon the Tax Commissioner in pursuing the Judicial In Rem Foreclosure Procedures.

(B) The County, through the Fulton County Attorney's Office, shall retain outside counsel to provide legal services to the Tax Commissioner in the enforcement of a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures. Such services shall include, but are not limited to, initiating suits and representing the Tax Commissioner in such proceedings. While retained by the County, said outside counsel shall work under the direction of the Tax Commissioner.

## **VIII. FUNDING AND EXPENSES**

(A) **Administrative Fee.** The County shall be entitled to payment from the City of an administrative fee of \$50.00 for each instance the City requests the Tax Commissioner enforce a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures. Pursuant to O.C.G.A. § 48-5-359.1(3)(B), said administrative fee substantially approximates the cost to the County of providing to the City the services set forth in this Agreement. The City shall remit to the Tax Commissioner the full amount of the administrative fee simultaneously with the submission of the items described in Subsection (F) of Section V. The Tax Commissioner shall deliver such payment to the County's General Fund. The City agrees that the administrative fee under this provision is not refundable.

(B) **Attorney's Fees.** For each Tax Delinquent Parcel the City requests the Tax Commissioner enforce a Municipal Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures, the County shall be entitled to a payment (or payments, as applicable) from the City to pay the attorney's fees for the outside counsel retained by the County under

Subsection (B) of Section VII. Said attorney's fees shall be paid in the amount(s) and under the timeline(s) provided below.

1. Code Enforcement Proceeding in the Superior Court. Following the filing in the Superior Court of the petition for ad valorem tax foreclosure under O.C.G.A. § 48-7-78, the Tax Commissioner through Counsel shall deliver to the City a copy of the file-stamped petition. Within 30 days of its receipt of this item, the City shall remit to the County \$7,500.00, the purpose of such charge being to pay the attorney's fees for the retained outside counsel for the Tax Commissioner in order to prosecute the ad valorem tax foreclosure action in the Superior Court to a final decision.
2. Appeal. In the event an appeal is brought from a Superior Court decision in the ad valorem tax foreclosure action, the County shall be entitled to payment from the City at the rate of \$325.00 per hour for each hour that the retained outside counsel expends in representation of the Tax Commissioner and/or the County in that appeal. Counsel for the Tax Commissioner shall deliver to the City an itemized invoice (or invoices) for the services of the retained outside counsel in the appeal each month when services are rendered during the pendency of an appeal. Within 30 days of the receipt of this invoice, the City shall remit to the Tax Commissioner full payment of the charges stated therein for payment of outside counsel upon approval and at the direction of the Fulton County Attorney.
3. Attorney Review and No Code Enforcement Proceeding Filed. In the event the Tax Commissioner declines to enforce a Code Enforcement Lien through the Judicial In Rem Foreclosure Procedures and the retained outside counsel has expended time to research the matter and/or to provide legal advice on the matter, the County shall be entitled to payment from the City at the rate of \$325.00 per hour for each hour that the retained outside counsel has expended on the matter. Counsel for the Tax Commissioner shall deliver to the City an itemized invoice (or invoices) for the services of the retained outside counsel in such proceeding (and, to the extent applicable, in any appeal therefrom). Within 30 days of the receipt of this item, the City shall remit to the Tax Commissioner full payment of the charges stated therein.

(C) Legal Costs. The City acknowledges that the charge set forth in Subsection (B) is only for the attorney's fees for the outside counsel retained by the County under Subsection (B) of Section VII and is not intended to cover the cost of any expense(s) incurred by the outside counsel in providing legal services to the Tax Commissioner through the Judicial In Rem Foreclosure Procedures. Such expenses may include the costs of obtaining a title report, any court filing fees, service of process fees, publication costs and other reasonable costs incurred by outside counsel in providing legal services to the Tax Commissioner. The City is solely responsible for the payment to the outside counsel for such expenses within 30 days of the receipt of the list of such expenses. Neither the County nor the Tax Commissioner shall have any obligation to expend County funds in order to pay for such expenses.

(D) Recovery Under O.C.G.A. § 48-4-77. In the event suit is brought under the Judicial In Rem Foreclosure Procedures, the amounts paid by the City for Attorney's Fees and Legal Costs shall be included in the calculation of recoverable expenses authorized by O.C.G.A. § 48-4-77. In the event the subject Tax Delinquent Parcel is redeemed by the owner or is publicly sold pursuant to a Judicial In Rem Foreclosure order, the amounts received by the Tax Commissioner from such payment for the aforesaid Attorney's Fees and Legal Costs shall be

remitted to the City within 30 days after such funds are received, if redeemed, or 30 days after the Judicial Foreclosure is confirmed by the Court, if bought by a third party bidder.

(E) **Tax Commissioner's Compensation.** The Tax Commissioner shall not be entitled to any compensation from the City for his provision of services under this Agreement.

## **IX. DUTY TO DEFEND**

The City acknowledges and understands that the sole purpose for the County and the Tax Commissioner entering this Agreement is to assist the City with the enforcement and collection of an otherwise valid Municipal Code Enforcement Lien. Nothing contained herein shall be construed to impose upon the County or the Tax Commissioner any obligation (1) to defend any administrative decision by the City that determines a violation of the Housing Code has occurred as to any Parcel or; (2) to defend the validity of any proceeding or decision by the Municipal Court as to a purported Housing Code violation.

In the event any third party asserts, in any state or federal court, any claim or suit (arising either in law or equity) against the County or the Tax Commissioner that, in whole or in part, arises out of or in connection with any action, decision, policy, or occurrence concerning a Municipal Code Enforcement Lien that transpired prior to the delivery of such item to the Tax Commissioner, the City shall defend and hold the County and the Tax Commissioner harmless from such claim or suit.

## **X. NOTICES**

Any notice required or penalty under this Agreement shall be in writing and shall be emailed and mailed, with adequate postage affixed, to the relevant addressee, email address, and address listed below. Said notice shall be deemed received three (3) days following deposit of same in the U.S. Mail.

### **IF TO FULTON COUNTY:**

Fulton County Manager  
Fulton County Government Center 141 Pryor Street SW  
Tenth Floor  
Atlanta, GA 30303  
Email: Dick.Anderson@fultoncountyga.gov

Fulton County Attorney  
Fulton County Government Center 141 Pryor Street SW  
Suite 4038  
Atlanta, GA 30303  
Email: Soo.Jo@fultoncountyga.gov

### **IF TO TAX COMMISSIONER:**

Fulton County Tax Commissioner  
Fulton County Government Center 141 Pryor Street SW  
Suite 1072

Atlanta, GA 30303

Email: Arthur.Ferdinand@fultoncountyga.gov; Terry.Noble@fultoncountyga.gov

**IF TO THE CITY OF ATLANTA:**

Mayor

City Hall Annex

55 Trinity Avenue SW

Atlanta, GA 30303

Email: mayordickens@atlantaGA.gov

**XI. MISCELLANEOUS**

- (A) **Collection Agreement**. Nothing contained in this Agreement shall be construed to modify the term of the Collection Agreement or to alter or expand the respective obligations imposed upon the Parties under the Collection Agreement.
- (B) **Entire Agreement**. This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements between the Parties with respect to the collection and enforcement of a Municipal Code Enforcement Lien issued against a Tax Delinquent Parcel via the use of the Judicial In Rem Foreclosure Procedures. Furthermore, the Agreement supersedes all prior agreements, negotiations, and communications of whatever type, whether written or oral, between the parties hereto with respect to these matters.
- (C) **Amendment/Modification**. To be valid and enforceable, any amendment or modification to this Agreement must be in writing and signed by the Parties.
- (D) **No Consent to Breach**. No consent or waiver, express or implied, by any Party to this Agreement, to any breach of any covenant, condition, or duty of another Party shall be construed as a consent to or waiver of any future breach of the same.
- (E) **Severability**. Should any phrase, clause, sentence, or paragraph of this Agreement be held invalid or unconstitutional, the remainder of the Agreement shall remain in full force and effect as if such invalid or unconstitutional provision were not contained in the Agreement, unless the elimination of such provision detrimentally reduces the consideration that any Party is to receive under this Agreement or materially affects the operation of this Agreement.
- (F) **Governing Law**. This Agreement shall be governed in all aspects, as to validity, construction, capacity, and performance or otherwise, by the laws of the State of Georgia.
- (G) **Compliance with The Law**. The Parties shall comply with all applicable local, state and federal statutes, ordinances, rules and regulations.
- (H) **Rules of Construction**. For purposes of administration and enforcement of this Agreement, unless otherwise stated herein, the following rules of construction shall apply:
  - 1. The paragraph headings used in this Agreement are included solely for convenience and shall not affect, or be used in connection with, the interpretation of this Agreement.
  - 2. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
  - 3. Words used in the present tense shall include the future and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

- (I) **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed and sealed as follows:

**CITY OF ATLANTA, GEORGIA**

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk, City of Atlanta

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

**FULTON COUNTY, GEORGIA**

\_\_\_\_\_  
Chairman, Fulton County Board of  
Commissioners

Date: \_\_\_\_\_

**FULTON COUNTY TAX  
COMMISSIONER**



Dr. Arthur E. Ferdinand, Tax  
Commissioner

Date: 3/12/2025

ATTEST:

\_\_\_\_\_  
Clerk, Fulton County Board of  
Commissioners

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney