

**HABERSHAM COUNTY BOARD OF COMMISSION**

**EXECUTIVE SUMMARY**

**SUBJECT:** Municipal Intergovernmental Agreements regarding elections

**DATE:** June 11, 2015

**RECOMMENDATION**

**POLICY DISCUSSION**

**BUDGET INFORMATION:**

**STATUS REPORT**

ANNUAL-

**OTHER**

CAPITAL-

**COMMISSION ACTION REQUESTED ON:** June 15, 2015

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**PURPOSE:** To provide intergovernmental agreements with the Town of Alto, City of Baldwin, City of Clarkesville, City of Cornelia, City of Demorest and Town of Mount Airy for the conducting of municipal elections by the Habersham County Office of Elections & Voter Registration.

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**BACKGROUND / HISTORY:** The intergovernmental agreements have been revised from previous agreements with the municipalities in order to include the changes to the location of city/county precincts and also changes to how some of the election costs will be determined upon the location of the city precinct; whether it's located within the city limits of their municipality or whether it is located outside their city limits and within a county precinct.

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**FACTS AND ISSUES:**

- The intergovernmental agreements allow the above mentioned municipalities to appoint the Habersham County Board of Elections & Registration as their "Election Superintendent" and also allow their city elections to be conducted by the Habersham County Office of Elections & Voter Registration.
  - The agreements also create the approval of new city/county precincts, allowing all elections (city/county/state/federal), to be placed on the same ballot, if necessary, to prevent city voters from having to go to two (2) different voting locations on Election Day.
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**OPTIONS:** Approving the municipal intergovernmental agreements will make the conducting of city/county/state/federal elections uniformed and will create consistency with voting procedures and precinct locations.

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**RECOMMENDED SAMPLE MOTION:** I make a motion to approve the municipal intergovernmental agreements regarding elections and authorize the Habersham County Commission Chairman to sign each municipal intergovernmental agreement as they are approved and signed by the Mayor and Council of each municipality.

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**DEPARTMENT: Elections & Voter Registration**

Prepared by: Laurel Ellison

Director: Laurel Ellison

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**ADMINISTRATIVE  
COMMENTS:** \_\_\_\_\_

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\_\_\_\_\_ **DATE:** \_\_\_\_\_

County Manager

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**STATE OF GEORGIA  
COUNTY OF HABERSHAM**

**INTERGOVERNMENTAL AGREEMENT FOR HABERSHAM COUNTY  
TO CONDUCT ELECTIONS FOR THE CITY OF CORNELIA, GEORGIA**

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Cornelia, Georgia, a municipal corporation lying within the County of Habersham, Georgia, hereinafter referred to as the “City,” and Habersham County, a political subdivision of the State of Georgia, hereinafter referred to as the “County”.

**W I T N E S S E T H**

**WHEREAS**, O.C.G.A. § 36-70-20 *et seq.* provides that local governments should develop a service delivery system that is efficient and responsive to citizens; and

**WHEREAS**, under the provisions of the Georgia Election Code, particularly O.C.G.A. § 21-2-45, the governing authority of any municipality may by ordinance authorize the county in which it is located to conduct its elections and may request that the county’s Board of Elections perform for it all duties as superintendent of elections specified by the Georgia Elections Code, and the City has heretofore adopted such an Ordinance; and

**WHEREAS**, the City and the County are also authorized by Article IX, Section III, Paragraph 1 of the Constitution of the State of Georgia to enter into such intergovernmental agreements; and

**WHEREAS**, Habersham County, by and through the Habersham County Board of Elections and Registration (“Board of Elections”), employs staff trained and skilled in the conduct of elections; and

**WHEREAS**, the City desires to contract with the County to conduct all municipal elections for the citizens of the City, including general elections, referenda, bond issues, special elections, second elections pursuant to O.C.G.A. § 21-2-520 *et seq.*, and run-off elections, hereinafter referred to as Elections or Election Events; and

**WHEREAS**, the City desires to hold its municipal elections for the duration of this agreement at the location currently designated by the County as the Habersham South precinct, or such other county precinct as may in future be mutually agreeable to the parties hereto; and

**WHEREAS**, the County is willing to conduct Elections for the City at the designated County precinct under the terms and conditions contained herein,

**NOW THEREFORE**, in consideration of the premises contained herein, the sufficiency of which is hereby acknowledged, it is hereby agreed by the City and the County as follows:

**(1)**  
**Conduct of Elections**

This Agreement shall govern the conduct of all Elections. It is the intent of the parties that all Elections be conducted in compliance with applicable federal, state, and local legal requirements. In the event that any special or second Election becomes necessary it shall be held according to the schedule provided by state law, and if not so provided, the City and the County shall confer and reach a mutually convenient date to conduct such election.

**(2)**  
**Time of Commencement and Termination of Services**

(a) The services to be performed pursuant to this Agreement shall commence as of the date the agreement is signed by the last of the required signatories.

(b) Except as provided in (c) or (d) below, this agreement shall renew automatically July 1 of each year during its term as specified above.

(c) Either party may terminate this agreement by providing notice of intent no later than 60 days before each renewal date. The effective date of termination shall be the next 30th day of June, unless the parties mutually consent to some other effective date. The termination date shall be extended at the request of either party to accommodate completion of an election cycle.

(d) In the event the City: 1) fails to make payment to the County as required by this Agreement; 2) receives written notice from the County of such nonpayment; and 3) fails within thirty (30) days of such notice from the County to make full payment to the County, then the County may, in its sole discretion, terminate this Agreement, effective immediately or as of a date specified by the County, by providing written notice of termination to the City.

(e) In the event of termination of this Agreement, all compensation theretofore due to the County for services rendered prior to the effective date of termination shall be tendered by the City to the County, insofar as is practicable, on or before said date of termination, except as to payments as to the satisfactory performance by the County of its obligations, if any remain, under the terms and conditions of this agreement which are in dispute with the City. The County shall render a final bill within 60 days of the effective termination date unless circumstances beyond its control prevent calculation of the amount within that period. The City shall pay such charges within 60 days of receipt.

**(3)**  
**Duties and Responsibilities**

Designees of the Board of Elections, in the persons of the Supervisor of Elections and elections office staff or contractors under the direction of the Supervisor, shall perform

any and all functions for the City in connection with the conduct of Elections, **with the exception of the following tasks to be performed by the City:**

- (a) Adoption of Election Resolutions and Calls for Elections (“the Calls,” as required by Title 21 of the Official Code of Georgia;
- (b) Pursuant to O.C.G.A. § 21-2-130, *et seq.*, the setting of qualifying fees;
- (c) Timely submission of Resolutions and other appropriate municipal Election information as required to the County Supervisor of Elections and the Georgia Secretary of State;
- (d) Providing to the County a detailed map showing the City’s municipal boundaries and voting district boundaries in compliance with O.C.G.A. § 21-2-226 (c). The City shall have sole discretion regarding municipal boundaries, including commission districts or ward boundaries, but any boundary changes must be reported to the Elections Supervisor no later than 60 days prior to an Election Event to which the boundary is relevant;
- (e) Being responsible for all aspects of municipal bond issues, except for municipal Elections duties specifically assigned to the County herein; and
- (f) 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.

**Designees of the Board of Elections, in the person of, or under the direction of, the Supervisor of Elections, shall specifically be responsible for:**

- (a) Preparing Qualifying materials for potential candidates and performing qualifying of candidates, including any write-in candidates, for municipal Elections pursuant to O.C.G.A. § 21-2-130, *et seq.* All qualifying fees shall be paid to the Habersham County Commissioners and retained by the County as a token payment in lieu of separate billing for this service.
- (b) Performing filing officer duties as required by the Georgia Government Transparency and Campaign Finance Commission or its successor agency in accordance with O.C.G.A. § 21-5-34 (4), receiving required campaign finance reports, making them available for public inspection and copying and transmitting them timely as required by state law.
- (c) Placing Advertisements in the City’s legal organ regarding Calls, qualifying of candidates and amounts of qualifying fees pursuant to O. C.G.A. § 21-2-130 *et seq.*, and performing logic and accuracy testing as required by Sections 183-1-12.02 and .07 of the Georgia Administrative Code (cost of these to be paid by the City);
- (d) Placing the City’s candidate(s) and/or referendum question(s) on the ballot for municipal elections at the earliest feasible opportunity after written notice from the City

is received by the County (which notice shall include all necessary details and information), and the County shall have ballots printed or loaded into voting equipment as appropriate;

- (e) Hiring, training, supervising and paying poll officers and absentee ballot clerks;
- (f) Performing duties of election superintendent and absentee ballot clerk for municipal Elections;
- (g) Providing at all necessary staff, equipment and election supplies for conducting every Municipal Election Event for voters who are residents of the City.
- (h) Certifying municipal Election returns pursuant to O.C.G.A. § 21-2-493 and submitting them to the Georgia Secretary of State with copy to the City Clerk or as otherwise required by law.
- (i) Notifying City residents of any change in voting districts and/or the municipal precinct (City to pay notification costs);
- (j) Answering, as appropriate, open records requests in connection with, or complaints regarding the County's conduct of City Elections.
- (k) Preparing and submitting timely requests for Preclearance, if and when necessary, to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act.

#### (4)

#### Costs, Fees and Payments

In accordance with O.C.G.A. 21-2-45 and Section 10 of H. B. 553 (Act 35 of the Georgia General Assembly 2011-2012 Session, the City will pay the full cost of each primary or election conducted for the municipality, along with a fee established by the Board to offset operational costs of the office of the Habersham County Board of Elections and Registration, as follows:

- (a) The actual cost of expenses paid by the County for goods and services provided to the City in order to serve City voters and staff the Polling Place for City Elections, including, but not limited to, postage, newspaper advertising, election database, absentee ballots, and training and services of poll workers for any election event held under this agreement. When a City Election is held in conjunction with a county, state or federal election, the County will split the cost of poll workers and poll worker training with the City. These direct costs shall be itemized on the County's bill to the City after each Election. Copies of supporting invoices shall be available on request for 30 days from the date of the bill. When there is no City Election on the ballot, County shall pay for poll workers and poll worker training.
- (b) A fee to offset administrative costs incidental to elections and operational costs of maintaining the county elections office. This fee is initially set at 35% of the amount

billed for direct costs as specified in (a) above and shall continue at that rate until adjusted. The 35% fee may be adjusted to more accurately reflect actual costs of administering city elections and maintaining the elections office and voting equipment, but no more often than once per calendar year and only after notice no later than 90 days before June 30, setting forth the amount of and rationale for the increase. The effective date of adjustment shall be the 1st day of July, unless the parties mutually consent to some other effective date.

(c) Bills to the City shall be submitted to: City of Cornelia, P. O. Box 785, Cornelia, GA 30531. The City shall pay all invoices within 30 days. Payments shall be payable to Habersham County Georgia and remitted to the County Board of Commissioners at 555 Monroe St., Unit 20, Clarkesville, GA 30523.

## (5)

### Legal Responsibilities

(a) To the extent permitted under Georgia law and not underwritten by insurance, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to actions or misdeeds by the City Council or City employees, or both, as to any City Election, except claims of negligence or willful misdeeds of agents or employees of the County as to the performance of their duties under this Agreement. The City agrees to reimburse the County for all costs, including but not limited to court costs and attorney fees, incurred by the County as a result of any such claim or litigation as to actions or misdeeds by the City Council or City employees, or both. Alternatively, if the County determines that insurance provided by the City to cover City Election Events is inadequate, the County may obtain coverage and bill the City therefor. The City shall pay any invoice for reimbursement to the County within 60 days of receipt.

(b) 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 Town, such formality shall be observed without limitation.

(c) In the event that a City Election is contested as to actions or misdeeds by the City Council or City employees, or both, the City shall bear all costs incurred in responding to the Election challenge. If insurance coverage has not been obtained for such challenge, then the parties hereto shall select a mutually acceptable attorney to defend such action, and the City shall be responsible for all costs associated therewith as provided herein. If a second election is required, such election shall be conducted in accordance with the terms of this Agreement, unless the second election due to the actions of agents and employees of the County and which in such event the County will bear the costs of the second election

## (6)

### Miscellaneous

(a) Neither party shall, without written consent of the other party, assign or transfer this Agreement or any rights or obligations hereunder.

(b) The terms of this Agreement shall not be altered, amended, or modified except in writing signed by duly authorized officers of the same type and number as those signing the original agreement. This shall apply even when the parties mutually agree to depart from one or more of the provisions.

(c) This Agreement shall be construed under the laws of the State of Georgia.

(d) If any paragraph, subparagraph, sentence, clause, phrase, or any portion of this Agreement shall be declared invalid or unconstitutional by any court of competent jurisdiction, or if the provisions of any part of this Agreement as applied to any particular situation or set of circumstances shall be declared invalid or unconstitutional, such invalidity shall not be construed to affect the portions of this Agreement not held to be invalid. It is hereby declared to be the intent of the parties to provide for separable and divisible parts, and they do hereby adopt any and all parts hereof as may not be held invalid for any reason.

(e) Any notice of communications hereunder shall be in writing and shall be deemed to have been delivered when deposited in the United States mail, registered or certified, or when sent by overnight courier, addressed as follows:

City of Cornelia, Georgia:  
Attn: Mayor James Irby  
P. O. Box 785  
Cornelia, GA 30531

Habersham County:  
Attn: Habersham County Board of Commissioners  
555 Monroe Street, Unit 200  
Clarkeville, GA 30523

Habersham County Board of Elections and Registration:  
Attn: Supervisor of Elections  
555 Monroe Street, Unit 45  
Clarkeville, GA 30523

Or to such other address as each party may designate for itself by written notice to the other parties from time to time.

(f) This agreement shall be exclusively for the benefit of the City and the County and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

(g) The performance of either party hereunder shall be excused if such party is reasonably precluded from performance by the occurrence of an Uncontrollable Circumstance, which shall be defined as follows: Any act, event or condition, or any combination thereof, that is beyond the reasonable control of the party relying on the same and that materially interferes with the performance of the party's obligation, to include, but not be limited to, (a) acts of God; (b) fire, flood, hurricane, tornado, and



earthquakes; (c) the failure of any utility provider to provide and maintain utility services through no fault of the party; and (d) the preemption, confiscation, diversion, destruction, or other interference in possession or performance or supply of materials or services, by or on behalf of, or with the authority of, a governmental body in connection with a declared or asserted public emergency by an entity other than one of the parties.

A party relying on the occurrence of an Uncontrollable Circumstance as an excuse for non-performance shall, as soon as is reasonably possible upon becoming aware of such an event and its possible consequences, notify the other party and shall take all reasonable efforts to eliminate the cause of such non-performance and to resume full performance in accordance with this Agreement.

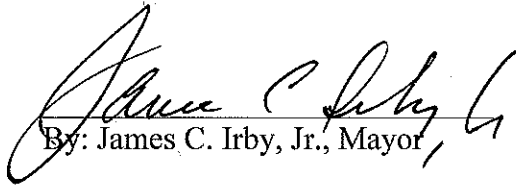
(h) This agreement may be executed in one or more counterparts, each of which shall constitute an original. It shall not be necessary that each signatory sign the same counterpart as long as each has signed an identical counterpart.

(i) Each of the individuals who execute this Agreement agrees and represents that he is authorized to execute this Agreement on behalf of the respective governmental unit and further agrees and represents that this Agreement has been duly passed upon by his respective governmental unit and spread upon its Minutes. Accordingly, the County and City both waive and release any right to contest the enforceability of this Agreement based upon the execution and/or approval thereof.

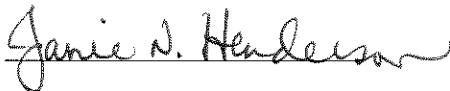
**IN WITNESS WHEREOF**, the parties have hereunto set their hands and affixed their seals as of the dates shown for each.

City of Cornelia

Habersham County, Georgia

  
By: James C. Irby, Jr., Mayor

\_\_\_\_\_  
By: Andrea Harper, Chairman

Attest: 

Attest: \_\_\_\_\_

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

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

Habersham County Board of Elections and Registration

\_\_\_\_\_  
By: Ernie Garrett, Chairman

Attest: \_\_\_\_\_

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