

STATE OF GEORGIA  
BEN HILL COUNTY

**INTERGOVERNMENTAL AGREEMENT FOR ELECTION  
SERVICES FOR NOVEMBER 2023 MUNICIPAL ELECTION**

This Intergovernmental Agreement for Election Services for November 2023 Municipal Election (“Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2023, by BEN HILL COUNTY, GEORGIA, by and through its Board of Commissioners of Ben Hill County, Georgia (hereinafter referred to as the “County”), the BOARD OF ELECTIONS AND REGISTRATION OF BEN HILL COUNTY, GEORGIA (hereinafter referred to as the “BOER”) and the CITY OF FITZGERALD, GEORGIA, by and through its Mayor and Council (hereinafter referred to as the “City”), relating to the conducting of the municipal election to be held on November 7<sup>th</sup>, 2023, and any resulting runoff election.

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

**WHEREAS**, there will be a vacancy in the following seats of the Fitzgerald City Council:

- Alderman At Large East and West (3 seats)

**WHEREAS**, there will be a vacancy in the following seats of the Fitzgerald Water, Light & Bond Commission:

- 3<sup>rd</sup> Ward Western
- At large East and West

**WHEREAS**, an election must be held to fill the following seats for the Fitzgerald City Council:

- Alderman At Large East and West (3 seats)

and the following seats of the Fitzgerald Water, Light & Bond Commission:

- 3<sup>rd</sup> Ward Western
- At Large East and West.

**WHEREAS**, pursuant to the provisions of O.C.G.A. § 21-2-45(c), the City desires for the BOER to perform certain duties as the registrar and superintendent of elections for such municipal election and any runoff that may be held as a result of the same; and;

**WHEREAS**, the City desires to use the Ballot Marking Devices, owned by the County, during said municipal election as provided for in O.C.G.A. § 21-2-45(c); and

**WHEREAS**, the BOER and County desire to enter into such contractual relationship with the City;

**NOW, THEREFORE**, it is agreed by all parties as follows:

1.

**BOER/COUNTY SERVICES**. The BOER agrees to perform the following services in connection with the November 7th, 2023 municipal election and December 5<sup>th</sup> 2023, runoff election, if required (collectively referred to herein as the “Election”) for the vacant seats referenced in the recitals above:

- (a) All duties and services as superintendent of elections, pursuant to Part 3 of Article 2 of Chapter 2 of Title 21 of the Official Code of Georgia Annotated;
- (b) All duties and services as county registrar, pursuant to Article 6 of Chapter 2 of Title 21 of the Official Code of Georgia Annotated;
- (c) Furnish the personnel, equipment and machines necessary to conduct the Election;
- (d) Provide the services of the BOER’s designee, who shall meet all certification requirements set forth in O.C.G.A. § 21-2-101 with respect to the Election;
- (e) Hold advance voting, pursuant to applicable law, at the BOER’s office located at 602 S. Grant Street, Fitzgerald, Georgia 31750;
- (f) Perform all other election duties and functions pertaining to the Election; and
- (g) Submit an invoice to the City for expenses related to the Election, once the Election is completed.

2.

**CITY SERVICES**. With respect to said Election, the City will have the sole responsibility of the following:

- (a) Issuing the call for the Election;
- (b) Qualifying any candidates of the Election;
- (c) Publishing and advertising all statutory notices regarding the Election, including qualifying of candidates;
- (d) Referring all voter registration applications to the BOER;
- (e) Reviewing and approving the list of registered voters for the Election;
- (f) Providing a polling place for municipal voters to cast ballots on the designated election day;

- (g) Adhering to the directions and requests of the BOER with regard to the Election;
- (h) Contracting with technicians to perform logistics and accuracy testing and performing all technical duties pertaining to the EMS server for the Election;
- (i) Reimbursing the County as set out in Exhibit A, including, but not limited to, the costs of paying all poll workers for elections day and the day of any run-off (the City is not responsible for paying for poll workers for the advance/early voting period); and
- (j) Reimbursing the County for all postage for all outgoing mail pertaining to the Election and for all additional ink cartridges used in the printing of ballots, if any.

3.

**COMPENSATION.** For the services provided in this Agreement, the BOER/County shall receive the following compensation:

- (a) Municipal Election. The City shall pay to the County THIRTY-FIVE THOUSAND FIVE HUNDRED EIGHTY-TWO DOLLARS (\$35,582.00) which shall be payment for the services of the BOER provided under this contract with regard to the November 7th, 2023 municipal election.
- (b) Run-off Election. In the event that a run-off election is to be held on December 5<sup>th</sup>, 2023, or any date set by the Elections Divisions of the office of the Georgia Secretary of State, the County shall provide the City with an invoice within five days of the consolidation of the municipal election results for the costs of the services of the same.
- (c) In the event that the BOER must use additional ink cartridges for the printing of ballots, the City will reimburse the County \$94.00 per ink cartridge.
- (d) Payment for all services for the Election, including any run-off, shall be promptly paid by the City upon receipt of a statement of services provided by the County and due no later than December 31, 2023.
- (e) In the event that the BOER/County determines that the BOER's services will exceed the allocated costs, the County will immediately notify the City. The City will have seven (7) days in which to agree to the additional expenses or terminate the Agreement. If the Agreement is terminated, the County/BOER will be compensated for all services provided to the City with regard to the Election, up to

the date of termination as well as be reimbursed for all costs associated with the services.

(f) Payment for cellular services of \$ 50.00 billed by the state for the use of Poll Pads.

4.

**INDEMNITY.** The City shall indemnify and save harmless the County (including its agents, servants and employees) and the BOER (including its agents, servants and employees) from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, including reasonable attorney's fees, for any damages and/or injuries that may occur or result to any person or thing with regard to the BOER or County carrying out their duties pursuant to this Agreement or the negligence or misconduct of the City, its employees, agents and officers with regard to the preparing for and holding of the municipal election and run-off, under this Agreement.

5.

**VOTING EQUIPMENT AND MACHINES.** The BOER may use voting machines and equipment purchased by the County for the purpose of carrying out its duties provided for in this Agreement. During the voting period, the City shall be responsible for any damage to any voting machines and/or equipment as a result of the use by the municipal voters. The County will immediately notify the City of any such damage and the City shall: 1) promptly pay the cost of repair to said voting machines and/or equipment, or 2) replace the damaged voting machine and/or equipment with an approved comparable machine and/or machine, whichever is the least costly of the two options.

6.

**TERM.** This Agreement shall be for a period effective the date of execution of this Agreement by all parties until the conclusion of the Election, without further action by the parties unless notice of termination of said Agreement is provided prior to the automatic termination.

7.

**TERMINATION.** This Agreement may be terminated as follows:

- (a) By either party upon thirty (30) days written notice to the non-terminating parties. If the Agreement is terminated by the City, the City shall compensate the BOER/County for all services provided up and until the date of termination, as well as reimburse the BOER/County for expenses incurred as a result of the services.

- (b) By the City, as provided for in Section 3(e) if the costs of the municipal election exceed the amounts stated in sections 3(a) and (b). Further, the City shall be solely responsible for the conducting and holding of the Election from the date of termination.
- (c) By default if any party breaches this Agreement or defaults in the performance of any of the service or condition contained herein. The nonbreaching party must provide written notice of the default to the breaching or defaulting party, who will have ten (10) days from the date of the notice to cure said breach or default. In the event that the breach or default is not cured at the expiration of the ten (10) days or an agreement has not been reached between the parties regarding the breach or default, the nonbreaching party has the right to: (i) terminate this Agreement; or (ii) pursue any other right or remedy to which it may be entitled by law. No remedy is intended to be exclusive of any other remedy but each and every such remedy shall be cumulative. Specifically excluded from the parties' right to any damages is incidental, consequential, indirect or punitive damages.

8.

**NO OPPOSITION.** Pursuant to O.C.G.A. § 21-2-285(j), in the event there is no opposed candidate in this municipal election, no election shall be held unless a write-in candidate has qualified as provided by law. In such case, pursuant to O.C.G.A. § 21-2-285(k), the City shall provide notice reasonably calculated to inform the affected electorate that no election is to be conducted and each unopposed candidate shall be deemed to have voted for himself or herself. The superintendent will certify the unopposed candidate(s) as elected. In the event there is at least one opposed candidate in this municipal election, an election will be held for every position, regardless of whether it is opposed or unopposed.

9.

**NOTICES.** All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given when delivered personally, or sent by United States mail, certified mail, postage prepaid, as follows:

To the County:

Ben Hill County, Georgia  
ATTN: Hon. Steve Taylor, Chairman  
402-A E. Pine Street  
Fitzgerald, Georgia 31750

To the BOER:

Ben Hill County Board of Elections and Registration  
ATTN: Danny Young, Chairman  
602 S. Grant Street  
Fitzgerald, Georgia 31750

To the City:

City of Fitzgerald  
ATTN: Jason Holt, Mayor  
302 E. Central Avenue  
Fitzgerald, Georgia 31750

10.

**ENTIRE AGREEMENT.** This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the City, County and BOER with respect to the Election, and no modification hereof shall be binding on the parties unless the same is reduced to writing and signed by all the parties.

11.

**MISCELLANEOUS**

- (a) Time is of the essence of this Agreement.
- (b) This Agreement shall be governed by the laws of the State of Georgia.
- (c) 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.
- (d) No consent to waive, 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.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of Ben Hill County, Georgia, the Board of Elections and Registration of Ben Hill County, Georgia, and the City of Fitzgerald, Georgia, by their authorized officials, following the authorization thereof by the respective governments/boards, duly assembled, and have set their hands and official seals hereto, on the date and in the year first above mentioned.

**BEN HILL COUNTY**

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Steve Taylor  
Chairman

**BEN HILL COUNTY BOARD OF ELECTIONS  
AND REGISTRATION**

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Danny Young  
Chairman

**CITY OF FITZGERALD, GEORGIA**

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Jason Holt  
Mayor