

**RESOLUTION NO. 24-051**

**A RESOLUTION OF THE CITY OF POWDER SPRINGS (“CITY”) GRANTING AUTHORITY TO ENTER INTO A JOINT SERVICE DELIVERY STRATEGY (“SDS”) NEGOTIATIONS, ALTERNATIVE DISPUTE RESOLUTION AND LITIGATION AS NECESSARY; TO AUTHORIZE ENTERING INTO A JOINT SDS PROCEEDINGS AGREEMENT WITH THE CITIES OF ACWORTH, AUSTELL, KENNESAW, MARIETTA AND SMYRNA; TO FILE LEGAL ACTIONS ON BEHALF OF THE CITY AS NECESSARY TO ACCOMPLISH THE PURPOSE OF SECURING A SERVICE DELIVERY STRATEGY AGREEMENT WITH COBB COUNTY; AND FOR OTHER PURPOSES.**

**WITNESSETH:**

**WHEREAS**, the City of Powder Springs (“City”) is a municipal corporation duly organized and existing under the laws of the State of Georgia, and is charged with providing public services to its residents; and

**WHEREAS**, the Service Delivery Act, O.C.G.A. §36-70-20 *et seq.*, (“Act”) requires each county and affected municipalities located therein to develop, approve, and implement a service delivery strategy that specifies the manner in which all local governmental services will be provided and funded; and

**WHEREAS**, the Act also requires the periodic review and revision of service delivery strategies upon the occurrence of any one of the six conditions specified on O.C.G.A. §36-70-28(b); and,

**WHEREAS**, Cobb County, and the Cities of Cobb County have been reviewing the existing Service Delivery Strategy and over the course of nearly two (2) years discussing how to revise it as provided for in the Act to no avail; and,

**WHEREAS**, according to the Georgia Department of Community Affairs (“Department”) the existing Service Delivery Strategy is set to lapse after October; and,

**WHEREAS**, if no new Service Delivery Strategy is verified by the Department by October 31, 2024, then the sanctions (withholding state permits and grants) as provided for in O.C.G.A. §36-70-27 will be imposed on all local governments and governmental entities within Cobb County; and

**WHEREAS**, the Act provides for a means by which local governments can resolve a dispute regarding the review and revision of a service delivery strategy; and

**WHEREAS**, the City wishes to cooperate with its fellow cities in negotiation, alternative dispute resolution, and possible litigation and work jointly to achieve a fair Service Delivery Strategy agreement in accordance with the Act; and



**WHEREAS**, the City wishes to cooperate the Cities of Acworth, Austell, Kennesaw, Marietta and Smyrna by joining those Cities in a joint SDS Proceedings Agreement; and

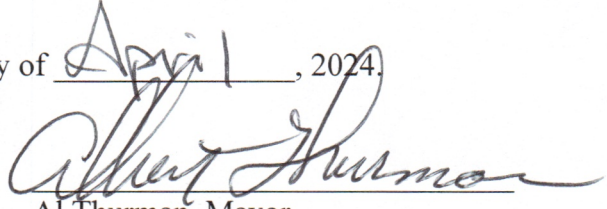
**WHEREAS**, the Mayor and City Council in the exercise of their sound judgment and discretion, after giving thorough thought to all implications involved, and keeping in mind the public interest and welfare of the citizens of the City, have determined it to be in the best interest of the citizens of the City, that this Resolution be adopted.

**THEREFORE, IT IS NOW RESOLVED BY THE CITY COUNCIL OF THE CITY OF POWDER SPRINGS, GEORGIA AS FOLLOWS:**

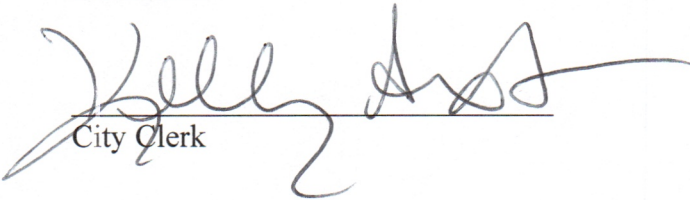
1. **Incorporation of Recitals.** The above-stated recitals are true and correct and are incorporated as though fully set forth herein.
2. **Authorization to Legal Counsel.** The City hereby authorizes the Mayor (a) to retain separate specialized legal counsel to represent the City and those other Cities which agree to be jointly represented by such counsel (hereinafter "Special Counsel"); (b) to enter into a joint SDS Proceedings Agreement with the other Cities which will allow for the sharing of information without waiving any privilege held by the City except to the extent authorized in said Agreement; and (c) authorizes the City Attorney and Special Counsel to take all actions necessary or convenient toward seeking alternative dispute resolution, mandatory mediation, and judicial resolution, as appropriate, pursuant to the dispute resolutions process provided for in the Act generally and O.C.G.A. §36-70-25.1(d) particularly. Moreover, the City Attorney and Special Counsel are hereby authorized to take all such legal actions as may be necessary or convenient toward protecting the rights of the City of Powder Springs related to the provision and funding of services and the review and revision of the Service Delivery Strategy for Cobb County as may be necessary by law. The City Attorney and Special Counsel are hereby authorized to file petitions for mandatory mediation and/or judicial review pursuant to the Act. No authority to settle is granted to the City Attorney or Special Counsel until settlement is approved by the City Council.
3. **Representation of City to Special Counsel.** The City represents that it will pay its portion of legal fees, expert witness fees, and all other costs and expenses of such legal action incurred by Special Counsel if Special Counsel is retained.
4. **Additional Documents, Attestation, and Authorization.** The City Council hereby authorizes the Mayor to execute any and all documents which may be necessary or convenient to effectuate this Resolution and for the City Clerk to attest same. Moreover, the Mayor, City Manager, City Attorney, Special Counsel and other City personnel, as may be necessary, are authorized to assist in all legal endeavors related to the purpose for this Resolution, including, investigation, processing, and filing of lawsuits, mediation, actions for recoupment, arbitration, and any other action that may be necessary, including but not limited to hiring experts or consultants to assist with the above-stated purposes.

5. **Severability.** To the extent any portion of this Resolution is declared to be invalid, unenforceable, or nonbinding, that shall not affect the remaining portions of this Resolution.
6. **Repeal of Conflicting Provisions.** All City resolutions are hereby repealed to the extent they are inconsistent with the Resolution.
7. **Effective Date.** This Resolution shall take effect immediately.

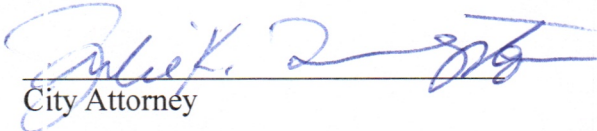
THIS RESOLUTION adopted on 1st day of April, 2024.

  
Al Thurman, Mayor

**ATTEST:**

  
City Clerk

**APPROVED AS TO FORM:**

  
City Attorney



**JOINT SERVICE DELIVERY STRATEGY PROCEEDINGS AGREEMENT AMONG  
COUNSEL FOR CITIES OF COBB COUNTY**

This Agreement is made by and between Andrew J. (Andy) Welch, III and Smith Welch Webb & White which represents the City of Powder Springs as Special Counsel, Julie Livingston and GDCR which represents the City of Powder Springs, Doug Haynie and Haynie Litchfield and White, P.C., which represents the Cities of Acworth and Marietta, Scott Kimbrough and Dupree & Kimbrough, LLP, which represents the City of Austell, Randall Bentley and The Bentley Law Firm, which represents the City of Kennesaw, and Scott Cochran and Cochran & Edwards, which represents the City of Smyrna, (which are referred to herein as “the Cities”).

WHEREAS, the Cities are requesting a fair Service Delivery Strategy Agreement (“SDS Agreement”) with Cobb County;

WHEREAS, the Cities desire to preserve their common interest and maintain confidentiality with respect to the negotiations, alternative dispute resolution, litigation, and adjudication arising out of or relating to achieving a SDS Agreement pursuant to the SDS Act, O.C.G.A. §36-70-20 *et seq.* (hereinafter “SDS Proceedings”);

WHEREAS, the Cities agree that it is beneficial to have all counsel for the Cities cooperate with each other; and

WHEREAS, the Cities agree that it is beneficial and desirable to have a free exchange of information associated with the SDS Proceedings, including but not limited to communication and information that (a) is or may be developed during the course of informal or formal discovery; (b) is or may be protected by attorney-client privilege; and/or (c) is prepared in anticipation of negotiations, alternative dispute resolutions and litigation and, therefore, is subject to protection under the attorney work product doctrine; and

WHEREAS, all of the Cities desire to preserve the protection afforded under any privilege, including the attorney-client privilege, the joint defense/common interest privilege, and/or the attorney work product doctrine, as to all communications or information which they have exchanged or will exchange.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Cities, for themselves, hereby agree as follows:

1. The preamble is incorporated herein as if fully restated. The Cities agree that they have a common interest in the SDS Proceedings with Cobb County and those SDS Proceedings will be advanced by the ability to share information and plans among the Cities to work together to develop and coordinate a strategy for the advancement of the SDS Proceedings. The Cities reserve the right, however, to terminate this Agreement by notice in the event and to the extent their interests may later diverge.
2. The Cities in conducting the SDS Proceedings shall be free to exchange among each other any communications or information which is or may be protected under any privilege,



including the attorney-client privilege and/or the attorney work product doctrine, without such exchange resulting in a waiver of the protection afforded for the attorney-client privilege, the attorney work product doctrine, or otherwise.

3. Absent the prior written consent of the Cities, the Cities shall NOT:
  - (a) Disclose to any person other than each other and counsel outside of this common interest relationship created by this Agreement any privileged and/or confidential communication or information exchanged pursuant to this Agreement;
  - (b) Disclose any privileged and/or confidential communication or information exchanged pursuant to this Agreement in a manner which is inconsistent with the purpose of this Agreement; or
  - (c) Waive the attorney-client privilege or the protection afforded under the attorney-work product doctrine as to any privileged and/or confidential communication or information exchanged pursuant to this Agreement.
4. No unilateral waiver by counsel of the attorney-client privilege or the protection afforded under the attorney-work product doctrine as to any information exchanged pursuant to this Agreement, whether such waiver is intentional or inadvertent, shall operate as a waiver as to the other Cities.
5. Nothing in this Agreement shall limit or restrict the signatories or their counsel from disclosing to their respective experts any of the communications or information exchanged pursuant to this Agreement, provided that such experts shall be bound by the terms and conditions of this Agreement and that such disclosures shall be made in a manner which is consistent with the purpose of this Agreement.
6. Nothing in this Agreement is intended as a waiver of rights, claims, defenses, or obligations available to the Cities under any insurance policy or otherwise.
7. The rights, privileges, protections, duties, obligations, and covenants set forth herein shall be binding upon and inure to the benefit of the above-listed Cities, their counsel, and their respective partners, shareholders, associates, paralegals, employees, investigators, experts, agents, representatives, successors, assigns, heirs, administrators, and executors.
8. This Agreement may be amended only by written agreement that is signed by the above-listed Cities, by and through their respective counsel.
9. This Agreement may be terminated at any time by any of the above-listed Cities upon giving written notice to all other Cities to this Agreement. In the event of termination, all of the rights, duties, obligations, and covenants with respect to maintaining the privileged and confidential nature of the communications and information exchanged pursuant to this Agreement shall survive such termination and shall remain in effect as provided herein or by law.



10. In the event fewer than all Cities terminate this Agreement, such termination shall be effective only as to the City giving such notice, and this Agreement shall remain in full force and effect as to the remaining Cities. If fewer than all anticipated Cities join this Agreement by signing below, this Agreement shall nevertheless be binding upon those who do so join, and they shall be considered the Cities to this Agreement.
11. This Agreement sets forth the entire agreement and understanding of the parties hereto and supersedes all prior agreements, arrangements, and understandings relating to the subject matter of this Agreement.
12. This Agreement shall be construed and enforced in accordance with Georgia law and the Standards of Conduct of the State Bar of Georgia.
13. This Agreement shall be construed as if the Cities jointly prepared it, and any uncertainty or ambiguity shall not be construed or interpreted against the party actually preparing this Agreement.
14. If a court of competent jurisdiction determines that any term, provision, or part of this Agreement is invalid, unenforceable, or void for any reason whatsoever, then such invalid, unenforceable, or void term, provision, or part shall be severed from the remainder of this Agreement and shall not affect the validity of enforceability of the remainder of this Agreement.

WHEREFORE, the Cities by and through their respective counsel, set forth their signatures and seals of the date set forth below.

This \_\_\_\_ day of \_\_\_\_\_, 2024.

SMITH WELCH WEBB & WHITE

GDCR

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