

**MINUTES OF REGULAR MEETING
COBB COUNTY BOARD OF COMMISSIONERS
MARCH 28, 2023
7:00 PM**

The Regular Meeting of the Cobb County Board of Commissioners was held on Tuesday, March 28, 2023 at 7:00 p.m. in the second-floor public meeting room at 100 Cherokee Street, Cobb County Building, Marietta, Georgia. Present and comprising a quorum of the Board were:

Chairwoman Lisa Cupid – left the meeting at 7:58 p.m.

Commissioner JoAnn Birrell

Commissioner Keli Gambrill

Commissioner Jerica Richardson

Commissioner Monique Sheffield

CALL TO ORDER

Chairwoman Cupid called the meeting to order at 7:02 p.m.

PRESENTATIONS

1. **To present ceremonial checks to recent recipients of Cobb County American Rescue Plan Act (ARPA) funds.**

The Board of Commissioners presented ceremonial checks to six organizations from the Cobb County ARPA funds.

2. **To present a certificate of achievement to Mike Gold and Christopher Schmidt in recognition of winning the GIAA District 1 Championship and being named GIAA Region/District Coaches of the Year.**

Commissioner Gambrill presented certificates of achievement to Mike Gold and Christopher Schmidt and their team members for being named GIAA Region/District 1 Coaches and Champions of the year.

3. **To present a proclamation designating March 2023 as *Red Cross Month*.**

Commissioner Richardson presented a proclamation designating March 2023 as *Red Cross Month* in Cobb County.

4. **To present Certificates of Recognition to Destinee Rivera, Connie Ghosh, Officer Michael Justice, Tim Phillips, and Stacey Haire in recognition of their award-winning volunteer service with the Water System.**

Commissioner Birrell presented Certificates of Recognition to Destinee Rivera, Connie Ghosh, Officer Michael Justice, Tim Phillips and Stacey Haire in recognition of their award-winning volunteer service with the Water System.

5. To present a proclamation designating April 2, 2023 as Education and Sharing Day in Cobb County.

Chairwoman Cupid presented a proclamation designating April 2, 2023 as *Education and Sharing Day* in Cobb County.

Clerk's Note: Chairwoman Cupid called for a recess from 7:49 p.m. through 7:52 p.m.

Clerk's Note: Commissioner Birrell and Commissioner Gambrill requested the following statements that are on file in the County Clerk's office be attached to each vote and made a part of these minutes:

Commissioner Birrell's statement

I do not support the Home Rule Challenge of the majority of this board. It is unconstitutional and illegal. I voted against the amended map three times in 2022 (1/25/22, 10/11/22 and 10/25/22).

I have a duty to represent my constituents and will not have my vote suppressed as I was duly elected on November 8, 2022 under the state map (HB 1154) voted on by the Georgia General Assembly in February 2022 and signed into law by Governor Kemp on March 2, 2022 and certified by the Board of Elections on November 15, 2022.

Commissioner Gambrill's statement

When the Board first entered Executive Session in March 2022 to discuss the "Home Rule" challenge, I challenged the County Attorney's Office on the premise and requested outside counsel to be sought.

While the County Attorney's Office claims the Association of County Commissioners of Georgia (ACCG) provided legal advice, I too am in receipt of the documents from the ACCG regarding Home Rule, to which it clearly defines the limit of this Board's Constitutional powers as to redistricting. I also contend that the Board of Commissioners did not follow the Home Rule challenge in its entirety.

In addition, the Georgia Supreme Court has ruled that the GA Constitution limits legislative action by the Board of Commissioners to matters for which no provision has been made by general law. Furthermore, the "Home Rule" powers granted to the Board of Commissioners do not extend to any matters which the Georgia General assembly by general law has preempted, like the redistricting map here in Cobb Co. Commissioners of Wayne Co. v. Smith 240 Ga. 540 (1978); Brophy v. McCranie 264 Ga. 187 (1994).

In fact, even in Federal Court in Georgia, the court has ruled the General Assembly is the only legislative body with the power to enact redistricting legislation for the counties; therefore, where the General Assembly failed to enact reapportionment legislation for a certain county, although it was entitled to consideration as an expression of county policy, a reapportionment plan proposed by a county was not a legislatively enacted plan requiring deferential treatment and the district court was required to fashion a reapportionment plan. Bodker v. Taylor, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. June 5, 2002).

In January, Georgia State Attorney General, Chris Carr stated that the Cobb County Commission's move to amend its electoral redistricting map is "inappropriate and not legally binding."

Per the letter dated December 22, 2022, from C. Ryan Germany, General Counsel for the Office of the Secretary of State, "you should not consider the ministerial function of filing the Amendment with our office or the publishing of the Amendment to the a comment on whether the Amendment is allowable under state law or a proper exercise of the authority by the Cobb County Commission, nor should you rely on this to attempt to establish the validity of the Amendment." "In fact" he continues "it appears that the Amendment is very likely an unauthorized exercise of authority by the Cobb County Commissioner that does not comply to Georgia Law or the State Constitution.

With the majority of this Board's actions on October 25, 2022 and the resulting filing and recording with the Office of the Secretary of State on October 26, 2022, the boundaries of the districts from which county commissioners were elected in Districts 1 and 3 were changed (14) days prior to the General Election, and eight (8) days after early voting had begun using district boundaries for Districts 1 and 3 as approved by the Governor.

Furthermore, the Board of Elections certified the election of Commissioners in District 1 and 3 using the map as approved by the Governor on March 2, 2022 on November 15, 2022 and not the maps that the Board of Commissioners made effective on October 26, 2022.

In a letter dated October 3, 2022 Deputy Legislative Counsel D. Stuart Morelli, "It is practically indisputable that a county home rule resolution or ordinance changing the boundaries of the districts from which county commissioners are elected would be an action affecting the procedure for the election of the county's governing authority. O.C.G.A. 36-35-4.1, no such statutory authority exists for Georgia counties.

In January, I was unjustifiably removed from this dais and prevented from representing my constituents and carrying out the duties I was elected to perform, based on an opinion that is not supported by law or policies of this Board.

Quotes by DaShanne Stokes, "Leadership by deception isn't leadership. It's fraud. Truth is hard, propaganda is cheap."

While I am here representing my constituents and fulfilling my duties as an elected official, I hereby request the clerk to attach this statement to each vote that is recorded herein.

Clerk's Note: Chairwoman Cupid requested the ARPA Tab be moved forward in the agenda and the following motion was made:

Motion by Cupid, second by Richardson, to **move** the ARPA Tab (Items 28-30) forward in the agenda to be heard prior to the Public Hearing Tab. (See items 6-8 of these minutes)

VOTE: **ADOPTED 5-0** (Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes)

ARPA

6. **To approve Change Order No. 3 to the Scope of Work with Deloitte Consulting LLP for administering the Cobb County ARPA allocation program.**

Motion by Cupid, second by Richardson, to **approve** Change Order No. 3 to the Scope of Work with Deloitte Consulting LLP from administering the Cobb County ARPA allocation program.

Funding is available in the ARPA Fund with the following transactions:

Decrease Expenditure:	279-055-ARAD-8820	ARPA Admin Contingency	\$400,000.00
Increase Expenditure:	279-020-AR13-6312	ARPA Consultant Services	\$400,000.00

VOTE: **ADOPTED 3-2**, Commissioners Birrell and Gambrill opposed (Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes)

7. **To authorize the creation of two new units in the Grant Fund, approve the creation of new positions within these units, and authorize the allocation of previously approved funding within the ARPA Fund.**

Motion by Cupid, second by Sheffield, to **authorize** the creation of two units in the Grant Fund; authorize the creation of (2) Juvenile Probation Officer II, grade 110, in Juvenile Court Grant Unit 270-190-G461; **authorize** the creation of (1) Magistrate Judge position, in the Magistrate Court Grant Unit 270-185-G642; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

ARPA Fund

Decrease Expenditure:	279-130-PS07-8005	ARPA - Preliminary Estimates	\$1,959,848.00
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Superior Court

Increase Expenditure:	279-130-PS07-6262	Superior - Software	\$7,579.56
Increase Expenditure:	279-130-PS07-6354	Superior - Juror Fees	\$565,000.00
Increase Expenditure:	279-130-PS07-6332	Superior - Senior Judge	\$174,790.08
Increase Expenditure:	279-130-PS07-8005	Superior - Contingency	\$121,753.34

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Magistrate Court

Increase Expenditure:	279-130-PS07-6258	Magistrate - Laptop Bundles (10)	\$20,000.00
Increase Expenditure:	279-130-PS07-6122	Magistrate - Laptop Bags (10)	\$200.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Desktop Computers (5)	\$5,500.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Desktop Printers (3)	\$600.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Copy Machines (2)	\$5,000.00
Increase Expenditure:	279-130-PS07-6112	Magistrate - Toner (20)	\$1,400.00
Increase Expenditure:	279-130-PS07-6112	Magistrate - Toner GCIC (4)	\$760.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Kiosk (1)	\$9,459.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - 22 Inch Monitors (5)	\$1,250.00
Increase Expenditure:	279-130-PS07-6112	Magistrate - Headsets (10)	\$850.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Scanners (9)	\$4,950.00
Increase Expenditure:	279-130-PS07-6258	Magistrate - Desk Phones (2)	\$350.00
Increase Expenditure:	279-130-PS07-6116	Magistrate - Paper (30)	\$1,050.00
Increase Expenditure:	279-130-PS07-6262	Magistrate - Microsoft 365 (15)	\$5,175.00
Increase Expenditure:	279-130-PS07-6574	Magistrate - Contribution to Grant	\$726,253.44

Juvenile Court

Increase Expenditure:	279-130-PS07-6258	Juvenile - Copy Machines (2)	\$5,000.00
Increase Expenditure:	279-130-PS07-6574	Juvenile - Contribution to Grant	\$302,927.58

Grant Fund

Juvenile Court Grant

Increase Revenue:	270-190-G461-4920	Juvenile - ARPA Contribution	\$302,927.58
Increase Expenditure:	270-190-G461-6012	Juvenile - Salaries & Fringe	\$302,927.58

**Magistrate Court
Grant**

Increase Revenue:	270-185-G462-4920	Magistrate - ARPA Contribution	\$726,253.44
Increase Expenditure:	270-185-G462-6012	Magistrate - Salaries & Fringe	\$133,200.00
Increase Expenditure:	270-185-G462-6018	Magistrate - Part-time Salaries	\$593,053.44

VOTE: ADOPTED 5-0 *(Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes)*

8. **To authorize the purchase of 30 Cardiac Monitors / defibrillators with advanced clinical capabilities, using funding pursuant to the American Rescue Plan Act of 2021.**

Motion by Cupid, second by Richardson, to **authorize** the purchase 30 Cardiac Monitors from funding received pursuant to the American Rescue Plan Act of 2021; **authorize** the Purchasing Director to execute the necessary documents and **further authorize** the corresponding budget transactions.

Funding is available in the ARPA Fund:

279-130-PS08-8426

Emergency Medical Services Equipment

VOTE: **ADOPTED 5-0** (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

Chairwoman Cupid left the meeting at 7:58 p.m. Vice Chair Richardson lead the remainder of this meeting.

PUBLIC HEARING

9. **To conduct a public hearing for employment of consultant services where contract fees will likely exceed \$100,000.00 for Pearl of East Cobb Detention Pond Dam/Wall Failure Repair Design, Program No. SW2193.**

Judy Jones, Water System Agency Director, requested a public hearing prior to the employment of a consultant or consulting firm where contract fees will likely exceed \$100,000.00 for professional services for Pearl of East Cobb Detention Pond Dam/Wall Failure Repair Design.

Vice Chair Richardson opened the public hearing and asked those wishing to speak to come forward. Following one speaker, the public hearing was closed.

No official action was taken by the Board.

10. **To conduct a public hearing for employment of consultant services where contract fees will likely exceed \$100,000.00 for Glenleigh Park Detention Pond Wall Foundation Failure Repair Design, Program No. SW1994.**

Judy Jones, Water System Agency Director, requested a public hearing prior to the employment of a consultant or consulting firm where contract fees will likely exceed \$100,000.00 for professional services for Glenleigh Park Detention Pond Wall Foundation Failure Repair Design.

Vice Chair Richardson opened the public hearing and asked those wishing to speak to come forward. Following one speaker, the public hearing was closed.

No official action was taken by the Board.

PUBLIC COMMENT

1. Monica Delancy addressed the Board regarding the Riverside Community.
2. Reginald Knight addressed the Board regarding ADA issues in Cobb.
3. Donald Barth addressed the Board regarding various matters.
4. Craig Harfoot addressed the Board regarding various matters.
5. Tyler Bigler addressed the Board regarding the Noonday Creek Trail.

CONSENT AGENDA

Motion by Richardson, second by Birrell, to **approve** the following items on the Consent Agenda, *as revised*; and **authorize** execution of the necessary documents by the appropriate County personnel.

District Attorney

11. **To authorize the application for a Bureau of Justice Assistance, FY 2023 National Sexual Assault Kit Initiative Grant.**

To **authorize** the application for a Bureau of Justice Assistance, FY 2023 National Sexual Assault Kit Initiative Grant, and the submission of the application electronically as required.

Superior Court Administration

12. **To authorize the elimination of two part-time judicial assistant positions and the creation of one full-time budget analyst.**

To **authorize** the elimination of part-time positions 8510004 and 8510006 and the creation of one Budget Analyst position (Grade 112) within Superior Court effective April 2, 2023, and **further authorize** the corresponding budget transactions.

Funding is available in Superior Court's FY23 budget.

Juvenile Court

13. **To authorize the application and acceptance of emergency grant funds from this Criminal Justice Coordinating Council for the Juvenile Drug Treatment Court.**

To **authorize** the application, acceptance and appropriation of emergency grant funds from the Criminal Justice Coordinating Council to supplement the Cobb County Juvenile Drug Treatment Program, in the amount of \$4,290.00; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman and Adolphus Graves to execute all necessary documents.

Increase revenue	270-190-S134-4467	CJCC	\$4,290.00
Increase expenditure	270-190-S134-6312	Contract Services	\$4,290.00
		TOTAL	\$4,290.00

State Court Administration

14. To authorize the acceptance of technology grant funding from the Criminal Justice Coordinating Council for the Cobb County DUI Court Program.

To **authorize** the acceptance of technology grant funding from the Criminal Justice Coordinating Council, Georgia Accountability Court funding Committee, in the amount of \$3,258.00 for the existing grant period ending June 30, 2023, to support the Cobb DUI Court Program; **authorize** the corresponding budget transactions; **authorize** the Chairwoman, Judge Eric Brewton, and/or Darcy Kamau, to execute the necessary documents.

Increase Revenue:	(Other Local Revenue)	270-220-S130-4467	\$3,258.00
Appropriate Expenditure:	(Accountable Equipment)	270-220-S130-6258	\$3,258.00

Water System

15. To approve a work order under the FY23 Stormwater Management Unit Price Contract with Chatfield Contracting, Inc. for 3906 Sharpel Lane, Program No. SW2242.

To **approve** a work order under the FY23 Stormwater Management Unit Price Contract with Chatfield Contracting, Inc., for an amount not to exceed \$79,072.50, for 3906 Sharpel Lane, Program No. SW2242; **authorize** the corresponding budget transaction; and **further authorize** the Chairwoman to execute the necessary documents.

Funding is available in the Water System's CIP Budget as follows:

Transfer from:

Stormwater Multi-Year Budget

Drainage Contract R&M Service	510-500-5758-6496	SW9999-Z	\$79,072.50
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Transfer to:

3906 Sharpel Lane

Drainage Contract R&M Service	510-500-5758-6496	SW2242-C	\$79,072.50
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16. To approve a List of Prequalified Contractors for Water and Sewer Line Construction, Sewer Pipe Cured-In-Place Rehabilitation Construction, and Manhole Rehabilitation Construction to become effective April 1, 2023.

To **approve** the Water System's List of Prequalified Contractors for Water and Sewer Line Construction, Sewer Pipe Cured-In-Place Rehabilitation Construction, and Manhole Rehabilitation Construction to become effective April 1, 2023.

17. **To approve Change Order No. 1 to the construction contract with R2T, Inc. for Northwest Cobb Water Reclamation Facility Odor Control and Pump Station Improvements, Program No. T4021, and to approve a Restatement and Amendment to the agreement with Black and Veatch Corporation for Northwest Cobb Water Reclamation Facility Improvements, Program No. T4019.**

To **approve** Change Order No.1 to the construction contract with R2T, Inc. for a time extension of 365 calendar days to the substantial and final dates for Northwest Cobb Water Reclamation Facility Odor Control and Pump Station Improvements, Program No. T4021, and a Restatement and Amendment to the agreement with Back and Veatch Corporation, in an amount not to exceed \$95,724.00 with an extension of services through June 30, 2024, for Northwest Cobb Water Reclamation Facility Improvements, Program No. T4019; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

Funding is available in the Water System's CIP Budget as follows:

Increase Encumbrance:			
GAE 510111417503	510-500-5753-8225	T4019-E	\$95,724.00
Transfer from:			
Northwest Plant Miscellaneous Improvements			
Preliminary Estimates	510-500-5753-8005	T4501-Z	\$95,724.00
Transfer to:			
Northwest Cobb Water Reclamation Facility Improvements			
Engineering – Basic Fees	510-500-5753-8225	T4019-E	\$95,724.00

Transportation

18. **To authorize the creation of one new residential Street Light District.**

To **authorize** the creation of one new residential Street Light District for Powder Springs Road, from Grove Valley Drive to Green Drive.

Available in the Street Light District Fund approved FY23 Operating Budget, as follows:

Available:	235-050-SLD1-4712/6472	Street Light Energy Revenue/Electricity
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Support Services Agency

Support Services Administration

19. To adopt a Cobb County Lease Policy to provide direction, guidelines and uniform procedures for the lease of County Owned Property or sublease of County leased properties to third parties, and for the lease of property owned by third parties for use by the County.

To **adopt** a Cobb County Lease Policy to provide direction, guidelines and uniform procedures for the lease of County Owned Property or sublease of County leased properties to third parties, and for the lease of property owned by third parties for use by the County. A copy of the Lease Policy is attached and made a part of these minutes.

20. To approve a lease agreement between Cobb County, Georgia and the Marietta/Cobb Museum of Art, Inc., a Georgia nonprofit corporation, in order to lease Cobb County owned real property and improvements located at 30 Atlanta Street, Marietta, Georgia 30060 for use as an art museum.

To **approve** a lease agreement between Cobb County, Georgia and the Marietta/Cobb Museum of Art, Inc., a Georgia nonprofit corporation, in order to lease Cobb County owned real property and improvements located at 30 Atlanta Street, Marietta, Georgia for use as an art museum; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

Lease payments will be posted to the General Fund as:

010-014-0140-4870 Rental of Real Estate

Information Services

21. To approve contract Amendment No. 1 with Dell Financial Services LLC (DFS) and Dell Marketing L.P. (DMLP) to the 2020 Contract for Dell Computers and Equipment.

To **approve** Amendment No. 1 dated April 1, 2023 to the Contract for Dell Computers and Equipment dated July 1, 2020 between Cobb County, Georgia, Dell Marketing, LP and Dell Financial Services, L.L.C.; and **further authorize** the Chairwoman to execute the necessary documents.

22. **To approve a contract amendment with i3-ImageSoft, LLC (ImageSoft) and a maintenance fee agreement with Hyland Software, Inc. (Hyland) for OnBase support and maintenance.**

To **approve** Amendment-1 to the Agreement Documents dated March 20, 2018 between Cobb County, Georgia, and i3-ImageSoft, LLC, an authorized reseller of Hyland Supported Software in an amount not to exceed \$36,629.30; **approve** the Annual Maintenance Fee Agreement with Hyland Software, Inc. in an amount not to exceed \$1,185,656.43; **authorize** the corresponding budget transactions; and further authorize the Chairwoman to execute the necessary documents.

Community Development

23. **To review a summary of the appeal hearing conducted by the License Review Board on March 2, 2023 for MMD Empires, LLLP d/b/a Esco Marietta Restaurant and Tapas.**

To **affirm** the decision of the License Review Board, following the review of the summary of the appeal hearing of March 2, 2023, to approve the application for a liquor, beer, wine, and Sunday sales pouring license for MMD Empires, LLLP d/b/a Esco Marietta Restaurant and Tapas, 2495 East West Connector, Ste. 70/80, Austell, GA 30106, Mark Davis, Jr., licensee.

Human Resources

24. **To authorize acceptance and appropriation of grant funds from the Association of County Commissioners of Georgia's (ACCG) Internship Program to fund the 2023 summer internship program.**

To **authorize** acceptance and appropriation of grant funds from the Association of County Commissioners of Georgia's (ACCG) Internship Program to fund the 2023 summer internship program; approve the Association of County Commissioners of Georgia's (ACCG) Program Grant Agreement in the amount of \$10,430.40; **authorize** reimbursement to ACCG for the amount of grant funds unspent; **authorize** the corresponding initial and close-out budget transactions; and further authorize the Chairwoman to execute the necessary documents.

Increase Revenue:	270-095-G480-4506	Other Local Revenue	\$10,430.00
Increase Expenditure:	270-095-G480-6018	Part-Time Salaries	\$10,430.00

Finance

25. **To adopt a resolution adopting all budget amendments set forth in agenda items on this date.**

To **adopt** a resolution adopting all budget amendments set forth in agenda items on this date. A copy of said resolution is attached and made a part of these minutes.

26. **To approve the Fourteenth Amendment to the current Grant Administration Agreement with W. Frank Newton, Inc. to extend the term of the Agreement for the provision of administrative services for grant programs received from the U.S. Department of Housing & Urban Development and other federal and state sources and establish a fee schedule for the renewal term.**

To **approve** the Fourteenth Amendment to the current Grant Administration Agreement with W. Frank Newton, Inc. to extend the term of the Agreement for the provision of administrative services for grant programs received from the U.S. Department of Housing & Urban Development and other federal and state sources and establish a fee schedule; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the Fourteenth Amendment and any other necessary documents.

The contract fees for administration of the various federal and state grant programs are paid entirely with grant funds. No monies from the County's general fund are used. The addition or deletion of grant funds/programs received by the County may result in changes to contract fees to include the possible termination of the grant agreement in the event HUD grant funding is no longer provided. Funding for administrative fees will be included in each of the budgets for the various grant programs being administered.

CDBG

27. **To authorize the acceptance of Phase 40 Emergency Food and Shelter National Board Program grant funds from the Federal Emergency Management Agency and authorize the allocation of funds to Cobb County for program administration carried out by W. Frank Newton, Inc.**

To **authorize** the acceptance of Phase 40 Emergency Food and Shelter Program grant funds from the Federal Emergency Management Agency; **authorize** the allocation of funds to Cobb County for program administration carried out by W. Frank Newton, Inc.; **authorize** all corresponding budget transactions, and **further authorize** the Chairwoman to execute the necessary documents.

FEMA will send program funds directly to the participating non-profit organizations; thus Phase 40 budget appropriations are for the administrative portion of the grant only:

Increase Revenues:	270-390-G706-4432	(Federal Grants)	\$4,632.00
Increase Expenditures:	270-390-G706-6312	(Contract with WFN, Inc.)	\$4,632.00

CobbWorks

28. To approve a Workforce Innovation and Opportunity Act grant award from the Technical College System of Georgia for CobbWorks, Inc. to provide education, training, and employment services for Dislocated Workers.

To **approve** the Dislocated Worker Program grant award in the amount of \$700,000.00 from the Technical College System of Georgia for CobbWorks, Inc., the local Workforce Development Board, to provide training and employment services for dislocated workers; **authorize** corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

Funding for this Workforce Innovation and Opportunity Act grant will be appropriated in the WIOA Fund as follows:

Increase Revenue:

QST-22-23-03-004	(Federal Grant Revenue)	\$700,000.00
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Increase Expenditures:

QST-22-23-03-004/vary- P	(Program)	\$700,000.00
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QST-22-23-03-004/vary-A	(Admin)	\$ 70,000.00
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Total Grant:		\$700,000.00
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29. To accept a Workforce Innovation and Opportunity Act grant award from the Technical College System of Georgia for CobbWorks, Inc. to provide education, training, and employment services for Dislocated Workers.

To **authorize** the acceptance of the Dislocated Worker Program grant award in the amount of \$100,000.00 from the Technical College System of Georgia for CobbWorks, Inc., the local Workforce Development Board, to provide training and employment services for dislocated workers; **authorize** corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

Funding for this Workforce Innovation and Opportunity Act grant will be appropriated in the WIOA Fund as follows:

Increase Revenue:

276-120-WF23-WF23RR-P-4430/VARY	(Federal Grant Revenue)	\$100,000.00
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Increase Expenditures:

276-120-WF23-WF23RR-P-4430/VARY	(Program)	\$100,000.00
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Total Grant:		\$100,000.00
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County Clerk

30. To approve minutes.

Motion by None, second by None, to **approve** the minutes of the following meetings:

- March 13, 2023 - Agenda Work Session
- March 14, 2023 - BOC Regular Meeting
- March 21, 2023 - BOC Zoning Hearing

CONSENT VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrell are attached and made a part of these minutes*)

REGULAR AGENDA

ARPA

31. To approve Change Order No. 3 to the Scope of Work with Deloitte Consulting LLP for administering the Cobb County ARPA allocation program.

This item was moved forward in the agenda (See item 6 of these minutes).

32. To authorize the creation of two new units in the Grant Fund, approve the creation of new positions within these units, and authorize the allocation of previously approved funding within the ARPA Fund.

This item was moved forward in the agenda (See item 7 of these minutes).

33. To authorize the purchase of 30 Cardiac Monitors / defibrillators with advanced clinical capabilities, using funding pursuant to the American Rescue Plan Act of 2021.

This item was moved forward in the agenda (See item 8 of these minutes).

Transportation

34. To approve a contract with Excellere Construction, LLC for Callaway Road Sidewalk, Project No. X2778, CCDOT Contract No. 001644.

Motion by Sheffield, second by Birrell, to **approve** a contract with Excellere Construction, LLC, in an amount not to exceed \$2,276,600.00, for Callaway Road Sidewalk, Project No. X2778, CCDOT Contract No. 001644; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfers:

Transfer from:	347-050-X270-X270-8761-X2778-C	Preliminary Estimate	\$ 994,000.00
	347-050-X270-X270-8761-X2776-C	Preliminary Estimate	\$ 515,000.00
	347-050-X270-X270-8761-X2775-C	Preliminary Estimate	\$ 83,400.00
	347-050-X270-X270-8741-X2774-R	Preliminary Estimate	\$ 200,000.00
	347-050-X270-X270-8761-X2766-C	Preliminary Estimate	\$ 85,000.00
	347-050-X270-X270-8761-X2765-C	Preliminary Estimate	\$ 44,035.90
Transfer to:	347-050-X270-X270-8762-X2778-C	Turnkey Construction	\$1,921,435.90

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Callaway Road Sidewalk is an eligible project/program under the Pedestrian Improvements – Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 4 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi-modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges where needed.

SPLOST Project Summary as of March 1, 2023: Callaway Road Sidewalk

Budget:	\$1,302,846.00	Expended:	\$276,709.23
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Adjusted SPLOST Project Summary, following requested budget transfer:

Adjusted Budget:	\$2,230,281.90
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Available in the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Transfer from:	DOT Projects - Relocate Lines		
	510-500-5756-8005-W4069-Z	Preliminary Estimate	\$372,264.10
Transfer to:	Callaway Road Sidewalk		
	510-500-5756-8260-W4426-C	Construction	\$355,164.10
	510-500-5756-8265-W4426-M	Material and Supplies	\$ 10,000.00
	510-500-5756-8810-W4426-T	Contingency	\$ 7,100.00
		Total:	\$372,264.10

VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

35. To approve Change Order No. 1 (final) to the contract with Chatfield Contracting, Inc., for drainage system repairs on Lake Latimer Drive, Project No. X2286, CCDOT Contract No. 001672.

Motion by Birrell, second by Sheffield, to **approve** Change Order No. 1 (final) to the contract with Chatfield Contracting, Inc., a savings to the project in the amount of \$56,434.59, for drainage system repairs on Lake Latimer Drive, Project No. X2286, CCDOT Contract No. 001672; **authorize** the corresponding budget transactions; and **further authorize** the Chairwoman to execute the necessary documents.

A savings to the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Decrease Encumbrance

GAE 34707122225: 347-050-X220-X220-8762-X2286-C Turnkey Construction \$33,983.23

Transfer from: 347-050-X220-X220-8762-X2286-C Turnkey Construction \$33,983.23

Transfer to: 347-050-X220-X220-8005-X2200-A Preliminary Estimate \$33,983.23

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Drainage System Improvements.

Lake Latimer Drive is an eligible project/program under the Infrastructure Preservation - Drainage System Improvements Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 9).

SPLOST Component Summary as of March 1, 2023: Drainage System Improvements

Budget: \$17,610,628.96 Encumbered/Expended: \$16,458,824.58

A savings to the Water System DOT Projects - Relocate Lines Adopted CIP Budget, with the following budget transfers:

Decrease Encumbrance

GAE 51007122225: 510-500-5756-6496-W5061-C Drainage Contract R&M Svc. \$22,451.36

Transfer from: Lake Latimer Drive Drainage - Util. Allow.

510-500-5756-6496-W5061-C Drainage Contract R&M Svc. \$22,451.36

510-500-5756-8265-W5061-M Materials and Supplies \$ 2,500.00

510-500-5756-8810-W5061-T Contingency \$ 500.00

Total: \$25,451.36

Transfer to: DOT Projects - Relocate Lines

510-500-5756-8005-W4069-Z Preliminary Estimate \$25,451.36

VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

36. To approve a Utility Relocation Agreement with Georgia Power Company for preliminary engineering and relocation of facilities on Austell Road Sidewalk, Project No. X2765, CCDOT Contract No. 001608.

Motion by Sheffield, second by Birrell, to **approve** a Utility Relocation Agreement with Georgia Power Company, in an amount not to exceed \$106,435.00, for preliminary engineering and relocation of facilities on Austell Road Sidewalk, Project No. X2765, CCDOT Contract No. 001608; **authorize** the corresponding budget transaction; and **further authorize** the Chairwoman to execute the necessary documents.

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfer:

Transfer from:	347-050-X270-X270-8761-X2765-C	Preliminary Estimate	\$106,435.00
Transfer to:	347-050-X270-X270-8786-X2765-U	Utility Relocation	\$106,435.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Austell Road Sidewalk is an eligible project/program under the Pedestrian Improvements – Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 4 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi-modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges where needed.

SPLOST Project Summary as of March 1, 2023: Austell Road Sidewalk

Budget:	\$1,553,272.45	Expended:	\$405,014.21
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VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

37. To approve a Utility Relocation Agreement with Georgia Power Company for preliminary engineering and relocation of facilities on Old Alabama Road Sidewalk, Project No. X2769, CCDOT Contract No. 001631.

Motion by Sheffield, second by Birrell, to **approve** a Utility Relocation Agreement with Georgia Power Company, in an amount not to exceed \$238,134.00, for preliminary engineering and relocation of facilities on Old Alabama Road Sidewalk, Project No. X2769, CCDOT Contract No. 001631; **authorize** the corresponding budget transaction; and **further authorize** the Chairwoman to execute the necessary documents.

Available in the 2016 SPLOST Transportation Improvements Program Fund, with the following budget transfers:

Transfer from:	347-050-X270-X270-8761-X2769-C	Preliminary Estimate	\$ 50,000.00
	347-050-X270-X270-8761-X2770-C	Preliminary Estimate	\$188,134.00
Transfer to:	347-050-X270-X270-8786-X2769-U	Utility Relocation	\$238,134.00

The 2016 Special Purpose Local Option Sales Tax (SPLOST), adopted by the Board of Commissioners on July 22, 2014, provides for capital improvements and anticipated corresponding budget funding to address, inter alia, Sidewalks.

Old Alabama Road Sidewalk is an eligible project/program under the Pedestrian Improvements – Sidewalks Component of the 2016 SPLOST Transportation Improvements (Cobb County 2016 SPLOST, pp. 7, 14). Pedestrian Improvements within Commission District 4 include construction of sidewalks and other pedestrian improvements along roadways in the vicinity of schools, activity centers, multi-modal facilities (transit stops/shelters, etc.), and other congested areas, to include pedestrian bridges, where needed.

SPLOST Project Summary as of March 1, 2023: Old Alabama Road Sidewalk

Budget:	\$3,551,600.26	Expended:	\$895,493.50
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VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

APPOINTMENTS

38. To approve the reappointment of John Pape to the Recreation Board.

Motion by Gambrill, second by Richardson, to **approve** the reappointment of John Pape to the Recreation Board for a five-year term to expire on March 31, 2028.

CONSENT VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

39. To approve the reappointment of Elliott Hennington to the Recreation Board.

Motion by Sheffield, second by Birrell, to **approve** the reappointment of Elliott Hennington to the Recreation Board for a 5-year term to expire on March 31, 2028.

CONSENT VOTE: **ADOPTED 4-0**, Chairwoman Cupid not present (*Statements of Commissioner Birrell and Commissioner Gambrill are attached and made a part of these minutes*)

40. To announce the appointment of John Loyd to the Home Builders Advisory Board.

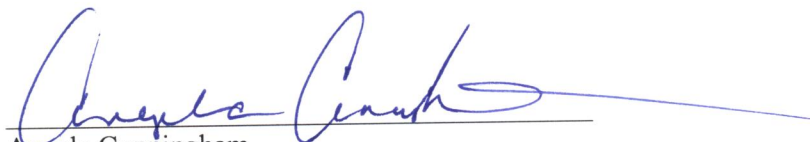
Commissioner Birrell **announced** the appointment of John Loyd to the Home Builders Advisory Board for a four-year term to expire on December 31, 2026. This appointment will replace Ronnie Raines.

41. To announce the appointment of Karen Hill, Marty Hughes, and William Tanks to the Workforce Development Board.

Vice Chair Richardson **announced** the appointment of Karen Hill, Marty Hughes, and William Tanks to the Workforce Development Board for a three-year term to expire on June 30, 2025. These appointments will fill vacant posts.

ADJOURNMENT

The meeting was adjourned at 8:52 p.m.



Angela Cunningham
Deputy County Clerk
Cobb County Board of Commissioners

Commissioner Birrell's statement

I do not support the Home Rule Challenge of the majority of this board. It is unconstitutional and illegal. I voted against the amended map three times in 2022 (1/25/22, 10/11/22 and 10/25/22).

I have a duty to represent my constituents and will not have my vote suppressed as I was duly elected on November 8, 2022 under the state map (HB 1154) voted on by the Georgia General Assembly in February 2022 and signed into law by Governor Kemp on March 2, 2022 and certified by the Board of Elections on November 15, 2022.

Commissioner Gambrill's statement

When the Board first entered Executive Session in March 2022 to discuss the "Home Rule" challenge, I challenged the County Attorney's Office on the premise and requested outside counsel to be sought.

While the County Attorney's Office claims the Association of County Commissioners of Georgia (ACCG) provided legal advice, I too am in receipt of the documents from the ACCG regarding Home Rule, to which it clearly defines the limit of this Board's Constitutional powers as to redistricting. I also contend that the Board of Commissioners did not follow the Home Rule challenge in its entirety.

In addition, the Georgia Supreme Court has ruled that the GA Constitution limits legislative action by the Board of Commissioners to matters for which no provision has been made by general law. Furthermore, the "Home Rule" powers granted to the Board of Commissioners do not extend to any matters which the Georgia General assembly by general law has preempted, like the redistricting map here in Cobb Co. Commissioners of Wayne Co. v. Smith 240 Ga. 540 (1978); Brophy v. McCranie 264 Ga. 187 (1994).

In fact, even in Federal Court in Georgia, the court has ruled the General Assembly is the only legislative body with the power to enact redistricting legislation for the counties; therefore, where the General Assembly failed to enact reapportionment legislation for a certain county, although it was entitled to consideration as an expression of county policy, a reapportionment plan proposed by a county was not a legislatively enacted plan requiring deferential treatment and the district court was required to fashion a reapportionment plan. Bodker v. Taylor, 2002 U.S. Dist. LEXIS 27447 (N.D. Ga. June 5, 2002). In January, Georgia State Attorney General, Chris Carr stated that the Cobb County Commission's move to amend its electoral redistricting map is "inappropriate and not legally binding."

Per the letter dated December 22, 2022, from C. Ryan Germany, General Counsel for the Office of the Secretary of State, "you should not consider the ministerial function of filing the Amendment with our office or the publishing of the Amendment to the a comment on whether the Amendment is allowable under state law or a proper exercise of the authority by the Cobb County Commission, nor should you rely on this to attempt to establish the validity of the Amendment." "In fact" he continues "it appears that the Amendment is very likely an unauthorized exercise of authority by the Cobb County Commissioner that does not comply to Georgia Law or the State Constitution.

With the majority of this Board's actions on October 25, 2022 and the resulting filing and recording with the Office of the Secretary of State on October 26, 2022, the boundaries of the districts from which county commissioners were elected in Districts 1 and 3 were changed (14) days prior to the General Election, and eight (8) days after early voting had begun using district boundaries for Districts 1 and 3 as approved by the Governor.

Furthermore, the Board of Elections certified the election of Commissioners in District 1 and 3 using the map as approved by the Governor on March 2, 2022 on November 15, 2022 and not the maps that the Board of Commissioners made effective on October 26, 2022.

In a letter dated October 3, 2022 Deputy Legislative Counsel D. Stuart Morelli, "It is practically indisputable that a county home rule resolution or ordinance changing the boundaries of the districts from which county commissioners are elected would be an action affecting the procedure for the election of the county's governing authority. O.C.G.A. 36-35-4.1, no such statutory authority exists for Georgia counties.

In January, I was unjustifiably removed from this dais and prevented from representing my constituents and carrying out the duties I was elected to perform, based on an opinion that is not supported by law or policies of this Board.

Quotes by DaShanne Stokes, "Leadership by deception isn't leadership. It's fraud. Truth is hard, propaganda is cheap."

While I am here representing my constituents and fulfilling my duties as an elected official, I hereby request the clerk to attach this statement to each vote that is recorded herein.

COBB COUNTY LEASE POLICY

Effective Date:
BOC Amended:

Owner	Board of Commissioners
Reviewers	Support Services; County Attorney's Office
Related Policies	Support Services - Steps Taken for Purchase/Sale of County Owned Property; DOT Land Acquisition Policy, Procedure and Rule Manual § III Q
Related Standards	
Storage Location	Clerk's Office via Agenda Item
Last Review Date	N/A
Next Review Date	N/A
Review Cycle	Document is updated as needed; no regular cycle established
Employee Acknowledgment	N/A

1. PURPOSE

The purpose of the Cobb County Lease Policy is to provide direction, guidelines and uniform procedures for the lease of County Owned Property or sublease of County leased properties to third parties, and for the lease of property owned by third parties for use by the County.

2. GOVERNING LAWS, REGULATIONS AND STANDARDS

Georgia Constitution and Official Code of Georgia Annotated	Art. IX, § III, Para. I, Art. IX, § II, Para. III, Ga. Constitution O.C.G.A. § 36-9-2 and 3; O.C.G.A. § 36-30-3; O.C.G.A. § 36-60-13
Official Code of Cobb County	§ 2-3
Case Law	Screws v. City of Atlanta, 189 Ga. 839, 843 (1940); Malcolm v. Webb, 211 Ga. 449, 86 S.E. 2d 489 (1955); Madden v. Ballew, 260 Ga. 530, 531 (1990); Stein v. Maddox, 234 Ga. 164, 215 S.E.2d 231 (1975); City of Atlanta V. Black, 265 Ga. 425, 457 S.E.2d 551 (1995); Dyer v. Martin, 132 Ga. 445, 64 S.E. 475 (1909).

4. DEFINITIONS

- a. **Board of Commissioners ("BOC")**-The duly elected officials of the Cobb County Board of Commissioners.
- b. **County Owned Property** – Real property owned by the County which is surplus or otherwise available for lease to third parties.
- c. **County Leased Property** – Real property leased by the County which is surplus or otherwise available for sublease to third parties.

- d. **Property Advisory Commission ("PAC")** – A commission duly established in accordance with state law and resolution of the BOC, on January 28, 2003, for the sale and disposal of County Owned Property and leased property.

5. POLICY

The County enters into leases of real property both as a landlord and as a tenant. The policy respecting leases differs depending upon the capacity of the County in each lease. When acting in the capacity of a landlord and leasing County Owned Property, the County is acting in a proprietary, rather than a governmental, manner and has greater flexibility regarding the terms of those leases.

The Georgia courts have held that it is the duty of County commissioners to exercise their best judgment and skill and to do everything reasonable in their power to obtain the best price of land being sold. *Malcolm v. Webb*, 211 Ga. 449, 86 S.E. 2d 489 (1955); *Stein v. Maddox*, 234 Ga. 164, 215 S.E. 2d 231 (1975); *City of Atlanta v. Black*, 265 Ga. 425, 457 S.E. 2d 551 (1995). The courts have further held that County commissioners and all dealing with them were required to exercise the utmost good faith, fidelity and integrity. *Id.* The same principles apply regarding lease rents and other terms when leasing County Owned Property.

A. Lease of County Owned Property

- i. The County is authorized by the Georgia Constitution, statutes and case law to lease, as a landlord, County Owned Property that is surplus and/or not currently required for County purposes.
- ii. Pursuant to the Georgia Constitution the County may lease properties to other governmental entities for a period not to exceed 50 years.
- iii. A primary objective in leasing County Owned Property to private entities is to maximize the benefits to the County through fair market rental amounts and upon other lease terms most favorable to the County.
 - a. The fair market rental of a property can be determined by an independent appraisal or by real estate market analysis by the real estate broker retained by the County.
 - b. County Owned Property should not be leased for no or nominal rental amounts.
 - c. Existing leases at no or nominal rents (i.e. \$1.00 annually) should be renegotiated upon expiration of those leases to conform to this policy.
 - (1) When the County has available space and a service listed in Georgia Constitution Article IX, § II, ¶ III, Supplementary Powers, is being provided, the BOC, in its discretion, may consider the following when leasing to a non-profit or charitable entity: (i) the ability of the entity to pay fair market rental, and (ii) in recognition of the substantial community benefits that such entities provide to the County, the fair market rent may be paid through a cash component and an in-kind contribution component as follows: the value of the agreed upon in-kind contributions will reduce the fair market rent detailed in (a) of this Section. The required in-kind contributions shall be mandatory and agreed to between the Tenant and the County on an annual basis and shall run concurrently with each year of the

rental term. In-kind contributions are at the sole discretion of the County. In the event the required in-kind contributions are not made as anticipated throughout the year, the Tenant shall pay the difference between the deduction granted that year to fair market rent and the actual value of the contributions provided. This reconciliation shall occur at the same time the annual in-kind contributions are determined for each year of the rental term. To be considered for such lease rent reductions:

- i. The tenant must be a 501(c)(3) organization listed as active with the Secretary of State and current in filing federal tax returns with the Internal Revenue Service;
 - ii. Non-profits leasing from the County must have current IRS status and sufficient resources to fully maintain the County Owned Property, including ability to pay all utility costs;
 - iii. Non-profit organizations leasing County Owned Property may not sublease any portion of the space to any other entity and may not collect rent for any portion of the property, without written agreement of the County. The County will, at a minimum, equally share in any rental revenue resulting from approved subleases.
- (2) Rent reduction consideration must have the support of the District Commissioner in whose district the County Owned Property is situated.
 - (3) Capital investments to make the facility/spaces usable by the non-profit tenant will be considered when determining duration of the lease agreement.
 - (4) The BOC must, to the extent possible, treat all nonprofit or charitable entity tenants fairly and equitably, without preferences.
 - (5) The BOC will, by majority vote, make the final determination regarding any rental reductions on a lease by lease basis.
- v. Secondary objectives for these leases should be to reduce and allocate as much cost and risk, as feasible, to the tenant under the leases, including tenant's responsibility for:
- a. *Use*- limited to specific purpose of tenant only, no illegal use or purpose inimical to health safety and welfare of the public;
 - b. *Term* – generally limited to three years, with possible one or two one-year renewal periods (Note: exceptions may be made depending upon cost of tenant improvements and other factors.)
 - c. *Termination* - provide for right of County to terminate lease for convenience.
 - d. *Condition* – property leased “as-is, where is” with all faults and no warranties.
 - e. *Repair and maintenance of the property* – tenant responsibility at its cost (Note: the County may in some circumstances wish to remain responsible for roof, foundation, structural, electrical, plumbing, HVAC and exterior maintenance-tenant responsible for all other repairs);
 - f. *Tenant improvements* –only with prior written consent of County, in its sole discretion, with all improvements becoming property of County upon lease termination and at tenant's sole expense, or County retains the right to require removal/restoration of property; tenant to perform work in first class manner in compliance with all laws and keep property lien free.

- g. *Insurance requirements*: tenant responsible for commercial general liability, property casualty and commercial automobile coverage. (Note: County insures buildings/property, but coverage should be secondary to tenant's insurance);
 - h. *Taxes*: tenant pays applicable taxes (excluding real estate taxes as County Owned Property is tax exempt);
 - i. *Utilities* – tenant responsible for all utilities consumed on the property or prorate utilities as appropriate.
 - j. *Risk of loss from casualty and condemnation* – on tenant, with County right, but not obligation, to repair and restore property; rent abates during restoration; provide right of either party to terminate lease upon casualty or condemnation.
 - k. *Default and remedies* - maximize events constituting default by tenant with shorter cure periods for such defaults; ensure broad remedies of County for tenant's default, including County cure of default and termination of lease.
 - l. *Assignment of Lease/Subletting or Property* - not permitted without prior written consent of County in its sole discretion.
- vi. Lease Procedures
- a. A County Owned Property must be declared either surplus and not necessary for County purposes or otherwise determined to be currently available for leasing to a third party. (e.g. not surplus but reserved for future use).
 - Such property would include remnant parcels from DOT projects, closed facilities (i.e. libraries, fire stations, other former uses), property donated to the County, and excess land not currently needed for County purposes.
 - A County-Owned Property can be declared surplus when it becomes "unserviceable" and cannot be beneficially or advantageously used under all circumstances for County purposes
 - b. The Support Services Department is responsible for overseeing the process of determining that a property is surplus and/or otherwise currently available for lease, with the recommendation from the various departments formerly utilizing or responsible for the property.
 - c. Once suitable property is identified, the Support Services Department should discuss it with the District Commissioner and obtain support from the District Commissioner for the lease, then either (i) present it to the PAC for a recommendation to the BOC that the property be declared surplus, or (ii) if the property is currently not in use but the County would like to reserve it for future use, then present it to the County Manager for recommendation that it be leased.
 - d. The PAC or County Manager, as applicable, can then direct that the property be marketed for lease through the services of the real estate broker retained by the County.
 - e. The real estate broker will advertise and solicit offers to lease properties upon the most favorable terms.
 - f. Once an offer to lease is received, the lease terms and documents are drafted and negotiated with the assistance of the County Attorney's Office.
 - g. When fully negotiated, the lease is presented to the BOC to declare the property surplus or otherwise available for lease and authorize entering the lease.

- h. The BOC has the sole authority to approve leases of County Owned Property pursuant to the Georgia Constitution, Georgia Code and case law, as it does with other interests in real property.
- i. In order for any County Owned Property to be leased, the BOC must by majority vote authorize entering into the lease and authorize the Chairperson to execute the necessary documents.

B. County Sublease of County Leased Property

To the fullest extent practicable, County sublease of County Leased Property should follow the same procedures as County lease of County Owned Properties.

C. County Lease of Third-Party Owned Property

- i. If the County is to be a tenant under a lease of property owned by a third party, it must comply with further requirements.
 - a. The lease must comply with O.C.G.A. § 36-60-13.
 - b. If the lease requires rent payments by the County beyond the current calendar year, it must comply with O.C.G.A. § 36-60-13. Multi-year leases by counties are prohibited unless they comply with that statute. Multi-year leases where the County is the landlord (and therefore do not create a debt obligation to the County) do not have to comply with O.C.G.A. § 36-60-13.
- ii. A primary objective in leasing property owned by a third party is to maximize the benefits to the County through the lowest rental amounts negotiable and upon other lease terms most favorable to the County.
- iii. Secondary objectives for these leases should be to reduce and allocate as much cost and risk, as feasible, to the landlord under the leases, including:
 - a. Repair and maintenance of the property - landlord's responsibility;
 - b. Insurance requirements - Landlord insures for commercial liability, building and property casualty; County insures contents and its personal property.
 - c. Taxes/Assessments – paid by landlord;
 - d. Risk of loss from casualty and condemnation - on landlord (including obligation to repair and restore, and abatement of rent during restoration period). County should have right to terminate lease at its discretion.
 - e. Default and remedies - minimize events constituting default by County and maximize cure periods for such defaults, ensure adequate remedies for landlord's default, including right to cure at landlord's cost and right to terminate lease.
- iv. Lease Procedures
 - a. The County will lease property owned by a third party when there is no suitable County Owned Property available for its proposed use.
 - b. A County department, court or elected official in need of additional space must first determine through the Support Services Department that there is no County Owned Property available for their purposes.
 - c. Upon such determination, the Support Services Department will solicit the assistance of the real estate broker retained by the County to identify suitable property of third parties for the required use.

- d. Once suitable property is identified, a letter of intent ("LOI") is solicited from the third party or prepared with the assistance of the County Attorney's Office to lease it.
- e. When the basic terms of the LOI have been agreed upon with the landlord, the County Attorney's Office will prepare and negotiate the necessary lease documents.
- f. Once the final lease terms have been fully negotiated and lease drafted, the lease is presented to the BOC for approval.
- g. The BOC has the sole authority to approve leases of Third Party Owned Property pursuant to the Georgia Constitution, Georgia Code and case law.
- h. The BOC must by majority vote authorize entering into the lease and authorize the Chairperson to execute the necessary documents.

D. Specific Lease Provisions/Considerations

- i. **Payment Obligations.** Is the specific amount due monthly under the lease sufficiently specific (i.e. rent, common areas charges, other)? Commercial landlords like to structure leases with rent plus a percentage of operating expenses (i.e., building maintenance, landscaping, janitorial, utilities, etc.) based on square footage of leased space versus square footage of overall space. This presents a problem in that 1) the monthly rent can vary, and 2) departments might not be aware of and/or budget for additional operating expenses. The better practice is a lease where the County pays a specified dollar amount every month.
- ii. **Property Description.** Is the legal description of the leased space specific? Can the property be adequately identified from the lease language or exhibits? Are the proper exhibits attached?
- iii. **Term:** Is the term of the lease defined? The initial term, and any renewal terms, if applicable, should follow the calendar year. Initial term should be 1 - 3 years' maximum, with possibility of one or two one-year renewals with the consent of the County (this will vary depending upon type of property being leased, such as airport, ATMs and others). NO MULTIPLE YEAR TERMS when the County is a tenant, absent compliance with O.C.G.A. § 36-60-13.
- iv. **Lease Approval.** Who is approving lease as to substance? The County Attorney approves as to form, but another agency, typically the Support Services Department or the user department, has negotiated the terms of the lease and would therefore sign "as to substance".
- v. **Contracting Party:** Who is the County entity listed as a party to the lease? Sometimes the user agency tries to make the lease in their name (e.g. Cobb County Water Department), but as the BOC approves the lease, "Cobb County" is the party to the lease. (Often there's descriptive language along the lines of "Cobb County, for use by the Tax Commissioner's Office", but sometimes we want to preserve the ability of another agency to step into the space without having to amend the lease).
- vi. **Other Party to Lease:** ensure that name of other party is a legal entity (e.g. Acme, Inc. versus Acme, LLC; check the Georgia Secretary of State's website to ensure they are a legal entity authorized to do business in this state.)
- vii. **Use of Property:** Should be as broad as possible where County is tenant; limited narrowly to specific use of tenant where County is landlord.

- viii. **Maintenance and Repairs.** Landlord is responsible for all repairs where County is tenant. Where County is landlord, all repairs are to be performed by tenant, except for foundation, structural, exterior of building (excluding windows and doors), roof, exterior electrical and plumbing, parking lot and common areas, the maintenance of which to be performed by County. All tenant repairs to County property would require prior County approval.
- ix. **Taxes:** Generally, not applicable where County owns property (tax exempt). Landlord pays taxes where County is tenant of other property
- x. **Remedies for Breach:** Does lease define the County's remedies for breach? The other party's remedies against the County for breach? Would the County be liable for liquidated damages? Would the County be liable for attorneys' fees and legal expenses of landlord to enforce the lease? The latter provision is unconstitutional and cannot be agreed to.
- xi. **Waiver due to Breach:** Lease should contain provision that there shall no waiver of breach due to the failure of a party to enforce their rights; failure to enforce previous breach does not waive right to enforce subsequent breach.
- xii. **Termination.** Does lease contain a termination for convenience provision for the County? This should be included if at all possible.
- xiii. **Termination/Renewal Notice.** If the lease is for multiple terms, when and in what form must the County provide notice of termination or notice to renew? A typical provision requires the County to provide notice of intent to terminate on or before October 1st for terms ending at the end of the year. Obviously, the less amount of advance notice the County must provide, the better.
- xiv. **Exhibits.** Are all correct exhibits attached? The lease cannot go to the BOC without all exhibits attached.
- xv. **Waiver of Suit:** Lease must not waive the County's rights to sue (i.e. no mandatory arbitration).
- xvi. **Choice of Forum:** Lease cannot have a choice of forums clause requiring suits to be brought outside of Cobb Superior Court. This is a non-negotiable deal point (except where other party is the U.S. Government, the State of Georgia or an agency of either entity).
- xvii. **Lease Construction.** Who drafted the lease? If the County did, then consider provision to the effect of "Both parties participated equally in the drafting of this Agreement and such Agreement shall not be construed against either party". This is intended as a defense against construing contracts against the party that drafted it. See O.C.G.A. § 13-2-2(5). (Obviously if it's their contract, leave this out).
- xviii. **Severability:** Include a severability section: "if any one provision of lease is declared void by a court of competent jurisdiction, such provision shall be stricken and the remaining provisions shall remain in force and effect".
- xix. **Insurance Provisions:** If County is requiring the other party to maintain insurance, or they are requiring us (the County is self-insured) to do so, confirm accuracy/appropriateness of insurance language with the County Attorney's office and requirements. If County is landlord, tenant is to maintain general liability, property/casualty, automobile, umbrella, workers' compensation and other types and amounts of coverages determined by County.

- xx. **Tenant Improvements:** Can be made by tenant only with prior written approval of County and at tenant's sole expense. Improvements must be removed at lease expiration or retained and owned by County in its sole discretion. Improvements must be constructed in first class workmanlike manner in accordance with all laws and permits. Liens may not attach to the property or must be bonded off and removed by tenant.
- xxi. **Indemnification:** The County cannot, by law, indemnify third parties (other than the state, other counties or municipalities). Other governments know this, private parties almost never do. Delete any language that purports to have the County hold harmless or indemnify another party. This is non-negotiable.
- xxii. **Amendments and/or Renewals:** Leases can only be amended or renewed before they expire. Once they expire there is no renewal possible, rather a new lease is required. If amending a previous lease, review the previous leases and prior amendments, if applicable, to understand what is, is not being amended. The preferred method to amend previous contract is to delete Paragraph "X" of lease and insert in lieu thereof new Paragraph "X". Don't just amend by adding language if that creates a conflict or confusion over existing language. The County Attorney's Office must be consulted in drafting amendments and renewals.
- xxiii. **Subleases or Assignments:** where County is landlord, not permitted or at minimum impermissible without prior consent of County in its sole discretion. Where County is tenant, permitted without consent of landlord.
- xxiv. **Overall Review.** Does the lease make sense? Are there glaring ambiguities in the terms of the Lease? Typographical errors? Internal inconsistencies between various paragraphs? Illegible provisions? Review/draft the lease with the thought, "would this provision make sense to a judge or jury?"

Resolution

COBB COUNTY BOARD OF COMMISSIONERS

RESOLUTION

ADOPTING ALL BUDGET AMENDMENTS SET
FORTH IN AGENDA ITEMS ON THIS DATE

WHEREAS, Georgia Law, O.C.G.A. § 36-81-3 (b), requires each unit of government to operate under an annual balanced budget adopted by ordinance or resolution; and

WHEREAS, Cobb County Code 2-49 provides for revisions to the adopted budget during the year only by formal action of the commission in a regular meeting; and

WHEREAS, in official opinion date February 24, 1999, the Attorney General of the State of Georgia concluded that all amendments to the budgets of local government must be adopted by ordinance or resolution;

NOW, THEREFORE, BE IT RESOLVED the Cobb County Board of Commissioners does hereby adopt all such budget amendments as are set forth in agenda items which are adopted by the Board of Commissioners without change this date, as well as other such budget amendments as shall be specifically detailed in motions adopted by the Board of Commissioners this date.

This 28th of March 2023

