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MEMORANDUM

To: Mayor and City Council
From: Brent Walker, Parks and Recreation Manager
Date: September 28, 2015
Subject: **Intergovernmental Agreement with DeKalb County Board of Education for the Use of Peachtree Charter Middle School**

ITEM DESCRIPTION

Discussion of an Intergovernmental Agreement with DeKalb County Board of Education for the use of the athletic fields at Peachtree Charter Middle School.

BACKGROUND

Staff met with the Peachtree Charter Middle School Principal, Mr. Scott Heptinstall, and crafted an Intergovernmental Agreement (IGA) between the City of Dunwoody and the DeKalb County Board of Education. The IGA would allow the City to access the athletic fields at the school during designated times of the week and utilize them for athletic and recreational programs. As part of this agreement, the City will be responsible for maintaining the athletic turf in that area . The additional expense for this maintenance is reflected in the 2016 operating budget request for Parks. A copy of the IGA is attached to this document for your review

RECOMMENDATION

Staff respectfully requests that Council: (1) approve the IGA with the DeKalb County Board of Education (2) authorize the City Manager to execute the necessary documents following satisfactory review by legal counsel.

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Peachtree Charter Middle School

INTERGOVERNMENTAL AGREEMENT

Draft dated 8/5/15

THIS LEASE AGREEMENT (the "Agreement"), made and entered into as of this ____ day of _____, 2015, by and between the **CITY OF DUNWOODY** a municipal corporation of the State of Georgia acting by and through its authorized officials signing below (hereinafter referred to as "City") and the **DeKALB COUNTY BOARD OF EDUCATION**, a political subdivision of the State of Georgia acting by and through its authorized officials signing below (hereinafter referred to as "DCBE").

Background Information

- A. DCBE owns certain real property located at 4664 North Peachtree Rd. Dunwoody, Georgia, (the "Peachtree Charter Middle School Property"), on which Peachtree Charter Middle School is located. The Peachtree Charter Middle School Property is hereinafter referred to as the "School Property." The Peachtree Charter Middle School is also referred to herein as a "School."
- B. The Playing Field (exterior School Facilities) and Cafeteria (interior School Facilities) (the "Peachtree Charter Middle School Facilities") are located on the Peachtree Charter Middle School Property. The Peachtree Charter Middle School Facilities hereinafter referred to as the "School Facilities," as identified on Exhibit A.1 and A.2.
- C. DCBE and City desire to enter into this Agreement to provide for the joint use of the School Facilities by DCBE and City.

Agreement

Now, therefore, in consideration of the premises and mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and DCBE hereby agree as follows:

1. **Use of School Facilities by City.** DCBE hereby grants the City the right to use the School Facilities on the following terms and conditions:
 - a. City shall have no right to use the School Facilities during Regular School Hours unless the principal (the "Principal") of the School on which such School Facilities are located or his or her designee consents to such use in such Principal's sole and absolute discretion. As used herein, the term "Regular School Hours" shall mean the periods from 7:00 a.m. through 6:30 p.m., Monday through Friday, throughout each Academic Year during the Term of the Agreement.
 - b. City may request the use of the interior School Facilities, excluding the Gymnasium, after Regular School Hours when DCBE has priority to use such interior School Facilities (i.e., from 3:00 p.m. until 11:00 p.m., Monday through Friday, throughout each Academic Year during the Term of the Agreement) by notifying the Principal of the School on which such School Facilities are located in writing not less than one week prior to the date City

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desires to use such School Facilities. Such Principal shall use reasonable efforts to accommodate such request.

City may request the use of the exterior School Facilities after Regular School Hours when DCBE has priority to use such exterior School Facilities (i.e., from 3:00 p.m. until 6:30 p.m. Monday through Friday, throughout each Academic Year during the Term of the Agreement) by notifying the Principal of the School on which such School Facilities are located in writing not less than one week prior to the date City desires to use such School Facilities. Such Principal shall use reasonable efforts to accommodate such request.

c. During each Academic Year, City shall have first priority use of the exterior School Facilities Monday through Friday from 6:30 p.m. until 11:00pm. The City shall have first priority use of the exterior School Facilities Saturdays and Sundays from 7:00 a.m. until 11:00pm. City shall also have first priority use of the School Facilities during the Non-Academic Year, defined as the time between the end of each Academic Year and the beginning of the next Academic Year. Notwithstanding, the City acknowledges as a result of or due to any emergency, evacuation and/or any other unexpected event, activity and/or occurrence, the Principal shall have first priority superseding any scheduled or non-scheduled City or third party activity and or event during either the Academic school year or Non-academic School Year. The times for use of the School Facilities during the Non-Academic Year shall be 7:00am until 11:00pm Monday-Sunday. The City may enter onto the Playing Field thirty minutes prior for setup.

Notwithstanding, City acknowledges that the Principal may schedule special events to be held during the Academic Year and Non-Academic Year while City has first priority use, whereas City will accommodate such scheduled events as long as proper notice of 30 days is given by the Principal to the City.

DCBE and the City shall determine a mutually agreed upon period of rest for the Playing Field for a period of no less than thirty (15) consecutive days during the Non-Academic Year in order to maintain the quality of the turf.

d. Notwithstanding subsection 1.e. above, DCBE may request the use of the School Facilities during times when City has first priority to use such School Facilities as described above by notifying City in writing not less than one week prior to the date DCBE desires such School Facilities. City shall use reasonable efforts to accommodate such requests. DCBE and City expressly agree that during such times, the School Facilities may be used for the activities of any DeKalb County School.

e. City and DCBE acknowledge that non-City sponsored groups may, from time to time, request the use of the School Facilities or have the right to request the use of the School Facilities. Such groups may be permitted to use the School Facilities provided that (a) such groups qualify, in DCBE's or its representative's sole discretion, to use the School Facilities under DCBE's policy governing use of School Facilities; (b) both DCBE and City deem the proposed activity to be an appropriate use of the School Facilities; (c) the use does not interfere in any way with the conduct of school activities, including but not limited to, after-school athletic and other extracurricular activities of whatever nature of any DeKalb County School; (d) the use does not interfere in any way with the conduct of City's recreational activities; (e) the activity does not conflict with any previously scheduled activities of City or DCBE; (f) reasonable periods of rest are observed in order to maintain the quality of any turf located on any of the School Facilities, and (g) such non-City sponsored groups agree in writing to the following: (g.1.) provide supervisory and security personnel to properly maintain the order and discipline when the School

Facilities are being used by such groups; (g.2.) vacate the School Facilities and remove refuse promptly after each practice, game or other activity thereon; (g.3.) if applicable, secure and lock the School Facilities upon the completion of each practice, game or other activity thereon; (g.4.) maintain the exterior School Facilities during the period of use. When non-City sponsored groups request the use of the School Facilities during the times when City has the first priority to use the School Facilities, City will use reasonable efforts to accommodate such requests and will be responsible for scheduling such activities, and City will promptly notify the Principal of the School on which such activities will occur of each such request. The Principal will coordinate such scheduling when non-City sponsored groups request to use the School Facilities during all times when City does not have the exclusive right to use the School Facilities. The principal shall use reasonable efforts to accommodate such request.

A group that has entered into an MOU/Agreement with the City to provide recreational and/or athletic programs to the public shall constitute a City-sponsored group and shall be deemed to be the City of the purposes of this IGA subject to approval by DCBE. Subject to the facility use agreement entered into with the City, such provider shall have the same rights to use the School Facilities under this Agreement as the City. The City shall accept full responsibility for such uses.

f. City shall (i) provide adequate supervisory and security personnel at each activity to properly maintain order and discipline when the School Facilities are being used by City; (ii) vacate the School Facilities and remove refuse promptly after each practice, game or other activity thereon; (iii) if applicable, secure and lock the School Facilities upon completion of each practice, game or other activity thereon; (iv) return School Facilities to original condition prior to its use; (v) City shall place trash cans and recycling bins on the exterior School Facilities where Principal deems appropriate; and (vi) City shall place porta potties on exterior School Facilities where Principal deems appropriate.

g. City shall keep all motorized vehicles off grassed areas and public parking shall be limited to designated areas only as directed by the Principal.

2. **Term of Agreement.** This agreement shall be for a term commencing on the ___ day of ___, and automatically renew annually provided that the Board of Education may cancel this agreement if City fails to timely remedy any non-compliance with this Agreement within thirty days of written notice of DCBE's intention to cancel the Agreement, notwithstanding the terms of Sections 9, 11 and 14(b) of this Agreement. Following expiration of the Lease, all permanent improvements made by the City will remain the property of DCBE.

The Intergovernmental Agreement shall automatically renew. However, the City may notify DCBE at least ninety (90) days prior to the expiration of the term to request that the Intergovernmental Agreement not be renewed.

3. **Consideration and Expenses.** The parties agree that the mutual use of the School Facilities by the parties is the consideration for the entry into this Agreement by both parties and that no rent shall be payable for the use of the exterior School Facilities by either DCBE or City. Notwithstanding the foregoing, the City agrees that it shall make the initial improvements as described in Exhibit B. The said initial improvements shall be made by the City within the first year of the initial term, more specifically during the period recognized as the Non-Academic Year and the said initial improvements shall be completed prior to the next Academic year.

In addition, if DCBE incurs direct costs or expenses (other than maintenance costs, which shall be governed by Section 5 below) solely as a result of the use of DCBE's School Facilities by the City (not including maintenance or utility expenses resulting from the reasonable use of such School Facilities) upon DCBE being made aware of such costs or expenses, DCBE shall notify the City of such costs or expense prior to the City's continued use of such School Facilities, and the City shall be required to reimburse DCBE for such costs or expenses within thirty (30) days of the request.

4. **Maintenance of School Facilities.**

a. In addition to the obligations contained in subsection 1.g. above, during the Academic Year, each party shall, at such party's expense, maintain the School Facilities in good condition and repair in relation to each party's use of the School Facilities, including without limitation the provision of routine custodial services and landscape maintenance services and the repair and replacement of all equipment and improvements located on the School Facilities.

City agrees that it will maintain and repair the irrigation systems for the Playing Field at its own cost, which repairs and maintenance shall conform to DCBE specifications for such irrigation systems, and agrees to keep them in good working order and in compliance with all local codes. In addition, City shall pay for all water used for the irrigation systems for the Playing Field during the term of this Agreement and any renewal terms. If City shall tap into DCBE water line, City shall provide written notice of such tap and connection to DCBE prior to making tap and connection. Such payment shall be due within 60 days of receipt of invoice based upon an estimate of annual water costs to be provided by DCBE or its designee with a final accounting (and payment or refund) once the actual cost has been determined.

Periodic inspections may be performed by DCBE or its agents or employees of the field improvements and/or field conditions. Any problems (and origin thereof, if identifiable) are to be reported to the offices of the DCBE. DCBE shall provide notice to the City to make the appropriate repairs and / or corrections to the field.

City shall maintain, at City's sole expense, the Playing Field in a good and safe condition. Maintenance shall include, but not be limited to, mowing the field on a routine basis, fertilizing, re-seeding, and making such improvements as may be necessary or reasonably requested by DCBE subject to those conditions noted in Paragraph 2.

As used herein, the term "routine custodial services" shall include without limitation, the collection of litter and debris from the School Facilities, utilized for recreational activities, ; following each use, removal of the contents of City's furnished trash receptacles and recycling bins; and following each use, removal of hazardous items from areas utilized or accessible to staff, students, or visitors. The City shall maintain an adequate level of sanitary supplies as mutually agreed upon by the City and Principal.

b. Notwithstanding the terms of subsection 4.a. above, during the Term of the Agreement, the City shall maintain the exterior School Facilities utilized for recreational activities during the period of the Non-Academic Year.

c. City shall have no right to construct any improvements on the School Facilities owned by DCBE without DCBE's consent which consent may be withheld in DCBE's sole discretion. During the Term, the City shall not demolish any of the School Facilities located on DCBE's property without the consent of DCBE hereto, which consent shall not be unreasonably withheld, conditioned or delayed.

5. **Utilities.** The City shall pay all water and electricity charges for the maintenance of the exterior School Facilities. DCBE shall pay all water and electricity charges for the interior School Facilities.
6. **Insurance.** The City shall maintain a minimum of \$1 million commercial general liability (including bodily injury, property damage and fire legal liability) insurance with a \$2 million general aggregate, shall maintain a minimum of \$1 million automobile liability insurance (CSL), and provide statutory Workers Compensation coverage with a minimum Employers Liability of \$100,000 per accident, \$500,000 policy limit. Any third party using the School Facilities with the express, written consent of the City shall maintain a minimum of \$1 million commercial general liability (including bodily injury and property damage) and automobile liability insurance coverage, with minimum policy limit of \$1 million per occurrence (CSL), and name DCBE and City as additional insureds. For purposes of this Agreement, the phrase "third party using the School Facilities" shall mean an entity, group, or individual other than an agent, employee, or elected or appointed official of the City or the DCBE that receives written permission from the DCBE or City to use the School Facilities for a function, event or program in a manner substantively more intense than general public use, it being understood and agreed that 'use of the School Facilities' by the general public for general recreational purposes shall not require acquisition of the insurance referenced immediately above. Any third party performing building, construction, or public improvement projects on the School Facilities with the express written consent of DCBE shall be required to maintain a minimum of \$2 million commercial general liability (including bodily injury and property damage) insurance, shall maintain a minimum of \$1 million automobile liability insurance (CSL) naming both DCBE and City as additional insureds and provide statutory Workers Compensation coverage with a minimum Employers Liability of \$100,000 per accident, \$500,000 policy limit. Any third party performing building, construction or public improvement projects on the School Facilities shall submit proof of insurance by submitting a certificate of insurance prior to performing such work.
7. **Liability.** City shall be responsible for the acts and omissions of City and its agents, contractors or employees. DCBE shall be responsible for the acts and omissions of DCBE and its agents, contractors, or employees. Any third party using the School Facilities shall be required to defend, indemnify and hold harmless DCBE and City and their agents and employees against all costs, damages, or claims, whether for personal injury or property damage, arising out of any act or omission of such third party in connection with its use of the School Facilities.
8. **Casualty.** If any of the School Facilities are damaged or destroyed during the Term of the Agreement by a casualty loss, DCBE may elect to rebuild or restore same to such School Facilities. If such damage or destruction is due to the acts or omission while in City's care, custody and control, then DCBE may elect to rebuild or restore the damaged or destroyed School Facilities subject to reimbursement by the City pursuant to the terms of Section 7 above.
9. **Condemnation.** In the event all or any portion of the School Property is condemned by any legally constituted authority for any public use or purpose, or sold under threat of condemnation, then all condemnation awards or sales proceeds shall belong to the owner of such condemned or sold property, and this Agreement shall terminate as to such property on the date of such condemnation or sale. If a portion of the School Property that contains all of the School Facilities is so condemned or sold then this Agreement shall terminate on the date of such condemnation or sale.

10. **Liens.** No encumbrances, charges or liens against the School Facilities shall exist because of any action or inaction by either party or such party's independent contractors. Each party shall discharge by bond or otherwise within ten (10) days of notice of existence of any lien, encumbrance or other charge arising because of the actions of such party.
11. **Termination.**
 - (a) Either party shall have the right to terminate this Agreement without cause upon ninety (90) days prior written notice.
 - (b) In the event either party defaults in the performance of any of its obligations under this Agreement, the non-defaulting party shall, in addition to all other rights and remedies available to such non-defaulting party at law or in equity, have the right to (i) provide written notice to the defaulting party of the intention to terminate this Agreement within (30) days of the written notice if such default is not remedied within the 30 days, or (ii) cure such default at the expense of the defaulting party. The defaulting party, within ten (10) days of the receipt of a statement for reimbursement, shall reimburse the other party for any amount paid and any expense or contractual liability so incurred. Notwithstanding the foregoing, if (i) such default is of such nature that it cannot reasonably be remedied within such thirty (30) day period, (ii) the defaulting party has commenced its efforts to remedy such default within such thirty (30) day period and is diligently and in good faith pursuing such efforts, and (iii) actually remedies such breach within sixty (60) days from the date it first receives notice of default from the non-defaulting party, the non-defaulting party shall not have the right to terminate this Agreement.
12. **Expiration of Term.**
 - a. If the expiration of the Term of the Agreement occurs after 20 years from its initial approval date, all fixed and permanent improvements upon the School Property shall remain the property of DCBE, free and clear of all liens and encumbrances. If the termination occurs prior to twenty years, DCBE will be responsible to pay the CITY a 5 % annual amortization rate per each remaining year for the value of the construction cost of the infrastructure improvements, excluding turf and vegetation improvements. Either party may remove portable improvements made by such party. A listing of all portable improvements shall be prepared by such party and approved by the other party prior to the removal of said improvements. Except in connection with repairs or replacements, each party covenants not to destroy or remove any improvements constructed (other than portable improvements) or equipment placed upon the other party's property, pursuant to this Agreement or otherwise, without the written consent of the other party, which written consent may not be unreasonably withheld, conditioned, or delayed.
 - b. Upon the expiration of the Term, the City agrees to promptly vacate all parts of the School Facilities. All keys (if any) held by the City for the School Facilities shall be returned to DCBE via hand delivery and written notice within 7 (seven) days of expiration.
13. **Notice.** Any notice or consent required to be given by or on behalf of any party hereto to any other party shall be in writing and sent by (i) certified mail, return receipt required or (ii) delivered personally, including by courier or expedited mail service, address as follows (or at such address as may be specified from time to time in writing):

If to DCBE: (Contact Name or Position)
 DeKalb County Board of Education
 XXXXXX
 XXXXXX

If to City: City Manager
 City of Dunwoody
 41 Perimeter Center East Suite 250
 Dunwoody, GA 30346

All such notices hereunder shall be deemed to have been given on the date of delivery or the date marked on the return receipt unless delivery is refused or cannot be made because of any incorrect address provided by the addressee, in which case the date of postmark shall be deemed notice has been given.

14. **Miscellaneous.**

a. This Agreement shall be construed as an intergovernmental contract, and no estate shall pass out of DCBE or City. Neither party shall, without the prior written consent of the other party, which consent may be withheld in the other party's sole discretion, assign its interest in this Agreement or any interest hereunder. Consent to any assignment shall not destroy this provision and any later assignments shall be made likewise only upon the prior written consent of the other party. Any assignee of either party, at the option of the party, shall become directly liable to the other party for all obligations of the assigning party hereunder, but no assignment by either party shall relieve such party of any liability hereunder to the other party.

b. If either party is delayed, hindered or prevented from performing any act or thing required hereunder by reason of strikes, lock-outs, labor troubles, casualties, inability to procure labor, materials or financing, failure or lack of utilities, governmental laws and regulations, riots, insurrection, war, acts of God, inclement weather, or other causes beyond the reasonable control of either party ("Force Majeure"), the delayed party shall not be liable, and the period of performance of any such act shall be extended for a period equivalent to the period of such delay, provided such party provides written notice of such occurrence to the other party within ten (10) days of such occurrence. The foregoing is inapplicable to the payment of money unless such delay is due to an act arising after a party's mailing which affects the physical delivery of the payment.

c. NEITHER PARTY WILL ALLOW ALCOHOLIC BEVERAGES OR THE USE OF TOBACCO PRODUCTS ON THE SCHOOL FACILITIES OWNED BY THE OTHER PARTY AT ANY TIME DURING ITS USE OF THE SCHOOL FACILITIES OWNED BY THE OTHER PARTY.

d. This Agreement constitutes the sole and entire agreement between the parties hereto as of the date hereof, and no modification of this Agreement shall be binding unless attached hereto and signed by City and DCBE. No representation, promise, or inducement not included in this Agreement shall be binding upon any party hereto.

e. Time is of the essence for each and every provision and stipulation of this Agreement.

f. Each party acknowledges that this Agreement has been freely negotiated by both parties, and that, in any controversy, dispute or contest over the meaning, interpretation,

validity or enforceability of this Agreement or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof.

g. No action or failure to act by any party hereto shall constitute a waiver of any right or duty afforded, to such party under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach of this Agreement except as may be specifically agreed in writing.

h. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal the day and year first above written.

CITY OF DUNWOODY

By: _____

Name: _____

Title: _____

Witness

Notary Public

DeKALB COUNTY BOARD OF EDUCATION

By: _____

Name:

Title:

Witness

By: _____

Name:

Title:

Notary Public

Exhibit A
Exhibit B

Exhibit A (Aerial Plan of Exterior School Facilities)



Exhibit B

The City shall make the following improvements: Turf Improvements

City shall submit three (3) sets of drawings which reflect the proposed improvements to DCBE for approval. No construction by the City shall commence until drawings are approved in writing by DCBE. As-builts shall be provided by the City following completion of construction of the improvements by the City.