



## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Steve Foote, AICP  
Community Development Director

**Date:** September 12, 2016

**Subject:** **Update to the 2008 Intergovernmental Agreement  
For Fire and Rescue Services with DeKalb County**

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### **ITEM DESCRIPTION**

Resolution to approve the Intergovernmental Agreement for Fire and Rescue Services with DeKalb County

### **BACKGROUND**

In December 2008 when the City of Dunwoody incorporated an Intergovernmental Agreement (IGA) was entered into between the City of Dunwoody and DeKalb County. This IGA laid out the responsibilities and provision of services for both jurisdictions. Article 10, therein, specifically identified many of the fire and rescue services that would still be performed by the County Fire Department.

Since it was adopted in 2008 the City initiated some of the same services offered by the County and has been performing them in-house. These service changes were made in communication with DeKalb County and the Fire Chief's office as they were implemented.

DeKalb County is now in the process of updating the Service Delivery Strategy with cities throughout the county. As a part of the update process, staff has met with the county and discussed modifying the current IGA to better reflect the current practices of the Community Development Department and the Fire Marshal's office. The attached IGA illustrates the changes made by staff to reflect current processes for building 'fire' plan reviews, inspections and related actions, as well as newer items, such as temporary tents, fireworks, and gated entrances.

Edits to the 2008 IGA were made following an internal review of the document by staff and the City Attorney's office, and based upon personal discussions with the Fire Chief's office. A copy of the latest revised IGA has been reviewed by the County. Minor comments have been received and incorporated into this draft. This item was placed on the City Council agenda to track concurrently with the Service Delivery Strategy.

### **RECOMMENDATION**

Approval of the updated Intergovernmental Agreement for Fire and Rescue Services.

STATE OF GEORGIA  
CITY OF DUNWOODY

**RESOLUTION 2016-XX-XX**

**A RESOLUTION TO APPROVE AND AUTHORIZE AN AMENDED  
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DUNWOODY  
AND DEKALB COUNTY FOR FIRE AND RESCUE SERVICES**

**WHEREAS,** the Mayor and City Council are the governing authority of the City of Dunwoody; and

**WHEREAS,** the Mayor and City Council are charged with the protection of the health, safety and welfare of the citizens of Dunwoody; and

**WHEREAS,** the Mayor and Council adopted an Intergovernmental Agreement with DeKalb County for provision of Fire and Rescue Services to the City in 2008; and

**WHEREAS,** in conjunction with this year's re-adoption of the Service Delivery Strategy for DeKalb County, the City of Dunwoody and the County have agreed to a revised IGA that delineates the Fire and Rescue, as well as Fire Code inspection services, as they are conducted today, including the provision of Fire Code Inspection Services by the City of Dunwoody; and

**WHEREAS,** the revised IGA is attached hereto and incorporated herein by reference.

**NOW THEREFORE, BE IT RESOLVED,** by the Mayor and City Council of the City of Dunwoody and it is resolved by the authority of said City Council, that the revised Fire and Rescue Intergovernmental Agreement, as attached hereto and incorporated herein as hereby approved. The Mayor and Council direct the City Manager to send a certified copy of this Resolution to the Chairman of the DeKalb County Board of Commissioners and the DeKalb County Chief Executive Officer.

**SO RESOLVED AND EFFECTIVE,** this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

Approved:

\_\_\_\_\_  
Denis L. Shortal, Mayor

Attest:

\_\_\_\_\_  
Sharon Lowery, City Clerk

(Seal)

September 12, 2016

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF FIRE RESCUE SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA and  
THE CITY OF DUNWOODY, GEORGIA**

**THIS INTERGOVERNMENTAL AGREEMENT, is entered into by and between DeKalb County, Georgia (“County”) and the City of Dunwoody, Georgia (“City”).**

WHEREAS, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Dunwoody is a municipality created by the 2008 Georgia General Assembly pursuant to Senate Bill 82 (hereinafter referred to as “SB 82”) ; and

WHEREAS, SB 82 provided that the city of Dunwoody began operations December 1, 2008 and Section 6.03(c) requires the County to “...provide within the territorial limits of the City all government services and functions which DeKalb County provided in 2008; and

WHEREAS, the County and the City further desire to establish the cost of fire rescue services to be provided by the County to the City pursuant to this Agreement; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the following mutual obligations, the County and City agree as follows:

**ARTICLE 1  
PURPOSE AND INTENT**

The purpose of this Agreement is to provide fire rescue services within the City.

**ARTICLE 2  
DEFINITIONS**

For the purposes of the Agreement, the following terms shall be defined as:

2.1 **“Fire Chief”** means the director of the DeKalb County Fire and Rescue department or designee.

2.2 **“Fire Code”** means (1) those applicable provisions of state law related to fire rescue services, including the state fire safety rules, the International Fire Code and (2) those applicable provisions of the Code of DeKalb County, Georgia related to fire rescue services including but not limited to chapter 12 of the Code of DeKalb County, Georgia and (3) those applicable provisions

of the Ordinances of the City of Dunwoody, Georgia that may be enacted during the term of this Agreement related to fire rescue services. .

2.2 **“Fire prevention tax district”** means the area of land in DeKalb County, Georgia that has been designated as the fire prevention tax district in which the County imposes and collects from the taxpayers in the district a separate fire tax for the purpose of defraying the cost of the County fire rescue services provided to the taxpayers in the district.

2.3 **“Fire Rescue Services”** means fire suppression, community risk reduction, fire protection, disaster mitigation, rescue, hazardous material response and emergency medical service transports service provided by County Fire and Rescue Department personnel.

### **ARTICLE 3 TERM OF AGREEMENT**

The term of the Agreement is for one year, commencing September 12, 2016 at 0000 hours and concluding at 2400 hours on September 11, 2017. This Agreement shall automatically renew without further action by the City or County on September 12<sup>th</sup> of each succeeding year for an additional one (1) year for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement. At the conclusion of this term, the City will be solely responsible for providing all fire rescue services within its boundaries, unless extended by mutual Agreement by both governing bodies.

### **ARTICLE 4 COMPENSATION AND CONSIDERATION**

4.1 For the fire rescue services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect the fire prevention district tax annually in the same manner and at the same rate that such tax is imposed and collected within the portion of the DeKalb fire prevention tax district that is located in unincorporated DeKalb County. The City agrees to remain within the DeKalb fire prevention tax district and nothing in this Agreement shall preclude the County's right to continue to collect DeKalb fire prevention district taxes from the residents of the City for all fire rescue services originating within the City of Dunwoody.

4.2 The City agrees that County remains entitled to impose, collect and retain all ambulance transport fees. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County, whether in effect at the time of this agreement or approved by the DeKalb County Governing Authority at some future date. Nothing in this Agreement shall preclude the County's right to continue to collect such fees for ambulance transport calls originating from within the City of Dunwoody.

### **ARTICLE 5 FIRE CHIEF**

The Fire Chief will direct and manage the daily fire rescue operations in the City and supervise the delivery of fire rescue services contracted for in this Agreement.

September 12, 2016

## **ARTICLE 6 SERVICES**

6.1 During the term of this Agreement, the County shall provide the same fire rescue services to the City as are provided in unincorporated area of DeKalb County. Such fire rescue services shall equal or exceed the fire rescue services provided by the County in 2008 within the area that comprises the City. The County shall provide fire rescue services on a continual 24-hour per day basis. The County and the City intend to enter into mutual aid agreements, which shall govern the parties in case of emergencies requiring assistance from neighboring fire departments.

6.2 Response times in the City shall remain consistent with those response times in unincorporated DeKalb County. County-wide response reports will be provided by the Fire Chief if requested by the City Manager.

6.3 All emergency incidents within the City shall operate under the National Response Plan (NRP) utilizing the National Incident Management System (NIMS). During the term of this agreement, the City agrees that it will not adopt any ordinance that in any way amends, repeals or replaces the applicable fire rescue provisions of the Code of DeKalb County, Georgia, including but not limited to chapter 12 of the Code of DeKalb County, Georgia and any amendments thereto without the written consent of the Fire Chief. Such consent shall not be unreasonably withheld.

## **ARTICLE 7 EQUIPMENT**

The County agrees to provide DeKalb County fire and rescue personnel assigned to work within the City with all necessary equipment and motor vehicles in connection with this Agreement in order to perform the agreed upon fire rescue services, in accordance with DeKalb County Fire and Rescue department policies and procedures. The County agrees to maintain said equipment and vehicles and to provide replacements as necessary during the term of the Agreement. All DeKalb County Fire and Rescue Officers assigned hereunder shall wear the uniform and insignia as issued and ordered by the DeKalb County Fire and Rescue Department.

## **ARTICLE 8 AUTHORITY TO ENFORCE THE LAW IN DUNWOODY**

8.1 The Fire Chief shall designate the fire rescue officers to take an oath administered by an official authorized by the City of Dunwoody to administer oaths, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking fire rescue duties pursuant to this Agreement to enforce the fire code.

8.2 Every fire and rescue officer of the County assigned to the City shall still be deemed to be a sworn officer of the County while performing the services, duties and responsibilities hereunder and is vested with the "police powers" of the County that are necessary to provide the fire rescue services within the scope of this Agreement.

8.3 The Fire Chief shall be and hereby is vested with the additional power to enforce the fire code, to make arrests or issue citations incident to the enforcement of the fire code, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce the fire code is made for the sole and limited purpose of giving official and lawful status to the performance of fire rescue services provided by fire and rescue officers within the City of Dunwoody.

8.4 Fire and Rescue officers shall enforce the fire code and shall appear in the Municipal Court of the City of Dunwoody as necessary to prosecute cases made therein. The City further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to the fire rescue officers working within the City.

## **ARTICLE 9 EMPLOYMENT STATUS**

All County Fire and Rescue Department personnel operating in the City, as well as any other County personnel operating under this Agreement are and will continue to be employees of the County for all purposes, including but not limited to duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions. All County Fire and Rescue Department personnel operating in the City as well as any other sworn personnel assigned under this Agreement are and will continue to be part of the DeKalb County Fire and Rescue Department command structure. Fire and rescue personnel are under the supervision of the DeKalb County Fire Chief.

## **ARTICLE 10 FIRE INSPECTION AND PREVENTION**

10.1 The County Fire Chief/Chief Building Official shall continue to offer "fire inspection and prevention services" which include, but are not limited to, the following:

- a. Perform plan reviews for new construction and renovations of existing commercial and multi-family structures;
- b. For all plans reviewed in (a) above, the reviewing authority will perform inspections for the same (new structures, additions, and renovations to commercial buildings and multi-family buildings, and similar);
- c. For all inspections performed in (b) above, the reviewing authority will perform Final Inspections on same;
- d. The reviewing authority will set occupancy levels for all plan reviews performed;
- e. Enforce the Fire Code.
- f. The county will forward records of intermediate and final reviews and inspection reports and occupancy loads to the Dunwoody Community Development Department.

10.2 Following completion and approval of final inspections of commercial and multi-family buildings by the Fire Chief/Chief Building Official:

- a. The County shall forward a written authorization to the City approving the issuance of a Certificate of Occupancy or Certificate of Completion for the permitted work.

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The City may not issue such certificates without the express written approval of the Fire Chief/Chief Building Official.

- b. The City shall issue the Certificate of Occupancy or Completion when the City is satisfied that the project has complied with all City requirements.
- c. The issuance of the Certificate of Occupancy or Completion by the City shall in no way obligate the City to make any plan review or inspections of the building, and it is specifically agreed that the City shall have the right to rely solely upon the plan review and inspections performed by the Fire Chief under 10.1 above.

10.3 The City of Dunwoody may offer customers an optional review process for the same services listed in 10.1 (a-e) above. Customers requesting a 'city' review will not be required to submit to DeKalb County Fire & Rescue for these services. When the above services are provided by the City of Dunwoody the city will forward copies of approved plans, occupancy loads, Certificate of Occupancy, and Certificate of Completion to the county for their records.

10.4 In addition to the services listed in 10.1(a-e) above, DeKalb County Fire & Rescue shall, unless modified by future agreement with the City of Dunwoody, provide the following exclusive services:

- a. Perform annual life safety inspections for occupancies as required by OCGA 25-1-13.
- b. Perform arson investigations.
- c. Review and approve fireworks stands for temporary outdoor sales facilities and indoor display according to State and county law.
- d. Review and approve temporary tents.
- e. Review plans (Land Disturbance Permits) for new construction of commercial and multi-family uses (includes apartments and townhomes) and subdivisions for Fire Lane, Access, and handicap parking compliance.
- f. Review and issue county permits for gated access roads and entrances separate from city permits required for gates.

10.5 The County shall be entitled to collect fees for any plan reviews, permits and inspections performed under this agreement in connection with commercial and multi-family buildings constructed or renovated in the City if such structures or plans are reviewed or inspected by the Fire and Rescue Department. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County for similar permits, inspections and plan reviews, whether in effect at the time of this agreement or as approved by the DeKalb County Governing Authority at some future date.

#### 10.6 Miscellaneous provisions

- a. The City of Dunwoody will perform all necessary inspections for new Occupational Tax Certificate applicants and forward copies of the Certificate of Occupancy to the county.
- b. Retaining walls, signs, greenhouses, satellite dishes, Christmas tree lots, emission inspections stations, and similar projects or structures shall not be subject to the provisions of this Agreement, and the City shall continue to issue permits and/or approvals for such projects.

- c. Both the City personnel and the County Fire and Rescue officers are authorized to enforce the provisions of and issue citations for violations of the fire code.
- d. The City shall be responsible for inspections of all erosion control and site work on all projects within the City.
- e. The City shall be responsible for enforcement of building code requirements and shall issue all citations necessary to prosecute any building code violations in the Municipal Court of Dunwoody.

## **ARTICLE 11 RECORDKEEPING AND REPORTING**

The County Fire and Rescue Department is the central repository for all departmental records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Fire and Rescue Department activity within the City. Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

## **ARTICLE 12 CITY – COUNTY RELATIONS**

The DeKalb County Fire Chief will notify the City Manager in the event of a significant fire rescue emergency situation within the City. The DeKalb County Fire Chief and City Manager shall designate what they consider “significant” by a memorandum. The County shall be the sole provider of services within the city that require sworn fire rescue personnel during the term of this Agreement.

## **ARTICLE 13 TRANSITION**

The County and City agree that 90 days prior to the end date of this Agreement, the City Manager and Executive Assistant will meet and confer to effect a smooth transition.

## **ARTICLE 14 TERMINATION AND REMEDIES**

14.1 The City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

14.2 Beginning September 12, 2017 at 0000 hours, the County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.



September 12, 2016

14.3 The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

## **ARTICLE 15 NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Further changes in addresses shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. Mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:

Executive Assistant  
Clark Harrison Center  
330 West Ponce de Leon Avenue, 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-4751, Facsimile number

With a copy to:

County Attorney  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-3024, Facsimile number

If to the City:

City Manager  
City of Dunwoody  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346  
770-396-4705, Facsimile number

With a copy to:

City Attorney  
City of Dunwoody  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346

## **ARTICLE 16 EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

## **ARTICLE 17**

**NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

**ARTICLE 18  
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 19  
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

**ARTICLE 20  
BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**ARTICLE 21  
INDEMNITY**

21.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers,

September 12, 2016

employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

21.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

21.3 The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.

## **ARTICLE 22 COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers.**

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

September 12, 2016

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_(SEAL)  
Lee May  
Interim Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

\_\_\_\_\_  
Barbara Sanders  
Clerk to the CEO and  
Board of Commissioners of  
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
O.V. Brantley  
County Attorney

\_\_\_\_\_  
Zachary Williams  
Executive Assistant

**CITY OF DUNWOODY, GEORGIA**

\_\_\_\_\_  
Denis Shortal  
Mayor

\_\_\_\_\_  
Sharon Lowry  
Municipal Clerk (SEAL)

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Lenny Felgin  
City Attorney

\_\_\_\_\_  
Eric Linton  
City Manager

September 12, 2016

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## **ARTICLE 8 AUTHORITY TO ENFORCE THE LAW IN DUNWOODY**

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## **ARTICLE 10 FIRE INSPECTION AND PREVENTION**

10.1 The County Fire Chief/Chief Building Official shall continue to offer "fire inspection and prevention services" which include, but are not limited to, the following:

- a. Perform plan reviews for new construction and renovations of existing commercial and multi-family structures;
- b. For all plans reviewed in (a) above, the reviewing authority will perform inspections for the same (new structures, additions, and renovations to commercial buildings and multi-family buildings, and similar);
- c. For all inspections performed in (b) above, the reviewing authority will perform Final Inspections on same;
- d. The reviewing authority will set occupancy levels for all plan reviews performed;
- e. Enforce the Fire Code.
- f. The county will forward records of intermediate and final reviews and inspection reports and occupancy loads to the Dunwoody Community Development Department.

10.2 Following completion and approval of final inspections of commercial and multi-family buildings by the Fire Chief/Chief Building Official:

- a. The County shall forward a written authorization to the City approving the issuance of a Certificate of Occupancy or Certificate of Completion for the permitted work.



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The City may not issue such certificates without the express written approval of the Fire Chief/Chief Building Official.

- b. The City shall issue the Certificate of Occupancy or Completion when the City is satisfied that the project has complied with all City requirements.
- c. The issuance of the Certificate of Occupancy or Completion by the City shall in no way obligate the City to make any plan review or inspections of the building, and it is specifically agreed that the City shall have the right to rely solely upon the plan review and inspections performed by the Fire Chief under 10.1 above.

10.3 The City of Dunwoody may offer customers an optional review process for the same services listed in 10.1 (a-e) above. Customers requesting a 'city' review will not be required to submit to DeKalb County Fire & Rescue for these services. When the above services are provided by the City of Dunwoody the city will forward copies of approved plans, occupancy loads, Certificate of Occupancy, and Certificate of Completion to the county for their records.

10.4 In addition to the services listed in 10.1(a-e) above, DeKalb County Fire & Rescue shall, unless modified by future agreement with the City of Dunwoody, provide the following exclusive services:

- a. Perform annual life safety inspections for occupancies as required by OCGA 25-1-13.
- b. Perform arson investigations.
- c. Review and approve fireworks stands for temporary outdoor sales facilities and indoor display according to State and county law.
- d. Review and approve temporary tents.
- e. Review plans (Land Disturbance Permits) for new construction of commercial and multi-family uses (includes apartments and townhomes) and subdivisions for Fire Lane, Access, and handicap parking compliance.
- f. Review and issue county permits for gated access roads and entrances separate from city permits required for gates.

10.5 The County shall be entitled to collect fees for any plan reviews, permits and inspections performed under this agreement in connection with commercial and multi-family buildings constructed or renovated in the City if such structures or plans are reviewed or inspected by the Fire and Rescue Department. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County for similar permits, inspections and plan reviews, whether in effect at the time of this agreement or as approved by the DeKalb County Governing Authority at some future date.

#### 10.6 Miscellaneous provisions

- a. The City of Dunwoody will perform all necessary inspections for new Occupational Tax Certificate applicants and forward copies of the Certificate of Occupancy to the county.
- ~~a~~.b. Retaining walls, signs, greenhouses, satellite dishes, Christmas tree lots, emission inspections stations, and similar projects or structures shall not be subject to the provisions of this Agreement, and the City shall continue to issue permits and/or approvals for such projects.

- ~~b.c.~~ Both the City personnel and the County Fire and Rescue officers are authorized to enforce the provisions of and issue citations for violations of the fire code.
- ~~e.d.~~ The City shall be responsible for inspections of all erosion control and site work on all projects within the City.
- ~~d.e.~~ The City shall be responsible for enforcement of building code requirements and shall issue all citations necessary to prosecute any building code violations in the Municipal Court of Dunwoody.

## ~~ARTICLE 10~~

### ~~FIRE INSPECTION AND PREVENTION~~

~~10.1—The County shall also provide “fire inspection and prevention services” which include, but are not limited to, the following:~~

- ~~a. — review of all interior finished, new structures, additions and renovation of all commercial buildings and multi-family buildings, whether existing or to be constructed in the City;~~
- ~~b. — Reviewing plans for both new construction and renovations of existing structures;~~
- ~~c. — Final inspections for all commercial and multi-family buildings;~~
- ~~d. — Inspections for business licenses or change of occupancy;~~
- ~~e. — Inspections required for setting occupancy loads;~~
- ~~f. — Enforcement of fire lane and handicap parking regulations; and~~
- ~~g. — Enforcement of the fire code.~~

~~10.2—The County shall be entitled to collect the plan review, permit and inspection fees in connection with commercial and multi-family buildings constructed or renovated in the City if such structures or plans are reviewed or inspected by the Fire and Rescue Department. Fees charged shall be equal to those imposed upon residents of unincorporated DeKalb County for similar permits, inspections and plan reviews, whether in effect at the time of this agreement or as approved by the DeKalb County Governing Authority at some future date.~~

~~10.3—Construction plans and accompanying documents for all buildings subject to the provisions of this Agreement shall be submitted to the Fire Chief. Interior finish work and minor building additions may make use of the Fire and Rescue department “walk through” process.~~

~~10.4—Following completion of final inspection of commercial and multi-family buildings by the Fire Chief:~~

- ~~a. — The City shall not issue any Certificate of Occupancy without the express written approval of the Fire Chief.~~
- ~~b. — The City shall issue the Certificate of Occupancy when the City is satisfied that the project has complied with all City requirements.~~
- ~~c. — The City shall be responsible for notifying utilities companies in connection with the issuance of Certificates of Occupancy.~~

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~~d. The issuance of the Certificate of Occupancy by the City shall in no way obligate the City to make any plan review or inspections of the building, and it is specifically agreed that the City shall have the right to rely upon the plan review and inspections performed by the Fire Chief.~~

~~10.5 Retaining walls, tents, signs, greenhouses, satellite dishes, Christmas tree lots, emission inspections stations, and similar projects or structures shall not be subject to the provisions of this Agreement, and the City shall continue to issue permits and/or approvals for such projects.~~

~~10.6 Both the City personnel and the County Fire and Rescue officers are authorized to issue citations for violations of the fire code.~~

~~10.7 The City shall be responsible for inspections of all erosion control and site work on all projects within the City.~~

~~10.8 The City shall be responsible for enforcement of building code requirements and shall issue all citations necessary to prosecute any building code violations in the Municipal Court of Dunwoody.~~

## **ARTICLE 11 RECORDKEEPING AND REPORTING**

The County Fire and Rescue Department is the central repository for all departmental records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Fire and Rescue Department activity within the City. Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

## **ARTICLE 12 CITY – COUNTY RELATIONS**

The DeKalb County Fire Chief will notify the City Manager in the event of a significant fire rescue emergency situation within the City. The DeKalb County Fire Chief and City Manager shall designate what they consider “significant” by a memorandum. The County shall be the sole provider of services within the city that require sworn fire rescue personnel during the term of this Agreement.

## **ARTICLE 13 TRANSITION**

The County and City agree that 90 days prior to the end date of this Agreement, the City Manager and Executive Assistant will meet and confer to effect a smooth transition.

## **ARTICLE 14 TERMINATION AND REMEDIES**

14.1 The City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

14.2 Beginning September 12, 2017 at 0000 hours, the County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.

14.3 The parties reserve all available remedies afforded by law to enforce any term of condition of this Agreement.

## **ARTICLE 15 NOTICES**

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile notice. Further changes in addresses shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. Mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County:

Executive Assistant  
Clark Harrison Center  
330 West Ponce de Leon Avenue, 6<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-4751, Facsimile number

With a copy to:

County Attorney  
1300 Commerce Drive, 5<sup>th</sup> Floor  
Decatur, Georgia 30030  
404-371-3024, Facsimile number

If to the City:

City Manager  
City of Dunwoody  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346  
770-396-4705, Facsimile number

September 12, 2016

With a copy to:

City Attorney  
City of Dunwoody  
41 Perimeter Center East, Suite 250  
Dunwoody, Georgia 30346

## **ARTICLE 16 EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

## **ARTICLE 17 NON-ASSIGNABILITY**

Neither party shall assign any of the obligations or benefits of this Agreement.

## **ARTICLE 18 ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

## **ARTICLE 19 SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself

or through its agent prepared the same, it being agreed that the agents of all parties have participated in the preparation hereof.

## **ARTICLE 20 BINDING EFFECT**

This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

## **ARTICLE 21 INDEMNITY**

21.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the City defend, indemnify and hold harmless the County and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the City, its employees, officers and agents. The County shall promptly notify the City of each claim, cooperate with the City in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the City's participation.

21.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the County defend, indemnify and hold harmless the City and its officers, employees, or agents from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the City or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the negligent performance of this Agreement by the County, its employees, officers, and agents. The City shall promptly notify the County of each claim, cooperate with the County in the defense and resolution of each claim and not settle or otherwise dispose of the claim without the County participation.

21.3 The indemnification provisions of this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of the Agreement provided the claims are based upon actions that occurred during the term of this Agreement.

## **ARTICLE 22 COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF, the City and County have executed this Agreement through their duly authorized officers.**

**SIGNATURES APPEAR ON THE FOLLOWING PAGES**

September 12, 2016

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_(SEAL)

Lee May  
Interim Chief Executive Officer  
DeKalb County, Georgia

ATTEST:

\_\_\_\_\_  
Barbara Sanders  
Clerk to the CEO and  
Board of Commissioners of  
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
O.V. Brantley  
County Attorney

\_\_\_\_\_  
Zachary Williams  
Executive Assistant

**CITY OF DUNWOODY, GEORGIA**

\_\_\_\_\_  
Denis Shortal  
Mayor

\_\_\_\_\_  
Sharon Lowry  
Municipal Clerk (SEAL)

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

\_\_\_\_\_  
Lenny Felgin  
City Attorney

\_\_\_\_\_  
Eric Linton  
City Manager