

MEMORANDUM

To: Mayor and City Council
From: Jessica Guinn
Date: September 12, 2016
Subject: **Solid Waste Management IGA**

ITEM DESCRIPTION

Resolution to approve and authorize an intergovernmental agreement between the City of Dunwoody and DeKalb County for solid waste management services

BACKGROUND

An intergovernmental agreement (IGA) was adopted in 2010 to provide for solid waste management services. The agreement automatically renews annually on January 1. In 2015, DeKalb County Sanitation transitioned from twice weekly residential collection to once weekly collection. At this time, an amendment to the IGA is proposed in order to reflect this change. Additionally, DeKalb County Sanitation empties waste and recycling receptacles located on City right-of-way at various locations throughout the City. As proposed, the IGA would be updated to reflect this current practice.

These amendments are minor changes intended to reflect current practices and procedures. The updated IGA is expected to be incorporated into the updated Service Delivery Strategy documentation.

RECOMMENDED ACTION

At the August 22 City Council meeting, the City Council voted to defer this item to the September 12 meeting. The Mayor, City Staff and DeKalb Sanitation representatives will be meeting on September 16 to discuss this item further. Staff recommends deferral of this item until after that meeting.

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF SOLID WASTE MANAGEMENT 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, the Georgia Solid Waste Management Act (“SWMA”) at O.C.G.A. § 12-8-31.1(a) requires each city and county in Georgia to develop or be included in a comprehensive Solid Waste Management Plan (“SWMP”) that conforms to the procedures promulgated by the Georgia Department of Community Affairs; and

WHEREAS, the City desires to ensure that its citizens continue to receive Solid Waste Management Services, as defined herein, in a manner consistent with the SWMA; and

WHEREAS, the County has an approved SWMP in place; and

WHEREAS, the County collects, transports and disposes Solid Waste, as defined herein, in accordance with its SWMP and currently provides Solid Waste Management Services to unincorporated DeKalb County and municipalities located in the County, including the City of Dunwoody; and

WHEREAS, the City desires to continue to be a part of the County’s SWMP; and

WHEREAS, the County and the City further desire to establish the cost of the Solid Waste Management Services to be provided 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 and therefore desire to adopt this amended Intergovernmental Agreement for provision of Solid Waste services.

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 for continued Solid Waste Management Services within the City.

**ARTICLE 2
DEFINITIONS**

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

2.1 **Commercial Establishment** means any hotel, motel, apartment house, rooming house, business, industrial, public or semipublic establishment of any nature or kind whatsoever other than a single dwelling unit/residential unit and condominiums.

2.2 **Commercial Refuse** means waste material from industrial processes, manufacturing canneries, slaughterhouses, packing plants, poultry processing plants or similar industries, and large quantities of condemned foods. Commercial refuse also includes waste material from the construction, remodeling and repair operations on houses, commercial buildings, multiple dwellings and other structures such as concrete, bricks, plaster, stone, earth, lumber, roofing materials, gutters, shavings and sawdust.

2.3 **Garbage** means food waste, including waste accumulation of animal or vegetable matter used or intended for use as food, or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.

2.4 **Refuse** means Garbage, Rubbish or Commercial Refuse.

2.5 **Rubbish** means waste paper, cartons, boxes, wood, tree branches, yard trimmings, furniture, appliances, metals, cans, glass crockery, dunnage and/or similar materials.

2.6 **Solid Waste** means any Garbage or Refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agriculture operation materials; solid or dissolved matters in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. Section 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended and as defined by O.C.G.A. § 12-8-22(33) as may hereafter be amended.

2.7 **Solid Waste Management Services** includes collection, transportation and disposal of Solid Waste from residences, Commercial Establishments and other Special Services as described in this section. Residences shall be provided at least **once** weekly curbside garbage collection, including backdoor service for medically eligible residents. Residences shall be allowed unlimited volume of garbage collection. Commercial Establishments shall be provided collection services one to **five** times weekly, to be determined by the Commercial Establishments. As a service to the public, the County shall collect mixed paper recycling from drop of sites at various County libraries and fire stations. Special Services the County shall provide include: once a week yard waste pick-up and appliance pick-up; once a week residential subscription recycling service; mixed paper and co-mingled (plastics, glass, aluminum and metal containers) recycling in County office buildings and facilities; fee based special and bulky material collection and dead animal collection; scheduled mowing and maintenance of County owned properties, major roads and right of way (ROW) maintenance; and road litter and illegal dumping abatement programs.

ARTICLE 3 TERM OF AGREEMENT

The term of the Agreement is for a minimum of one year, commencing January 1, **2017** at 0000 hours through 2400 hours on December 31, **2017**. This Agreement shall automatically renew without further action by the City or the County on January 1st 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.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 For the Solid Waste Management Services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect its fees in a manner consistent with the fees imposed and collected from the residents and Commercial Establishments in the unincorporated area of the County. Currently, residential property owners shall be billed annually as a separate line item on their County tax bill. Commercial Establishments shall be billed monthly. The County agrees that residential property owners and Commercial Establishments shall be charged fees at the same rate and in the same manner as such fees are imposed and collected within the unincorporated portion of DeKalb County.

**ARTICLE 5
PUBLIC WORKS DIRECTOR**

The County Public Works Director will direct and manage the Solid Waste Management Services the County provides under this Agreement.

**ARTICLE 6
SERVICES**

The Solid Waste Management Services the County will provide City during the term of this Agreement shall be identical to the services provided in unincorporated areas of County. **The County will also provide weekly collection services for street trash and recycling receptacles along public right of way in commercial areas. The City will provide a map and addresses of the locations of the receptacles. The City will update the map periodically when new facilities are added.**

**ARTICLE 7
EQUIPMENT**

The County agrees to provide all equipment and personnel necessary to execute the Solid Waste Management Services contemplated in this Agreement.

**ARTICLE 8
AUTHORITY TO ENFORCE THE COUNTY'S APPLICABLE COLLECTION AND
DISPOSAL CODE**

8.1 The County shall have concurrent authority to enforce the County codes governing Solid Waste Management, including collection and disposal services as addressed in the Code of DeKalb County, as Revised 1988, Article I, Section 22-1 through 22-5, Article II, Section 22-26 through Section 22-35, Article III, Section 22-51 through 22-60 and Article IV, Section 22-61 through 22-69 within the City. The County's Public Works Director shall be responsible for enforcing the County's collection and disposal code and related provisions. The County Public Works personnel assigned to the City, shall take an oath administered by the Judge of the Municipal Court of the City, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking code enforcement duties pursuant to this Agreement to enforce the ordinances regulating Solid Waste Management.

8.2 Every County Public Works personnel assigned to the City shall still be deemed 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 code enforcement within the scope of this Agreement.

8.3 County Public Works personnel shall be and hereby are vested with the additional power to enforce the applicable ordinances of the City regulating Solid Waste Management, to issue citations incident to the enforcement of such County and City ordinances, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce these County and City ordinances is made for the sole and limited purpose of giving official and lawful status to the performance of code enforcement services provided by sworn officers within the City.

8.4 County Public Works Department personnel shall enforce County and City ordinances regulating Solid Waste Management Services and shall appear in the Municipal Court of the City as necessary to prosecute cases made therein. The City agrees to compensate the County Public Works Department personnel for their appearance in the Municipal Court pursuant to state law. The City further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to County personnel working within the City.

8.5 Whenever the County intends to amend its solid waste management ordinances, it will forward a copy of such proposed amendment(s) at least 90 days prior to the date of enactment to the City Manager. If the City does not enact amendments to its Solid Waste Management ordinance at least as stringent as those adopted by the County within 60 days of the County's enactment, this Agreement will immediately terminate with no further action required of the County.

ARTICLE 9 EMPLOYMENT STATUS

All County Public Works 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.

**ARTICLE 10
RECORDKEEPING AND REPORTING**

The County Public Works Department is the central repository for all Solid Waste related 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 Solid Waste Management activities it conducts 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 11
CITY-COUNTY RELATIONS**

The County Public Works Department Director shall be the County's main point of contact regarding Solid Waste Management issues and will coordinate with the City Manager as appropriate.

**ARTICLE 12
TRANSITION**

The County and City agree that 180 days prior to the end date of this Agreement, the City Manager and the County's Executive Assistant will meet and confer to determine whether the City desires to extend the Agreement.

**ARTICLE 13
TERMINATION AND REMEDIES**

The City and the County may terminate this Agreement with or without cause, by giving 180 days prior written notice to the other party. The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

**ARTICLE 14
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. Future changes in address 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, 6th Floor
Decatur, Georgia 30030

404-371-4751, Facsimile number

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
404-371-3011, Office number
404-371-3024, Facsimile number

If to the City: City Manager
City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346
678-382-6701, Facsimile number

With a copy to: City Attorney
City of Dunwoody
41 Perimeter Center East, Suite 250
Dunwoody, GA 30346
678-382-6701, Facsimile number

**ARTICLE 15
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 16
NON-ASSIGNABILITY**

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

**ARTICLE 17
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 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 18
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 19
BINDING EFFECT**

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

**ARTICLE 20
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 PAGE

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)
Chief Executive Officer
DeKalb County, Georgia

ATTEST:

Barbara Sanders, CCC
Clerk of the Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

O.V. Brantley
County Attorney

William R. Rhinehart
Public Works Director

CITY OF DUNWOODY

Denis L. Shortal
Mayor

Sharon Lowery
Municipal Clerk

Cecil McClendon
City Attorney

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 SOLID WASTE MANAGEMENT SERVICES

WHEREAS, the City of Dunwoody shall provide for the general health, sanitation and welfare for the inhabitants of the City; and

WHEREAS, the Mayor and Council adopted an Intergovernmental Agreement with DeKalb County for provision of Solid Waste 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 Solid Waste Services as they are conducted today;

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 Intergovernmental Agreement (IGA) for the provision of Solid Waste Management Services, as attached hereto and incorporated herein, is 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