

**MEMORANDUM OF UNDERSTANDING
BETWEEN
CH2M HILL, INC.
AND THE
CITY OF DUNWOODY**

This Memorandum of Understanding (hereinafter "MOU") is entered into as of this 1st day of October, 2008, between CH2M HILL, Inc., a Florida corporation (hereinafter "CH") and the City of Dunwoody, Georgia, a municipal corporation (hereinafter "City") hereinafter referred to as a "Party" or the "Parties".

WHEREAS, prior to December 1, 2008 the Citizens for the City of Dunwoody (hereinafter "Committee") anticipated contracting out the performance of the following services: Administrative, Financial, Community Services, Motor Vehicle, Human Resources, Public Works, Transportation, Streets, Rights-of-Way, Facilities, Parks and Recreation, Capital Improvements, Planning And Zoning, Inspections, Code Enforcement, and Permitting (hereinafter collectively "Services"); and

WHEREAS, the Committee organized a competitive selection process for the selection of a private firm for the delivery of the above Services at the time the City officially begins providing services on December 1, 2008; and

WHEREAS, on September 16, 2008 the City held its first municipal election at which time, the City Council and Mayor for the City were formally elected and sworn into office and have the power to enter into a contract; and

WHEREAS, the Committee recommended to the City Council, CH as the preferred service provider and the City Council subsequently heard a presentation by CH and made its own determination that CH was the preferred service provider and that a public-private partnership was the preferred business model; and

WHEREAS, the Mayor and/or the City Manager have the authorization to enter into obligations and contracts on behalf of the City; and

WHEREAS, the Parties wish to specify the responsibilities and obligations between the Parties as to the performance of certain Services prior to the December 1, 2008 start date.

NOW THEREFORE, in consideration of the mutual covenants and promises herein set forth, and other good and valuable consideration, the Parties here to do agree as follows:

1. **Introduction:** City and CH are presently negotiating agreements for the above Services (hereinafter "Agreements"). The City will be incorporated on December 1, 2008; however due to the timeframe and scope of the Services, it requires that CH provide services and enter into agreements to procure services and equipment from third parties prior to the Agreements being executed.
2. **Scope Authorization:** This MOU shall authorize CH to begin providing services and procure services and equipment from third parties on behalf of the City. As such, the City agrees to reimburse to CH a lump sum amount of One Million Eight Hundred Thousand Dollars (\$1,800,000) if such Agreements are not executed on behalf of the City by December 1, 2008. This lump sum amount shall compensate CH for such service costs incurred by CH in preparation of starting Services for the

City on December 1, 2008. This lump sum amount does not provide compensation to Corporation for the actual performance of the Services and as such, any amounts expended by Corporation to furtherance of providing the Services on a day to day operational basis shall be invoiced to the City and payable within thirty (30) calendar days of receipt of invoice. CH shall also assign current leases and/or agreements for the project to the City. The City shall pay any associated unamortized costs, buy-out or termination charges to CH.

3. **Term:** This MOU shall be effective as of October 1, 2008 and be effective until December 1, 2008. If an agreement is executed prior to the termination date, this MOU shall be superseded by such Agreements.
4. **Liability:**
 - a. CH shall indemnify, defend and hold harmless the City from and against any and all liability, suits, actions, damages, costs, losses and expenses, including attorneys' fees, demands and claims for personal injury, bodily injury, sickness, diseases or death or damage or destruction of tangible property, arising out of any negligent acts of CH, its officials, agents, employees or subcontractors in the performance of the services of CH. CH's indemnification, however, shall be limited to the actual amount of any liability of City and not encompass any sums for which City is exempt based upon Georgia municipal immunity Statutes.
 - b. Notwithstanding anything to the contrary in this agreement, neither Party nor its officers, directors, agents, employees, elected officials, and/or representatives shall be liable for any incidental, special, consequential, or indirect damages to persons or property, whether arising in tort, contract or otherwise, connected with or relating to this agreement or connected with or resulting from the performance or non-performance under this MOU.
5. **Intellectual Property:** Any "Data", which includes draft and final written reports, studies, drawings, photographs and other information collected or developed in connection with delivery of Services, which would be considered a public record under O.C.G.A. §50-14-1 *et seq.* shall be owned by the City. Corporation shall own all rights to software code and documentation, drawings, specifications, designs, models, processes, systems, and graphic, electronic, chemical or mechanical representations with a non-exclusive non-transferable royalty free license to the City for the term of this MOU. No title or ownership of any intellectual property is transferred to the City under this MOU.
6. **Nonassignability:** This MOU may not be assigned or otherwise transferred by either Party without the prior written consent of the other party.
7. **Entire Agreement:** This MOU contains all the agreements, representations and understandings of the Parties hereto and supersede any and all previous commitments and agreements, whether oral or written, related to the provision of Services prior to October 1, 2008.
8. **Choice of Law:** This MOU shall be governed by and construed in accordance with the laws of the State of Georgia. If any part, term or provision of this agreement is held to be invalid, void, illegal, or unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this MOU, the remainder of the provisions shall remain in full force and effect and shall be in no way affected, impaired or invalidated.
9. **Severability:** If any provision of this MOU shall, to any extent, be held invalid or unenforceable, the remainder of this MOU, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

10. **Costs and Attorney Fees:** If either Party is required to enforce the terms of MOU by court proceedings and or otherwise due to breach of contract, the prevailing Party shall recover its reasonable attorney fees and costs.
11. **Survival of Provisions:** Any terms and conditions of this MOU that require acts beyond the dates of its termination shall survive the termination of this MOU, shall remain in full force and effect unless and until the terms and conditions are completed and shall be fully enforceable by either Party.

IN WITNESS WHEREOF, this MOU is entered into as of the date first set forth above.

CH2M HILL, INC.

CITY OF DUNWOODY, GEORGIA, a Georgia
municipal corporation

Name: _____
Title: _____
Date: _____

Name: _____
Title: _____
Date: _____

