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MEMORANDUM

To: Mayor and City Council
From: Warren Hutmacher, City Manager
Date: February 28, 2011
Subject: **Lease Agreement for Fire Station 12**

BACKGROUND

DeKalb County provides Fire and Rescue services to the City of Dunwoody through a previously adopted Intergovernmental Agreement funded by a fire prevention millage rate. The City purchased Fire Station 12 in 2010. Staff has negotiated an intergovernmental lease agreement with DeKalb County whereby the City would grant and lease Fire Station 12 for a total fixed rental equal to fifty dollars.

RECOMMENDATION

Staff recommends the City enter into an IGA with DeKalb, subject to final review by the City Manager and City Attorney, to lease Fire Station 12 to the County for its continued use to provide Fire and Rescue Services.

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2011-02-10

A RESOLUTION TO APPROVE AND AUTHORIZE AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF DUNWOODY AND DEKALB COUNTY

WHEREAS, Dunwoody (hereinafter referred to as "City") is a municipality created by the 2008 Georgia General Assembly pursuant to Ga. L. 2008, p. 3526; and

WHEREAS, DeKalb County (hereinafter referred to as "County") is a political subdivision of the State of Georgia; and

WHEREAS, the City is the owner of certain property, hereinafter referred to as "Fire Station 12;" and

WHEREAS, the County provides Fire and Rescue Services to citizens of the County and the City through a previously adopted Intergovernmental Agreement funded by a fire prevention millage rate; and

WHEREAS, the City wishes to lease Fire State 12 to the County for its continued use to provide Fire and Rescue Services; and

WHEREAS, the City and the County are empowered to enter into this agreement pursuant to 1983 Georgia Constitution Article IX, Sec. III, Para. I, as an intergovernmental agreement not exceeding 50 years; and

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 by passage of this Resolution the City of Dunwoody Mayor and City Council authorize an Intergovernmental Agreement (IGA) with DeKalb County for the lease of Fire Station 12.

SO RESOVLED AND EFFECTIVE this 28th day of February, 2011.

Approved:

Ken Wright, Mayor

Attest:

Sharon Lowery, City Clerk

Seal

**STATE OF GEORGIA
COUNTY OF DEKALB**

INTERGOVERNMENTAL LEASE AGREEMENT FOR FIRE STATION 12

THIS INTERGOVERNMENTAL LEASE AGREEMENT, hereinafter referred to as "Agreement", is made and entered into effective this _____ day of _____, 2011, (hereinafter referred to as "the date hereof"), by and between the **CITY OF DUNWOODY** (hereinafter referred to as "City"), a municipality of the State of Georgia, and **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia, (hereinafter referred to as "County").

WHEREAS, the City is the owner of certain property, hereinafter referred to as "Fire Station 12" and more particularly described below; and

WHEREAS, the County provides Fire and Rescue Services to citizens of the County and the City through a previously adopted Intergovernmental Agreement funded by a fire prevention millage rate; and

WHEREAS, the City wishes to lease Fire Station 12 to the County for its continued use to provide Fire and Rescue Services; and

WHEREAS, the City and the County have duly approved this Agreement at public meetings; and

WHEREAS, the City and the County are empowered to enter into this agreement pursuant to 1983 Ga. Const. Art. IX, Sec. III, Para. I, as an intergovernmental agreement not exceeding 50 years.

NOW, THEREFORE, for and in consideration of the sum of fifty dollars (\$50.00) and for other good and valuable consideration, in hand paid at and before the execution and delivery of these presents, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1.
PROPERTY LEASED

For and in consideration of the mutual promises and of the terms and conditions hereinafter set forth to be kept by the County, the City hereby grants and leases the structure and real property described in Exhibit "A" attached to this Agreement and incorporated herein by reference to the County (hereinafter referred to as "Fire Station 12"), and the County does hereby take and lease Fire Station 12 from the City, on the promises and on the terms and conditions hereinafter set forth. This Agreement creates the relationship of the City as landlord

and the County as tenant between the parties hereto, and no estate shall pass from the City to the County under this Agreement. The County has, by virtue of this Agreement, only a usufruct as that word is set forth and used in O.C.G.A. Ch. 44-7.

2.

TERM AND EXTENSIONS

2.1 This Agreement shall be for an initial term commencing on the date hereof and ending at 11:59 p.m., prevailing legal time in Atlanta, Georgia, on December 31, 2011 (the "Initial Term"), unless sooner terminated as hereinafter provided.

2.2 Should the County cease to utilize Fire Station 12 to provide Fire and Rescue Services for a period of one-hundred and twenty (120) days, or be otherwise abandoned, this Agreement shall terminate instantly, unless the County resumes the use of the Fire Station 12 within thirty (30) days after written notice of such deemed abandonment is delivered by the City to the County

2.3 This Agreement shall automatically renew each year for additional one (1) full calendar year (the "Successive Terms") through December 31, 2061, unless sooner terminated as hereinafter provided. These Successive Terms shall be upon all of the same terms, covenants and conditions of this Agreement then applicable. The Initial Term and each Successive Term is referred to herein as, the "Term."

3.

RENT

The County agrees to pay the City, at the below-stated address a total fixed rental equal to \$50.00 payable on the date hereof for the Term of this Agreement, inclusive of all Successive Terms. In the event this Agreement is terminated for any reason, the County shall not be entitled to the return of any portion of the total fixed rental from the City.

4.

OCCUPANCY AND USE OF PREMISES

The County shall use Fire Station 12 solely for the purposes herein set forth and for the purpose of providing Fire and Rescue Services to the citizens of the County, including County citizens residing in the City. The County's use of Fire Station 12 shall be subject to and in accordance with the existing and future applicable rules, regulations, and policies of the County, the City and any applicable Federal, State or Local Law or Regulation. Without limitation of the foregoing, the County shall not: (a) use Fire Station 12 for any illegal purpose, or for any purpose inimical to the health, safety and welfare of the public; (b) commit, or suffer to be committed, any waste in or on the property; (c) create, or permit to be created, any nuisance in or on Fire Station 12; (d) use Fire Station 12 for any use other than a governmentally operated public safety and health facility; (e) change the scope and character of the current use of Fire Station 12; or (f) make any alternations, additions or improvements without the prior written consent of the City, which consent shall not be unreasonably delayed or conditioned. The County expressly covenants and agrees that it will not permit Fire Station 12 to be used by a non-

governmental person or for any use that constitutes “private use” under Section 141 of the Internal Revenue Code without the prior written consent of the City.

5.

OPERATIONS, MAINTENANCE AND ACCESS FOR INSPECTIONS

The County shall pay for all water, sewer, electrical, waste disposal, and other utility services provided to Fire Station 12, along with the cost of all necessary maintenance and upkeep. The County shall, at its own expense, maintain and keep the property and Fire Station #12 in a state of repair consistent with its state of repair on the date hereof, throughout the Term(s) of this Agreement and shall also maintain the lawn, trees and all landscaping consistent with County policy for the exterior maintenance of other County buildings. The City shall have the right to Fire Station 12 at reasonable hours and upon reasonable prior notice to the County's fire chief for any reasonable purpose, including, without limitation, the following purposes: (a) to exhibit the same to present or prospective mortgagees, lessors or purchasers during the Term of this Agreement, or (b) to inspect Fire Station 12. In connection with any such access and inspection, the City shall use reasonable efforts (i) not to interfere with the County's use or possession of Fire Station 12 in a material and adverse manner; and (ii) to protect the County and the County's agents, employees, contractors and invitees, together with the County's equipment and other personal property from injury, damage or destruction. Further, the City must, in all circumstances, be accompanied by a designated DeKalb County employee at all times during any such inspection. The City acknowledges that it may not, at certain times, be allowed access to all parts of Fire Station 12 due to safety reasons.

6.

COVENANT OF QUIET ENJOYMENT

The City covenants that the City is the holder of a fee simple interest in and to Fire Station 12. The City agrees that the County, upon paying the rents and keeping all the stipulations, provisions, covenants, terms, agreements and conditions herein contained, shall subject to the terms and conditions of this Agreement, lawfully, quietly and peacefully have, hold, use, possess, enjoy and occupy Fire Station 12 hereby rented, with all the improvements, tenements, appurtenances, and each and every part and parcel thereof for an during the term hereby granted, without any suit, hindrance, interruption, inconvenience, eviction , ejection, or molestation by the City.

7.

CAPITOL IMPROVMENTS, MAJOR REPIRS, APPROVAL OF PLANS

Neither the County nor the City is required to make any kind of capital improvement or major repair to Fire Station 12. In this Agreement, the term "major repair" means any repair exceeding three thousand dollars (\$3,000.00) in cost to the County or the City. Each party may decide in its sole discretion to undertake a capitol improvement or major repair, but neither party is required to do so. All plans for capital improvements or major repairs shall be subject to the approval of the City. Any construction, major repairs, or capital improvements of Fire Station 12 by the County, or its employees, officers or agents shall conform to "state minimum standard codes", as defined in O.C.G.A. Title 8, Part 2, entitled "State Building, Plumbing, Electrical, Etc., Codes" and shall have all plans permitted though the City. Any construction, major repair, or

capitol improvement shall be inspected for code compliance by the City in the same manner as any other commercial building in the City.

8.
TERMINATION

Either party may terminate this Agreement upon written notice to the non-terminating party, at least one hundred eighty (180) days prior to the expiration of the then existing Term. At the time of termination, all improvements made upon Fire Station 12 by the County shall become property of the City. Those items not considered to be fixtures on the property, including but not limited to fire engines, cars, trucks, fire and rescue equipment, fire and rescue gear, computers, or furniture shall remain the property of the County.

9.
NO ASSIGNMENT OR SUBLETTING

Fire Station 12 is leased for the sole use of the County, to be used under the terms of this Agreement, and for the purpose of providing Fire and Rescue services, and this Agreement is not to be assigned, sublet or otherwise made available to third parties without the express written consent of the City.

10.
COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW

The City and the County shall, at all times, obey and be in strict compliance with all applicable federal, state or local laws, regulations and ordinances.

11.
INSURANCE

The County shall maintain a fire and all risks hazard insurance coverage upon Fire Station 12, such insurance to be in an amount not less than the full replacement value of the property. Such insurance shall be primary insurance and shall pay all claims to its limits of liability before any payments are to be made by the State of Georgia Operational Hazard Reserve or Tort Claims Funds. In the event of any damage or loss, the County shall notify the City immediately. If at any time during the Term of this Agreement, Fire Station 12 is totally destroyed by storm, fire, lightning, earthquake or other casualty, this Agreement shall terminate as of the date of such destruction. If Fire Station 12 is damaged, but not wholly destroyed by any of such casualties, the County shall pay the deductible and the City shall restore Fire Station 12 to substantially the same condition as existed before such casualty as promptly as practicable; provided, however, that if the damage shall be so extensive that the same cannot be reasonably repaired and restored within sixty (60) days from the date of the casualty or if the County determines that its use Fire Station 12 will be materially adversely affected due to such damage, the County may terminate this Agreement by giving written notice to the City within sixty (60) days from the date of such casualty.

12.
DEFAULT BY THE COUNTY

If the County defaults in the performance or observance of any provision of this Agreement which is required to be kept by the County, notwithstanding whether such event of default be monetary or nonmonetary in nature, and remains in default for thirty (30) calendar days after the date of service of notice of such default by the City; the City may, but only during the continuance of such default, proceed to terminate the Agreement and the County's rights thereunder.

13.
CONDITIONS OF FIRE STATION 12

The County accepts Fire Station 12 in its "as is" condition. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CITY MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND TO THE COUNTY REGARDING THE CONDITION OF FIRE STATION 12, INCLUDING WITHOUT LIMITATION, AS TO THE PRESENCE OR SUSPECTED PRESENCE OF HAZARDOUS WASTE OR SUBSTANCES ON, ABOUT OR, UNDER THE PROPERTY, OR THE FITNESS OR SUITABILITY THEREOF OF ANY PART THEREOF IN ANY RESPECT OR IN CONNECTION WITH OR FOR THE PURPOSES OR USES OF THE COUNTY. THE COUNTY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CITY HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED, AS TO FIRE STATION 12. EXCEPT AS SET FORTH IN THIS AGREEMENT, FIRE STATION 12 ARE BEING LEASED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS.

14.
SUBJECT TO LIEN

It is understood and agreed that this Agreement shall at all times be subject and subordinate to any liens, restrictions and covenants upon Fire Station 12 and the entirety of the property as herein described on which it resides.

15.
ENVIRONMENTAL

The County, at its sole cost, shall comply with all laws related to the use and disposal of hazardous substances (as defined by such laws) at Fire Station 12 to the extent that such laws apply to the County's occupancy and/or use of Fire Station 12, after the commencement of this Agreement. The County shall defend, indemnify and hold the City harmless, to the extent permitted by law, from any and all claims, costs, damages and liabilities, to the extent permitted by law, including reasonable attorney's fees and costs, as well as reasonable costs of any removal, cleanup and restoration work and materials mandated or required by any government agency having jurisdiction, resulting from the County's violation of, or failure to comply with, any such laws, and which relates to any condition caused by the County which occur during the

term of this Agreement. The County's obligations hereunder shall survive the termination of this Agreement. The City shall remain liable for, and shall defend, indemnify and hold the County harmless, to the extent permitted by law, from and against all claims, costs, damages and liabilities, including reasonable attorney's fees and costs, as well as reasonable costs of any removal, cleanup and restoration work and materials mandated or required by any governmental agency having jurisdiction, resulting from the City's violation of, or failure to comply with, any such laws, and which relates to any condition caused by the City which occurred prior to the term of this Agreement. The City's obligations hereunder shall survive the termination of this Agreement. As used in this Agreement, the term "hazardous substance" means: (A) any substance designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. Section 1321(b)(2)(A)]; (B) any element, compound, mixture, solution or substance designated pursuant to Section 102 of CERCLA [42 U.S.C. Section 9602J]; (C) any hazardous waste having the characteristics identified under or listed pursuant section 3001 of the Solid Waste Disposal Act [42 U.S.C. Section 6921](but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); (D) any toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. Section 1317(a)]; (E) any hazardous air pollutant listed under Section 112 of the Clean Air Act [42 U.S.C. Section 7412]; and (F) any imminently hazardous chemical substance or mixture with respect to which the U.S. E.P.A. or similar state government entity has taken action pursuant to Section 7 of the Toxic Substance Control Act [15 U.S.C. Section 2606] and any hazardous substance pursuant to CERCLA [42 U.S.C. Section 9601, et. seq.].

16.

WAIVER OF SUBROGATION

The City and the County shall each have included in all policies of fire, extended coverage, business interruption and loss of rents insurance respectively obtained by them covering Fire Station 12 and/or the property on which it resides, as well as contents therein, a waiver by the insurer of all right of subrogation against the other in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured. To the full extent permitted by law, the City and the County each waives all right of recovery against the other for, and agrees to release the other from liability for, loss or damage to the extent such loss or damage is covered by valid and collectible insurance in effect at the time of such loss or damage or would be covered by the insurance required to be maintained under this Agreement by the party seeking recovery.

17.

NOTICES

All notices, statements, reports, demands, requests, consents, approvals, waivers and authorizations, hereinafter collectively referred to as "notices," required by the provisions of this Agreement to be secured from or given by either of the parties hereto to the other shall be in writing (whether or not the provision hereof requiring such notice specifies written notice) and the original of said notice shall be delivered either: (a) by hand delivery to the recipient party at such party's address; or (b) sent by United States Certified Mail - Return Receipt Requested,

postage prepaid and addressed to the recipient party at such party's address. Any notice, hand delivered or so mailed, the text of which is reasonably calculated to apprise the recipient party of the substance thereof and the circumstances involved, shall be deemed sufficient notice under this Agreement. Either party hereto may from time to time, by notice to the other, designate a different person or title, or both if applicable, or address to which notices to said party shall be given. On the date hereof, notices shall be addressed as follows:

If to the County:

Executive Assistant
1300 Commerce Drive 6th Floor
Decatur, Georgia 30030
404-371-2116, Facsimile number

With a copy to:

County Attorney
1300 Commerce Drive, 5th 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, 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

18.

TIME OF THE ESSENCE

Time is of the essence of this Agreement.

19.

HOLDING OVER

The County shall not use and shall promptly vacate possession of Fire Station 12 upon the expiration or any termination of the term of this Agreement. Any holding over or continued use or occupancy of Fire Station 12 by the County after the expiration or termination of the term of this Agreement, without consent of the City, shall not constitute a tenancy-at-will in the

County, but the County shall be a tenant-at-sufferance and shall be required to vacate Fire Station 12 immediately without notice. There shall be no renewal or extension of the term of this Agreement by operation of law and in no event, without a new written Agreement, shall the occupancy extend beyond 50 years.

20.
NO JOINT VENTURE

Nothing contained in this Agreement shall make, or be construed to make, the City or the County partners in, of, or joint venturers with each other, nor shall anything contained in this Agreement render, or be construed to render, either the City or the County liable to a third party for the debts or obligations of the other.

21.
NON WAIVER

No failure of either party hereto to exercise any right or power given to said party under this Agreement, or to insist upon strict compliance by the other party hereto with the provisions of this Agreement, and no custom or practice of either party hereto at variance with the terms and conditions of this Agreement, shall constitute a waiver of either party's right to demand exact and strict compliance by the other party hereto with the terms and conditions of this Agreement.

22.
RIGHTS CUMULATIVE

All rights, powers and privileges conferred by this Agreement upon the City and the County shall be cumulative of, but not restricted to, those given by law.

23.
SEVERABILITY

If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Agreement shall survive and be applied, and any invalid or enforceable portion shall be construed or reformed to preserve as such of the original words, terms, purpose and intent as shall be permitted by law.

24.
BINDING EFFECT

Each of the terms and conditions of this Agreement shall apply, extend to, be binding upon, and inure to the benefit or detriment of the parties hereto and to their successors and assigns. Subject to the foregoing, whenever a reference to the parties hereto is made, such

reference shall be deemed to include the successors and assigns of said party, the same as if in each case specifically expressed.

25.
INTERPRETATION

Should any provision of this Agreement require judicial interpretation, it is agreed and stipulated by and between the parties hereto that the court interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that an instrument is to be construed more strictly against the party who prepared the same.

26.
GEORGIA AGREEMENT

This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of the State of Georgia. Should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia.

27.
SECTION HEADINGS

The brief headings or titles preceding each section herein are merely for purposes of section identification, convenience and ease of reference, and shall be completely disregarded in the construction of this Agreement.

28.
COUNTERPARTS

This Agreement is executed in two (2) counterparts which are separately numbered but each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

29.
ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements between the City and the County and constitutes the full, complete and entire agreement between the City and the County with respect to Fire Station 12 and the County's use and occupancy thereof; no member, officer, employee, representative or agent of the City or the County has authority to make, or has made, any statement, agreement, representation or contemporaneous agreement, oral or written, in connection herewith, amending, supplementing, modifying adding to, deleting from, or changing the terms and conditions of this Agreement. No modification or amendment to this Agreement shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by the Mayor of the City

and the Chief Executive officer of the County and incorporated in and by reference made a part hereof.

IN WITNESS WHEREOF, the City and the County, acting by and through their duly authorized representatives, have caused these presents to be signed, sealed, and delivered all as of the date hereof.

[SIGNATURES ON FOLLOWING PAGES]

CITY:

CITY OF DUNWOODY, GEORGIA

By: _____(SEAL)
Ken Wright, Mayor

Attest: _____
Sharon Lowery, City Clerk

(SEAL)

Approved as to form: _____
Brian Anderson, City Attorney

(Signatures continued on following page)

COUNTY:

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)
W. Burrell Ellis, Jr.
Chief Executive Officer

Attest: _____
Barbara H. Sanders, CCC
Clerk to the Board of Commissioners
and the Chief Executive Officer

(SEAL)

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

Viviane H. Ernstes
Chief Assistant County Attorney

Eddie O'Brien
Fire Chief