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**MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Smith, Public Works Director

**Date:** 11/12/2012

**Subject:** **Discussion of Intergovernmental Agreement with DeKalb County for Water and Sewer Related Pavement Repairs**

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**ITEM DESCRIPTION**

Discussion of Intergovernmental Agreement with DeKalb County for Water and Sewer Related Pavement Repairs

**BACKGROUND**

DeKalb County, as the water and sanitary sewer service provider for the City of Dunwoody, currently is responsible for any pavement repairs associated with water or sewer maintenance within the roadway. The City, as the maintaining agency of the roadway, and the County have discussed options for improving the speed and quality of the pavement repairs after water and sewer repairs have been completed in the roadway.

The attached Intergovernmental Agreement (IGA) provides a mechanism by which the County would notify the City when water and sewer repairs have been completed. The City would then complete the pavement repairs and request reimbursement from the County. The amount of the reimbursement will be set based on a unit cost derived through a competitively bid process.

**RECOMMENDED ACTION**

By entering into this IGA the City will be able to control the speed and quality of pavement repairs related to water and sewer work. Although, cost associated with the repair work will be fully reimbursed by the County, staff time will be required to coordinate this additional repair work. Some of this additional staff time will be offset by the staff time currently spent fielding calls from citizens and following up with the County on their pavement repairs.

Staff recommends approval of the proposed IGA with an evaluation after one year as to whether to renew for additional years.

STATE OF GEORGIA  
CITY OF DUNWOODY

RESOLUTION 2012-XX-XX

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

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

WHEREAS, DeKalb County provides water treatment and distribution and wastewater collection and treatment services to residents of Dunwoody; and

WHEREAS, the County, from time to time, conducts work on its water and sewer lines, which necessitates digging operations that require the road to be resurfaced once the work is completed; and

WHEREAS, the City and County desire to enter into an Intergovernmental Agreement, as attached hereto and incorporated herein by reference, for the City to assume responsibility for said resurfacing and for the County to reimburse the City for the cost of same; and

WHEREAS, the attached Intergovernmental Agreement has been reviewed by the City Attorney.

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, as attached hereto and incorporated herein, for road resurfacing. The Mayor and Council direct the City Manager to send a certified copy of this Resolution to DeKalb County.

SO RESOLVED AND EFFECTIVE, this \_\_\_ day of \_\_\_\_\_, 2012.

Approved:

\_\_\_\_\_  
Michael G. Davis, Mayor

Attest:

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

(Seal)

October 10, 2012

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF RESURFACING SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA AND  
THE CITY OF DUNWOODY, GEORGIA**

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

WHEREAS, the County provides water treatment and distribution and wastewater collection and treatment services to residents of Dunwoody; and

WHEREAS, the County and City desire to enter into an Intergovernmental Agreement to allow the City to resurface roads and rights-of way in the City after the County has repaired or upgraded a water or sewer line laying beneath such roads of rights of way; 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 the City agree as follows:**

**Section 1.** The County routinely performs unplanned, emergency repairs to the water and sewer system. Upon completion of such repairs located beneath a paved road or right-of-way within the City’s boundaries, the County shall backfill the excavation to subgrade per County standards, shall place and secure a steel plate over the backfilled excavation, and the Director of the Department of Watershed Management or his/her designee shall notify the City Manager or his/her designee of the location of the emergency repair.

**Section 2.** The City shall restore the road or right-of-way to City standards, using the same competitive, publicly bid, and unit price contract that it utilizes for other City roadway repairs. Upon completion of the pavement restoration, the City shall transport the County’s steel plate to a designated City location, and notify the County. The County will periodically retrieve the steel plates from the designated City location.

**Section 3.** The City shall bill the County for the cost of pavement restoration on a monthly basis, and the County shall pay the City within 30 days of approval of each request for payment, which shall not be unreasonably or unnecessarily delayed. The City agrees that its request for payment for any road repair work pursuant to this Agreement will never exceed the amount paid by the City for its other similar road repair work, not subject to reimbursement by the County. This cost of payment for restoration shall also include the City’s expense in correcting any improper backfill performed by the County after any particular excavation.

**Section 3.** The term of the Agreement is for one year, commencing January 1, 2013 at 0000 hours and concluding at 2400 hours on December 31, 2013. 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.

**Section 4.** The County or the City may terminate this Agreement with or without cause by giving thirty (30) days prior written notice to the other party.

**Section 5.** 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. All notices sent to the addresses listed below shall be binding unless said address is changed in writing no less than fourteen days before such notice is sent. 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  
   1300 Commerce Drive, 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, 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

**Section 6.** This Agreement may be extended at any time during the term by mutual consent of both parties so long as such extension is approved by official action of the City Council and approved by official action of the County governing authority.

**Section 7.** Neither party shall assign any of the obligations or benefits of this Agreement.

**Section 8.** The parties acknowledge, one to the other, that the terms of this Agreement constitute

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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 of Dunwoody or DeKalb County. All parties must sign any amendments to the Agreement.

**Section 9.** 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. 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 unenforceable portion shall be construed or reformed to preserve as such of the original words, terms, purpose and intent as shall be permitted by law.

**Section 10.** This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**Section 11.** 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, DeKalb County and the City of Dunwoody have executed this Agreement through their duly authorized officers.**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_ (SEAL)  
W. Burrell Ellis, Jr.  
Chief Executive Officer  
DeKalb County, Georgia

**ATTEST:**

\_\_\_\_\_  
Barbara H. Sanders, CCC  
Clerk of the  
Board of Commissioners of  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Viviane H. Ernstes  
Chief Assistant County Attorney

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
Ted Rhinehart  
Deputy COO

**CITY OF DUNWOODY, GEORGIA**

\_\_\_\_\_  
Michael G. Davis  
Mayor

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

**Approved as to Form:**

\_\_\_\_\_  
Staff Attorney