



41 Perimeter Center East, Suite 250
 Dunwoody, Georgia 30346
 P (678) 382-6700 F (678) 382-6701
dunwoodyga.gov

MEMORANDUM

To: Mayor and City Council

From: Brent Walker, Parks and Recreation Manager

Date: October 29, 2012

Subject: **Approval of City's Relationship with Affiliated Programming Partners**

ITEM DESCRIPTION

Several agencies provide beneficial recreational and arts programs and services within the City. The City currently does not have a standard agreement with these agencies.

BACKGROUND

In June of 2010 the City of Dunwoody acquired its park properties from DeKalb County. Several recreation and arts service providers have provided recreational and arts programs and services to the citizens of Dunwoody for many years. The facility usage agreements that were established between DeKalb County and these agencies have been honored by the City since the parks transfer occurred in 2010. The terms of the agreements have all expired.

The usage agreements vary in nature. Several have standard lease agreements in which the service provider pays rent to the City and the City pays all utilities and facility upkeep costs. Other organizations utilize the City facilities free of charge but are responsible for all utilities and maintenance for the programming area within their facility. The City is responsible currently for all capital improvements.

The City Manager and the Parks Manager met with the service providers to discuss their current arrangement and any desired changes they are seeking as the City proceeds with establishing formalized agreements between the parties. The City prepared draft agreements and sent them to each agency for their review and has received their approval of the agreement terms. These agreements will be for one year and renew automatically absent termination by either party with 60 days notice. A longer term agreement is not possible under Georgia law.

ANALYSIS

After meeting with all the affiliated organizations, staff has determined that the existing relationships serve the community and the revenues and expenses paid by the parties are fair and work well for all parties. Attached is a copy of each organizations usage agreement and a schedule of each organizations revenue contributions to the City for the use of their facility and the City's typical monthly operational costs for each facility.

RECOMMENDATION

Staff recommends the City establish facility usage agreements with its affiliated service partners and include \$250,000 in the FY 2013 budget (and subsequent years as funds are available) for capital improvements for the city owned facilities the partners utilize to provide services. The City



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would allow our partner agencies to request funding from the City for long-term capital improvements to city property. These funds can only be used for facility capital projects and not for any programming or operational costs. The Council would determine on a yearly basis which projects it wishes to fund and at what amount. The City and its partners would jointly manage the projects and all funds would remain with the City.

STATE OF GEORGIA
CITY OF DUNWOODY

FACILITY USAGE AGREEMENT

THIS AGREEMENT by and between the **City of Dunwoody, Georgia**, a municipal body politic and corporate, hereinafter designated "CITY" and **The Dunwoody Preservation Trust, Inc.** 5455 Chamblee Dunwoody Road, Dunwoody, GA, a private, nonprofit corporation organized under the laws of the State of Georgia, hereinafter designated "DPT."

WITNESSETH:

WHEREAS, CITY owns and operates The Donaldson–Bannister Farm located at 4831 Chamblee Dunwoody Road, Dunwoody, Georgia, (hereinafter designated as "Facilities"), for the purpose of serving the residents of the City of Dunwoody by locating and housing therein various public and private companies, corporations, and organizations capable of and willing to provide their services with the residents of the City of Dunwoody; and

WHEREAS, the undersigned DPT desires to operate the Facility and provide historical, educational, scientific, and community betterment programs including meetings, fund raising events, special events and other related activities for the benefit of residents of the City of Dunwoody and agrees to utilize space in the Facilities in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, the parties hereto agree as follows:

1. CITY does hereby grant to DPT the usage of six thousand one hundred eighteen (6,118) square feet of space delineated as the structures and also the grounds surrounding the structures on the Site Plan Layout attached hereto as Attachment B and by reference made a part hereof (hereinafter referred to as "Space").
2. This Agreement, beginning on _____ is for an initial term expiring on December 31, 2012. This Agreement shall terminate absolutely and without further obligation on the part of the City on December 31, 2012 and on December 31st of each succeeding and renewed year, as required by O.C.G.A. § 36-60-13, as amended, unless terminated by either Party no later than ninety (90) days prior to the conclusion of the initial or any renewal term. This Agreement may be automatically renewed on an annual basis for an additional twelve-month term upon the same terms and conditions, as provided for in this Agreement, unless previously terminated.
3. The City's governing authority may unilaterally terminate this Agreement on or before October 1st of each year in which the Agreement is in force.
4. This Agreement may be automatically renewed for an additional twelve-month term, subject to the following conditions:

- (a) DPT shall provide written notice to CITY at least sixty (60) days prior to the expiration date of this lease exercising the option to extend or renew or to engage in a process of amending and revising the agreement.
 - (b) DPT shall continue to perform its services and to coordinate its performance with that of other users and CITY.
 - (c) DPT shall comply with the conditions of this Agreement.
5. Either party shall have the right to terminate this Agreement for any reason at any time during the original term of this lease or any extension or renewal thereof by giving written notice to DPT of its intention to terminate at least ninety (90) days prior to the effective date of termination. CITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time DPT fails or refuses to fulfill the terms and conditions set forth herein. The City shall notify DPT of any violation of the terms of this Agreement in writing and allow DPT ten (10) days to cure said deficiency, upon which time, if said cure has not been effected, the City may terminate this Agreement without further notice. DPT, upon termination of this Agreement or any renewal thereof, or cancellation thereof by CITY, shall vacate and deliver up the Space peaceably, quietly, and in good order and condition.
6. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when deposited in the United States Mail, postage prepaid, certified, and addressed as follows:
- (a) CITY: City of Dunwoody
41 Perimeter Center E
Suite 250
Dunwoody, Georgia 30346
Attention: Parks & Recreation
 - (b) DPT: The Dunwoody Preservation Trust, Inc.
P.O. Box 889244
Dunwoody, Georgia 30356
7. CITY does hereby designate the Parks & Recreation Department as its representative in all matters pertaining to this lease. All requests and issues arising from use of the Space described herein should be addressed to the Parks & Recreation Department through its Parks Manager assigned to the Center. The Public Works Director is authorized to establish such administrative procedures he or she deems appropriate to carry out and enforce the terms of this Agreement.
8. The CITY and DPT shall provide services in accordance with Attachment A, which is attached hereto and by reference made a part hereof, during the term of the lease. DPT agrees to provide CITY with appropriate information about its program activities, including

program operating hours, in order to facilitate operation of the Center and coordination by the CITY.

- 9 DPT shall at all times exonerate, indemnify, and save harmless the CITY from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property (i) caused by or (ii) sustained on the Space in connection with the performance of this Agreement or any extension or renewal thereof or conditions created thereby and shall assume and pay for, without cost to the CITY, the defense of any and all claims, litigation and actions, suffered through any act or omission by the DPT or any of its officers, directors, members, employees, agents, successors and assigns with regard to the operations of the space that is result of the proximate negligence of the DPT or any of its officers, directors, members, employees, agents, successors and assigns.
- 10 Except as otherwise consented to in writing by CITY, DPT shall maintain in force during the life of this Agreement or any extension or renewal thereof comprehensive general public liability and property damage insurance, in the minimum amount of \$100,000.00 with respect to each person, and in the sum of \$300,000.00 with respect to each accident or occurrence, and in the sum of \$100,000.00 for injury or damage to property, and CITY shall be named as an additional insured under such policy or policies of insurance.
- 11 Except as otherwise consented to in writing by CITY, DPT shall furnish to the CITY within thirty (30) days after execution of this agreement, a certificate or certificates evidencing such insurance coverage in companies doing business in Georgia and acceptable to CITY covering:
 - (a) The location and the operations to which the insurance applies
 - (b) The expiration date of policies
 - (c) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notices to CITY, as evidenced by return receipts of registered or certified letters. Prior to ten (10) days before the expiration of any such certificate, DPT shall deliver to the CITY a certificate renewing or extending the terms for a period of at least one (1) year, or a certificate acceptable to CITY evidencing the required insurance coverage.
- 12 To the extent permitted by law, the City shall indemnify, defend, and hold the DPT and its officers, directors, members, employees, agents, successors and assigns, harmless from and against any and all claims, demands, liabilities, loss damage, injury, actions or causes of action of any name or nature (including attorneys' fees and court costs) which may be asserted, claimed, prosecuted, incurred or suffered by the DPT as a result of the physical condition of the Farm established pursuant to the terms of this AGREEMENT.
- 13 DPT shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia Annotated and all appropriate statues and regulations governing the services it furnishes and, when applicable, with the standards of its profession. DPT acknowledges their responsibility to report child abuse under O.C.G.A § 19-7-5 as may be

amended in the future and they accept responsibility to adhere to it, including all paid employees and volunteers and that failure to do so shall constitute a material breach of this Agreement.

- 14 The occupancy and use by DPT of the Space and rights herein conferred upon DPT shall be subject to rules and regulations as are now or may hereinafter be prescribed by CITY concerning the use of this or any City Property.
- 15 Both parties agree that the provisions of this Agreement or any extension or renewal thereof, are not intended to be nor should they be construed as in any way creating or establishing a relationship between the parties hereto other than that of Owner and User, and at all times during the term of this Agreement or any extension or renewal thereof, DPT is to be and shall remain as an independent contractor. DPT shall not have any property rights other than what is established under this Agreement in respect to the Property identified herein.
- 16 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 17 This Agreement shall be deemed to have been made and performed in the City of Dunwoody, Georgia. For the purpose of the venue, all suits or causes of actions arising out of this Agreement shall be brought in the appropriate courts within DeKalb County, Georgia.
- 18 Any amendment or modification of this Agreement shall be set forth in writing as an Amendment to this Agreement, duly executed by the parties, but shall not become effective until thirty (30) days after the execution and delivery of such writing.
- 19 DPT shall at the termination of this Agreement or any extension or renewal thereof surrender the Space in good order and condition, reasonable use and ordinary wear and thereof excepted. CITY shall be entitled to all rights and remedies provided by law including, without limitation, the dispossessory rights and remedies provided in O.C.G.A. § 44-7-49, *et seq.* as may be amended in the future.
- 20 Should any provision or term of this Agreement be determined by a court of competent jurisdiction to be unenforceable, all other provisions and terms shall remain in full force and effect.
- 21 This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Agreement shall be enforceable unless approved in writing by the City of Dunwoody and DPT.
- 22 In the event of a conflict between this agreement and any exhibit contained herein or any previous agreements, the provisions of this agreement shall govern.
- 23 Without regard to any designation made by the person or entity entering this Agreement, the City of Dunwoody considers all information submitted in relation to the Agreement to be a

public record that will be disclosed upon request pursuant to the Georgia Open Records Act O.C.G.A. § 50-18-70 *et seq.* as may be amended in the future, unless a court order is obtained to the contrary.

24 The headings of sections and paragraphs, if any, to the extent used herein are for convenience and reference only, and in no way define, limit or describe the scope or intent of any provision hereof, and therefore will not be used in construing or interpreting the provisions hereof.

25 Contractor (DPT) and Subcontractor Evidence of Compliance:

Pursuant to O.C.G.A. § 50-36-1(e), City contracts within the State of Georgia shall include the following provisions on the attached Affidavit Verifying Status:

1. Provide at least one secure and verifiable document, as defined in Code Section 50-36-2;
2. Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:
 - i. The applicant is a United States citizen or legal permanent resident 18 years of age or older; or
 - ii. The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

[SIGNATURES CONTINUE ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in three counterparts, each to be considered as an original by their authorized representative, on this _____ day of _____, 20__.

DPT: Dunwoody Preservation Trust, Inc.

CITY: City of Dunwoody, Georgia

By: _____
Signature

City Manager
City of Dunwoody, Georgia

Name (Typed or Printed)

Title

Federal Tax I.D. Number

ATTEST:

ATTEST:

Signature

City Clerk

Name (Typed or Printed)

Title

APPROVED AS TO FORM:

City Attorney Signature

**Affidavit Verifying Status
for City Public Benefit Application**

By executing this affidavit under oath, as an applicant for a City of Dunwoody, Georgia Business License or Occupation Tax Certificate, Alcohol License, Taxi Permit or other public benefit as referenced in O.C.G.A. Section 50-36-1, I am stating the following with respect to my application for a City of Dunwoody license/permit for:

1) _____ I am a United States citizen **(Must include copy of either Georgia Driver’s License, Passport, or Military ID)**

OR

2) _____ I am a legal permanent resident 18 years of age or older or I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act 18 years of age or older and lawfully present in the United States.* **(Must include either a copy of your Permanent Resident Card or Employment Authorization Card as well as another form of government issued identification such as Georgia Driver’s License, Military ID, or Passport)**

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of Code Section 16-10-20 of the Official Code of Georgia.

Signature of Applicant: _____ **Date:** _____

Printed Name: _____

***Alien Registration number for non-citizens:** _____

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE _____ DAY OF _____,
20____

Notary Public: _____ My Commission Expires: _____

*Note: O.C.G.A. § 50-36-1(e)(2) requires that aliens under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, provide their alien registration number. Because legal permanent residents are included in the federal definition of “alien”, legal permanent residents must also provide their alien registration number. Qualified aliens that do not have an alien registration number may supply another identifying number below:

Attachment A

The parties having entered the previous agreement and desiring to further address specific terms of the scope of the operations and ratification of respective intents, the following conditions are hereby stated and incorporated into the Agreement as provided in the Agreement. The City desires to serve the community and citizens of the City of Dunwoody by utilizing the Donaldson-Bannister Farm in a cost-effective manner that showcases the property to the broadest number of visitors and users feasible. DPT is a non-profit corporation that seeks to preserve and recognize the history and heritage of Dunwoody through a variety of means including underwriting maintenance, conducting research, providing education, and generally contributing to the cultural advancement of the community. The Donaldson-Bannister Farm provides DPT with a unique opportunity to engage in its efforts and enhance the community at the same time. DPT expects to engage in continued research and development of programming at the Farm in the coming years and intends to operate the Farm in an expanding role consistent with a master plan to be approved by the City. The expansion of the role in operation will allow opportunities for fund raising, special events, and other related activities. The parties to the Agreement recognize the ongoing evolution of the property's use and desire that this Agreement be interpreted to achieve those goals, thereby minimizing later modifications. The parties do understand that certain modifications will be necessary over time and wish to expedite the process as much as possible through this initial understanding and agreement. The following provisions of Attachment A are intended to accomplish that goal.

I. Responsibilities of the City

1. The City recognizes acknowledges and endorses the DPT's role in fundraising, development activities and other support efforts on behalf of the Farm and the benefits that the City derives from the DPT's funding and activities.
2. The City does hereby permit DPT to Use the Farm in accordance with the provisions of this Agreement. The DPT agrees to use the Farm for public historical education, historical preservation, special events, community meetings and historical meeting purposes provided that such use shall not damage the physical or structural integrity of the Farm.
3. City shall grant the DPT the use of the Farm, as long as all the promises in the AGREEMENT are maintained. City and the DPT will conduct an annual review of the AGREEMENT in the first quarter of each year.
4. The DPT is a separate legal entity and shall operate separately from, but cooperatively with the City in conjunction with the operation of the Farm.
5. The head of the City's Parks and Recreation Department will communicate with the DPT, keeping it notified of all matters concerning the Farm.
6. The City shall receive a copy of the DPT's bylaws and maintain a copy within its records. It is agreed that the DPT will operate at all times within the terms of its Articles of Organization

and its Bylaws and in accordance with all applicable ordinances of the City, as well as State and Federal Law.

7. The City, in order to expedite the process of opening the Farm, will commit \$200,000 towards capital improvements within one year of the acceptance of the DPT strategic plan by the City.

8. The City shall pay operational costs of the building(s), which include: house insurance, pest control, building maintenance, basic grounds, landscaping maintenance, security, and basic janitorial services approved by the Parks Director.

9. The City shall provide two (2) professionally contracted house cleanings for the exterior of the Main and Guest Houses during each calendar year, which cleaning shall include, but not necessarily, be limited to window washing, gutter cleaning, and general cleaning.

10. The City shall post the Farm's events, if given in a timely manner, on the City's website upon receiving emailed information concerning the meeting, educational session or function.

11. The City has the right to adjust information to follow the City website guidelines.

12. The City recognizes that all IT hardware/services located at the Farm shall remain the property of the DPT. In this Agreement, IT hardware/service refers to computers, printers and related peripherals, web services, support services, development services, so long as said hardware and services have been paid for, installed and maintained by the DPT.

Responsibilities of the DPT

1. The DPT is a separate legal entity and shall operate separately from, but cooperatively with the City.

2. The DPT agrees to use the Farm for historical, educational, scientific, and community betterment programs including meetings, fund raising events and other related activities. The DPT will be responsible for the scheduling of events on the Farm.

3. DPT shall be responsible for all utilities for the facilities utilized for programs upon the agreed date of occupancy if not simultaneously with the execution of this Agreement. Any additional facilities built by the City on the Property after the execution of this Agreement shall be maintained by the City at its expense.

4. The DPT shall create a statement of purpose to define the long-term historical use of the Farm by _____.

5. Rental rates and fees for the use of the Farm shall be determined and collected by the DPT.

6. The DPT will have control over service agreements between food service providers and retail services provided on the Farm subject to City's approval of the terms between DPT and such other entities.
7. The DPT will distribute a copy of the Farm's written special events policies, procedures and rental rates to the City's Parks and Recreation Department. DPT shall not charge unincorporated DeKalb County residents a higher rate for services.
8. The DPT agrees to keep all public notices for historical functions and events current on the DPT website, voicemail, collateral and any form of public marketing and will undertake to make corrections and updating of records upon due notice from City.
9. The DPT shall coordinate and contract for special events at the Farm. This includes management, staff, and janitorial services.
10. DPT and the CITY agree that large special events can be a nuisance to neighboring residents of the Donaldson-Banister Farm. DPT agrees to work with any party that rents the facility to alleviate excessive on street parking in the neighboring streets and encourage the use of on-site parking and off-site parking with shuttle services for special events.
11. The DPT shall maintain a schedule of all functions at the Farm. The DPT shall submit a report of all recorded Farm Functions of the previous year to the City each January to include date, use and number of people present.
12. The DPT shall voluntarily maintain a yearly logbook with the DPT member name(s) and visitor name(s) for usage of the archives room, tours, office hours, and other use of the Farm. This document shall be provided in January of each year for the City to include in the annual Citizen's Report.
13. The City shall provide an initial inventory of the items at the Farm and either identify as City or DPT Property. For each subsequent year of this Agreement, DPT shall furnish and provide any update to such an inventory by each January 30. Furthermore, at the execution of this Agreement, the City and DPT shall conduct a "walk-through" on the Property to identify the physical conditions thereon. Thereafter, aside from ordinary wear and tear, the DPT shall be responsible for any negative change in physical conditions on the Property directly related to the DPT's operation and use of the Property.
14. The DPT personnel shall oversee any scheduled history functions from opening and closing the Farm on the date of such scheduled event. The DPT shall provide basic janitorial services immediately following the scheduled event. The DPT shall provide other janitorial services as needed with exception of the Farm's public bathrooms, which are the responsibility of the City.
15. The DPT shall be responsible for all operational aspects of the Farm, and it shall have the rights to all revenues generated from the operation of the Farm. In addition, the DPT may provide financial support to the Farm. Funds earned from the operation of the Farm shall be

used for educational programming, marketing of said programming, overhead costs for special events, maintaining the Farm, gift shop operations (replacement of equipment and fixtures as needed) and inventory, collection acquisition/conservation, exhibits and displays, special event programs, and general enhancements related solely to the Farm property, as well as other general operating costs of the Farm.

16. The DPT shall contract for and pay for insurance to cover house contents and archives as well as maintain general liability insurance naming the City as additional insured in an Agreement of at least \$1,000,000 per person, \$3,000,000 per incident and \$1,000,000 for property damages, as well as workmen's compensation insurance as required by law.

17. Aside from the general liability insurance listed above, DPT shall obtain and maintain insurance (\$135,000 minimum coverage) for all the DPT property and historical properties within the Farm. A Certificate of Insurance shall be provided to the City on an annual renewal basis.

18. The DPT shall occupy the Farm and refer requests for all exterior and interior building maintenance and ground maintenance to the City's Parks and Recreation Department through work requests. Normal structural repair costs are the responsibility of the City, while any remodeling or redecorating costs are the responsibility of the DPT and subject to the approval of the City's Parks and Recreation Department. Any damages arising from a Farm rental or other function shall be the responsibility of the DPT.

19. The DPT shall set up and utilize a recycling system using recycling containers and coordinating with the City's Parks Manager for any initial implementation.

20. The DPT shall not accept any gifts, cash (with the exception of anonymous donations), or artifacts for the Farm that may impose a liability for the City without the prior written approval of the City.

21. The DPT provides in its Bylaws that, in the event of its dissolution, all unrestricted assets owned by the DPT, including those of its wholly-owned subsidiaries, will be distributed to another 501(c)(3) or similarly formed non-profit organization with a formal understanding that the funds shall be used solely for charitable purposes.

22. The DPT shall seek to recruit a diverse board, membership and volunteer core, and the DPT may conduct its meetings at the Farm.

23. The DPT will seek partners to manage special events and projects at the Farm both physically and financially. These partners may include, but are not limited to the following: master gardeners; garden clubs; governments or organizations providing grants; members who contribute at all donation levels DPT recognizes; and special events promoters, sponsors, or hosts. Said partners shall be subject to approval by the City.

24. The DPT will use the Farm only for the purpose delineated in this AGREEMENT.

25. The City shall provide access to the Facility and provide keys to the DPT as requested. Only the members of the DPT that are granted access to the Farm shall use a DPT member's assigned key. Keys cannot be shared or loaned to another member or non-member of the DPT for any reason. Any Farm keys lost by a member of the DPT shall be reported to the DPT President or designee. The person who lost the key shall be responsible for key replacement cost and lock change as determined by the City Parks and Recreation Manager.

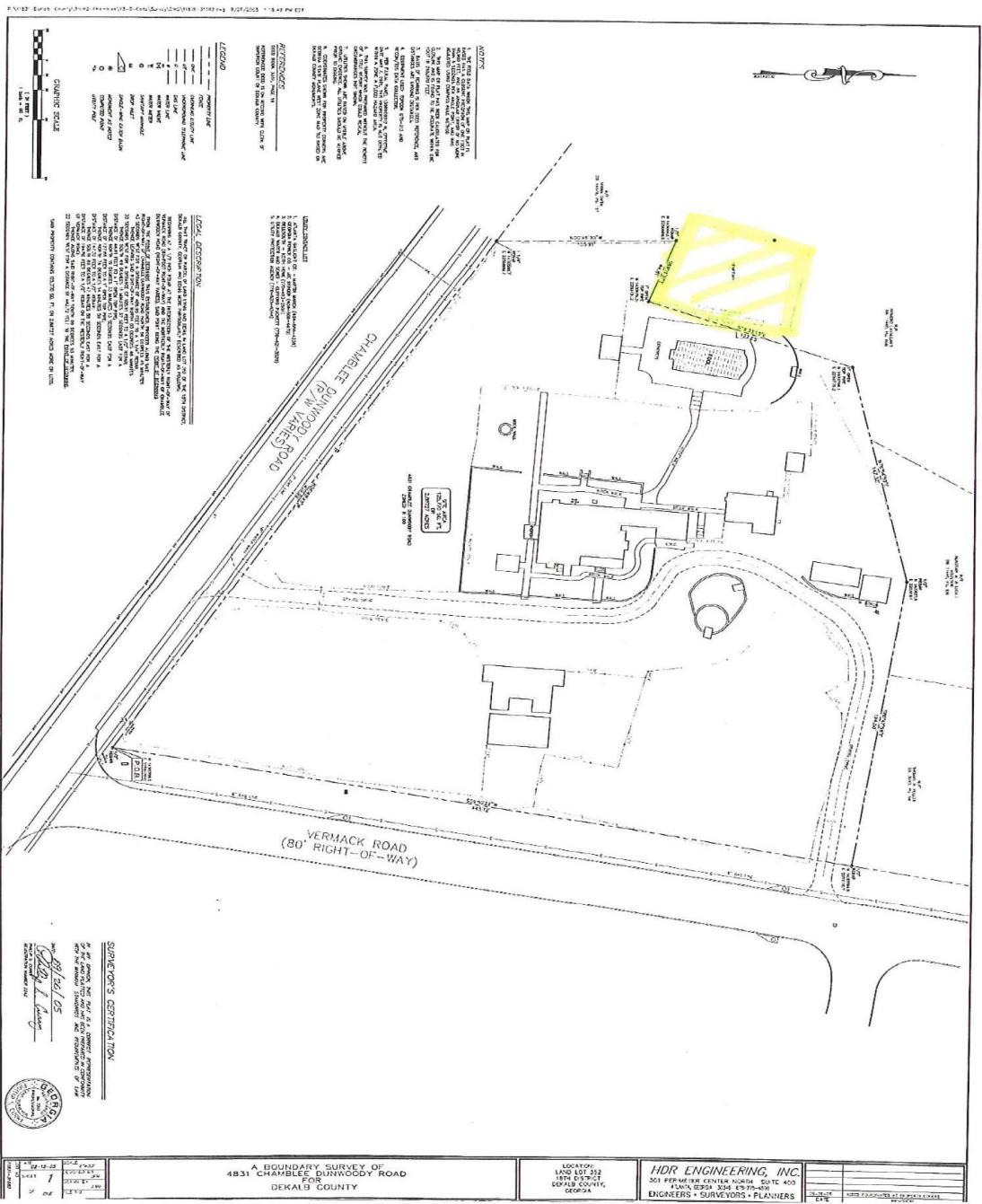
26. The City shall have the right to conduct events on the Farm separate from DPT's events on the Farm, so long as said events do not interfere with existing scheduled events of the DPT nor materially disrupt the operation of the Farm by DPT. The City shall coordinate with DPT on said events to make sure there is no such interference. The City shall be responsible for all preparation prior to and clean-up after the event and for any repairs related thereto.

27. The DPT shall comply with the City's Alcohol policies and Ordinances regarding use of alcoholic beverages on the Farm.

28. Any structural improvements/additions to the Farm made by DPT shall become the property of the City.

29. DPT agrees that The Farm property is a public park and the grounds must be available to the public. Areas may be temporarily closed to the public for the purpose of special events or rentals.

Attachment B



#L.2.

*Highlighted Area is the Donaldson Family Cemetery