



MEMORANDUM

To: Mayor and City Council

From: Warren Hutmacher, City Manager

Date: February 11, 2013

Subject: **Approval of an Intergovernmental agreement by and between the City of Dunwoody and DeKalb County regarding leasing the Dunwoody Library space to the County government.**

ITEM DESCRIPTION

A lease agreement between the City and DeKalb County for the interior space where the Dunwoody Library is currently located on Chamblee Dunwoody Road.

BACKGROUND

The City acquired the 4+ acres of land housing the North DeKalb Cultural Arts Center and the Dunwoody Library in 2010. The City wishes to lease back the interior space housing the Dunwoody Library to DeKalb County. The County operates the Library as a county-wide service to all DeKalb County residents.

ANALYSIS

The City of Dunwoody will retain title to the entire property in question. The City will maintain the exterior of the property and the space associated with the North DeKalb Cultural Arts Center. The City will lease the space dedicated to the Dunwoody Library to DeKalb County. The lease will be at no charge to the County. The County is responsible for all maintenance and repairs of the space leased to them including the roof. The term is for 50 years and there are mutual clauses for termination for cause or convenience upon 180 days notice.

RECOMMENDED ACTION

City Council approves an Intergovernmental Lease Agreement with DeKalb County for the space dedicated to the Dunwoody Library on Chamblee Dunwoody Road in Dunwoody.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2013-XX-XX

AN ORDINANCE ADOPTING AND AUTHORIZING AN INTERGOVERNMENTAL LEASE AGREEMENT BETWEEN THE CITY OF DUNWOODY AND DEKALB COUNTY FOR LEASE OF DUNWOODY LIBRARY

WHEREAS, the City of Dunwoody owns and operates the North DeKalb Cultural Arts Center, located at 5339 Chamblee Dunwoody Road, composed of the Arts Center and Dunwoody Library the City purchased from DeKalb County in 2010; and

WHEREAS, the Dunwoody Library has been continuously operated by DeKalb County for delivery of library services to the City of Dunwoody and surrounding area as part of the DeKalb County Library System; and

WHEREAS, the City wishes to Lease to the County, and the County wishes to Lease from the City, pursuant to the Intergovernmental Lease Agreement attached hereto and incorporated herein by reference, said Dunwoody Library to continue the delivery of library services by the County; and

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

WHEREAS, Section 2.10 of the City Charter requires that any leases that encumber City of Dunwoody land be authorized by Ordinance.

THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DUNWOODY AS FOLLOWS:

Section 1. That the Intergovernmental Lease Agreement between the City of Dunwoody and DeKalb County, for Dunwoody Library as described above is hereby authorized and approved in materially identical form as attached hereto and incorporated herein.

Section 2. That the Mayor, City Manager and City Attorney are hereby authorized to execute all applicable and appropriate documents to effectuate the execution of said Intergovernmental Lease Agreement and to deliver an executed copy to the offices of the DeKalb County CEO and/or County Attorney.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2013.

#I.3.

**STATE OF GEORGIA
CITY OF DUNWOODY**

ORDINANCE 2013-XX-XX

Approved:

Michael G. Davis, Mayor

ATTEST:

Sharon Lowery, City Clerk

(Seal)

APPROVED AS TO FORM:

Acting City Attorney

November 30, 2012

**STATE OF GEORGIA
COUNTY OF DEKALB**

INTERGOVERNMENTAL LEASE AGREEMENT FOR DUNWOODY LIBRARY

THIS INTERGOVERNMENTAL LEASE AGREEMENT, hereinafter referred to as "Agreement", is made and entered into effective the ____ day of _____, 2012, hereinafter referred to as "the date hereof", by and between the **CITY OF DUNWOODY**, a municipality of the State of Georgia, hereinafter referred to as "City" or "Landlord", and **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "County" or "Tenant."

W I T N E S S E T H T H A T :

WHEREAS, the City is the owner of certain property located at 5339 Chamblee-Dunwoody Road, Tax Parcel ID 18 366 05 006, hereinafter referred to as "the Property." The premises to be leased by the City to the County pursuant to this Agreement is hereinafter referred to as the "Dunwoody Library" more particularly described by a legal description attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the parties understand that the Dunwoody Library and the DeKalb Cultural Arts Center are both housed on the Property; and

WHEREAS, the County wishes to continue to utilize the Dunwoody Library; and

WHEREAS, the City wishes to lease the Dunwoody Library to the County for its continued use as a governmentally operated public library pursuant to the conditions listed in this Agreement; and

WHEREAS, the City and the County have, by proper Resolution, duly approved this Agreement at their regular 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 TEN DOLLARS (\$10.00) 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 Tenant, Landlord hereby grants and leases the Dunwoody Library unto Tenant, and Tenant does hereby take and lease the Dunwoody Library from Landlord, on the promises and on the terms and conditions hereinafter set forth. This Agreement creates the relationship of Landlord and Tenant between the parties hereto, and no estate shall pass from Landlord to Tenant under this Agreement. Landlord and Tenant agree that both shall have joint use of the parking lot of the DeKalb Cultural Arts Center and Library Complex. Tenant 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, with the exception that the County shall own the artwork currently stationed in the courtyard of the Library; shall maintain said artwork at its expense and shall have the right to remove said artwork at its discretion or relocate said artwork subject to the approval of Landlord as to placement on the Property.

2.

TERMS AND TERMINATION

2.1 This Agreement shall be for the Term beginning on the date hereof and ending at 11:59 p.m., prevailing legal time in Atlanta, Georgia, on December 31, 2012, (the Initial Termination Date) unless sooner terminated as hereinafter provided.

2.2 This Lease shall automatically extend for additional one (1) year successive Terms, not to exceed a total period of fifty (50) years, unless otherwise terminated by the City or County with one hundred and eighty (180) days prior written notice to the other party. These Renewal Terms shall be upon all of the same terms, covenants and conditions of this Agreement then applicable.

2.3 Should the County cease to utilize Dunwoody Library to provide library services for the City of Dunwoody and DeKalb County for a period of thirty (30) days, or be otherwise abandoned, this Agreement is hereby terminated effective sixty (60) days from the City's written notice of such failure to provide library services or abandonment. If during the sixty (60) day period, library services are resumed, the City, in its sole discretion, may choose to notify the County, in writing, that it is withdrawing the notice of termination and as of the date of such written withdrawal, this Lease shall remain in full force and effect without further action by either of the parties.

2.4 Except as otherwise provided in this Agreement, on the effective date of termination, all improvements made to the Dunwoody Library shall become property of the Landlord. Items not considered to be fixtures on the property, including but not limited to documents, writings, books, computers, furniture, bookcases, bookshelves affixed to the floor or walls, phones, will remain the property of the County, unless otherwise negotiated in a separate instrument by Landlord and Tenant prior to termination of this Agreement.

3.

RENT

Tenant agrees to pay Landlord, at the above-stated address, or at such other address or addresses as may be designated in writing from time to time by Landlord, a total fixed annual rental equal to \$10.00 payable on the date hereof for the Term. In the event the Term is extended, then for the Renewal Term and each successive Renewal Term, Tenant shall at the beginning thereof pay Landlord a total fixed annual rental equal to \$10.00 for each year of any Renewal Term.

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4.

OCCUPANCY AND USE OF PREMISES; DESTRUCTION OF PREMISES

4.1 Tenant shall use the Dunwoody Library solely for the purposes herein set forth and for the purpose of housing a governmentally operated library. Tenant's use of the Dunwoody Library shall be subject to and in accordance with the existing and future rules, regulations, and policies of the Tenant, the City and any applicable Federal, State or Local Law or Regulation. Without limitation of the foregoing, Tenant shall not: (a) use the Dunwoody Library 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 the Dunwoody Library; (d) use the Dunwoody Library for any use other than a governmentally operated public library; (e) make any alternations, additions or improvements which would materially reduce or adversely affect the value of the Dunwoody Library or the property on which it resides, without the prior written consent of the City; (f) use the Dunwoody Library in any manner that structurally impairs the remainder of the Property; and use the Dunwoody Library in a manner that negatively interferes with the operation of the DeKalb Cultural Arts Center. Except as disclosed, Tenant expressly covenants and agrees that it will not permit the Dunwoody Library 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. Landlord consents to Tenant allowing the Friends of Dunwoody Library, a non-profit organization, to meet and store materials at the Dunwoody Library. Landlord consents to Tenant allowing other organizations to use its meeting room occasionally for a nominal fee.

4.2 If the building housing the Dunwoody Library is destroyed for any reason to the point where it is unusable for the purposes stated herein, the library services may be moved to a different location at Tenant's or Landlord's expense. Tenant and Landlord may agree to the moving of the library services to a different location subject to another Agreement as to the cost of relocation. This subsection may be amended further by Landlord and Tenant upon destruction of the premises to negotiate a different solution.

5.

RENOVATION, OPERATIONS AND MAINTENANCE

5.1 Tenant and Landlord shall pay for their own use of all water, sewer, electrical, waste disposal and utility services provided to the Property, with the Tenant paying for all said services for the Dunwoody Library and Landlord paying for all said services for the remainder of the Property. Tenant shall pay for all necessary maintenance, upkeep and renovations as approved by the City, for the Dunwoody Library and Landlord shall pay for all said services for the remainder of the Property. Tenant shall maintain the roof, external paint and facade on the portion of the Property housing the Dunwoody Library consistent with its state of repair on the date hereof and Landlord shall maintain the remainder of the roof, and external paint and facade, as well as the interior walls and structures, including painting, of the building(s) on the Property. Tenant shall maintain the interior systems (HVAC) for the Dunwoody Library, consistent with its state of repair on the date hereof, and Landlord shall maintain the interior systems (HVAC) on the remainder of the Property. Landlord and Tenant shall pay for its own security services on the Property. Tenant shall be responsible for its own janitorial services for the Dunwoody Library. Tenant shall not commit waste upon the Dunwoody Library. Landlord shall have free access to the Dunwoody Library upon notice during

normal business hours for the purpose of examining same or making any alterations or repairs to the Dunwoody Library which Landlord may deem necessary for safety or its preservation. Landlord will continue to maintain all common areas of the property, including the common areas of the building housing the Dunwoody Library and the Cultural Arts Center, the Courtyard and parking lot attached thereto.

5.2 Landlord and Tenant agree that if Landlord determines that Tenant is not maintaining its area of the Dunwoody Library roof, external paint and façade and interior HVAC system in a habitable condition, Landlord shall notify Tenant, in writing, of needed repairs. The parties agree to discuss and/or arrive at a mutually beneficial resolution for no longer than 90 days from the date of the written notice of needed repairs. If a resolution is not reached, The City may terminate this Agreement by giving written notice of termination to the County. This Agreement shall then be terminated effective sixty (60) days from the City's written notice of termination. If during the sixty (60) day period, repairs are undertaken, the City, in its sole discretion, may choose to notify the County, in writing, that it is withdrawing the notice of termination and as of the date of such written withdrawal, this Lease shall remain in full force and effect without further action by either of the parties.

6.

NO COVENANT OF QUIET ENJOYMENT

Tenant hereby acknowledges that it has fully inspected the Dunwoody Library and that the premises are in satisfactory condition for the use intended. Tenant further acknowledges that no representation or warranty as to the title to, condition of, terrain of, or any covenant of quiet enjoyment of the Dunwoody Library has been made by Landlord, its members, officers, employees, representatives or agents, or by any other person whomsoever, and Landlord makes no warranty whatsoever as to the title to, present condition of, terrain of or any covenant of quiet enjoyment of the Dunwoody Library.

7.

AMERICANS WITH DISABILITIES ACT

In performing renovations, Landlord and Tenant shall be responsible for all costs and compliance with Title III of the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., (hereinafter the "ADA"). Notwithstanding any provision of this Agreement to the contrary, Landlord is and shall be solely responsible for assuring that the Property and all common areas are at all times in compliance with the ADA and all regulations promulgated thereunder.

8.

MUTUAL APPROVAL OF PLANS

Neither the County nor the City is required to make any kind of capital improvement or major repair to the Property. 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 capital 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

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approval of the City, which will not be unreasonably withheld. Any construction and improvements of the Dunwoody Library by Tenant, or Tenant's 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."

9.

NO ASSIGNMENT OR SUBLETTING

Dunwoody Library is leased for the sole use of Tenant, to be used under the terms of this Agreement, to provide library services to the City of Dunwoody, and this Agreement is not to be assigned, sublet or otherwise made available to third parties without the express written consent of Landlord.

10.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW

Tenant shall comply with all applicable federal, state or local laws, regulations and ordinances.

11.

INSURANCE

11.1 Tenant covenants and agrees that Tenant will carry and maintain, at its sole cost and expense, general comprehensive public liability insurance covering the Premises and Tenant's use thereof against claims for personal or bodily injury or death or property damage occurring upon, in, or about, the Premises (including contractual and liability coverage to cover Tenant's covenants set forth herein), such insurance to insure Landlord and its mortgagee as additional insureds. Such policy shall afford protection to the limit of not less than \$1,000,000.00 per occurrence, with a \$2,000,000.00 aggregate limit, on an occurrence basis, in respect to injury or death to any number of persons and broad form property damage arising out of any one (1) occurrence, operations hazard. Such policy will be written in the names of Tenant, Landlord and any other parties reasonably designated by Landlord or Tenant from time to time, as their respective interests may appear.

11.2 Landlord covenants and agrees that Landlord will carry and maintain, property insurance on all-risk extended coverage basis (including coverage against fire, wind, tornado, vandalism, malicious mischief, water damage and sprinkler leakage) covering all fixtures and equipment (but not the Tenant's personal property) located on the Premises, in an amount not less than one hundred percent (100%) of full replacement cost thereof. The property insurance shall have a reasonable deductible. Such policy will be in the names of Tenant, Landlord and any other parties reasonably designated by Landlord or Tenant from time to time, as their respective interests may appear, including the holder of any deed to secure debt or other security instrument encumbering the Premises.

11.3 All such insurance will be issued and underwritten by companies reasonably acceptable to the other party who are licensed to do business in the State of Georgia and will

contain endorsements that (a) such insurance may not lapse with respect to the other party, or be canceled or amended with respect to such other party without the insurance company endeavoring to give such other party at least thirty (30) days prior written notice of such lapse, cancellation or amendment, (b) such insurance will include a loss payee endorsement protecting the other party. Each party shall deliver to the other duly executed originals of the certificates of such insurance evidencing in-force coverage on or before the execution date of this Lease. Further, each party shall deliver to the other renewals thereof at least ten (10) days prior to the expiration of the respective policy terms.

12.
DEFAULT BY TENANT

If Tenant defaults in the performance or observance of any provision of this Agreement which is required to be kept by Tenant, 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 Landlord; Landlord may, but only during the continuance of such default, proceed to terminate the Agreement and Tenant's rights thereunder.

13.
CONDITIONS OF THE PREMISES

Tenant accepts the Dunwoody Library in its "as is" condition. EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND TO TENANT REGARDING THE CONDITION OF THE PREMISES, 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 TENANT. TENANT ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS LEASE, LANDLORD HAS NOT MADE AND IS NOT MAKING ANY REPRESENTATIONS, WARRANTIES OR COVENANTS, EXPRESS OR IMPLIED, AS TO THE PREMISES. EXCEPT AS SET FORTH IN THIS LEASE, THE PREMISES ARE BEING LEASED ON AN "AS IS" AND "WITH ALL FAULTS" BASIS.

14.
SUBJECT TO LIEN

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

15.
ENVIRONMENTAL

Tenant, at its sole cost, shall comply with all laws related to the use and disposal of hazardous substances (as defined by such laws) at the Dunwoody Library to the extent that such

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laws apply to Tenant's occupancy and/or use of the premises, after the commencement of this Lease. Tenant shall defend, indemnify and hold Landlord 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 Tenant's violation of, or failure to comply with, any such laws, and which relates to any condition caused by Tenant which occur during the term of this Lease. Tenant's obligations hereunder shall survive the termination of this lease. Landlord shall remain liable for, and shall defend, indemnify and hold Tenant 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 Landlord's violation of, or failure to comply with, any such laws, and which relates to any condition caused by the Landlord which occurred prior to the term of this Lease or during the term of this Lease on the common area portions of the property.

As used herein, 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 9602]; (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

Landlord and Tenant shall each have included in all policies of fire, extended coverage, business interruption and loss of rents insurance respectively obtained by them covering the Dunwoody Library 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, Landlord and Tenant 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 Lease by the party seeking recovery.

17.

INDEMNIFICATION

17.1 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the Tenant hereby indemnify the

Landlord from and agrees to hold Landlord harmless, against, any and all liability, loss, cost, damage or expense, including, without limitation, court costs and reasonable attorney's fees, imposed on Landlord, caused in whole or in part by, due to, occasioned by, or directly or indirectly related to any act or omission of Tenant, or any of Tenant's Agents, resulting or arising from or connected with injury or damage to person or property that occurs in or about the Dunwoody Library, otherwise occurring in connection with any use of the Dunwoody Library by Tenant or any of Tenant's Agents or any breach, default, violation or nonperformance of any term, provision, covenant or condition on the part of Tenant or any of Tenant's Agents hereunder, or any violation by Tenant or Tenant's Agents of any law, ordinance or governmental order of any kind.

17.2 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. Only to the extent permitted by law, shall the Landlord indemnify Tenant from and agrees to hold Tenant harmless, against, any and all liability, loss, cost, damage or expense, including, without limitation, court costs and reasonable attorney's fees, imposed on Tenant, caused in whole or in part by, due to, occasioned by, or directly or indirectly related to any act or omission of Landlord, or any of Landlord's Agents, resulting or arising from or connected with injury or damage to person or property that occurs in or about the Dunwoody Library, otherwise occurring in connection with any use of the Dunwoody Library by Landlord or any of Landlord's Agents or any breach, default, violation or nonperformance of any term, provision, covenant or condition on the part of Landlord or any of Landlord's Agents hereunder, or any violation by Landlord or Landlord's Agents of any law, ordinance or governmental order of any kind.

17.3 The provisions of this paragraph shall survive any termination of this Lease for any claims that may be filed after termination of this Lease provided the claims are based upon actions that occurred during the Term of this Lease.

18. 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. 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 after 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. On the date hereof, notices shall be addressed as follows:

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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

With a copy to:

Allison Weissinger
Director of the DeKalb County Library System
215 Sycamore Street
Decatur, Georgia 30030
404-370-8469, 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

19.

TIME OF THE ESSENCE

Time is of the essence of this Agreement.

20.

HOLDING OVER

Tenant shall not use and shall promptly vacate possession of the Dunwoody Library upon the expiration or any termination of the term of this Agreement. Any holding over or continued use or occupancy of the Dunwoody Library by Tenant after the expiration or termination of the term of this Agreement, without consent of Landlord, shall not constitute a Tenancy-At-Will in Tenant, but Tenant shall be a Tenant-At-Sufferance and shall be required to vacate the Premises 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.

21.
NO JOINT VENTURE

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

22.
NON WAIVER

No failure at 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.

23.
RIGHTS CUMULATIVE

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

24.
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.

25.
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.

26.
INTERPRETATION

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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.

27.
GEORGIA AGREEMENT

This Agreement shall be governed by, construed under, performed and enforced in accordance with the laws of the State of Georgia.

28.
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.

29.
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 on and the same instrument as the other.

30.
ENTIRE AGREEMENT

This Agreement supersedes all prior negotiations, discussions, statements and agreements between Landlord and Tenant and constitutes the full, complete and entire agreement between Landlord and Tenant with respect to the Dunwoody Library and Tenant's use and occupancy thereof; no member, officer, employee, representative or agent of Landlord or Tenant 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 Contract. No modification of or amendment to this Contract shall be binding on either party hereto unless such modification or amendment shall be properly authorized, in writing, properly signed by both Landlord and Tenant and incorporated in and by reference made a part hereof.

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

LANDLORD:

CITY OF DUNWOODY, GEORGIA

By: _____
Michael G. Davis, Mayor

Attest: _____
Sharon Lowery, City Clerk

(SEAL)

Approved as to form: _____
Acting City Attorney

TENANT:

DEKALB COUNTY, GEORGIA

By: _____
W. Burrell Ellis, Jr.,
Chief Executive Officer
DeKalb County, Georgia

Attest: _____
Barbara H. Sanders, CCC
Clerk

(SEAL)

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Allison Weissinger
Director of

Viviane H. Ernstes

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EXHIBIT A
Legal Description

ALL THAT PIECE PARCEL OR LOT OF LAND LYING AND BEING IN LAND LOT 336 OF THE 18TH DISTRICT, DEKALB COUNTY GEORGIA, AND HAVING THE FOLLOWING METES AND BOUNDS TO WIT:

COMMENCING AT A RIGHT-OF-WAY INTERSECTION BETWEEN THE NORTHERLY RIGHT-OF-WAY OF WOMACK ROAD (R/W VARIES) AND THE WESTERLY RIGHT-OF-WAY OF CHESTNUT RIDGE DRIVE (50' R/W), SAID RIGHT-OF-WAY INTERSECTION BEING THE **POINT-OF-COMMENCEMENT, (P.O.C.)**; THENCE CONTINUING ALONG THE NORTHERLY RIGHT-OF-WAY OF WOMACK ROAD (R/W VARIES) 614.80' TO A #4 REBAR FOUND AT SAID RIGHT-OF-WAY; THENCE TURNING AND CONTINUING SOUTH 22 DEGREES 04 MINUTES 38 SECONDS EAST ($S^{\circ}22^{\circ}04'38''E$) FOR A DISTANCE OF 16.32' TO AN OPEN TOP PIPE FOUND; THENCE CONTINUING ALONG THE NORTHERLY RIGHT-OF-WAY OF WOMACK ROAD (R/W VARIES) NORTH 89 DEGREES 47 MINUTES 37 SECONDS WEST ($N89^{\circ}47'37''W$) FOR A DISTANCE OF 365.64' TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY OF CHAMBLEE DUNWOODY ROAD (R/W VARIES); THENCE TURNING AND LEAVING THE NORTHERLY RIGHT-OF-WAY OF WOMACK ROAD (R/W VARIES) AND CONTINUING ALONG THE NORTHEASTERLY RIGHT-OF-WAY CHAMBLEE DUNWOODY ROAD (R/W VARIES) AND ALONG THE ARC OF A CURVE THAT DEFLECTS TO THE LEFT HAVING A RADIUS OF 1,954.00' AND AN ARC LENGTH OF 130.14', SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 36 DEGREES 16 MINUTES 42 SECONDS WEST ($N36^{\circ}16'42''W$) FOR A CHORD DISTANCE OF 130.12' TO A POINT; THENCE TURNING AND CONTINUING ALONG SAID RIGHT-OF-WAY NORTH 45 DEGREES 41 MINUTES 21 SECONDS WEST ($N45^{\circ}41'21''W$) FOR A DISTANCE OF 65.22' TO A POINT; THENCE CONTINUING ALONG THE ARC OF A CURVE THAT DEFLECTS TO THE LEFT HAVING A RADIUS OF 2,287.34' AND AN ARC LENGTH OF 175.33', SAID ARC BEING SUBTENDED BY A CHORD BEARING NORTH 42 DEGREES 30 MINUTES 43 SECONDS WEST ($N42^{\circ}30'43''W$) FOR A CHORD DISTANCE OF 175.29' TO A POINT; THENCE TURNING AND LEAVING THE NORTHEASTERLY RIGHT-OF-WAY OF CHAMBLEE DUNWOODY ROAD (R/W VARIES) NORTH 57 DEGREES 31 MINUTES 52 SECONDS WEST ($N57^{\circ}31'52''W$) FOR A DISTANCE OF 124.71' TO A POINT, SAID POINT BEING THE **POINT-OF-BEGINNING, (P.O.B.)**;

FROM THE **POINT-OF-BEGINNING (P.O.B.)** THUS ESTABLISHED, THENCE CONTINUING NORTH 57 DEGREES 31 MINUTES 52 SECONDS EAST ($N57^{\circ}31'52''E$) FOR A DISTANCE OF 27.77' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 32 DEGREES 10 MINUTES 47 SECONDS EAST ($S32^{\circ}10'47''E$) FOR A DISTANCE OF 12.04' TO A POINT; THENCE TURNING AND CONTINUING NORTH 57 DEGREES 26 MINUTES 17 SECONDS EAST ($N57^{\circ}26'17''E$) FOR A DISTANCE OF 24.26' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 32 DEGREES 31 MINUTES 56 SECONDS EAST ($S32^{\circ}31'56''E$) FOR A DISTANCE OF 35.58' TO POINT; THENCE TURNING AND CONTINUING NORTH 57 DEGREES 30 MINUTES 15 SECONDS EAST ($N57^{\circ}30'15''E$) FOR A DISTANCE OF 157.83' TO A POINT;

THENCE TURNING AND CONTINUING SOUTH 32 DEGREES 33 MINUTES 02 SECONDS EAST ($S32^{\circ}33'02''E$) FOR A DISTANCE OF 75.87' TO A POINT; THENCE TURNING AND CONTINUING SOUTH 58 DEGREES 53 MINUTES 16 SECONDS WEST ($S58^{\circ}53'16''W$) FOR A DISTANCE OF 234.06' TO A POINT; THENCE TURNING AND CONTINUING NORTH 32 DEGREES 25 MINUTES 11 SECONDS WEST ($N32^{\circ}25'11''W$) FOR A DISTANCE OF 105.79' TO A POINT; THENCE TURNING AND CONTINUING NORTH 57 DEGREES 31 MINUTES 18 SECONDS EAST ($N57^{\circ}31'18''E$) FOR A DISTANCE OF 23.97' TO A POINT; THENCE TURNING AND CONTINUING NORTH 32 DEGREES 28 MINUTES 42 SECONDS WEST ($N32^{\circ}28'42''W$) FOR A DISTANCE OF 12.05' TO A POINT, SAID POINT BEING THE **POINT-OF-BEGINNING, (P.O.B.)**.