

**MEMORANDUM**

**To:** Mayor and City Council

**From:** Lenny Felgin, Assistant City Attorney

**Date:** March 10, 2014

**Subject:** **Approval of Revised Intergovernmental Agreement with DeKalb County for the Provision of Election Services**

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**ITEM DESCRIPTION**

DeKalb County has submitted a revised Intergovernmental Agreement (IGA) for the provision of election services.

**BACKGROUND**

In 2009 the City Council approved an Intergovernmental Agreement (IGA) with DeKalb County for the provision of election services.

DeKalb County has revised the IGA and is requesting that the Agreement be approved by City Council. The main revision to the IGA covers the defense of litigation arising from Dunwoody elections. DeKalb County will now undertake the defense (at the City's expense) of any claim(s) stemming from an issue that arises from the action(s) of any of DeKalb County's employees in the Dunwoody election. In the prior version of the IGA, the City would have been responsible for defense as well as the any costs incurred with the defense. The City Council asked what changes DeKalb County was requesting that are different from the currently existing agreement. The first attachment shows what those substantive changes are that are being requested. The second attachment reflects additional negotiated changes between the City and DeKalb County due to the City's concerns over paying for DeKalb County to solely oversee any defense of election disputes.

**RECOMMENDED ACTION**

Staff recommends that Council approve the revised Intergovernmental Agreement with DeKalb County for the provision of election services.

March 21, 2013

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF ELECTION SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA and  
THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between DeKalb County, Georgia (“County”), a political subdivision of the State of Georgia, and the City of DUNWOODY, Georgia (“City”), a municipal corporation lying wholly or partially within the County.

**WHEREAS**, the parties to this Agreement are both governmental units; 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; and**

**WHEREAS**, both parties are interested in serving the needs of the citizens of the City by the County providing for the services of conducting all elections required and permitted by law; and

**WHEREAS**, the City desires to contract with the County to conduct all municipal elections for the citizens of the City pursuant to the applicable laws of the State of Georgia; and

**WHEREAS**, the City and the County are authorized by Art. IX, Sec. III, Par. I of the Constitution of the State of Georgia to enter into such an agreement for the conduct of the City elections; and

**WHEREAS**, O.C.G.A. § 21-2-45(c) authorizes the governing authority of any municipality to contract with the county within which that municipality wholly or partially lies to conduct any or all elections; and

**WHEREAS**, pursuant to O.C.G.A. § 21-2-45(c), a city may by ordinance authorize a county to conduct such election(s), and the City has adopted such an ordinance; and

**WHEREAS, the DeKalb County Board of Registrations and Elections (“BRE”) has jurisdiction over the conduct of primaries and elections and the registration of electors in the County; and**

**WHEREAS, the BRE, among other things, is responsible for the selection and appointment of the elections supervisor and the selection, appointment, and training of poll workers in elections;**

**NOW THEREFORE**, in consideration of the following mutual obligations, the County and City agree as follows:

## ARTICLE 1 CONDUCT OF ELECTIONS

1.1 This Agreement will govern the conduct of any and all elections (hereinafter referred to as "City Election") which the City requests the County to conduct, including any and all runoffs which may be necessary. It is the intent of the parties that City Elections be conducted in compliance with all applicable federal, state and local legal requirements.

1.2 For each City Election, City, at its sole option, shall submit to County a request in the form attached hereto as Exhibit A. ~~Requests must be made not later than 60 days before the Election~~ Requests must be made in conformance with O.C.G.A § 21-2-540, now and as it may be amended hereafter, to the address specified in the Notice Section below. If a timely request is not made, the County shall have no obligation to conduct the City Election which was the subject of the request.

1.3 In the event any Special City Election becomes necessary, the City and the County shall confer and determine a mutually convenient date as allowed by law to conduct any such election.

## ARTICLE 2 TERM OF AGREEMENT

This Agreement shall commence on the date that it is executed by or on behalf of the governing authority of DeKalb County, Georgia and will terminate on December 31, 2063, unless otherwise terminated as set forth herein.

## ARTICLE 3 DUTIES AND RESPONSIBILITIES

Pursuant to this Agreement, each party shall provide the following enumerated services:

3.1 Upon receipt of request to perform a City Election, the BRE and/or the County Election Supervisor, or their designee(s) shall be responsible for:

- a) Designating early and advance voting sites and hours;
- b) Placing the City's candidate(s) on the electronic and printed ballots for City Elections after qualifying;
- c) Placing the City's referendum question(s) on the ballot for a City Election after timely written notice from the City is received by the County (which such notice shall include all necessary details and information);
- d) Hiring, training, supervising and paying poll officers and absentee ballot clerks;

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- e) Preparing and submitting to the City Clerk, as required by state law O.C.G.A. § 21-2-224(e), now and as it may be amended hereafter, a list of electors.
- f) Performing duties of election superintendent/supervisor, and absentee ballot clerk for City Elections;
- g) Performing logic and accuracy testing as required by Sections 183-1-12-.02 and .07 of the Official Compilation of Rules and Regulations of the State of Georgia, now and as they may be hereafter amended;
- h) Providing staff, equipment and supplies for conducting City Elections at City polling places on City Election days and for conducting recounts as may be required;
- i) Certifying City Election returns as required by state law O.C.G.A. § 21-2-493, now and as it may be amended hereafter, and submitting certified City Election returns to the Georgia Secretary of State and City Clerk or as otherwise directed;
- j) Upon a change in City precincts or voter districts, notifying City residents of any change in voting districts and/or municipal precincts; and
- k) Preparing and submitting timely requests for Preclearance of voting precinct changes to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965.

3.2 The City shall be responsible for:

- a) Adopting Election Resolutions pursuant to O.C.G.A. § 21-2-45(c), now and as it may be amended hereafter, and Calls for Special City Elections (“the Calls”) as required by O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- b) Submitting Preclearance requests, as necessary, to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965, including, but not limited to the submission of a request to allow for district changes or Calls for Special City Elections;
- c) Preparing qualifying materials for potential candidates and performing qualifying of candidates, including any write-ins, for City Elections as required by state law, specifically O.C.G.A. § 21-2-130 *et seq.*, now and as it may be amended hereafter;
- d) Placing advertisements in the City’s legal organ regarding Calls, as required by state law O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- e) Fixing and publishing the qualifying fee as required by state law under O.C.G.A. § 21-2-131, now and as it may be amended hereafter;

- f) Collecting and retaining the qualifying fee as required by state law O.C.G.A. § 21-2-131, now and as it may be amended hereafter;
- g) Performing filing officer duties as required by the State of Ethics Commission for any and all state reports filed by the candidates or committees in conjunction with City Elections to ensure compliance with Title 21, Chapter 5 of the Official Code of Georgia;
- h) Verifying, in a timely manner, accuracy of voter list(s) for City residents;
- i) Providing the County with a detailed map showing the City's Municipal Boundaries and Voting District Boundaries;
- j) For all aspects related to the issuance of bonds by the City, except for City referendum election duties specifically requested of the County as provided herein;
- k) Notifying the County immediately of the need for a Special City Election including election races and/or ballot referendum questions;
- l) Providing the County with an electronic copy of referendums that must be placed on a ballot;
- m) Providing the County, via electronic mail or facsimile, affidavits and listing of candidates immediately after close of qualifying;
- n) Reviewing ballot proofs and notifying County of corrections or approval within twenty-four (24) hours of receiving proofs for candidate listings; and
- o) Otherwise cooperating with the County in the performance of this Agreement and providing the County such documentation and information as it may reasonably request to facilitate the performance of its duties under this Agreement.

#### ARTICLE 4 COMPENSATION AND CONSIDERATION

Pursuant to this Agreement and O.C.G.A. § 21-2-2-45(c) now and as it may be amended hereafter, the City shall pay to the County all costs incurred in performing the functions agreed upon herein. City agrees to pay County the actual costs incurred by County in conducting City Elections as stated on the County's invoice. City shall remit said funds to County within thirty (30) days of receipt of invoice.

#### ARTICLE 5 LEGAL RESPONSIBILITIES

~~The County shall not be financially responsible for any liability resulting from or furnishing of any services in the form of legal opinions or defenses in connection with any~~

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~~litigation arising by reason of the Election. All legal services and defenses of litigation, including but not limited to attorney's fees, required by any Board or person arising from the Election(s) conducted under this contract shall be furnished by the City Attorney for the City. Should the City Attorney for any reason fail to provide the legal services referred to in this paragraph, the Superintendent shall have authority to engage the DeKalb County Law Department at the expense of the City; provided, however, that all requests for legal assistance shall be communicated in writing before the City will be obligated to pay for legal services under this paragraph. The failure of the City Attorney's office to respond within fifteen days to a request made hereunder shall be deemed to be a refusal to furnish such services. County shall notify City in writing of its determination that the City has failed to respond as contemplated hereinabove before incurring legal fees on its own behalf for which the City shall be responsible.~~

5.1 The City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any City Election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and/or the County Election Supervisor in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs, including, but not limited to, court costs and attorney fees for the County Attorney or outside counsel, incurred by the County as a result of any such claim or litigation. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.

5.2 In the event that a City Election is contested, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any contested City Election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and/or the County Election Supervisor in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs incurred in responding to the election challenge, including, but not limited to, attorney's fees for the County Attorney or outside counsel and all expenses associated with the election challenge and any appeals thereafter. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County. If a second election is required, such election will constitute a City Election under this Agreement and shall be conducted in accordance with the terms of this Agreement.

5.3 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law.

5.4 Should it be necessary to comply with legal requirements that any of the County's personnel shall be sworn in as a temporary officer or employee of the City, such formality shall be observed without limitation.

## **ARTICLE 6 EMPLOYMENT STATUS**

6.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including, but not limited to: duties and

responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.

6.2 All County personnel assigned under this Agreement are and will continue to be part of the DeKalb County Voter Registrations and Elections and under the supervision of the Elections Supervisor.

6.3 All City personnel assigned under this Agreement are and will continue to be employees of the City.

**ARTICLE 7  
RECORDKEEPING AND REPORTING**

7.1 The County Voter Registrations and Elections Department is the central repository for all departmental records and makes available public records as defined and required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, et seq., O.C.G.A. § 21-2-51 and O.C.G.A. § 21-2-72, now and as they may be amended hereafter. During the term of this Agreement, the County will continue to comply with the applicable provisions of the Georgia Open Records Act and the Georgia Election Code.

7.2 Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

**ARTICLE 8  
TERMINATION AND REMEDIES**

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever by notice in writing to the other party delivered at least thirty (30) days prior to the effective date of the termination.

**ARTICLE 9  
NOTICES**

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. Future changes in address shall be effective upon written notice being given by the City to the County Elections Supervisor 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:                    Elections Supervisor  
   4380 Memorial Drive  
   Suite 300  
   Decatur, Georgia 30032

With a copy to:                    County Attorney  
   1300 Commerce Drive, 5<sup>th</sup> Floor

March 21, 2013

Decatur, Georgia 30030

If to the City:

City Manager  
City of Dunwoody  
41 Perimeter Center East  
Suite 250  
Dunwoody, Ga 30346  
\_\_\_\_\_ (facsimile)

With a copy to:

City Attorney  
City of Dunwoody  
41 Perimeter Center East  
Suite 250  
Dunwoody, Ga 30346  
\_\_\_\_\_ (facsimile)

**ARTICLE 10  
NON-ASSIGNABILITY**

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

**ARTICLE 11  
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the parties regarding the subject matter of the Agreement, and supersedes all ~~matters contained herein. No representations, prior oral or written, agreements or understandings. No representation oral or written~~ not incorporated ~~herein in this Agreement~~ shall be binding upon the ~~City or the County. All parties hereto. All must sign any subsequent changes in this Agreement must be in writing and signed by all parties, the Agreement.~~

**ARTICLE 12  
SEVERABILITY, VENUE AND ENFORCEABILITY**

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.

**ARTICLE 13  
BINDING EFFECT**

This Agreement shall inure to the benefit of ~~the parties hereto only and is not intended to benefit any third party or to give rise to any duties to or causes of action for any third party.~~ and be binding upon, the respective parties' successors.

**ARTICLE 14  
COUNTERPARTS**

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**, the ~~parties have hereunto set~~ City and County have executed this Agreement through their ~~hands and affixed their seals pursuant to resolutions of their governing bodies~~ duly adopted and entered authorized officers on the ~~Minutes thereof~~ day and year first above written.

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Dir. (SEAL)

**W. BURRELL ELLIS, JR.**  
Chief Executive Officer

**ATTEST:**

\_\_\_\_\_  
**BARBARA H. SANDERS, CCC**  
Clerk to the Board of Commissioners  
and Chief Executive Officer

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**H. MAXINE DANIELS**  
Director  
DeKalb County Board of Registrations

\_\_\_\_\_  
**LORI BRILL**  
Senior Assistant County Attorney

March 21, 2013

and Elections

**CITY OF DUNWOODY, GEORGIA**

\_\_\_\_\_(SEAL)  
**MICHAEL G. DAVIS**  
Mayor

\_\_\_\_\_  
**SHARON LOWERY**  
Municipal Clerk

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**WARREN HUTMACHER**  
City Manager

\_\_\_\_\_  
City Attorney

DRAFT

**EXHIBIT A**

As per the Agreement ~~previously approved, executed on \_\_\_\_\_~~, THE CITY OF DUNWOODY hereby requests that DeKalb County conduct ~~their General Municipal~~ its Election on ~~November 3, 2009~~, \_\_\_\_\_. The last day to register to vote in this election is ~~October 5, 2009~~, \_\_\_\_\_. The absentee poll will be located at 4380 Memorial Drive, Decatur, Georgia, 30032.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Municipal Clerk (SEAL)

The DeKalb County Board of Registrations and Elections agrees to conduct the CITY OF DUNWOODY ~~General Municipal~~ \_\_\_\_\_ Election on \_\_\_\_\_, 20\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
 Elections Supervisor  
 DeKalb County Board of Registrations and  
 Elections (SEAL)

September 18, 2013

**INTERGOVERNMENTAL AGREEMENT  
FOR THE PROVISION OF ELECTION SERVICES  
BETWEEN  
DEKALB COUNTY, GEORGIA and  
THE CITY OF DUNWOODY, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between DeKalb County, Georgia (“County”), a political subdivision of the State of Georgia, and the City of \_\_\_\_\_, Dunwoody, Georgia (“City”), a municipal corporation lying wholly or partially within the County.

**WHEREAS**, the parties to this Agreement are both governmental units; 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; and

**WHEREAS**, both parties are interested in serving the needs of the citizens of the City by the County providing for the services of conducting all elections required and permitted by law; and

**WHEREAS**, the City desires to contract with the County to conduct all municipal elections for the citizens of the City pursuant to the applicable laws of the State of Georgia; and

**WHEREAS**, the City and the County are authorized by Art. IX, Sec. III, Par. I of the Constitution of the State of Georgia to enter into such an agreement for the conduct of the City elections; and

**WHEREAS**, O.C.G.A. § 21-2-45(c) authorizes the governing authority of any municipality to contract with the county within which that municipality wholly or partially lies to conduct any or all elections; and

**WHEREAS**, pursuant to O.C.G.A. § 21-2-45(c), a city may by ordinance authorize a county to conduct such election(s), and the City has adopted such an ordinance; and

**WHEREAS**, the DeKalb County Board of Registrations and Elections (“BRE”) has jurisdiction over the conduct of primaries and elections and the registration of electors in the County; and

**WHEREAS**, the BRE, among other things, is responsible for the selection and appointment of the elections supervisor and the selection, appointment, and training of poll workers in elections;

**NOW THEREFORE**, in consideration of the following mutual obligations, the County and City agree as follows:

## **ARTICLE 1 CONDUCT OF ELECTIONS**

1.1 This Agreement will govern the conduct of any and all elections (hereinafter referred to as "City Election") which the City requests the County to conduct, including any and all runoffs which may be necessary. It is the intent of the parties that City Elections be conducted in compliance with all applicable federal, state and local legal requirements.

1.2 For each City Election, City, at its sole option, shall submit to County a request in the form attached hereto as Exhibit A. Requests must be made in conformance with O.C.G.A § 21-2-540, now and as it may be amended hereafter, to the address specified in the Notice Section below. If a timely request is not made, the County shall have no obligation to conduct the City Election which was the subject of the request.

1.3 In the event any Special City Election becomes necessary, the City and the County shall confer and determine a mutually convenient date as allowed by law to conduct any such election.

## **ARTICLE 2 TERM OF AGREEMENT**

This Agreement shall commence on the date that it is executed by or on behalf of the governing authority of DeKalb County, Georgia and will terminate on December 31, 2063, unless otherwise terminated as set forth herein.

## **ARTICLE 3 DUTIES AND RESPONSIBILITIES**

Pursuant to this Agreement, each party shall provide the following enumerated services:

3.1 Upon receipt of request to perform a City Election, the BRE and/or the County Election Supervisor, or their designee(s) shall be responsible for:

- a) Designating early and advance voting sites and hours;
- b) Placing the City's candidate(s) on the electronic and printed ballots for City Elections after qualifying;
- c) Placing the City's referendum question(s) on the ballot for a City Election after timely written notice from the City is received by the County (which such notice shall include all necessary details and information);
- d) Hiring, training, supervising and paying poll officers and absentee ballot clerks;

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- e) Preparing and submitting to the City Clerk, as required by state law O.C.G.A. § 21-2-224(e), now and as it may be amended hereafter, a list of electors.
- f) Performing duties of election superintendent/supervisor, and absentee ballot clerk for City Elections;
- g) Performing logic and accuracy testing as required by Sections 183-1-12-.02 and .07 of the Official Compilation of Rules and Regulations of the State of Georgia, now and as they may be hereafter amended;
- h) Providing staff, equipment and supplies for conducting City Elections at City polling places on City Election days and for conducting recounts as may be required;
- i) Certifying City Election returns as required by state law O.C.G.A. § 21-2-493, now and as it may be amended hereafter, and submitting certified City Election returns to the Georgia Secretary of State and City Clerk or as otherwise directed;
- j) Upon a change in City precincts or voter districts, notifying City residents of any change in voting districts and/or municipal precincts; and
- k) Preparing and submitting timely requests for Preclearance of voting precinct changes to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965.

3.2 The City shall be responsible for:

- a) Adopting Election Resolutions pursuant to O.C.G.A. § 21-2-45(c), now and as it may be amended hereafter, and Calls for Special City Elections (“the Calls”) as required by O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- b) Submitting Preclearance requests, as necessary, to the Department of Justice, Civil Rights Division under Section V of the Voting Rights Act of 1965, including, but not limited to the submission of a request to allow for district changes or Calls for Special City Elections;
- c) Preparing qualifying materials for potential candidates and performing qualifying of candidates, including any write-ins, for City Elections as required by state law, specifically O.C.G.A. § 21-2-130 *et seq.*, now and as it may be amended hereafter;
- d) Placing advertisements in the City’s legal organ regarding Calls, as required by state law O.C.G.A. § 21-2-540, now and as it may be amended hereafter;
- e) Fixing and publishing the qualifying fee as required by state law under O.C.G.A. § 21-2-131, now and as it may be amended hereafter;

- f) Collecting and retaining the qualifying fee as required by state law O.C.G.A. § 21-2-131, now and as it may be amended hereafter;
- g) Performing filing officer duties as required by the State of Ethics Commission for any and all state reports filed by the candidates or committees in conjunction with City Elections to ensure compliance with Title 21, Chapter 5 of the Official Code of Georgia;
- h) Verifying, in a timely manner, accuracy of voter list(s) for City residents;
- i) Providing the County with a detailed map showing the City's Municipal Boundaries and Voting District Boundaries;
- j) For all aspects related to the issuance of bonds by the City, except for City referendum election duties specifically requested of the County as provided herein;
- k) Notifying the County immediately of the need for a Special City Election including election races and/or ballot referendum questions;
- l) Providing the County with an electronic copy of referendums that must be placed on a ballot;
- m) Providing the County, via electronic mail or facsimile, affidavits and listing of candidates immediately after close of qualifying;
- n) Reviewing ballot proofs and notifying County of corrections or approval within twenty-four (24) hours of receiving proofs for candidate listings; and
- o) Otherwise cooperating with the County in the performance of this Agreement and providing the County such documentation and information as it may reasonably request to facilitate the performance of its duties under this Agreement.

#### **ARTICLE 4 COMPENSATION AND CONSIDERATION**

Pursuant to this Agreement and O.C.G.A. § 21-2-2-45(c) now and as it may be amended hereafter, the City shall pay to the County all costs incurred in performing the functions agreed upon herein. City agrees to pay County the actual costs incurred by County in conducting City Elections as stated on the County's invoice. City shall remit said funds to County within thirty (30) days of receipt of invoice.

#### **ARTICLE 5 LEGAL RESPONSIBILITIES**

5.1 The City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any City Election, or if any City Election is contested, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and/or the County Election Supervisor in connection with

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any City Election held pursuant to this Agreement. If the County utilizes members of the County Attorney's Office to defend said claims against the agents or employees of the County, the BRE or the Elections Supervisor, the cost to the City shall be equivalent to the average of the then current hourly rate that the County pays to retain outside counsel for transactional matters. Until further notified, the current rate will be \$200.00 per hour. However, this rate is subject to change over the lifetime of the Agreement. If the County determines that it is necessary to employ outside counsel to assist with the litigation, the County and the City shall make a joint determination on who to retain or whether such defense can be done by the City Attorney's Office in conjunction with the County Attorney's Office. The County and the City ~~and~~ shall also agree on the cost of said additional or outside counsel and the distribution of liability of said cost between the City and the County. The City agrees to reimburse the County for all costs, including, but not limited to, court costs and attorney fees for the County Attorney or outside counsel, incurred by the County as a result of any such claim or litigation. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.

5.2 ~~In the event that a City Election is contested, the City shall be solely responsible for any liability resulting from any claims or litigation arising from or pertaining to any contested City Election, except claims or litigation regarding the acts of agents or employees of the County, the County Board of Registrations and Elections, and/or the County Election Supervisor in connection with any City Election held pursuant to this Agreement. The City agrees to reimburse the County for all costs incurred in responding to the election challenge, including, but not limited to, attorney's fees for the County Attorney or outside counsel and all expenses associated with the election challenge and any appeals thereafter. The City shall make payment of such reimbursements to the County within thirty (30) days of receipt of any invoice for reimbursement from the County.~~ If a second election is required, such election will constitute a City Election under this Agreement and shall be conducted in accordance with the terms of this Agreement, with the exception that if the necessity for a second election is due to the negligence or improper performance of duties by any County employee or agent, BRE Agent or the Elections Superintendent, said second election shall be conducted without additional expense to the City.

5.3 It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law.

5.4 Should it be necessary to comply with legal requirements that any of the County's personnel shall be sworn in as a temporary officer or employee of the City, such formality shall be observed without limitation.

## **ARTICLE 6 EMPLOYMENT STATUS**

6.1 All County personnel assigned under this Agreement are and will continue to be employees of the County for all purposes, including, but not limited to: duties and responsibilities, employee benefits, grievance, payroll, pension, promotion, annual or sick leave, standards of performance, training, workers compensation and disciplinary functions.



6.2 All County personnel assigned under this Agreement are and will continue to be part of the DeKalb County Voter Registrations and Elections and under the supervision of the Elections Supervisor.

6.3 All City personnel assigned under this Agreement are and will continue to be employees of the City.

**ARTICLE 7  
RECORDKEEPING AND REPORTING**

7.1 The County Voter Registrations and Elections Department is the central repository for all departmental records and makes available public records as defined and required by the Georgia Open Records Act, O.C.G.A. § 50-18-70, *et seq.*, O.C.G.A. § 21-2-51 and O.C.G.A. § 21-2-72, now and as they may be amended hereafter. During the term of this Agreement, the County will continue to comply with the applicable provisions of the Georgia Open Records Act and the Georgia Election Code.

7.2 Except as limited by any provision of state or federal law, the City may request, review and access data and County records at a mutually agreed upon time to ensure compliance with this Agreement.

**ARTICLE 8  
TERMINATION AND REMEDIES**

Either party may unilaterally terminate this Agreement, in whole or in part, for any reason whatsoever by notice in writing to the other party delivered at least thirty (30) days prior to the effective date of the termination.

**ARTICLE 9  
NOTICES**

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. Future changes in address shall be effective upon written notice being given by the City to the County Elections Supervisor 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:            Elections Supervisor  
   4380 Memorial Drive  
   Suite 300  
   Decatur, Georgia 30032

With a copy to:            County Attorney  
   1300 Commerce Drive, 5<sup>th</sup> Floor  
   Decatur, Georgia 30030

If to the City:                City Manager

September 18, 2013

City of Dunwoody  
41 Perimeter Center East  
Suite 250  
Dunwoody, Ga 30346  
\_\_\_\_\_ (facsimile)

With a copy to:

City Attorney  
City of Dunwoody  
41 Perimeter Center East  
Suite 250  
Dunwoody, Ga 30346  
\_\_\_\_\_ (facsimile)

**ARTICLE 10  
NON-ASSIGNABILITY**

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

**ARTICLE 11  
ENTIRE AGREEMENT**

The parties acknowledge, one to the other, that the terms of this Agreement constitute 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 or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 12  
SEVERABILITY, VENUE AND ENFORCEABILITY**

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.

**ARTICLE 13  
BINDING EFFECT**

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

**ARTICLE 14  
COUNTERPARTS**

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**, the City and County have executed this Agreement through their duly authorized officers on the day and year first above written.

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Dir. (SEAL)  
**W. BURRELL ELLIS, JR.**  
Chief Executive Officer

**ATTEST:**

\_\_\_\_\_  
**BARBARA H. SANDERS, CCC**  
Clerk to the Board of Commissioners  
and Chief Executive Officer

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**H. MAXINE DANIELS**  
Director  
DeKalb County Board of Registrations  
and Elections

\_\_\_\_\_  
**LORI BRILL**  
Senior Assistant County Attorney

**CITY OF DUNWOODY, GEORGIA**

September 18, 2013

\_\_\_\_\_(SEAL)  
**MICHAEL G. DAVIS**  
Mayor

\_\_\_\_\_  
**SHARON LOWERY**  
Municipal Clerk

**APPROVED AS TO SUBSTANCE:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**WARREN HUTMACHER**  
City Manager

\_\_\_\_\_  
City Attorney

DRAFT

**EXHIBIT A**

As per the Agreement executed on \_\_\_\_\_, THE CITY OF DUNWOODY hereby requests that DeKalb County conduct its \_\_\_\_\_ Election on \_\_\_\_\_. The last day to register to vote in this election is \_\_\_\_\_. The absentee poll will be located at 4380 Memorial Drive, Decatur, Georgia, 30032.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Municipal Clerk (SEAL)

The DeKalb County Board of Registrations and Elections agrees to conduct the CITY OF DUNWOODY \_\_\_\_\_ Election on \_\_\_\_\_.

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Elections Supervisor  
DeKalb County Board of Registrations and  
Elections (SEAL)