

## **MEMORANDUM**

**To:** Mayor and City Council

**From:** Michael Starling, Director of Economic Development  
Brent Walker, Director of Parks and Recreation

**Date:** January 22, 2018

**Subject:** Facility Usage Agreement with Dunwoody Nature Center

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### **Background**

The Dunwoody Public Facilities Authority was created on July 24, 2017 when the City Council Approved the Resolution formally establishing the members of City Council as the Board of the Facilities Authority. A driving force for establishing the Authority is the ability to enter into long-term agreements with partners for public land and facilities rather than one-year renewable leases.

The Dunwoody Nature Center is undertaking a capital campaign to add facilities to expand programming and to meet the growing needs of residents and visitors who use the Park. They are requesting a 40-year Usage Agreement to provide assurances to corporations and foundations that funds donated for capital improvements will be used for the stated purposes and remain under the control of the Nature Center.

The Facility Authority convened on December 7, 2017 to discuss a draft of the proposed usage agreement. Several comments and requests were made for staff to address in the document and return at a future date. These comments have been addressed in the attached updated draft document and are submitted to the Facility Authority for review.

### **Staff Recommendation**

Staff recommends that the Authority review and adopt the attached updated 40 Year Facility Usage Agreement with the Dunwoody Nature Center. Prior to signatures approving the Facility Usage Agreement, staff will prepare documents transferring the Park Property to the Public Facilities Authority.

STATE OF GEORGIA  
CITY OF DUNWOODY

FACILITY USAGE AGREEMENT

THIS AGREEMENT by and between the **Dunwoody Facility Authority, Georgia**, a municipal body politic and corporate, hereinafter designated "AUTHORITY," and **Dunwoody Nature Center, Inc.**, P.O. Box 88070 Dunwoody, GA 30356, a private nonprofit organized under the laws of the State of Georgia, hereinafter designated "DNC," is effective as of \_\_\_\_\_, 2018.

WITNESSETH:

WHEREAS, AUTHORITY owns Dunwoody Park located at 5343 Roberts Drive, Dunwoody, Georgia, including structures located thereon, now or in the future (hereinafter designated as "Park"), for the purpose of serving the residents and guests of the City of Dunwoody and its surroundings; and

WHEREAS, DNC is a charitable non-profit organization established in 1992 and dedicated to inspiring the love of nature and cultivating environmental understanding and stewardship by conserving and enhancing Dunwoody Park and Nature Center; educating children, families and adults of all ages about the natural world and our place in it; and motivating environmental awareness and responsible action; and

WHEREAS, the City of Dunwoody and DNC have a longstanding working relationship established for the purpose of operating, developing, enhancing, and maintaining Dunwoody Park and Nature Center. The terms of the relationship have been set forth in prior written agreements. Pursuant to that relationship, DNC provides year-round mission based programming, and raises private funds to support not only its programming but also its work to enhance and preserve the Park as critical urban green space; and

WHEREAS, DNC does now and desires to continue to operate the Park Facilities, including the primary education building and any other structures located thereon (hereinafter designated as "Facilities") in a manner consistent with its mission and primarily for the benefit of residents and guests of the City of Dunwoody, DNC agrees to operate and utilize the Park and Facilities located thereon in accordance with the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. AUTHORITY does hereby grant DNC use of the Park and Facilities located thereon as designated and attached hereto as Attachment B and by reference made a part hereof,

provided however that Park areas not designated as Facilities on Attachment B may not be used or programmed by DNC to the exclusion of the public. Such portions of the Park must remain accessible to the public at all times."

2. This Agreement, beginning upon execution of this document is for an initial term terminating absolutely and without further obligation on the part of the AUTHORITY on December 31, 2058 unless terminated earlier in accordance with the termination provisions of the Agreement.
3. This Agreement may be terminated pursuant to the following:
  - (a) Either party shall have the right to terminate this Agreement for any reason at any time during the original term or any extension or renewal thereof by giving written notice to the other party of its intention to terminate at least one hundred and eighty (180) days prior to the effective date of termination.
  - (b) AUTHORITY reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time DNC materially breaches the terms and conditions set forth herein. AUTHORITY shall provide written notice to DNC of its intention to terminate pursuant to this provision at least ninety (90) days prior to the effective date of termination. After 90 days notice stated above and termination of this Agreement or any renewal thereof, or cancellation thereof by AUTHORITY, DNC shall vacate and deliver up the Facilities peaceably, quietly, and in good order and condition within a commercially reasonable period of time. However, no default or breach as to this Agreement shall be claimed by the AUTHORITY without first providing written notice of such default and allowing sixty (60) days from the date of written notice, or other mutually agreed upon time period, to cure. **If the AUTHORITY terminates and/or cancels this agreement pursuant to a material breach or default as stated above, the provisions of 3(d) will not apply to the termination or cancellation.**
  - (c) DNC reserves the right to terminate and cancel this Agreement or any extension or renewal thereof at any time AUTHORITY materially breaches the terms and conditions set forth herein. DNC shall provide written notice to AUTHORITY of its intention to terminate pursuant to this provision at least ninety (90) days prior to the effective date of termination. However, no default or breach as to this Agreement shall be claimed by DNC without first providing written notice of such default and allowing sixty (60) days from the date of written notice, or other mutually agreed upon time period, to cure.
  - (d) If the AUTHORITY terminates the Agreement prior to the expiration of the initial term set forth above, and within twenty (20) years of completion of construction of fixed and permanent Park or Facility improvements, **and except for reasons set forth above in 3(b),** AUTHORITY will pay DNC a 5% annual amortization rate per each remaining year of a twenty (20) year period for the value of the construction cost of the Park or Facility improvements, payable upon termination of the Agreement. Either party may remove portable improvements made by such party. A listing of all portable improvements shall be prepared by such party and approved by the other party prior to the removal of said improvements. Except in connection with repairs or replacements, each party covenants not to destroy or remove any improvements constructed (other than portable improvements) or equipment placed upon the Park or Facilities, pursuant to this

Agreement or otherwise, without the written consent of the other party, which written consent may not be unreasonably withheld, conditioned, or delayed.

- (e) If the AUTHORITY terminates the Agreement prior to the expiration of the initial term set forth above, but more than twenty (20) years after completion of fixed and permanent improvements upon the Park or Facilities, all such fixed and permanent improvements upon the Park or Facilities shall remain the property of the AUTHORITY, free and clear of all liens and encumbrances.
4. For the purpose of this Agreement, all notices to be given hereunder shall be in writing and shall be deemed given when hand delivered or deposited in the United States Mail, postage prepaid, certified, and addressed as follows:
- (a) Dunwoody Facilities Authority  
4800 Ashford Dunwoody Road  
Dunwoody, Georgia 30338
  - (b) Dunwoody Nature Center, Inc.  
P.O. Box 88070, Dunwoody, Georgia 30356 or (if hand-delivered)  
5343 Roberts Drive, Dunwoody, Georgia  
Attention: Executive Director
5. AUTHORITY does hereby designate the City of Dunwoody as its representative in all matters pertaining to this Agreement. All requests and issues arising from use of the Facilities described herein should be addressed to the City of Dunwoody through its Parks Director. The Parks Director is authorized to establish such administrative procedures he or she deems appropriate to carry out and enforce the terms of this Agreement.
6. The AUTHORITY and DNC shall provide services in accordance with Attachment A, which is attached hereto and by reference made a part hereof, during the term of the Agreement. DNC agrees to provide AUTHORITY with appropriate information about its program activities, including program operating hours, in order to facilitate operation of the Park and Facilities and coordination by the AUTHORITY.
7. DNC shall at all times exonerate, indemnify, and save harmless the AUTHORITY and CITY of DUNWOODY 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 Facilities in connection with intentional or grossly negligent acts or errors or omissions by DNC, its officers, agents, or employees, up to, but not exceeding, the limits of DNC's insurance policies set forth below, **which must at all times cover at a minimum of \$ 2,000,000** Neither this Agreement, nor this provision specifically, shall waive or limit DNC's right or ability to be indemnified, defended and/or held harmless by other entities not party to this Agreement including but not limited to consultants, contractors, their subconsultants and/or subcontractors, their officers, agents or employees, or anyone else performing work at or related to the Park or Facilities located thereon.



8. Except as otherwise consented to in writing by AUTHORITY, DNC 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 AUTHORITY and CITY of DUNWOODY shall be named as an additional insured under such policy or policies of insurance.
9. Except as otherwise consented to in writing by AUTHORITY, DNC shall furnish to the AUTHORITY 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 AUTHORITY covering:
  - (a) The location and the operations to which the insurance applies;
  - (b) The expiration date of policies; and
  - (c) An agreement that the policies certified will not be changed or canceled without thirty (30) days prior notices to AUTHORITY, as evidenced by return receipts of registered or certified letters. Prior to ten (10) days before the expiration of any such certificate, DNC shall deliver to the AUTHORITY a certificate renewing or extending the terms for a period of at least one (1) year, or a certificate acceptable to the AUTHORITY evidencing the required insurance coverage.
10. To the extent permitted by law, the AUTHORITY and CITY of DUNWOODY shall indemnify, defend, and hold the DNC 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 DNC as a result of or in connection with the physical condition of the Park or Facilities located thereon, negligence or willful misconduct of the AUTHORITY or CITY, its employees, partners, agents, contractors, or subcontractors, or their employees, partners, or agents. Neither this Agreement, nor this provision specifically, shall waive or limit the AUTHORITY'S or CITY'S right or ability to be indemnified, defended and/or held harmless by other entities not party to this Agreement including but not limited to consultants, contractors, their subconsultants and/or subcontractors, their officers, agents or employees, or anyone else performing work at or related to the Facilities.
11. DNC shall comply with the provisions of the Code of the City of Dunwoody, Georgia and Official Code of Georgia annotated and all appropriate statutes and regulations governing the services it furnishes and, when applicable, with the standards of its profession. DNC acknowledges its responsibility to report child abuse under O.C.G.A. 19-7-5 as may be amended in the future and accepts responsibility for compliance therewith, including all applicable persons in accordance with the statute. DNC acknowledges that failure to do so may constitute a material breach of this Agreement.

- 12 All revenues received by DNC for its programming, rental or usage fees, or other revenues generated in the operation of DNC shall be and remain the sole property of DNC.
- 13 DNC is the primary fundraising agent for the Park and Facilities located thereon and may conduct its operations, including fundraising activities and/or capital campaign(s), independently of the AUTHORITY in furtherance of its support of the Park and Facilities located thereon. DNC exercises control over its own fundraising and funds received shall remain with DNC upon termination or expiration of the Agreement. However, if DNC has begun construction on a Park capital project for which DNC has raised money to complete at the time of termination or expiration of this Agreement, DNC will complete such construction
- 14 DNC may commence physical construction of capital projects at the Park or Facilities located thereon once the total amount raised in cash, pledges, and in-kind support equals or exceeds the project budget, **and once approval is otherwise obtained from the AUTHORITY. DNC may also request approval from the AUTHORITY to commence physical construction of capital projects at the Park or Facilities prior to the total funds being raised for the project, if substantial documentation is provided to the AUTHORITY that funds will be realized to complete the project.**
- 15 Upon approval of the AUTHORITY, DNC shall have the sole right to select the specific vendors (i.e. architects, engineers, construction, etc.) required during any design, building or construction processes related to Park capital projects for which DNC has raised money to complete. The parties shall recognize DNC as the Facility operator and in such capacity shall have primary discretion regarding selection and management of vendors. State law shall apply where applicable.
- 16 DNC shall be allowed to recommend that portions of the Facilities be named in honor or in memory of those making capital campaign contributions. **All naming recommendations shall be subject to the approval of the AUTHORITY per the AUTHORITY'S Facility Naming Policy.**
- 17 The AUTHORITY or its designee shall have the right to conduct events in the Park separate from DNC's operations, so long as said events do not interfere with existing scheduled events or programming of the DNC nor materially disrupt the operation of the Park or Facilities by DNC. **DNC shall provide the AUTHORITY an annual calendar of events and programming and notify the AUTHORITY if any modifications of the schedule occur.** The AUTHORITY shall coordinate with DNC on said events to make sure there is no such interference and shall use its best efforts to provide DNC with reasonable notice. The AUTHORITY shall be responsible for all preparation prior to and clean-up after the event and for any repairs related thereto.
- 18 The AUTHORITY shall allow use of the easement granted to the City by the DeKalb Board of Education to the DNC, as designated on Attachment B and referenced in Exhibit C.

- 19 The occupancy and use by DNC of the Park and Facilities located thereon, and rights herein conferred upon DNC shall be subject to rules and regulations as are now or may hereinafter be prescribed by the AUTHORITY.
- 20 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, DNC is to be and shall remain as an independent contractor.
- 21 This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- 22 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.
- 23 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.
- 24 DNC shall at the termination of this Agreement or any extension or renewal thereof surrender up the Facilities in good order and condition, reasonable use and ordinary wear and tear thereof excepted. AUTHORITY shall be entitled to all rights and remedies provided by law including, without limitation, the dispossession rights and remedies provided in O.C.G.A. § 44-7-49, *et seq* as may be amended in the future.
- 25 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.
- 26 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 both parties.
- 27 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.
- 28 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.

- 29 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.
- 30 When applicable, the Contractor will provide Evidence of Compliance as follows: Contractor (DNC) and Subcontractor Evidence of Compliance

Pursuant to O.C.G.A. § 50-36-1(e), AUTHORITY 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 \_\_\_\_\_, 2017.

**DNC: Dunwoody Nature Center, Inc.**

**AUTHORITY: FACILITY AUTHORITY  
of Dunwoody, Georgia**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
AUTHORITY Manager  
AUTHORITY of Dunwoody, Georgia

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax I.D. Number

**ATTEST:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Typed or Printed)

\_\_\_\_\_  
Title

**ATTEST:**

\_\_\_\_\_  
AUTHORITY Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
AUTHORITY Attorney Signature

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

By executing this affidavit under oath, as an applicant for an AUTHORITY 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 AUTHORITY 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

### **I. OBLIGATIONS OF THE AUTHORITY**

The AUTHORITY agrees to:

- a. Allow the non-exclusive use of the Park and Facilities located thereon to DNC under expressed terms and conditions set forth by the AUTHORITY herein for the purpose of conducting nature-based programming and related operations, including but not limited to classes, camps, special events, meetings, fundraisers, exhibits, rentals by third parties, and demonstrations for the promotion of environmental programs, community interest and welfare. If DNC and AUTHORITY agree to terms for the use of the Facilities for other events, such use or uses shall be governed by separate agreement or agreements. DNC shall be able to utilize the Park and Facilities located thereon on Sundays-Saturdays from 7am-11pm. DNC shall have authority to establish hours of operation for the Facilities, which may at times operate outside of normal Park hours.
- b. Upon request by DNC or potential donors, AUTHORITY will provide written letters to potential donors confirming that the DNC has the authority to manage and perform capital construction projects and other fundraising for the benefit of the Park and the public on behalf of the AUTHORITY.
- c. Provide:
  - i. general, standard, and customary maintenance of the Park and Facilities located thereon, now or in the future, including but not limited to the Nature Center buildings, pavilions, observation decks, wetland boardwalk, playground, parking areas, public restrooms, and other associated structures and areas the responsibility for maintenance of which is not specifically assigned to the Nature Center in this Agreement;
  - ii. maintenance of Facilities that have achieved LEED status that is consistent with any additional substantive LEED maintenance requirements;
  - iii. daily trash collection;
  - iv. daily cleaning of all the Park's public restrooms as designated in Attachment B;
  - v. maintenance of the grounds, landscaping, parking areas, trails and other walkways, including tree removal as needed and weekly mowing and removal of yard debris; and
  - vi. payment of water utility bills associated with the Park's public restrooms designated in Attachment B and irrigation of the landscaping at the Park.
- d. Ensure that the Park and Facilities located thereon comply at all times with all federal, state, county, municipal laws, regulations, ordinances and other governmental mandates.

### **II. OBLIGATIONS OF DNC**

DNC agrees to:

- a. Provide environmental programs in accordance with all guidelines set forth by the AUTHORITY. DNC agrees that all of its paid staff and contractors must undergo a



criminal background check prior to being allowed to participate in any activities on AUTHORITY Property. DNC agrees that any paid or unpaid staff member or contractor having any contact with minor children must comply with all state law provisions relating to child abuse notification and training therefore and that failure to do so may constitute a material breach of this Agreement.

- b. Comply with all statutes, ordinances, rules, orders, regulations and requirements of federal, state, county and city governments where applicable.
- c. The payment of all utility bills for the Facilities except for water expenses related to the Park's public restrooms and irrigation of the landscaping at the Park.
- d. Maintain the Facilities to include a clean programming space and exhibits and make minor Facility repairs needed to ensure a proper safe programming area.
- e. Maintain a schedule of all functions at the Facilities and submit a report of all recorded functions of the previous year to the AUTHORITY each January to include date, use and number of participants.
- f. Daily cleaning of all enclosed Nature Center buildings and office space to include but not be limited to floors, bathrooms, trash removal and general upkeep.
- g. Adhere to all other provisions contained in this Agreement.

### **III. DNC'S MAINTENANCE RESPONSIBILITIES**

- a. DNC is responsible for daily clean-up, placing litter in proper containers prior to leaving the Facilities after each function.
- b. DNC shall obtain the prior written approval and consent from the AUTHORITY before making any repairs, improvements, additions or alterations to the Facilities; however, such approval shall not be unduly delayed or unreasonably withheld. All improvements, additions or alterations which may be approved shall become the property of AUTHORITY, unless the parties otherwise agree, and remain upon said premises and be surrendered with the premises at the termination of this Agreement. Failure to obtain prior written authorization from the AUTHORITY can constitute cause for the termination of this Agreement as provided for above. Responsibility for the cost of repairs must be agreed upon prior to any action being taken. This paragraph shall be construed together with the termination provisions of this Agreement.

- c. DNC is responsible for reporting all acts of vandalism to the Facilities to the AUTHORITY and the local Police Department within a reasonable time from discovery. A copy of the police report must be filed with the AUTHORITY.
- d. DNC agrees to take any action necessary to prevent or correct any nuisance or other grievances upon, or in connection with, said premises during the terms of this Agreement.
- e. The AUTHORITY or any of its agents or employees shall have the right to enter upon the said premise at any time during the term of this Agreement to examine and inspect as deemed necessary. AUTHORITY may supervise any physical maintenance activities, as needed.




#### **IV. DNC'S SAFETY PRECAUTIONS**

- a. DNC agrees to administer its activities at the Facilities in a safe and professional manner, having a sufficient number of adults present to supervise all scheduled activities, from the time the first person arrives until the last person departs.
- b. Upon reasonable advance notice to DNC, the AUTHORITY has the right to cancel any scheduled activity when it is determined that such activity would damage the Facility. Persistent damage to the Facilities by DNC will result in DNC being prohibited from using the Facilities.



# ATTACHMENT B

## LEGEND

-  PARK
-  FACILITY
-  DCBOE\* EASEMENT

\*DeKalb County Board of Education



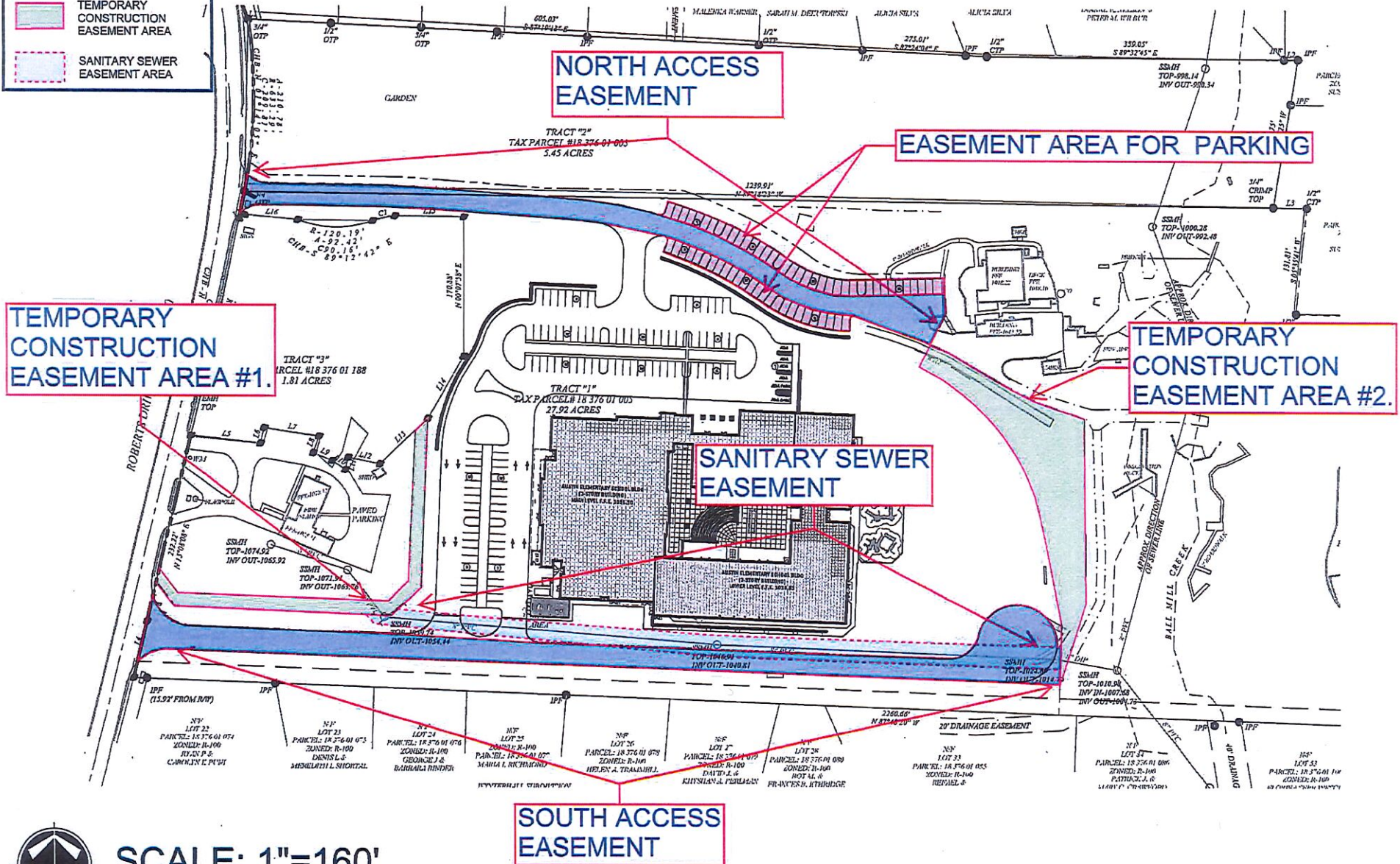
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# EASEMENT

- ACCESS EASEMENT AREA
- PARKING EASEMENT AREA
- TEMPORARY CONSTRUCTION EASEMENT AREA
- SANITARY SEWER EASEMENT AREA

## EXHIBIT 'C' AUSTIN E.S. EASEMENT SKETCH



Upon recording return to:  
Nelson, Mullins, Riley & Scarborough, LLP  
201 17<sup>th</sup> Street, NW  
17<sup>th</sup> Floor  
Atlanta, Georgia 30363  
Attn: Cheryl V. Shaw, Esq

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is made this 20th day of January, 2017 (the "Effective Date") by and among DEKALB COUNTY BOARD OF EDUCATION, a political subdivision of the State of Georgia ("DCBOE") and the CITY OF DUNWOODY, GEORGIA, a municipal corporation of the State of Georgia ("City").

#### WITNESSETH:

WHEREAS, DCBOE is the owner and holder of the fee simple title to certain property lying and being in Land Lot 376 of the 18th District of DeKalb County, Georgia and more particularly described on Exhibit "A" attached hereto and by this reference made a part hereof (the "**DCBOE Property**");

WHEREAS, City is the owner and holder of the fee simple title to certain property lying and being in Land Lots 376 and 379 of the 18th District of DeKalb County, Georgia and more particularly described on Exhibit "B" attached hereto and by this reference made a part hereof (the "**City Property**");

WHEREAS, the Parties desire to enter into and grant certain easements to one another on and subject to the terms and conditions set forth herein below

NOW, THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by the parties one to the other, the covenants contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, DCBOE and City hereby agree as follows:

1. DCBOE Grant of Parking Easement to City: DCBOE hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of City, and its agents, employees, volunteers, invitees, successors and assigns a perpetual, non-exclusive easement (the "**City Parking Easement**") for the purpose of parking vehicles in approximately (59) unreserved and non-exclusive parking spaces now existing or hereinafter constructed within that portion of DCBOE Property depicted on Exhibit "C" attached hereto and incorporated herein by this reference during all times, and in the other parking lots and spaces now existing or hereinafter constructed on the DCBOE Property - but only after school hours (the "**DCBOE Parking Easement Area**") together with access to and from the DCBOE Parking Easement Area, and for the purpose of vehicular and pedestrian access to, ingress to and egress from the

Austin E.S.



DCBOE Parking Easement Area in, on, over, and across the paved entranceways, drive lanes, and/or ramps located within the DCBOE Parking Easement Area.

2. Easement for Use of DCBOE North Access Easement for Access to the City Property. DCBOE hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of City; and its agents, employees, volunteers, invitees, successors and assigns a non-exclusive easement in perpetuity on, over, upon, through, under and across that portion of the DCBOE Property identified and described on Exhibit "C" as the "North Access Easement" (the "North Access Easement") for vehicular and pedestrian ingress and egress to access the City Property.

3. Easement for Use of DCBOE South Drive for Bus Access Only to the City Property. DCBOE hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of City, and its agents, employees, volunteers, invitees, successors and assigns a non-exclusive easement in perpetuity on, over, upon, through, under and across that portion of the DCBOE Property identified and described on Exhibit "C" as the "South Access Easement" (the "South Access Easement") for bus use (ingress and egress) only to access the City Property. DCBOE shall erect, install and maintain visible signage limiting the City's use of the South Access Easement to bus use.

4. DCBOE Grant of Sanitary Sewer Easement to City. DCBOE hereby declares, establishes, creates, grants, and/or conveys to and for the benefit of the City, and its successors and assigns a non-exclusive easement in perpetuity on, over, upon, through, under and across that portion of the DCBOE Property identified and described on Exhibit "C" (the "Sanitary Sewer Easement") for the installation and maintenance of a sanitary sewer line and connection, along with rights of entry, ingress and egress upon and across the DCBOE Property as needed for access to the Sanitary Sewer Easement and the purposes of the Sanitary Sewer Easement.

5. City's Grant of Temporary Construction Easement to DCBOE. City hereby grants and conveys to DCBOE: a temporary, non-exclusive construction easement over and across those portions of the City Property identified and described on Exhibit "C" for DCBOE's reasonable use to construct a school on the DCBOE Property. This temporary construction easement shall expire on the earlier of DCBOE's completion of the school or December 31, 2019. DCBOE shall use reasonable means to protect and preserve the existing trees and shrubs on the City Property, and to otherwise minimize disturbance to the City Property. All construction and all other work or activities performed hereunder by DCBOE or its designee shall be done in accordance with reasonable commercial standards, and the City Property shall be left in a clean and good condition, with all debris removed therefrom, and all areas and other improvements which have been disturbed by such work shall be restored to their former condition as nearly as practicable.

6. Reservation of Rights.

(a) DCBOE Reservation of Rights. DCBOE hereby reserves all its right, title and interest in and to the DCBOE Property incident to the fee simple estate thereof and for any and all purposes not inconsistent with DCBOE's declaration of the easements granted hereunder and as expressly permitted herein.

(b) City Reservation of Rights. The City hereby reserves all its right, title and interest in and to the City Property incident to the fee simple estate thereof and for any and all purposes not inconsistent with City's declaration of the easements granted hereunder and as expressly permitted herein.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties and understanding between DCBOE and City relating to the subject matter hereof and may not be amended, waived or discharged except by instrument in writing executed by the party against which enforcement of such amendment, waiver or discharge is sought.

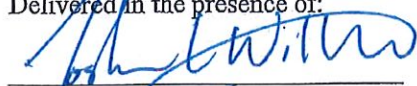
8. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Agreement, or any portion thereof, shall not affect the remaining portions thereof, or any part thereof, and this Agreement shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the agreement of the parties with respect to the covenant, agreement, condition or provision which has been deemed invalid.

9. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute one and the same document.

IN WITNESS WHEREOF, each of DCBOE and City has caused its authorized representatives to execute this Agreement on the day first above written.

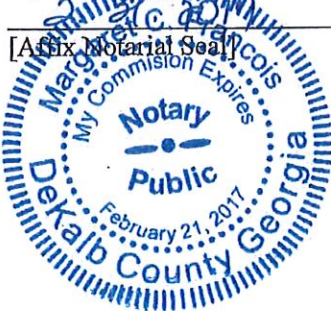
Signed, sealed and  
Delivered in the presence of:

  
Unofficial Witness

  
Notary Public

My Commission Expires:

[Affix Notarial Seal]



**DCBOE:**

DEKALB COUNTY BOARD OF EDUCATION, a political  
subdivision of the State of Georgia

By: 

Dr. Melvin Johnson, Board Chair

Attest: 

Dr. R. Stephen Green, Superintendent

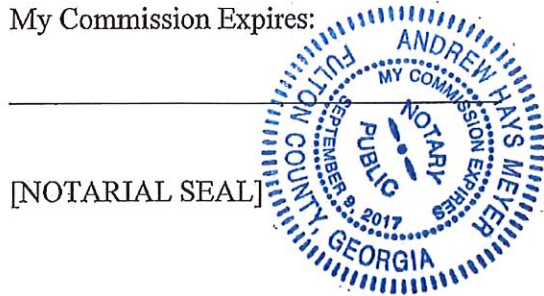


Signed, sealed and delivered  
in the presence of:

Christopher Pile  
Unofficial Witness

[Signature]  
Notary Public

My Commission Expires:



**CITY OF DUNWOODY, GEORGIA**

By: Denis L. Shortal  
Denis L. Shortal, Mayor

[SEAL]

Attest:

By: Sharon Lowery  
Sharon Lowery, City Clerk

Approved as to Form and Content:

By: [Signature]  
City Attorney