



4800 Ashford Dunwoody Road
Dunwoody, Georgia 30338
dunwoodyga.gov | 678.382.6700

MEMORANDUM

To: Mayor and City Council
From: Sharon Lowery, City Clerk
Date: June 12, 2023
Subject: **Resolution Requesting that DeKalb County Voter Registration & Elections Conduct the City of Dunwoody General Election on November 7, 2023**

ACTION

Adoption of a resolution requesting that DeKalb County Voter Registration & Elections conduct the City of Dunwoody General Election to be held on November 7, 2023, for the purpose of electing a mayor and three members of city council .

SUMMARY

DeKalb County Voter Registration & Elections is requiring a resolution from municipalities if they will be conducting their elections on November 7, 2023.

DETAILS

The City of Dunwoody will conduct a General Election on Tuesday, November 7, 2023, for the purpose of electing a mayor and three (3) members of City Council. The position of Mayor is currently held by Lynn Deutsch. City Council posts to be voted on are City Council Post 4 (District 1 at Large), currently held by Stacey Harris, City Council Post 5 (District 2 at Large), currently held by Joe Seconder, and City Council Post 6 (District 3 at Large), currently held by John Heneghan. If a runoff election is necessary, the runoff election would be held on Tuesday, December 5, 2023.

The City of Dunwoody has an Intergovernmental Agreement with DeKalb County whereby they have agreed to conduct City of Dunwoody Elections.

STAFF RECOMMENDATION

It is the recommendation of staff that the city council adopt the resolution requesting that DeKalb County Voter Registration & Elections conduct the City of Dunwoody General Election on November 7, 2023.

A RESOLUTION BY THE CITY OF DUNWOODY, GEORGIA APPOINTING DEKALB COUNTY BOARD OF REGISTRATIONS AND ELECTIONS TO CONDUCT THE CITY OF DUNWOODY NOVEMBER 7, 2023, GENERAL ELECTION AND IF NECESSARY, TO CONDUCT A CITY OF DUNWOODY RUNOFF ELECTION TO BE HELD ON DECEMBER , 2023; AND FOR OTHER LAWFUL PURPOSES.

WHEREAS, the City of Dunwoody, Georgia (the “City”) in accordance with O.C.G.A. §21-2-9(c) will hold a General Municipal Election on Tuesday, November 7, 2023 (“General Election”); and

WHEREAS, the City, in accordance with O.C.G.A. § 21-2-501, may have need to hold additional City elections, including a runoff election on December 5, 2023, in addition to the General Election, collectively (“Elections”); and

WHEREAS, the Dunwoody City Council is hereby in agreement that it would be in the best interest of its citizens, pursuant to O.C.G.A. §21-2-45(c), to allow the DeKalb County Board of Registrations and Elections staff equipment and expertise to conduct the City of Dunwoody 2023 Elections; and

WHEREAS, the City and DeKalb County executed an Intergovernmental Agreement for the provision of Election Services between DeKalb County and the City of Dunwoody (“IGA”); and

WHEREAS, the City wishes to execute an agreement in conjunction with the IGA to allow the DeKalb County Board of Registrations and Elections to conduct the Elections; and

WHEREAS, individual duties and responsibilities of both the City and DeKalb County staff shall be set forth in more detail in the IGA; and

WHEREAS, the City agrees to pay all costs associated with such Elections in a manner provided in the IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA:

Section 1. That in accordance with O.C.G.A. §21-2-45(c) the City is authorized to enter into an agreement appointing DeKalb County Board of Registrations and Elections to Conduct the City of Dunwoody December 5, 2023, General Municipal Election and if necessary, to conduct a City of Dunwoody Runoff Election to be held on December 5, 2023.

Section 2. That the City Attorney is hereby directed to prepare an agreement with DeKalb County Board of Registrations and Elections for execution by the City clerk in a substantially similar form to the agreement set forth in **Exhibit A** attached hereto. Amendment becomes effective immediately upon adoption of this resolution.

Section 3. That the City shall pay DeKalb County all costs incurred in conducting the General Municipal Election specifically enumerated in the Intergovernmental Agreement.

**STATE OF GEORGIA
CITY OF DUNWOODY**

RESOLUTION 2023-06-XX

for the provision of Election services between DeKalb County and the City of Dunwoody attached hereto as **Exhibit B**.

Section 4. That the agreement with DeKalb County Board of Registrations and Elections shall not become binding on the City and the City shall incur no liability upon same until such agreement has been executed by the Municipal Clerk and delivered to the contracting party.

SO RESOLVED this 12th day of June 2023.

CITY OF DUNWOODY, GEORGIA

Lynn P. Deutsch, Mayor

APPROVED AS TO FORM:

ATTEST:

**Sharon Lowery, City Clerk
(SEAL)**

Ken Bernard, City Attorney

EXHIBIT "A"

As per the Agreement executed on July 23, 2014, THE CITY OF DUNWOODY hereby requests that DeKalb County conduct its General Municipal Election on November 7, 2023. The last day to register to vote in this election is October 10, 2023. The absentee poll will be located at 4380 Memorial Drive, Decatur, Georgia, 30032.

This 12th day of June 2023.

_____; (SEAL)
Municipal Clerk

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

This _____ day of _____, 20__.

____ (SEAL)
Elections Supervisor
DeKalb County Board of Registrations and
Elections

DeKalb County
Contract No. 14-801131

**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 23 day of July, 20 14, 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;

- 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

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 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 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, 5th Floor
Decatur, Georgia 30030

If to the City: City Manager
City of Dunwoody
41 Perimeter Center East
Suite 250
Dunwoody, Ga 30346
770-396-4705 (facsimile)

With a copy to: City Attorney
 City of Dunwoody
 41 Perimeter Center East
 Suite 250
 Dunwoody, Ga 30346
 770-396-4705 (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**

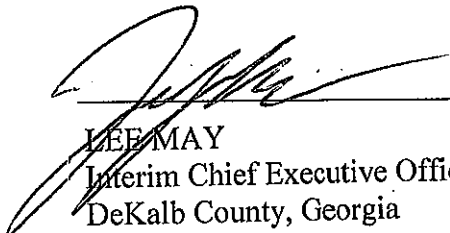
This Agreement shall inure to the benefit of, and be binding upon, the respective parties' successors.

**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)
LEE MAY
Interim Chief Executive Officer
DeKalb County, Georgia

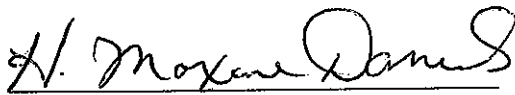
7/23/2014

ATTEST:



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

APPROVED AS TO SUBSTANCE:




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

APPROVED AS TO FORM:

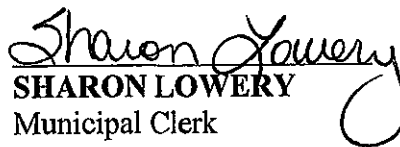


LORI BRILL
Senior Assistant County Attorney

CITY OF DUNWOODY, GEORGIA



(SEAL)
MICHAEL G. DAVIS
Mayor



SHARON LOWERY
Municipal Clerk

DeKalb County
Contract No. 14-801131

APPROVED AS TO SUBSTANCE:

WA. HT

WARREN HUTMACHER
City Manager

APPROVED AS TO FORM:

David Kelly

City Attorney

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__.

(SEAL)
Municipal Clerk

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

This _____ day of _____, 20__.

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