



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item

File ID: 2017-0471

Substitute

6/13/2017

Public Hearing: YES NO

Department: Chief Executive Office

SUBJECT: Intergovernmental Agreement with the City of Tucker – Solid Waste Services
Commission District(s): All

Information Contact: Zachary Williams, Chief Operating Officer and Executive Assistant

Phone Number: 404-371-2174

PURPOSE:

To consider approving certain intergovernmental agreements between the County and the City of Tucker for solid waste management services.

NEED/IMPACT:

This intergovernmental agreement is intended to establish the transition and management of certain solid waste services and signifies a mutually beneficial, efficient and cooperative working relationship between the two governments.

FISCAL IMPACT:

Pursuant to Contract

RECOMMENDATION:

To approve the resolution and authorize the chief executive officer to execute all necessary documents.

**INTERGOVERNMENTAL AGREEMENT
FOR THE PROVISION OF SOLID WASTE MANAGEMENT SERVICES
BETWEEN
DEKALB COUNTY, GEORGIA and
THE CITY OF TUCKER, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia and the City of Tucker, Georgia.

WHEREAS, DeKalb County, Georgia (“County”) is a constitutionally created political subdivision of the State of Georgia; and

WHEREAS, the City of Tucker (“City”) is a municipality created by the 2015 Georgia General Assembly pursuant to House Bill 636 (hereinafter referred to as “HB 636”); and

WHEREAS, the Georgia Solid Waste Management Act (“SWMA”) at O.C.G.A. § 12-8-31.1(a) requires each city and county in Georgia to develop or be included in a comprehensive Solid Waste Management Plan (“SWMP”) that conforms to the procedures promulgated by the Georgia Department of Community Affairs; and

WHEREAS, the City desires to ensure that its citizens receive Solid Waste Management Services, as defined herein, in a manner consistent with the SWMA; and

WHEREAS, the County has an approved SWMP in place that is effective through 2014; and

WHEREAS, the County collects, transports and disposes Solid Waste, as defined herein, in accordance with its SWMP and currently provides Solid Waste Management Services to unincorporated DeKalb County and municipalities located in the County; and

WHEREAS, the geographic area that now comprises the City has been and continues to be a part of the County's SWMP; and

WHEREAS, the City desires to continue to be a part of the County's SWMP; and

WHEREAS, the County and the City further desire to establish the cost of the Solid Waste Management Services to be provided by the County to the City pursuant to this Agreement; 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.

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

ARTICLE 1 PURPOSE AND INTENT

The purpose of this Agreement is to provide for continued Solid Waste Management Services within the City.

ARTICLE 2 DEFINITIONS

For purposes of the Agreement, the following terms shall be defined as:

2.1 **Commercial Establishment** means any hotel, motel, apartment house, rooming house, business, industrial, public or semipublic establishment of any nature or kind whatsoever other than a single dwelling unit/residential unit and condominiums.

2.2 **Commercial Refuse** means waste material from industrial processes manufacturing canneries, slaughterhouses, packing plants, poultry processing plants or similar industries, and large quantities of condemned foods. Commercial refuse also includes waste material from the construction, remodeling and repair operations on houses, commercial buildings, multiple dwellings and other structures such as concrete, bricks, plaster, stone, earth, lumber, roofing materials, gutters, shavings and sawdust.

2.3 **Garbage** means food waste, including waste accumulation of animal or vegetable matter used or intended for use as food, or that attends the preparation, use, cooking, dealing in or storing of meat, fish, fowl, fruit or vegetables.

2.4 **Refuse** means Garbage, Rubbish or Commercial Refuse.

2.5 **Rubbish** means waste paper, cartons, boxes, wood, tree branches, yard trimmings, furniture, appliances, metals, cans, glass crockery, dunnage and/or similar materials.

2.6 **Solid Waste** means any Garbage or Refuse; sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agriculture operation materials; solid or dissolved matters in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. Section 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended and as defined by O.C.G.A. § 12-8-22(33) as may hereafter be amended.

2.7 **Solid Waste Management Services** includes collection, transportation and disposal of Solid Waste from residences, Commercial Establishments and other

Special Services as described in this section. Residences shall be provided weekly curbside garbage collection, including backdoor service for medically eligible residents. Residences shall be allowed unlimited volume of garbage collection. Commercial Establishments shall be provided collection services one to six times per week, to be determined by the Commercial Establishments. Commercial Establishments shall also be provided mixed paper commercial recycling services one to five times weekly, to be determined by the Commercial Establishments. As a service to the public, the County shall collect mixed paper recycling from drop off sites at various County libraries and fire stations. Special Services the County shall provide include: once a week yard waste pick-up and appliance pick up; once a week residential subscription recycling service (over 22,000 subscribers since county-wide program started in August 2005); mixed paper and co-mingled (plastics, glass, aluminum and metal containers) recycling in City office buildings and facilities; fee based special and bulky material collection and dead animal collection; scheduled mowing and maintenance of County owned properties.

ARTICLE 3 TERM OF AGREEMENT

The term of the Agreement is for a minimum of six months, commencing July 1, 2017 at 0000 hours through 2400 hours on December 31, 2017. This Agreement shall automatically renew without further action by the City or the County on January 1st of each succeeding year for an additional one (1) year for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement.

ARTICLE 4 COMPENSATION AND CONSIDERATION

4.1 For the Solid Waste Management Services to be rendered during the term of this Agreement, the City agrees that the County shall remain entitled to impose and collect its fees in a manner consistent with the fees imposed and collected from the residents and Commercial Establishments in the unincorporated area of the County. Currently, residential property owners shall be billed annually as a separate line item on their County tax bill. Commercial Establishments shall be billed monthly. The County agrees that residential property owners and Commercial Establishments shall be charged fees at the same rate for similar services, and in the same manner as such fees are imposed and collected within the unincorporated portion of DeKalb County.

ARTICLE 5 PUBLIC WORKS DIRECTOR

The County Public Works Director will direct and manage the Solid Waste Management Services the County provides under this Agreement.

**ARTICLE 6
SERVICES**

The Solid Waste Management Services the County will provide City during the term of this Agreement shall be identical to the services provided in unincorporated areas of County, unless changed pursuant to the provisions of Article 4 of this Agreement. The City is interested in pursuing additional recycling options for its residents and businesses and the County is willing to discuss and evaluate such options with the City during 2016. The City Manager and the County Public Works Director agree to confer in person to mutually evaluate the cost and benefit of additional recycling options.

**ARTICLE 7
EQUIPMENT**

The County agrees to provide all equipment and personnel necessary to execute the Solid Waste Management Services contemplated in this Agreement.

**ARTICLE 8
AUTHORITY TO ENFORCE THE COUNTY'S APPLICABLE COLLECTION
AND DISPOSAL CODE**

8.1 The County shall have concurrent authority to enforce the County codes governing Solid Waste Management, including collection and disposal services as addressed in the Code of DeKalb County, as Revised 1988, Article I, Section 22-1 through 22-5, Article II, Section 22-26 through Section 22-35, Article III, Section 22-51 through 22-60 and Article IV, Section 22-61 through 22-69 within the City. The County's Public Works Director shall be responsible for enforcing the County's collection and disposal code and related provisions. The County Public Works personnel assigned to the City, shall take an oath administered by the Judge of the Municipal Court of the City, as prescribed by O.C.G.A. §§ 45-3-1 and 45-3-10.1 prior to undertaking code enforcement duties pursuant to this Agreement to enforce the ordinances regulating Solid Waste Management.

8.2 Every County Public Works personnel assigned to the City shall still be deemed to be a sworn officer of the County while performing the services, duties and responsibilities hereunder and is vested with the police powers of the County that are necessary to provide the code enforcement within the scope of this Agreement.

8.3 County Public Works personnel shall be and hereby are vested with the additional power to enforce the applicable ordinances of the City regulating Solid Waste Management, to issue citations incident to the enforcement of such County and City ordinances, and to perform other tasks as are reasonable and necessary in the exercise of their powers. This vesting of additional powers to enforce these County and City ordinances is made for the sole and limited purpose of giving official and lawful status to the performance of code enforcement services provided by sworn officers within the City.

8.4 County Public Works Department personnel shall enforce County and City ordinances regulating Solid Waste Management Services and shall appear in the Municipal Court of the City as necessary to prosecute cases made therein. The City agrees to compensate the County Public Works Department personnel for their appearance in the Municipal Court pursuant to state law. The City further agrees to provide, at its own expense, citation books containing the printed Municipal Court information to County personnel working within the City.

8.5 On or before the last day of the month following the effective date, the City will adopt solid waste management ordinances that are no less stringent and are as broad in scope as Attachment "A", the Code of DeKalb County, Georgia, Article I, Section 22-1 through 22-5, Article II, Section 22-26 through Section 22-35, Article III, Section 22-51 through 22-60 and Article IV, Section 22-61 through 22-69, attached hereto and incorporated by reference, (hereinafter referred to as the County's solid waste management ordinances). If the City does not enact solid waste management ordinances at least as stringent as the County's solid waste management ordinances, this Agreement will immediately terminate with no further action required of the County. Whenever the County intends to amend its solid waste management ordinances, it will forward a copy of such proposed amendment(s) at least 90 days prior to the date of enactment to the City Manager. If the City does not enact amendments at least as stringent as those adopted by the County within 60 days of the County's enactment, this Agreement will immediately terminate with no further action required of the County.

**ARTICLE 9
EMPLOYMENT STATUS**

All County Public Works Department personnel operating in the City, as well as any other County personnel operating 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.

**ARTICLE 10
RECORDKEEPING AND REPORTING**

The County Public Works Department is the central repository for all Solid Waste related records and makes available public records as defined by the Georgia Open Records Act, O.C.G.A. 50-18-70, *et seq.* During the term of this Agreement, the County will continue to maintain all reports relating to Solid Waste Management activities it conducts within the City. 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 11
CITY – COUNTY RELATIONS**

The County Public Works Department Director shall be the County’s main point of contact regarding Solid Waste Management issues and will coordinate with the City Manager as appropriate.

**ARTICLE 12
TRANSITION**

The County and City agree that 180 days prior to the end date of this Agreement, the City Manager and the County's Executive Assistant will meet and confer to determine whether the City desires to extend the Agreement.

**ARTICLE 13
TERMINATION AND REMEDIES**

The City and the County may terminate this Agreement with or without cause, by giving 180 days prior written notice to the other party. The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

**ARTICLE 14
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 Executive Assistant 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: Executive Assistant
 Clark Harrison Center
 330 West Ponce de Leon Avenue, 6th Floor
 Decatur, Georgia 30030
 404-371-4751 (facsimile)

With a copy to: County Attorney
 1300 Commerce Drive, 5th Floor
 Decatur, Georgia 30030
 404-371-3024 (facsimile)

If to the City: City Manager
 City of Tucker
 200 Ashford Center North
 Suite 150
 Atlanta, GA 30338
 _____ (facsimile)

With a copy to: City Attorney
 City of Tucker
 200 Ashford Center North
 Suite 150
 Atlanta, GA 30338
 _____ (facsimile)

**ARTICLE 15
EXTENSION OF AGREEMENT**

This Agreement may be extended at any time during the term by mutual written consent of both parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

**ARTICLE 16
NON-ASSIGNABILITY**

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

**ARTICLE 17
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 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 18
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 19
BINDING EFFECT**

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

**ARTICLE 20
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.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the County and the City have executed this Agreement through their duly authorized officers.

This ____ day of _____, 2017.

DEKALB COUNTY, GEORGIA

MICHAEL J. THURMOND
Chief Executive Officer

ATTEST:

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

APPROVED AS TO SUBSTANCE:



TRACY HUTCHINSON
Director, Sanitation

APPROVED AS TO FORM:



VIVIANE H. ERNSTES
Deputy County Attorney

CITY OF TUCKER, GEORGIA

(SEAL)
FRANK AUMAN
Mayor

APPROVED AS TO SUBSTANCE:

TAMI HAMLIN
City Manager

APPROVED AS TO FORM:

BRIAN ANDERSON
City Attorney