



DeKalb County Government

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

Agenda Item

File ID: 2018-2717

Substitute

10/23/2018

Public Hearing: YES NO

Department: Executive Assistant - Chief Operating Office

SUBJECT: Intergovernmental Agreement with the City of Brookhaven for Public Safety, Fire and Emergency parking and break facilities.

Commission District(s): All

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

Phone Number: 404-371-2174

PURPOSE:

To consider approving an intergovernmental agreement between the County and the City of Brookhaven for the improvement and use of the building, property and premises located at 3292 Buford Highway, Brookhaven, GA 30329 for parking and break facilities for County public safety, fire and emergency services personnel, contractors and subcontractors.

NEED/IMPACT:

This intergovernmental agreement signifies a mutually beneficial, efficient and cooperative working relationship between the two governments.

FISCAL IMPACT:

Pursuant to the Intergovernmental Agreement, in an amount not to exceed \$180,000.

RECOMMENDATION:

To approve the resolution and authorize the Chief Executive Officer to execute all necessary documents.

**INTERGOVERNMENTAL AGREEMENT BETWEEN
DEKALB COUNTY, GEORGIA
AND
BROOKHAVEN, GEORGIA**

This Intergovernmental Agreement (the "Agreement"), made and entered into on the ____ day of _____, 2018, by and between the **CITY OF BROOKHAVEN**, Georgia, a municipal corporation duly and legally created by the General Assembly of the State of Georgia, acting by and through its duly elected Mayor and Council (hereinafter referred to as the "City") and **DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia, acting by and through its duly elected Governing Authority (hereinafter referred to as the "County").

WITNESSETH

WHEREAS, the County and the City are both political bodies, existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and Agreements with other political entities; 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, it is beneficial to the citizens of both jurisdictions for the County to have access to parking and use of facilities for public safety and emergency services personnel;

WHEREAS, pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, DeKalb County is authorized to enter into Intergovernmental Agreements with the City for periods not exceeding fifty (50) years.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and in consideration of the mutual promises and undertakings contained herein, the parties hereto do hereby agree and consent to the following:

**ARTICLE 1
PURPOSE AND INTENT**

The purpose of this Agreement is to provide for the County's use of the City-owned property located at 3292 Buford Highway, Brookhaven, GA 30329 (the "Premises"), for parking and use of the building, property and premises by County public safety and emergency services personnel, contractors, and sub-contractors.

**ARTICLE 2
DEFINITIONS**

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

- A. The word "Tenant" as used in this Agreement shall be construed to mean the County.
- B. The word "Landlord" as used in this Agreement shall be construed to mean the City.
- C. The word "Premises" as used in this Agreement shall include not only the particularly above described property and Premises, but also all the buildings, parking lot, landscaping, improvements, tenements and appurtenances, thereunto belonging or in any way appertaining.
- D. Any and all references to the "Term" of the Agreement contained within this rental Agreement shall include not only the original term but also any renewal or extension of the original term.
- E. The term "Emergency", "Ambulance", "Police" or "Public Safety" personnel shall mean all fire, emergency, police, and public safety employees of the County, and shall include and all County contractors, sub-contractors, and their employees (collectively, "Personnel").

**ARTICLE 3
TERM**

This Agreement shall commence on the effective date set forth herein for a period of five (5) years (the "Term"), beginning at 00:00 hours on November 1, 2018 and automatically terminating at 24:00 hours on October 31, 2023, unless otherwise terminated as provided herein. The parties reserve the right to amend and renew this Agreement by amending said Term in writing subject to approval by the applicable governing authorities.

**ARTICLE 4
USE OF PREMISES**

The City does hereby lease to the County the Premises located at 3292 Buford Highway, Brookhaven, Georgia 30329, described and attached hereto as Exhibit "A". The Premises shall be used exclusively by the County and County-approved contractors and sub-contractors for public safety and emergency service personnel and purposes, including but not limited to the parking of public safety and emergency vehicles. The Premises and building located thereon includes approximately 3,300 square feet (sq. ft.) of heated building space. The Premises and existing building shall be used by Personnel as necessary for parking, office uses, break-room uses, and restroom facilities.

**ARTICLE 5
CONSIDERATION**

For the mutual benefit of efficient and cooperative effort on public safety, including but not limited to ambulances, both parties shall benefit from this Agreement. In exchange for mutual consideration, the City shall receive increased public safety and emergency presence within the boundaries of the City and the County shall receive the use of the Premises. The City will make and pay for certain improvements to the premises to be determined by mutual agreement between the City Manager and County Executive Assistant, said improvements which are estimated to total \$180,000. In exchange for the use of the Premises, the County shall pay to the City a maximum of 60 payments in the amount of \$3,000 per month for a total amount not to exceed \$180,000 or, in the event of early termination, \$3,000 for each month of use, with a prorated amount for any partial month of use.

**ARTICLE 6
TERMINATION**

The County or the City may terminate this Agreement without cause at its option by providing one-hundred and eight (180) days written notice to the other party.

**ARTICLE 7
NOTICE OF DEFAULT**

This Agreement may be terminated for cause upon an event of default; provided, however, prior to such termination, the County must first notify the City in writing, specifying the event of default. The City shall have thirty (30) days after the date of the written notice from the County to cure the stated event of default. Events of default include, but are not limited to the following:

- (a) The City assigns or sub-lets without the express written consent of the County; or
- (b) The City or County uses the Premises in violation of this Agreement.

The failure of either party to exercise its rights of termination as provided herein shall not be deemed a waiver or limitation of any rights of either party to subsequently terminate this Agreement for any other or similar default.

**ARTICLE 8
NO THIRD PARTY BENEFICIARIES**

This Agreement is for 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.

**ARTICLE 9
NOTICE**

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 City: City Manager
 City of Brookhaven
 4362 Peachtree Rd NE
 Brookhaven, GA 30319
 _____, Facsimile number

If to the County: Executive Assistant
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030
 404-371-6291, Facsimile number

**ARTICLE 10
NON-ASSIGNABILITY**

Neither this Agreement, nor the rights granted by it shall be assigned or transferred by City or County under any circumstances whatsoever. Any attempt at assignment or transfer in derogation of this prohibition is void.

**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
COVENANTS AND REPAIRS**

12.1 REPAIRS BY CITY:

During the term of this rental Agreement, the City shall, at City's sole cost, service, replace, keep and maintain in good order and repair each and every part and portion of the existing Premises together with any improvements or additions the City might install in or place upon the Premises in the course of the term of this Agreement.

12.2 ALTERATIONS TO PREMISES:

City reserve the right to determine the specific vendors; contractors, materials, and finishes for the Premises. County will only make alterations to the Premises with the advance written approval of the City.

12.3 ENTRY FOR INSPECTION AND REPAIRS, ALTERATIONS, OR ADDITIONS

The County shall permit the City and the City's agents or employees to enter into and upon said Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining or making repairs, alterations or additions to any portion of the Premises.

12.4 NOTICE TO CITY OF DAMAGE OR DEFECTS

County shall give to the City prompt written notice of any accident to or any defects in the said Premises and such damage or defects shall be remedied with due diligence by the City at City's own expense; unless caused by the negligence of the County, its employees, agents or representatives.

12.5 IMPROVEMENTS, ERECTIONS AND ADDITIONS BY COUNTY

With the express consent of the City first having been obtained, the County may make, at County's own expense, such improvements, erections and alterations as are necessary to adapt the Premises for the use of the Premises as provided in this Agreement.

12.6 REMOVAL OF FIXTURES BY COUNTY

At any time before the expiration or termination of this Agreement, the County shall have the right and privilege to remove all vehicles, equipment, appliances and movable furniture which the County has placed in or upon the demised premises.

12.7 HOURS OF OPERATION

County use of the Premises shall be permitted twenty-four (24) hours per day, seven (7) days a week.

12.8 PARKING

On-site parking is available for the County, County contractors, and the authorized uses herein. An estimated thirty (30) parking spaces are available, but not specifically reserved, under this lease. The County may park vehicles on-site overnight as a convenience and at its own risk. Visitor parking is available at the front of building and additional overflow in the rear of the building.

12.9 RESTROOMS

Restrooms are included as part of the Premises, located within the existing building, and available for use by the County, its agents, employees, contractors, and authorized users.

12.10 UTILITIES

Utilities (i.e., water, electric, trash) shall be the responsibility of the County.

12.11 SUBLETTING

The County shall not assign this rental Agreement, or any interest therein, and shall not sublet the said premises or any part thereof, or suffer any other person to occupy or use the said premises, or any portion thereof, without the written consent of City first having been obtained City (which approval shall not be unreasonably denied, conditioned or delayed). Any such assignment or subletting without such consent should be void, and shall, at the option of the City, on twenty (20) days' notice to the County, terminate this rental Agreement. Consent to one assignment and/or subletting shall not destroy this provision, and all later assignments and/or subletting shall likewise be made only on prior consent of the City, which consent shall not unreasonably be withheld.

12.12 SURRENDER OF PREMISES

At termination of this Agreement, the County shall surrender the Premises and keys thereof to the City in the same condition as at commencement of the term, except due to natural wear and tear, damage by fire, acts of God, the elements, or other casualties, condemnation and/or appropriation, and damage or defects arising out of actions by the City or persons not a party to this Agreement.

ARTICLE 13 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 14
BINDING EFFECT**

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

**ARTICLE 15
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)

October 15, 2018

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

DEKALB COUNTY, GEORGIA

MICHAEL L. THURMOND
Chief Executive Officer

BARBARA SANDERS, CCC
Clerk of the BOC
DeKalb County, Georgia (SEAL)

APPROVED AS TO FORM:

APPROVED AS TO SUBSTANCE:

MARIAN C. ADEIMY
Assistant County Attorney

DARNELL D. FULLUM
Chief, Fire & Rescue

CITY OF BROOKHAVEN, GEORGIA

JOHN ERNST
Mayor

SUSAN HIOTT
City Clerk (SEAL)

APPROVED AS TO FORM:

CHRIS BALCH
City Attorney