



# DeKalb County Government

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

## Agenda Item

May 10, 2022

File ID: 2022-1611

Substitute

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Public Hearing: YES  NO

Department: Law Department

**SUBJECT:**

Commission District(s): all

Proposed approval of two lease forms for certain property located at 2660 Osborne Road, Atlanta, Georgia, 30319, tax parcel identification number 18 240 04 067, as part of the settlement of the City of Brookhaven's lawsuit against DeKalb County, Civil Action No. 21CV1143 in the Superior Court of DeKalb County. One of the lease forms is for a ground lease between Brookhaven as lessor and DeKalb County as lessee; the other is for Amendment No. 1 to the County's Lease with the DeKalb Community Service Board ("CSB"), which acts a sublease between DeKalb County as sublessor and the CSB as sublessee. These leases are intended to go into effect at the time of the County's transfer to Brookhaven of the 2660 Osborne Road property upon which the CSB operates a facility providing intellectual and developmental disability services, and upon which the CSB will continue to provide such services after the transfer of such property.

**Information Contact:** Viviane Ernstes, County Attorney

**Phone Number:** 404 441-8009

**PURPOSE:**

To approve the forms for a ground lease between Brookhaven and DeKalb County and Amendment No. 1 to the County's Lease with the DeKalb Community Service Board for certain property located at 2660 Osborne Road, Atlanta, Georgia, 30319, tax parcel identification number 18 240 04 067.

**NEED/IMPACT:**

To comply with the County's obligations under the Intergovernmental Agreement, Settlement Agreement, and Full and Final Release of Claims ("Agreement") with the City of Brookhaven and provide for the CSB's and County's continued use of and access to a building and certain other areas on the 2660 Osborne Road property to be transferred to Brookhaven as part of a settlement.

**FISCAL IMPACT:**

Cost of continued building maintenance by the County during the lease period.

**RECOMMENDATION:**

Approve forms for the ground lease between Brookhaven and DeKalb County and Amendment No. 1 to the County's Lease with the DeKalb Community Service Board and authorize the CEO to execute the ground lease, Amendment No. 1 and any other documents related to these leases at an appropriate time and in a form authorized by the County Attorney.

Ground Lease  
May 5, 2022

## **GROUND LEASE**

This **GROUND LEASE** (“Agreement”), made and entered into as of \_\_\_\_\_, 2022, (“Commencement Date”) by and between DEKALB COUNTY, GEORGIA, a political subdivision of the State of Georgia (the “County”), and the CITY OF BROOKHAVEN, a municipal corporation of the State of Georgia (the “City”).

### **W I T N E S S E T H:**

**WHEREAS**, the parties have entered into that certain Intergovernmental Agreement, Settlement Agreement and Full and Final Release of All Claims dated as of April 26, 2022, as amended by that certain Amendment No. 1 to Intergovernmental Agreement, Settlement Agreement and Full and Final Release of All Claims dated as of April 26, 2022(together, the “IGA”) in which, among other things, the County has agreed to convey to the City that certain property described on Exhibit “A” attached hereto and by this reference made a part hereof (the “Osborne Property”); and

**WHEREAS**, in the IGA, the parties also agreed that City would lease back to County that certain portion of the Osborne Property being the ONE STORY WOOD FRAME structure and the immediately surrounding areas as shown on Exhibit “B” attached hereto and made a part hereof by this reference, including all buildings, personal property and improvements thereon (the “Community Service Property” or “Premises”) pursuant to this Ground Lease for a term that runs through January 30, 2063, and this Agreement constitutes a part of the IGA; and

**WHEREAS**, the Community Service Property is currently leased by the County to Dekalb Community Service Board, a public agency and instrumentality of the State of Georgia (“Subtenant”) pursuant to that certain Lease Agreement dated January 31, 2013 (herein, together with any replacement or substitution thereof, referred to as the “Sublease”) and the City has agreed for the County to continue all rights and obligations of the landlord under the Sublease, but now, as a sublandlord, for the full term of this Agreement; and

**WHEREAS**, the Premises is to be made available by the County to the Subtenant only in accordance with the terms of the Sublease and the restrictions on use, to the extent still applicable, set forth in that certain Deed recorded at Deed Book 2907 Page 121 DeKalb County, Georgia records (the “Deed Restrictions”); and

**WHEREAS**, the County and the City are authorized under the Georgia Constitution and statutes of the State of Georgia (the “State”) to enter into this Agreement for the purposes set forth herein; and

**WHEREAS**, on May 10, 2022, the City Council for the City authorized the execution and delivery of this Agreement and the Board of Commissioners of County also authorized the same;

**NOW, THEREFORE**, for and in consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the County and the City do hereby agree, as follows:

## **ARTICLE I REPRESENTATIONS**

**Section 1.1. Representations by the City.** The City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Authority. Article IX, Section III, Paragraph I (a) of the Constitution of the State of Georgia of 1983 authorizes any municipality of the State of Georgia to contract for any period not exceeding fifty (50) years with any public corporation or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided that such contract deals with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide. The City has all requisite power under the laws of the State to enter into, perform its obligations under, and exercise its rights under this Agreement.

(b) Agreements Are Legal and Authorized. The execution and delivery by the City of this Agreement and the compliance by the City with all of the provisions hereof (i) are within the purposes, powers, and authority of the City and (ii) have been done in full compliance with the provisions of the applicable laws, have been approved by the governing body of the City and are legal and will not conflict with or constitute on the part of the City a violation of or a breach of or a default under any organic document, indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the City is a party or by which the City or its properties are otherwise subject or bound, or any license, judgment, decree, law, statute, order, writ, injunction, demand, rule, or regulation of any court or governmental agency or body having jurisdiction over the City or any of its activities or properties. This Agreement is the valid, legal, binding and enforceable obligation of the City. The officials of the City executing this Agreement are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the City.

(c) Assignment of Certain Rights by City to County. The City hereby grants to County the right and power, at the County's own cost and expense and in the County's own name, to enforce performance and observance of any obligation, agreement or covenant of the Subtenant under the Sublease, and the County is hereby authorized by the City to take whatever action at law or in equity as may appear reasonably necessary and desirable to enforce the performance and observance of any obligation, agreement, or covenant of the Subtenant under the Sublease. No such grant shall release City from any of its duties or obligations hereunder.

**Section 1.2. Representations by the County.** The County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Authority. The County is a political subdivision of the State duly created and validly existing under the laws of the State. The County has all requisite power under the laws of the State to operate and lease the Premises, and to enter into and perform its obligations under, and exercise its rights under, this Agreement and the Sublease. Article IX, Section III, Paragraph I(a) of the Constitution of the State of Georgia of 1983 authorizes the County to contract for any period not exceeding fifty (50) years with any public corporation or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, if such contract deals with activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.

(b) Agreement Is Legal and Authorized. The execution and delivery by the County of this Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or the compliance with all of the provisions hereof (i) are within the power, legal right, and authority of the County and (ii) are legal and will not conflict with or constitute on the part of the County a violation of or a breach of or a default under, any organic document, indenture, mortgage, security deed, pledge, note, lease, loan, or installment sale agreement, contract, or other agreement or instrument to which the County is a party or by which the County or its properties are otherwise subject or bound, or any license, law, statute, rule, regulation, judgment, order, writ, injunction, decree, or demand of any court or governmental agency or body having jurisdiction over the County or any of its activities or properties. This Agreement is the valid, legal, binding, and enforceable obligation of the County. The officials of the County executing this Agreement are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of the County.

## **ARTICLE II DEMISING CLAUSE**

**Section 2.1. Demise of Premises.** The City demises and leases to the County, and the County leases from the City, the Premises at the rental of One Dollar (\$1.00) per year, such annual rent commencing on, and being payable on, the Commencement Date and on each succeeding one (1) year anniversary thereof during the term of this Agreement and for the term set forth in Section 2.2 below. The Premises may be used solely for the purposes set forth in the Sublease for the use and benefit of residents of the County as more fully set forth in the Sublease. The interest in the Premises granted to the County in this Section 2.1 shall be deemed and construed to create an estate for years and not a usufruct. The City retains its fee simple interest in the Premises. This shall be a net lease type of arrangement with the City and County assigning all responsibility and obligation for utilities, maintenance, repair, taxes, and other costs either to County, or to the extent set forth in the Sublease, to the Subtenant.

**Section 2.2. Term.** This Agreement shall become effective upon the Commencement Date and shall be in full force and effect until 11:59 PM on January 30, 2063, unless sooner terminated. In no event shall the term of this Agreement, if extended, go beyond the date that is fifty (50) years from the Commencement Date. In the event that the Sublease is terminated and

there exists no other agreement between County and Subtenant for Subtenant's use and occupancy of the Premises, then this Agreement shall terminate.

## ARTICLE III CITY'S OBLIGATIONS

### **Section 3.1. City Covenants.**

(a) The City covenants and agrees that (i) it will not breach any of the terms, covenants or conditions of this Agreement, (ii) it will not cause or affirmatively permit any default under this Agreement, and (iii) it shall take all actions necessary for the continuance in full force and effect of this Agreement and the Sublease; provided, however, that the City shall not be liable and shall have no obligation, in any way, to provide any resources whatsoever with respect to the operation and maintenance of the Premises other than to execute and deliver any required documents to facilitate such efforts.

(b) In the event City receives a request from the County under the Sublease for the County to construct improvements or alterations (as such terms are used in the Sublease) on or to the Premises, then City shall provide its written consent to any such work that has otherwise been approved by County under the terms of the Sublease. County may only request such improvements or alterations to the extent same may be requested by Subtenant under the terms of the Sublease. The Parties agree that any consent granted pursuant to this subparagraph shall not constitute a breach of the Intergovernmental Agreement between the City and the County nor shall it qualify as any improvement by the City to the unimproved areas of the Park during the term of the IGA.

(c) City agrees that it shall maintain and, at all times during the existence of this Agreement, allow, full vehicular and pedestrian access to and from the Premises over the driveways, parking areas and other improvements on other portions of the Osborne Property to and from a public street. During the hours of 7:00AM to 6:00PM, Monday through Friday, except for State of Georgia holidays, County and Subtenant shall have the exclusive use during those operational hours of the parking spaces and outside areas of the Premises depicted in Exhibit C hereto, and the City shall be responsible for enforcement if necessary of the Subtenant's rights thereto. Ten (10) parking spaces within the area depicted on Exhibit C shall be reserved for Subtenant's exclusive use for parking of its vans on a continuous basis, 24 hours per day, 7 days a week. At other times, City may allow parking in such areas provided that such use does not interfere with the use of the Premises by Subtenant. City shall be responsible for any damage caused by use of such areas during such times as the use by Subtenant is not exclusive. Except to the extent caused by County's or Subtenant's negligence, City shall, at its expense, maintain, repair and replace, if necessary, the lawn and landscaping areas and all of the exterior lighting, driveways, walkways and fencing on the Osborne Property, including the Premises. Same shall be maintained in accordance with reasonable standards and at least as often as other City owned properties.

(d) City covenants and warrants that City will be, on the Commencement Date, the true and lawful owner of the Premises and has good right and full power to demise and lease the same.

(e) City agrees that County shall quietly and peaceably hold, possess and enjoy the Premises for the full term of this Agreement without any hindrance by City or its agents or employees, and City will defend the title to the Premises and the use and occupancy of the same by County and the Subtenant against the lawful claims of all persons claiming an interest through the City. City will, to the extent permitted by law, indemnify and hold County harmless from any and all losses, costs, expenses or liabilities due or attributable to a breach by City of this section. City agrees to execute and deliver a Memorandum of Lease which shall be in such form as will permit the recording thereof in the appropriate public real estate records and which shall recite the Commencement Date, the expiration date of the term of this Agreement, the property that is subject to this Agreement and such other information as County may reasonably require.

(f) City has received no written notice from any federal, state, county or municipal authority as to the existence of any such hazardous material at the Premises which is or is alleged to be in violation of any applicable law or ordinance. City covenants that, from and after the date of this Agreement it shall not cause or permit any Hazardous Substances (defined below) to be released, discharged or deposited onto or within the bounds of the Premises in violation of any applicable laws or regulations. **To the extent there are or may be any Hazardous Substances contained within or a part of the Community Services Property, the City shall not be deemed to have caused or permitted any release, discharge, or deposit of such substances on the leased property.** For purposes of this Agreement, the term "Hazardous Substances" shall mean any material or substance that is defined or classified under federal, state or local laws as: (a) a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), or Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as now or hereafter amended; (b) a "hazardous waste" pursuant to Section 1004 or Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903, 6921, as now or hereafter amended; (c) a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a)(1); (d) a "hazardous air pollutant" under Section 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended; (e) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. App. 1802(4), as now or hereafter amended; (f) toxic or hazardous pursuant to regulations promulgated now or hereafter under the aforementioned laws. City further warrants and represents that (i) City is not subject to any existing, pending or threatened investigation by any governmental authority under any applicable federal, state or local law, regulation or ordinance pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of Hazardous Substances, air emissions, or other environmental matters pertaining to the Premises, and (ii) any handling, transportation, storage, treatment, or use of Hazardous Substances by the City that has occurred on the Premises to date has been in material compliance with all applicable federal, state, and local laws, regulations and ordinances.

## ARTICLE IV COUNTY'S OBLIGATIONS

### **Section 4.1. Lease Covenants.**

(a) If and to the extent any real estate ad valorem taxes are levied or assessed by any lawful authority on the Premises (hereinafter collectively referred to as "real estate taxes"), County shall be responsible for the payment of such real estate taxes for the period beginning on the Commencement Date and continuing during the existence of this Agreement.

(b) County agrees not to encumber or convey any interest in County's leasehold estate in the Premises with any deed to secure debt, mortgage, or other instrument in the nature thereof as security for any debt which is not expressly subject to this Agreement and unless County and any such lender deliver a reasonable form of subordination, non-disturbance and attornment agreement.

(c) County agrees to execute and deliver a Memorandum of Lease which shall be in such form as will permit the recording thereof in the appropriate public real estate records and which shall recite the Commencement Date, the expiration date of the term of this Agreement, the property that is subject to this Agreement and such other information as County may reasonably require.

(d) County or Subtenant shall pay all charges for utilities provided to the Premises, including, without limitation, water, sewer, natural gas, electricity, telephone, fire alarm and security monitoring. Whenever possible, County will cause Subtenant to place any such utilities or services exclusively serving the Premises in its name and pay same as and when due directly to the utility or service provider. With respect to any utilities that cannot be transferred to Subtenant's or County's name, County shall pay as additional rent the Premises' reasonable share of such utility costs (which allocation shall take into account density and Subtenant's specific use or manner of use of such utility services) within ten (10) days of receiving an invoice from City for such costs.

(e) County shall keep and maintain the Premises in good order and repair, and, along with Subtenant, shall keep the Premises free and clear of trash and debris and in a clean and sanitary condition, free from pests and rodents. In the event County fails to make said repairs, City may, but shall not be obligated to, make such repairs (after any applicable notice and cure period), in which event, County shall reimburse City, as additional rent, for all expenses incurred thereby within ten (10) days of receipt of an invoice for same. County also agrees to keep all systems and equipment exclusively serving the Premises pertaining to water, fire protection, drainage, sewer, electrical, heating, ventilation, air conditioning and lighting in good order and repair.

(f) County may make, or allow to be made by Subtenant, modifications or alterations to the Premises, including openings cut through the roof, after prior written notice to City of such plans for modification or alteration. In the event any such modifications or alterations are performed, same shall be completed in accordance with all applicable codes and regulations.

(g) County may remove all of its equipment, inventory, furniture, personal property and trade fixtures prior to the expiration of the Term, including, without limitation, remove all low voltage cabling and networking equipment, telecommunications equipment, and vertical utility cables and lines back to their respective junction boxes. County or Subtenant shall repair, at its expense, all damage to the Premises caused by such removal. County shall return the Premises to City at the expiration or prior termination of this Lease, broom clean, and in the same condition and repair as when existed on the Commencement Date, normal wear and tear and casualty excepted. In the event this Lease is terminated for any reason, any property remaining in or upon the Premises after such termination may be deemed to become property of City and City may dispose of same as it deems proper with no liability to City and no obligation to County. Upon the expiration or earlier termination of the Sublease, the County shall be released from any further obligations related to the Premises, including but not limited to any obligation to fund repairs or demolition.

(h) If the whole of the Premises, or such portion thereof as will make the Premises unusable for County's intended use as described herein and in the Sublease, shall be condemned by any legally constituted authority for any public use or purpose, then, in any of said events, the term of this Lease shall cease from the time when possession or ownership thereof is taken by public authorities and rental shall be accounted for as between City and County as of that date. Such termination, however, shall be without prejudice to the rights of either City or County to recover compensation and damage caused by condemnation directly from the condemner. It is further understood and agreed that neither County, nor City, shall have any rights in any award made to the other by any condemnation.

(i) County shall have the right to erect at County's or Subtenant's sole expense Subtenant's customary identification sign on the front entrance glass of the Premises. These signs shall not be other than customary trade signs identifying the business of County or the Subtenant. All signage existing as of the Commencement Date shall be deemed approved and may be maintained throughout the term of this Lease by County and/or Subtenant. All future signs shall be subject to and in conformity with all applicable laws, zoning ordinances. On or before termination of this Lease, County or Subtenant shall remove the signs thus erected, and shall repair any damage or disfigurement, and close any holes, caused by such removal.

(j) County's rights under this Lease shall be subject to any bona fide mortgage or deed to secure debt which is now, or may hereafter be, placed upon the Premises by City, and County agrees to execute and deliver such documentation as may be required to evidence such subordination within ten (10) days of receipt of a request for such execution provided that such lender also executes and delivers a reasonable form of subordination, non-disturbance and attornment agreement.

(k) The failure of either party to exercise any power given to it hereunder, or to insist upon strict performance of any one or more of the obligations under this Lease, or to exercise any election contained in this Lease, shall not be construed as a waiver or relinquishment of the right to demand strict compliance with the terms hereof for the future performance of the terms and conditions of this Lease or of the right to exercise such election. Time is of the essence in this Lease. Signatures inscribed on the signature pages of this Agreement or any formal

amendment which are transmitted by telecopy or email transmission (e.g., PDF files) shall be valid and effective to bind the party so signing. Each party agrees to promptly deliver to the other party an executed original of this Agreement or any such formal amendment with its actual signature, but a failure to do so shall not affect the enforceability of this Agreement or any such formal amendment, it being expressly agreed that each party to this Agreement or any formal amendment shall be bound by its own telecopied or emailed signature and shall accept the telecopied or emailed signature of the other party to this Agreement or any formal amendment.

(l) County will carry casualty insurance coverage on the Premises in an amount and type deemed appropriate by County. If the Premises is totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and rental shall be accounted for as between City and County as of that date. If the Premises are damaged, but not wholly destroyed by any of such casualties, then County at its sole option may terminate this Lease by giving written notice to City within ten (10) days from the date of such casualty. In the event of such termination, rental shall be apportioned and paid up to the date of such termination.

## **ARTICLE V ASSIGNMENT**

This Agreement may not be sold, assigned, or encumbered by the City unless all provisions hereof shall be complied with by such assignee. Other than as set forth in the Lease, the County may not sell, assign or encumber this Agreement or its rights hereunder without the prior written consent of City, and shall not agree, permit, or allow the Subtenant to make any similar assignment, sublease, or encumbrance of the property.

## **ARTICLE VI EVENTS OF DEFAULT AND REMEDIES**

**Section 6.1 Events of Default Defined.** The following shall be “Events of Default” under this Agreement, and the terms “Event of Default” or “Default” shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) The County’s breach in any material respect of any representation or warranty contained in this Agreement or the County’s failure to observe, perform, or comply with any covenant, condition, or agreement in this Agreement on the part of the County to be observed or performed for a period of thirty (30) days after written notice specifying such breach or failure and requesting that it be remedied, given to the County by the City, unless the City and the County shall agree in writing to an extension of such time. In the case of any such breach or default that cannot with due diligence be cured within such thirty (30) day period but can be wholly cured within a period of time not materially detrimental to the rights of the City and the County, it shall not constitute an Event of Default if corrective action is instituted by or on behalf of the County within the applicable period and diligently pursued until the breach or default is corrected.

(b) The County shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, custodian, trustee, or liquidator of it or of all or a substantial part of its property or the Premises, (ii) enter into an agreement of composition with its creditors, (iii) admit in writing its inability to pay its debts as such debts become due, (iv) make a general assignment for the benefit of its creditors, (v) commence a voluntary case under the federal bankruptcy law (as now or hereafter in effect), (vi) file a petition or answer seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vii) fail to controvert in a timely or appropriate manner or acquiesce in writing to any petition filed against it in an involuntary case under such federal bankruptcy law, or (viii) take any action for the purpose of effecting any of the foregoing.

(c) A proceeding or case shall be commenced, without the application of the County, in any court of competent jurisdiction, seeking (i) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts of the County, (ii) the appointment of a trustee, receiver, custodian, liquidator, or the like of the County or of all or any substantial part of the assets of it, or (iii) similar relief in respect of the County under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition and adjustment of debts, and such proceeding or case shall continue undismissed or an order, judgment, or decree approving or ordering any of the foregoing shall be entered and shall continue unvacated and unstayed and in effect for a period of sixty (60) consecutive days.

**Section 6.2 Remedies on Default.** Whenever any Event of Default shall have happened and be continuing, the City, in its discretion, may from time to time take whatever action at law or in equity, or under the terms of this Agreement, may appear reasonably necessary or desirable to collect the amounts payable by the County hereunder then due or thereafter to become due, or to enforce performance and observance of any obligation, agreement, or covenant of the County under this Agreement.

No action taken pursuant to this section shall relieve the County from its obligations hereunder, all of which shall survive any such action, and the City may take whatever action at law or in equity as may appear reasonably necessary and desirable to enforce the performance and observance of any obligation, agreement, or covenant of the County hereunder.

In addition, upon the occurrence and continuation of an Event of Default which has not been cured within the applicable time frame after notice of such, the City may, in its discretion, terminate this Agreement and apply for and obtain a dispossessory action against County.

**Section 6.3 Exclusivity of Remedies.** Except as set out below, no remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

**Section 6.4 Waiver of Events of Default.** City may waive any Event of Default hereunder and its consequences. In case of any such waiver, or in case any proceeding taken by

the City on account of any such Event of Default shall be discontinued or abandoned or determined adversely to the City, then and in every such case, the City and the County shall be restored to their former position and rights hereunder, but no such waiver or rescission shall extend to or affect any subsequent or other Event of Default or impair or exhaust any right, power, or remedy consequent thereon.

**Section 6.5 Termination of Agreement.** At any time during the existence of this Agreement, County may terminate this Agreement by providing written notice of such termination with the effective date of such termination being set forth in such notice and being no less than thirty (30) days after the date of such notice.

## ARTICLE VII MISCELLANEOUS

**Section 7.1 Notices.** All notices, certificates, and other communications provided for hereunder shall be in writing and sent

- (a) by hand delivery, or
- (b) by registered or certified mail with return receipt requested (postage prepaid), or
- (c) by a recognized overnight delivery service (with charges prepaid). Any such must be sent to any party hereto at the following addresses or to such other address as any hereto shall have specified in writing to the other party:

If to the City: **City of Brookhaven  
4362 Peachtree Road, NE  
Brookhaven, Georgia 30319  
Attention: City Manager**

With a copy to:

Christopher D. Balch  
Balch Law Group  
830 Glenwood Ave., SE  
Suite 510-220  
Atlanta, GA 30316

If to the County: DeKalb County, Georgia  
Maloof Administration Building  
1300 Commerce Drive  
Decatur, Georgia, 30030  
Attention: Chief Executive Officer

With a copy to:

DeKalb County, Georgia  
Maloof Administration Building  
1300 Commerce Drive  
Fifth Floor  
Decatur, Georgia, 30030  
Attention: County Attorney

GDCR Attorneys at Law  
Clay Reese, Esq.  
2951 Flowers Rd. S, Suite 220  
Atlanta, GA 30341

Notices under this Section 7.1 will be deemed given only when actually received.

**Section 7.2 Construction and Binding Effect.** This Agreement, the IGA and the Sublease, constitute the entire agreement of the parties in relation to the leasing of the Premises from City to County and supersede any prior agreements. This Agreement shall inure to the benefit of and shall be binding upon the City, the County, and their respective successors and assigns subject, however, to the limitations contained in Article V hereof.

**Section 7.3 Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 7.4 Amendments, Changes, and Modifications.** This Agreement may be amended, changed, modified, altered, or terminated and the observance of any term hereof may be waived only following the prior execution by both parties hereto of a written amendment hereto.

**Section 7.5 Execution of 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.

**Section 7.6 Law Governing Construction of this Agreement.** This Agreement is prepared and entered into with the intention that the laws of the State of Georgia, exclusive of such State's rules governing choice of law, shall govern its construction.

**Section 7.7. Indemnification.**

(a) To the extent permitted by applicable law, the County shall indemnify and save harmless the City from and against any and all damages, costs, liabilities, expenses and claims of whatever nature arising from or related to the Premises or this Agreement during the term of this Agreement. This indemnity and hold harmless agreement shall include indemnity against all damages, costs, expenses and liabilities incurred or in connection with any such claim or proceeding brought thereon, and the defense thereof (including reasonable attorneys' fee actually incurred), except any claims resulting from the willful or wanton misconduct of the City. This

limited indemnification provision shall survive the expiration or earlier termination of this Agreement or the Lease.

(b) To the extent permitted by applicable law, the City shall indemnify and save harmless the County from and against any and all damages, costs, liabilities, expenses and claims of whatever nature arising from or related to the Osborne Property or this Agreement during the term of this Agreement and based on the City's sole negligence. This indemnity and hold harmless agreement shall include indemnity against all damages, costs, expenses and liabilities incurred or in connection with any such claim or proceeding brought thereon, and the defense thereof (including reasonable attorneys' fee actually incurred), except any claims resulting from the willful or wanton misconduct of the County. This limited indemnification provision shall survive the expiration or earlier termination of this Agreement or the Lease.

**Section 7.8. Immunity of Officials, Officers, and Employees of City and County.**

No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of the City or the County contained in this Agreement or for any claim based hereon or otherwise in respect hereof against any member of a governing body, officer, or employee, as such, in his\her individual capacity, past, present, or future, of the City, the County, or any successor body, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that this Agreement is solely a corporate obligation of the County and the City payable only from the funds and assets of the County and the City herein specifically provided to be subject to such obligation and that no personal liability whatsoever shall attach to, or be incurred by, any member of a governing body, officer, or employee, as such, past, present, or future, of the County or the City, or of any successor corporation, either directly or through the County, the City, or any successor corporation, under or by reason of any of the obligations, covenants, promises, or agreements entered into between the City and the County whether expressly contained in this Agreement or to be implied herefrom or therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member of a governing body, officer, and employee is, by the execution of this Agreement and as a condition of and as part of the consideration for the execution of this Agreement, expressly waived and released. The immunity of members of a governing body, officers, and employees of the City and the County under the provisions contained in this Section 7.8 shall survive the expiration and/or termination of this Agreement.

**Section 7.9. Definitions and other issues.** Certain words and terms used in this Agreement shall have the meaning given them in the Sublease, which definitions by this reference are incorporated herein.

**SIGNATURES CONTAINED ON FOLLOWING PAGES**

## **SIGNATURES AND SEALS**

**IN WITNESS WHEREOF**, the City has executed this Agreement by causing its name to be hereunto subscribed by its Mayor and by causing the official seal of the City to be impressed hereon and attested by its Secretary; and the County has executed this Agreement by causing its name to be hereunto subscribed by its officers set out below and by causing the official seal of the County to be impressed hereon and attested by its Clerk; all being done as of the day and year first above written.

### **CITY OF BROOKHAVEN**

By:

John Arthur Ernst, Jr., Mayor

Attest:

(Seal)

Susan Hiott  
City Clerk

Approved as to Form:

Christopher D. Balch  
City Attorney

**DEKALB COUNTY, GEORGIA**, a political subdivision of the State of Georgia

By: \_\_\_\_\_ By Dir.

Michael Thurmond  
Chief Executive Officer,  
DeKalb County, Georgia

Attest:

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Barbara H. Sanders  
Clerk to the Chief Executive Officer and the  
Board of Commissioners of Dekalb County, Georgia

Approved as to Substance:

Approved as to Form:

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Department Director

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Clay W. Reese  
Gregory, Doyle, Calhoun & Rogers, LLC

**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF OSBORNE PROPERTY**

All that tract or parcel of land lying and being in Land Lots Two Hundred and Forty (240) and Two Hundred and Forty One (241) of the 18th District, DeKalb County, Georgia, and being more particularly described as follows:

Beginning at the Southwest corner of OSBORNE ROAD (formerly JOHNSON'S FERRY ROAD) and PEACHTREE ROAD said corner being marked by a concrete monument; thence proceed in a Southwesterly direction along the West side of PEACHTREE ROAD, Six Hundred and Fifty Eight (658) feet to a point marked by a concrete monument; thence North Eighty Nine (89) degrees, Zero Zero (00) minutes West Eight Hundred and Twenty Six and Eight Tents (826.8) feet to a point marked by an iron pin; thence North Twenty Four (24) degrees, Thirty Six (36) minutes East Eight Hundred and Eighty Three and no tenths (883.0) feet to a point marked by an iron pin; thence North Eighty Eight (88) degrees Fifty (50) minutes East Five Hundred Fifty One and No Tents (551.0) feet to a point on the Southwest side of OSBORNE ROAD marked by a concrete monument; thence South, Fifty Two (52) degrees Twenty Five (25) minutes East One Hundred Seventy Three and Seven Tents (173.7) feet along OSBORNE ROAD to the point of beginning, containing 12.523 acres, more or less, and including whatever right the Government has over a one (1) acre sewer line easement.

**EXHIBIT "B"**  
**DRAWING SHOWING LOCATION OF PREMISES**

**EXHIBIT C**  
**DRAWING SHOWING OUTSIDE AREAS OF THE PREMISES RESERVED FOR**  
**EXCLUSIVE USE OF THE CSB DURING OPERATING HOURS**

**AMENDMENT NO. 1 TO LEASE AGREEMENT  
(DeKalb County Contract No. 13-800971)**

This **AMENDMENT NO. 1 TO LEASE AGREEMENT** (the “Amendment”) is entered into as of this \_\_\_\_\_ day of May, 2022, by and between DEKALB COUNTY, a political subdivision of the State of Georgia (“Landlord”) and DEKALB COMMUNITY SERVICE BOARD, a public agency and instrumentality of the State of Georgia, created under authority of Chapter 2 of Title 37 of the Official Code of Georgia Annotated (“Tenant”), and consented to by CITY OF BROOKHAVEN, a municipal corporation of the State of Georgia (“City”).

**W I T N E S S E T H:**

WHEREAS, Landlord and Tenant entered into that certain Lease Agreement dated as of January 31, 2013 (the “Lease”) for the lease of nine (9) separate properties in Dekalb County, Georgia, including the Dekalb Service Center, 2660 Osborne Road, Atlanta, GA which is more particularly shown on Exhibit “A” attached hereto and by this reference made a part hereof (the “Osborne Premises”); and

WHEREAS, Landlord and City have entered into that certain Intergovernmental Agreement, Settlement Agreement and Full and Final Release of All Claims dated as of April 26, 2022, as amended by that certain Amendment No. 1 to Intergovernmental Agreement, Settlement Agreement and Full and Final Release of All Claims dated as of April 26, 2022 (together, the “IGA”) in which, among other things, the Landlord has agreed to convey to the City certain property described in the IGA and which includes the Osborne Premises; and

WHEREAS, the IGA contemplates that the conveyance of the Osborne Premises to City shall be subject to the Lease and all of Tenant’s rights thereunder which understanding is further evidenced by that certain Ground Lease executed between Landlord and City of even date herewith (“Ground Lease”); and

WHEREAS, the parties desire to amend the Lease to reflect the fact that the title to the Osborne Premises has been transferred to City, that the Landlord is now a “tenant” under the Ground Lease, and that the Lease will continue in full force and effect with Landlord now being a “sublandlord”, but continuing with all rights, duties and obligations of the landlord under the Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Definitions.** Except as is otherwise defined herein, all defined terms and terms of art hereinafter set forth in this Amendment shall have the same meaning as and when such terms of art and defined terms are used in the Lease.

2. **Title to the Osborne Premises.** The Lease is hereby modified to reflect the fact that City is now the owner of the Osborne Premises, but that, pursuant to the IGA, the Ground Lease and

this Amendment, City has consented to Landlord continuing to act as the Landlord under the Lease for the duration of the Lease itself.

3. Obligations of Landlord. Landlord and Tenant each agrees and acknowledges that Landlord, and not City, is responsible for all obligations of the Landlord as set out in the Lease, except as may be related to lawn and landscaping and to certain exterior maintenance and repairs, all of which shall be the City's responsibility in accordance with the terms of the Ground Lease.

4. Notice Addresses. Effective immediately, the addresses as set out in the Lease shall be changed to be the following:

**If to the Landlord:** Dekalb County, Georgia  
Chief Executive Officer  
1300 Commerce Drive, 6<sup>th</sup> Floor  
Decatur, GA 30030

and

Executive Assistant to CEO  
1300 Commerce Drive, 6<sup>th</sup> Floor  
Decatur, Georgia 30030

With a copy to: Director of Purchasing and Contracting  
1300 Commerce Drive, 2<sup>nd</sup> Floor  
Decatur, Georgia 30030

**If to the Tenant:** \_\_\_\_\_  
Executive Director  
DeKalb Community Service Board  
\_\_\_\_\_

With a copy to:  
\_\_\_\_\_

5. Miscellaneous. Except as expressly set forth in this Amendment, the Lease otherwise is unmodified, remains in full force and effect and is incorporated and restated herein as if fully set forth at length. Time is of the essence herein. 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. This Amendment shall be governed by and construed in accordance with the laws of the State of Georgia.

6. City's Consent. City hereby consents to the Lease, as amended by this Amendment and agrees that the Lease (as amended hereby) is in compliance with the terms of the IGA and the Ground Lease.

SIGNATURES CONTAINED ON FOLLOWING PAGES

Signature Page to Amendment to Lease Agreement  
(DeKalb County Contract No. 13-800971)

IN WITNESS WHEREOF, the parties have duly executed this Amendment effective on the date first set forth above.

**COMMUNITY SERVICE BOARD**

**DEKALB COUNTY, GEORGIA**

By: \_\_\_\_\_ (SEAL)  
Signature / Date

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

by Dir. (SEAL)  
**MICHAEL L. THURMOND / Date**  
Chief Executive Officer  
DeKalb County, Georgia

\_\_\_\_\_  
Title

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

**ATTEST:**

**BARBARA H. SANDERS, CCC / Date**  
Clerk of the Chief Executive Officer  
and Board of Commissioners of  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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Attorney for CSB

**APPROVED AS TO SUBSTANCE:**

## **CITY OF BROOKHAVEN**

By: \_\_\_\_\_  
John Arthur Ernst, Jr., Mayor

Attest:

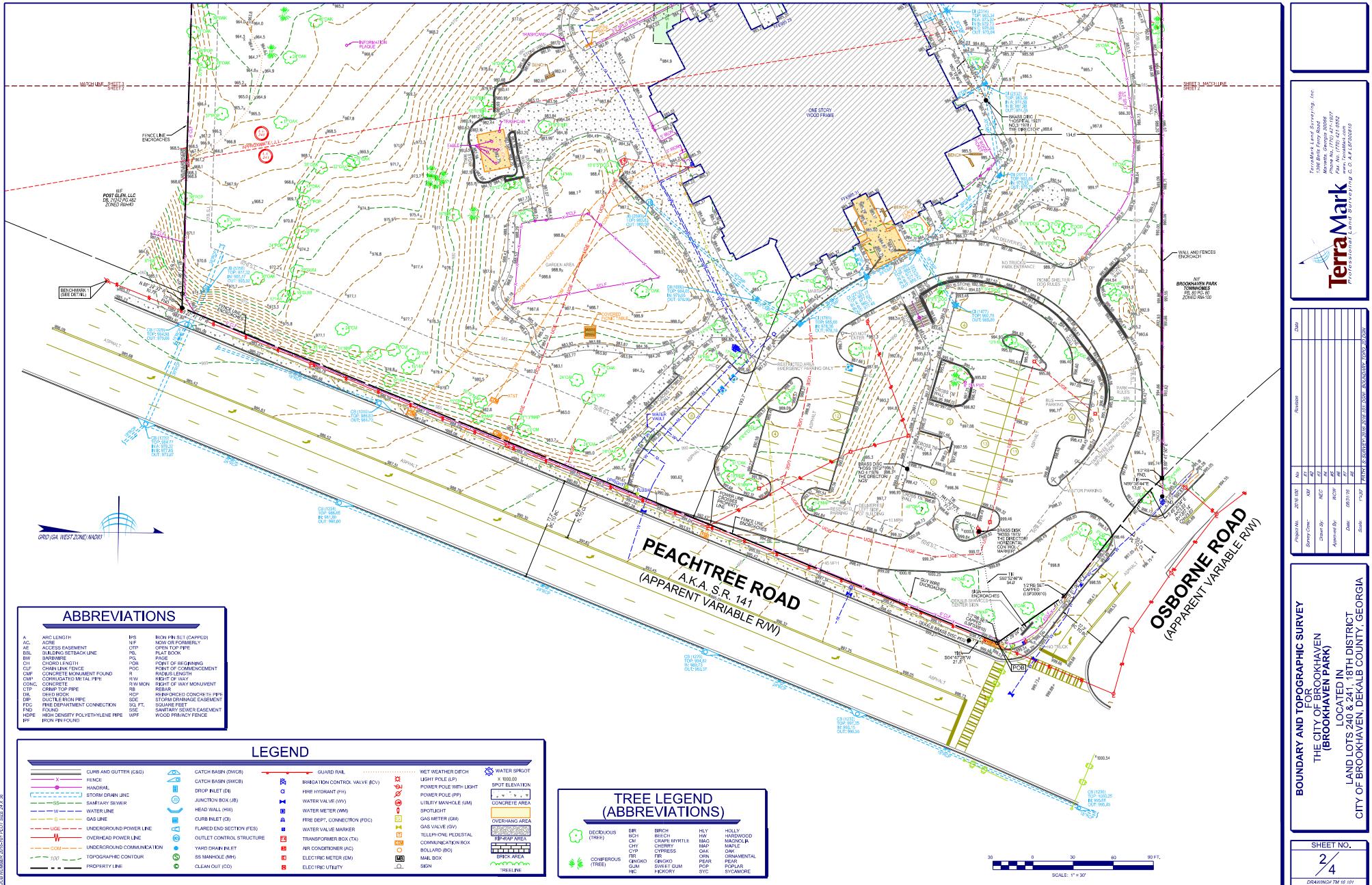
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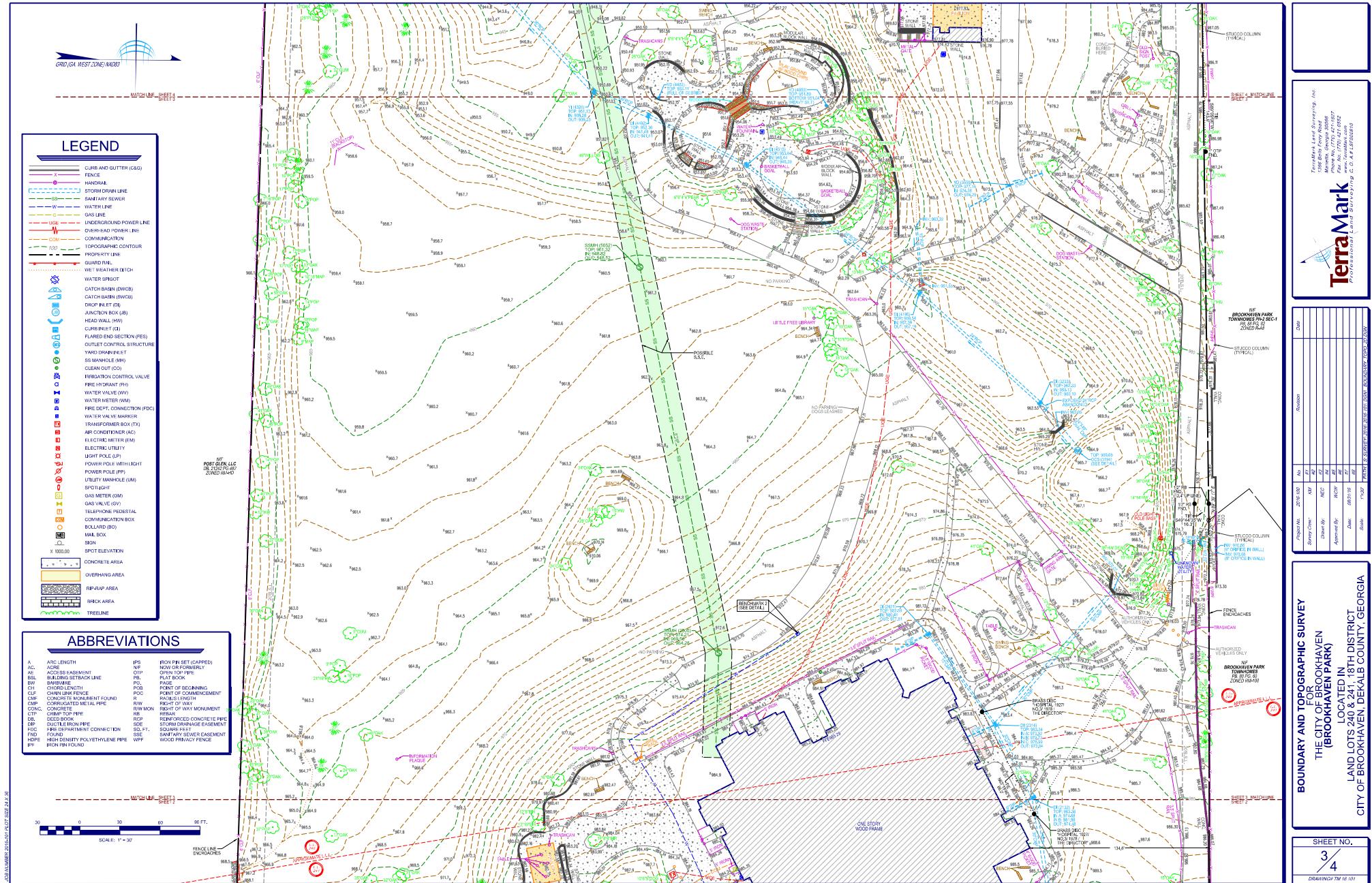
**Susan Hiott**  
**City Clerk**

Approved as to Form:

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Christopher D. Balch  
City Attorney





## 2660 Osborne Rd.- DeKalb CSB Sub-Lease Areas

