



CITY OF MILTON, GEORGIA

Joe Lockwood, Mayor

CITY COUNCIL

Karen Thurman
Julie Zahner Bailey
Bill Lusk
Burt Hewitt
Tina D'Aversa
Alan Tart

Monday, November 2, 2009

Regular Council Meeting Agenda

6:00 PM

INVOCATION – Bishop Scott Mower, The Church of Jesus Christ of Latter-day Saints,
Alpharetta Ward

1) CALL TO ORDER

2) ROLL CALL

3) PLEDGE OF ALLEGIANCE *(Led by the Sons of the American Revolution)*

4) APPROVAL OF MEETING AGENDA *(Add or remove items from the agenda)*
(Agenda Item No. 09-963)

5) PUBLIC COMMENT

6) CONSENT AGENDA

1. Approval of the October 12, 2009 Work Session Minutes.
(Agenda Item No. 09-964)
(Jeanette Marchiafava, City Clerk and Clerk of the Court)
2. Approval of the October 19, 2009 Regular Meeting Minutes.
(Agenda Item No. 09-965)
(Jeanette Marchiafava, City Clerk and Clerk of the Court)
3. Approval the execution of the contract with The Kelly Group to provide Parks and Recreation consulting services for the City of Milton.
(Agenda Item No. 09-966)
(Matt Marietta, Assistant to the City Manager)

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Milton City Hall
City Council Chambers
13000 Deerfield Parkway, Suite E
Milton, GA 30004

Persons needing special accommodations in order to participate in any City meeting should call 678-242-2500.

7) REPORTS AND PRESENTATIONS

1. A Veterans Day Proclamation.
(Presented by Councilmember Bill Lusk)
2. A proclamation declaring November 2009 as Family Month.
(Presented by Joe Lockwood, Mayor)

8) FIRST PRESENTATION

1. Approval of an Ordinance establishing Solid Waste Collection Services within the City of Milton; providing for the scope and nature of the operation, providing for the disposal of garbage, solid waste and refuse; requiring the execution by service providers of a non-exclusive agreement with the City of Milton; providers of a non-exclusive agreement with the City of Milton; providing procedures for the handling of complaints; providing for an infrastructure maintenance fee; requiring indemnity insurance; providing for revocation and amendment; prohibiting assignment and subletting without consent; providing for forfeiture; and for making other provisions.
(Agenda Item No. 09-967)
(Matt Marietta, Assistant to the City Manager)

9) FIRST PUBLIC HEARING

1. Approval of a Resolution Continuing the Wired and Wireless Enhanced 911 Charge, and Establishing a Concurrent Enhanced 911 Charge on VoIP, for all such Communications within the City of Milton.
(Matt Marietta, Assistant to the City Manager)

10) ZONING AGENDA *(None)***11) UNFINISHED BUSINESS** *(None)***12) NEW BUSINESS**

1. Approval of an Amendment of Resolution No. 09-10-106, A Resolution appointing members to the City of Milton Design Review Board by adding Board Member for District 5.
(Agenda Item No. 09-968)
(Presented by Councilmember Tina D'Aversa)
2. Approval of an Amendment of Resolution No. 09-10-107, A Resolution to create a Stakeholder Advisory Committee for the City of Milton Transportation Plan by Adding Committee member for District 5.
(Agenda Item No. 09-969)
(Presented by Councilmember Tina D'Aversa)

3. Approval of a Resolution for the Supplemental Lease Agreement with Georgia Municipal Association for Police Vehicle Purchase.

(Agenda Item No. 09-970)

(Presented by Stacey Inglis, Finance Director)

13) MAYOR AND COUNCIL REPORTS

14) STAFF REPORTS

15) EXECUTIVE SESSION *(If needed)*

16) ADJOURNMENT
(Agenda Item No. 09-971)

The minutes will be
Provided
electronically



To: Honorable Mayor and City Council Members

From: Matt Marietta, Assistant to the City Manager

Date: Submitted on October 22, 2009 for the November 2, 2009 Council Meeting

Agenda Item: Consent for the Execution of a Contract with The Kelly Group to provide Parks and Recreation Consulting Services for the City of Milton

City Manager's Office Recommendation

Approve the execution of the contract with The Kelly Group to provide Parks and Recreation consulting services for the City of Milton.

Background

On October 3, 2009, the portion of the CH2M Hill contract that provided parks and recreation oversight was discontinued. The City is currently in transition, hiring a City staff member to assume these responsibilities. The attached contract will allow the former CH2M Hill employee who was previously providing the services to the City to continue to provide those services on a consultancy basis until such a time that those services are no longer needed, or until December 31, 2009 (whichever comes first). By the termination of this contract, the City expects to have employed a full time staff member to assume these responsibilities.

Funding and Fiscal Impact

The contract is at the rate of \$6000.00 per month, which will be paid out of the already budgeted funds for the Parks and Recreation Department in the City of Milton.

Alternatives:

The City may continue to cover the services with those already staffed employees available to fill in on an as needed basis.

Concurrent Review:

Chris Lagerbloom, City Manager

Effective Date: _____

Expiration Date: _____



This is the Standard Professional Services Agreement of the City of Milton. Any consultant doing business with the City must enter into this Agreement.

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is effective as of this _____ day of _____, 2009, by and between the **CITY OF MILTON**, a municipal corporation of the State of Georgia, acting by and through its governing authority, the Mayor and Council of the City of Milton ("City"), and The Kelly Group, LLC, ("Consultant"), collectively referred to as the "Parties."

WITNESSETH THAT:

WHEREAS, the City desires to retain Consultant to provide certain services generally described as the development of a needs analysis for Parks and Recreation facilities and activities in the City as well as maintenance of certain on-going activities associated with the City's Parks and Recreation functions (the "Work"); and

WHEREAS, these ongoing needs include, but are not limited to, oversight of the development of the City's Parks and Recreation master plan, the Parks and Recreation Advisory Board, Hopewell Youth Association, Inc. ("HYA") contract, and other specific Parks development issues that arise in association with these various areas of oversight ; and

WHEREAS, the City finds that specialized knowledge, skills, and training are necessary to perform the Work contemplated under this Agreement; and

WHEREAS, the Consultant has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, the Consultant desires to perform the Work under the terms and conditions set forth in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

Consultant shall provide management consulting services and coordination of the following parks and recreation functions:

- Coordination of the EDAW assessment contract;
- Coordination with/of the Parks and Recreation Advisory Board, including attending/facilitating meetings and associated projects;
- Coordination of the Hopewell Youth Association contract, including management of HYA compliance issues, space allocation and general oversight; and
- Conducting a thorough needs assessment and survey to establish a comprehensive parks and recreation program in the City of Milton.

B. The Work

The Work to be completed under this Agreement (the “Work”) is described in Exhibit A.

C. Schedule, Completion Date, and Term of Agreement

Consultant warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the Work. This Agreement shall commence as of the date first written above and shall terminate on December 31, 2009. The Agreement shall automatically renew for additional consecutive one (1) year terms on January 1 following each then-current term absent written notice of non-renewal provided by the City to Consultant at least fourteen (14) days prior to the termination of the then-current term of the Agreement, and provided that the Agreement shall terminate absolutely and without further obligation on the part of the City at the end of each renewal calendar year..

II. WORK CHANGES

A. The City reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders executed by the Consultant and the City. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the City in its sole discretion, the City shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written change order duly executed on behalf of the City and the Consultant.

C. The City Manager has authority to execute without further action of the City of Milton Mayor and Council, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the total amount to be paid under this Agreement, as set forth in Section III(B) below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement in excess of \$25,000 must be approved by resolution of the City of Milton Mayor and Council.

III. COMPENSATION AND METHOD OF PAYMENT

A. City agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by the City that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by the City of invoices setting forth in detail the services performed and costs incurred. Invoices shall be submitted on a monthly basis, and such invoices shall reflect charges incurred versus charges budgeted. Any material deviations in tests or inspections performed, times or locations required to complete such tests or inspections and like deviations from the Work described in this Agreement shall be clearly communicated to the City *before charges are incurred* and shall be handle through change orders as described in Section II above. The City shall pay the Consultant within thirty (30) days after approval of the invoice by City staff.

B. The total amount paid under this Agreement as compensation for services performed and reimbursement for costs incurred shall not, in any case, exceed the amount referenced in Exhibit A, except as outlined in Section II(C) above.

IV. COVENANTS OF CONSULTANT

A. Expertise of Consultant

Consultant accepts the relationship of trust and confidence established between it and the City, recognizing that the City's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the services in pursuit of the timely and competent completion of the Work undertaken by Consultant under this Agreement.

B. Budgetary Limitations

Consultant agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Consultant's profession and industry. Consultant shall take no calculated risk in the performance of the Work. Specifically, Consultant agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of Consultant's profession and industry, Consultant will give written notice immediately to the City.

C. City's Reliance on the Work

The Consultant acknowledges and agrees that the City does not undertake to approve or pass upon matters of expertise of the Consultant and that; therefore, the City bears no responsibility for Consultant's services performed under this Agreement. The Consultant acknowledges and agrees that the acceptance of designs, plans, and specifications by the City is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The City will not, and need not, inquire into adequacy, fitness, suitability or correctness of Consultant's performance. Consultant further agrees that no approval of designs, plans, or specifications by any person, body or agency shall relieve Consultant of the responsibility for adequacy, fitness, suitability, and correctness of Consultant's professional and industry standards or for performing services under this Agreement in accordance with sound and accepted professional and industry principals.

D. Consultant's Reliance of Submissions by the City

Consultant must have timely information and input from the City in order to perform the services required under this Agreement. Consultant is entitled to rely upon information provided by the City, but Consultant shall be required to provide immediate written notice to the City if Consultant knows or reasonably should know that any information provided by the City is erroneous, inconsistent, or otherwise problematic.

E. Consultant's Representative

____Brad Chambers, Principal_____ shall be authorized to act on Consultant's behalf with respect to the Work as Consultant's designated representative.

F. Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the City. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and the City shall have no obligation to them.

G. Responsibility of Consultant and Indemnification of City

The Consultant covenants and agrees to take and assume all responsibility for the services rendered in connection with this Agreement. The Consultant shall bear all losses and damages directly or indirectly resulting to it on account of the performance or character of the services rendered pursuant to this Agreement. Consultant shall defend, indemnify and hold harmless the City, its officers, boards, commissions, elected officials, employees and agents from and against any and all claims, suits, actions, liability, judgments, damages, losses, and expenses, including but not limited to, attorney's fees, which may be the result of willful, negligent or tortuous conduct arising out of the Work, performance of contracted services, or operations by the Consultant, any subcontractor, anyone directly or indirectly employed by the Consultant or subcontractor or anyone for whose acts the Consultant or subcontractor may be liable, regardless of whether or not the offending act is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against the City or any of its agents or employees, by any employee of the Consultant, any subcontractor, anyone directly or indirectly employed by the Consultant or subcontractor or anyone for whose acts the Consultant or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Consultant or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify and defend the City, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

H. Independent Contractor

Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of the City. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of Consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. Any provisions of this Agreement that may appear to give the City the right to direct Consultant as to the details of the services to be performed by Consultant or to exercise a measure of control over such services will be deemed to mean that Consultant shall follow the directions of the City with regard to the results of such services only.

I. Insurance

(1) Requirements:

The Consultant shall have and maintain in full force and effect for

the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Consultant, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the City Attorney to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager.

(2) Minimum Limits of Insurance:

Consultant shall maintain limits no less than:

- (a) Comprehensive General Liability of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting there from.
- (b) Comprehensive Automobile Liability (owned, non-owned, hired) of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting there from.
- (c) Professional Liability of \$1,000,000 limit for claims arising out of professional services caused by the Consultant's errors, omissions, or negligent acts.
- (d) Workers' Compensation limits as required by the State of Georgia and employers Liability limits of \$1,000,000 per accident.

(3) Deductibles and Self-Insured Retentions:

Any deductibles or self-insured retentions must be declared to and approved by the City.

(4) Other Insurance Provisions:

The policy is to contain, or be endorsed to contain, the following provisions:

- (a) General Liability and Automobile Liability Coverage.
 - (i) The City, its officials, employees, agents and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant;

premises owned, leased, or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents or volunteers.

- (ii) The Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the City, its officials, employees, agents or volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, agents or volunteers.
- (iv) Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (v) Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
- (vi) The insurer agrees to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.
- (vii) All endorsements to policies shall be executed by an authorized representative of the insurer.

(b) Workers' Compensation Coverage.

The insurer will agree to waive all rights of subrogation against the City, its officials, employees, agents and volunteers for losses arising from work performed by the Consultant for the City.

(c) All Coverages.

- (i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except

after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

(ii) Policies shall have concurrent starting and ending dates.

(5) Acceptability of Insurers:

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A:VII.

(6) Verification of Coverage:

Consultant shall furnish the City with certificates of insurance and endorsements to the policies evidencing coverage required by this clause prior to the start of work. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate of insurance and endorsements shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by the City prior to execution of this Agreement by the City. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

(7) Subcontractors:

Consultant shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the parties as additional insured.

(8) Claims-Made Policies:

Consultant shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later.

(9) City as Additional Insured and Loss Payee:

The City shall be named as an additional insured and loss payee on all policies required by this Agreement.

J. Employment of Unauthorized Aliens Prohibited

It is the policy of City that unauthorized aliens shall not be employed to perform work on City contracts involving the physical performance of services. Therefore, the City shall not enter into a contract for the physical performance of services within the State of Georgia, unless the Contractor shall provide evidence on City-provided forms, attached hereto as Exhibits B and C. The City Manager or his/her designee shall be authorized to conduct an inspection of the Contractor's and Contractor's subcontractors' verification process to determine that the verification was correct and complete. The Contractor and Contractor's subcontractors shall retain all documents and records of its verification process for a period of three (3) years following completion of the contract. This requirement shall apply to all contracts for the physical performance of services where more than three (3) persons are employed on the City contract.

Compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 is mandatory.

Contractor agrees that the employee-number category designated below is applicable to the contractor.

_____ 500 or more employees.

_____ 100 or more employees.

_____ Fewer than 100 employees.

Contractor agrees that, in the event the Contractor employs or contracts with any subcontractor(s) in connection with this Agreement, the Contractor will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

K. Records, Reports and Audits

(1) Records:

(a) Records shall be established and maintained by the Consultant in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

(b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers,

orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information:

Upon request, the Consultant shall furnish to the City any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by the City.

(3) Audits and Inspections:

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Consultant will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

L. Conflicts of Interest

Consultant agrees that it shall not engage in any activity or conduct that would result in a violation of the City of Milton Code of Ordinances.

M. Confidentiality

Consultant acknowledges that it may receive confidential information of the City and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. The Consultant agrees that confidential information it receives or such reports, information, opinions or conclusions that Consultant creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the City. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City information whether specifically deemed confidential or not.

N. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, City, local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

O. Key Personnel

All of the individuals identified in Exhibit “D” are necessary for the successful prosecution of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant’s Project Manager or members of the project team, as listed in Exhibit “D”, without written approval of the City. Consultant recognizes that the composition of this team was instrumental in the City’s decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for the City’s consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant’s obligations under this Agreement and shall be grounds for termination. Consultant shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the City. Consultant shall be solely responsible for any such subcontractors in terms of performance and compensation.

P. Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

Q. Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant (“materials”) shall be the property of the City and the City shall be entitled to full access and copies of all such materials. Any such materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered immediately to the City. The Consultant assumes all risk of loss, damage or destruction of or to such materials. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

V. COVENANTS OF THE CITY

A. Right of Entry

The City shall provide for right of entry for Consultant and all necessary equipment to City of Milton, in order for Consultant to complete the Work.

B. City's Representative

The City Manager or his designee shall be authorized to act on the City's behalf with respect to the Work as the City's designated representative

VI. TERMINATION

A. The City shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least fourteen (14) calendar days in advance of the termination date. The Consultant shall have no right to terminate this Agreement prior to completion of the Work, except in the event of the City's failure to pay the Consultant within thirty (30) days of Consultant providing the City with notice of a delinquent payment and an opportunity to cure.

B. Upon termination, City shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.

C. Upon termination, the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the City all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by the City.

D. The rights and remedies of the City and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

VII. NO PERSONAL LIABILITY

No member, official or employee of the City shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement. Likewise, Consultant's performance of services under this Agreement shall not subject Consultant's individual employees, officers or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand or suit shall be directed and/or asserted only against Consultant or the City, respectively, and not against any employee, officer, director, or elected or appointed official.

VIII. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

IX. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties.

X. APPLICABLE LAW

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control.

XI. CAPTIONS AND SEVERABILITY

The caption or head note on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed and the remainder of this Agreement shall remain in full force and effect to the extent possible.

XII. NOTICES

A. Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the Work shall be exchanged between the City Manager or his designee for the City and Brad Chambers, Principal for the Consultant.

B. Official Notices

All other notices, writings or correspondence as required by this Agreement shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail,

postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the Parties at the addresses given below, unless a substitute address shall first be furnished to the other Parties by written notice in accordance herewith:

NOTICE TO THE CITY shall be sent to:

City Manager
City of Milton
13000 Deerfield Parkway, Suite 107f
Milton, Georgia 30004

NOTICE TO THE CONSULTANT shall be sent to:

Brad Chambers, dba The Kelly Group
635 Corbin Lake Ct
Sandy Springs, GA 30350

XIII. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

XIV. SOVEREIGN IMMUNITY

Nothing contained in this Agreement shall be construed to be a waiver of the City's sovereign immunity or any individual's qualified good faith or official immunities.

XV. FORCE MAJEURE

Neither the City nor Consultant shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONSULTANT; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts and all other obligations shall remain intact.

IN WITNESS WHEREOF the City and the Consultant have executed this Agreement effective as of the date the City Manager executes this Agreement on behalf of the City.

[SIGNATURES ON FOLLOWING PAGE]

Approved as to form:

City Attorney

CONSULTANT:

By: _____
Member/Manager

[CORPORATE SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness

Notary Public

[NOTARY SEAL]

My Commission Expires:

CITY OF MILTON:

By: _____
Its: _____

[CITY SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness

Notary Public

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "A"

Scope of Services

The scope of services for the Professional Services Agreement shall include, but not be limited to, the Consultant providing the below specified Parks and Recreation coordination and management services in accordance with the current professional standards of practice in municipal government recreation management in the State of Georgia. At all times, the Consultant shall comport him or herself in a manner consistent with the Georgia Parks and Recreation Association Code of Ethics (as adopted November, 2000).

Specific services within this scope shall include:

1. Coordination and management of the ongoing Professional Services Agreement dated April 16, 2009 between the City and EDAW, Inc. (Consultant acknowledges that Consultant has been provided a copy of said agreement);
2. Coordination and management with/of the City of Milton Parks and Recreation Advisory Board, including attending/facilitating meetings and associated projects;
3. Coordination and management of the Facility Use Agreement between the City and HYA dated June 18, 2009, as amended and as may be amended hereafter (Consultant acknowledges that Consultant has been provided a copy of said agreement and any amendments to said agreement), including management of HYA compliance issues, assistance with space allocation issues and general oversight of the smooth operation of the relationship between HYA and the City; and
4. Conducting a thorough needs assessment and survey, as directed by the City, to establish a comprehensive parks and recreation program in the City of Milton.

The Consultant shall also make him or herself available to the public and City officers and staff as needed to advise and/or provide basic citizen relations services related to Parks and Recreation facilities and activities in the City of Milton. These services may include occasional attendance at public meetings and/or Milton City Council meetings as required by the nature of works described in items one (1) through four (4), above. Compensation for the services delineated in this Exhibit shall be fixed at \$6000.00 per month.

In the event of termination of this Agreement by either party, in accordance with the terms of this Agreement, resulting in the Consultant providing services for a period of less than an entire month, the Consultant shall be paid a pro rata portion of the above

referenced fixed monthly fee based upon the percentage of the weekdays of such month during which the Consultant provided services to the City prior to the effective date of termination.

EXHIBIT "D"

Key Personnel

Brad Chambers, Principal
The Kelly Group

EXHIBIT "B"

STATE OF GEORGIA

CITY OF MILTON

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Milton has registered with and is participating in a federal work authorization program, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Milton, contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 in the form attached hereto as Exhibit "1." Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Milton at the time the subcontractor(s) is retained to perform such service.

EEV / Basic Pilot Program User Identification Number

BY: Authorized Officer or Agent Date
The Kelly Group, LLC

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 200_

Notary Public
My Commission Expires:

EXHIBIT "C"

STATE OF GEORGIA

CITY OF MILTON

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of contractor) on behalf of the City of Milton has registered with and is participating in a federal work authorization program, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91.

EEV / Basic Pilot Program User Identification Number

BY: Authorized Officer or Agent Date
[Subcontractor Name]

Title of Authorized Officer or Agent of Subcontractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE
____ DAY OF _____, 200_

Notary Public
My Commission Expires:

Proclamation

Whereas, it has long been our custom to commemorate November 11, the anniversary of the ending of World War I, by paying tribute to the heroes of that tragic struggle and by rededicating ourselves to the cause of peace; and

Whereas, in the intervening years the United States has been involved in several other great military conflicts, which have added millions of veterans living and dead to the honor rolls of this Nation; and

Whereas, the Congress passed a concurrent resolution on June 4, 1926 (44 Stat. 1982), calling for the observance of November 11 with appropriate ceremonies, and later provided in an act approved May 13, 1938 (52 Stat. 351), that the eleventh of November should be a legal holiday and should be known as Armistice Day; and

Whereas, in order to expand the significance of that commemoration and in order that a grateful Nation might pay appropriate homage to the veterans of all its wars who have contributed so much to the preservation of this Nation, the Congress, by an act approved June 1, 1954 (68 Stat. 168), changed the name of the holiday to Veterans Day:

Now, Therefore, I, Joe Lockwood, Mayor of the City of Milton, do hereby call upon all of our citizens to observe Wednesday, November 11, 2009, as Veterans Day. On that day let us solemnly remember the sacrifices of all those who fought so valiantly, on the seas, in the air, and on foreign shores, to preserve our heritage of freedom, and let us consecrate ourselves to the task of promoting an enduring peace so that their efforts shall not have been in vain.

I also direct the appropriate officials of the Government to arrange for the display of the flag of the United States on all public buildings on Veterans Day.

IN WITNESS WHEREOF, I have hereunto set my hand and cause the Seal of the City of Milton to be affixed on this 2nd day of November 2009.

Joe Lockwood, Mayor

Proclamation

Whereas The City of Milton, Georgia recognizes the family as the fundamental unit of society and an essential part of cultural, social and spiritual fabric that comprises our communities; and

Whereas Throughout Milton, Georgia's history, families have been the foundation of our society and a source of stability and love for every generation; and

Whereas Strong families teach children to love moral lives and help us pass down the values that define a caring society. Families provide children with the encouragement, support and love they need to become confident, compassionate and successful members of society; and

Whereas Upholding the timeless values that have sustained our social order Throughout history will result in the enhancement of the health and Security of Milton, Georgia's families; and

Whereas Spending more family time together facilitates the development of positive and open relationships between parents and children. These relationships help parents encourage their children to make positive choices; now

Now, therefore, we, the Mayor and City Council of the City of Milton, hereby dedicate and proclaim the month of November, 2009 as "FAMILY MONTH" in Milton, Georgia and encourage all citizens of Milton to spend quality time with family members to strengthen relationships between parents and children.

Given under my hand and Seal of the City of Milton, Georgia on this 2nd day of November 2009.

Joe Lockwood, Mayor



To: Honorable Mayor and City Council Members

From: Matt Marietta, Assistant to the City Manager

Date: Submitted on October 26, 2009 for First Presentation at the November 2, 2009 Regular Council Meeting and the November 16, 2009 Regular Council Meeting for its Second Reading

Agenda Item: Annual Re-enactment of the Ordinance Approving and Establishing the Regulation of Solid Waste Collection Services within the City of Milton, and Providing for the Scope and Nature of the Operation of Such Services

City Manager's Office Recommendation

Re-approve the ordinance approving and establishing the regulation of solid waste collection services within the City of Milton, and direct City Staff to facilitate the contracting of such services to providers currently in operation and those who may become in operation.

Background

The original ordinance was passed on November 21, 2006 and has been renewed each successive year since its original enactment. The City's authority to enter into solid waste franchise agreements emanates from this ordinance.

Discussion

This ordinance needs to be re-enacted each year in order to continue the validity of our solid waste franchise agreements.

Funding and Fiscal Impact

The ordinance contains the requirement for an infrastructure maintenance fee to be paid to the City quarterly in the amount of 5% of gross revenues. The impact to residential constituents has been less than one dollar (\$1.00) per month. Further, this revenue is dedicated to the maintenance of infrastructure, primarily the resurfacing of roadways.

Alternatives

If not re-enacted, the City would lose its authority to regulate solid waste collection within our corporate limits and the ability to collect franchise fees for the same activity, with the accompanying loss of revenue.

Concurrent Review

Chris Lagerbloom, City Manager

CITY OF MILTON
COUNTY OF FULTON
STATE OF GEORGIA

AN ORDINANCE ESTABLISHING SOLID WASTE COLLECTION SERVICES WITHIN THE CITY OF MILTON; PROVIDING FOR THE SCOPE AND NATURE OF THE OPERATION; PROVIDING FOR THE DISPOSAL OF GARBAGE, SOLID WASTE AND REFUSE; REQUIRING THE EXECUTION BY SERVICE PROVIDERS OF A NON-EXCLUSIVE AGREEMENT WITH THE CITY OF MILTON; PROVIDING PROCEDURES FOR THE HANDLING OF COMPLAINTS; PROVIDING FOR AN INFRASTRUCTURE MAINTENANCE FEE; REQUIRING INDEMNITY INSURANCE; PROVIDING FOR REVOCATION AND AMENDMENT; PROHIBITING ASSIGNMENT AND SUBLETTING WITHOUT CONSENT; PROVIDING FOR FORFEITURE; AND FOR MAKING OTHER PROVISIONS.

WHEREAS, several companies (“Company”) currently operate solid waste services within the corporate city limits pursuant to their contracts with their customers; and

WHEREAS, the City of Milton (“City”) seeks to provide standards of operation, regulation, and oversight in the providing of solid waste services within the corporate city limits; and

WHEREAS, it is in the interest of the City and its citizens to offer companies currently providing such services a non-exclusive contract on such terms and conditions that will provide the City with the controls and options necessary to provide for the public good.

NOW, THEREFORE, COUNCIL OF THE CITY OF MILTON HEREBY ORDAINS:

Section 1. Definitions.

1.0 For the purpose of this ordinance, whenever inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever the sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Section 1 or otherwise in this ordinance shall be given their common and ordinary meaning.

The following words, terms, phrases and their derivations shall, in this ordinance, have the meaning given in this section.

1.1 “City” means the City of Milton, Georgia, an incorporated municipal government in Fulton County, State of Georgia. Boundaries defining the City limits may be changed via ordinances approved by the City Council, for which any new boundary created shall be subject to this contract.

1.2 “Company” means any organization, firm, person, entity, corporation or other business that contracts with customers to provide for the collection and disposal of solid waste material as defined in this ordinance, and including but not limited to construction/demolition debris, dead animals, garbage, waste, storm debris, yard trimmings, and recyclable material.

1.3 “Solid Waste” means the collection of residential and commercial non-recyclable waste, residential and commercial recyclable waste, and residential yard trimmings/waste.

- 1.4 “Approved Container or Approved Bag” or “Container” or “Bag” means those containers used in the collection of solid waste, as defined in this ordinance, which have been approved by the Company for use by both residential and commercial customers.
- 1.5 “Construction/Demolition Debris” shall have the meaning set forth by the Georgia Department of Natural Resources, Environmental Protection Division (Georgia EPD Chapter 391-3-4.01(14)).
- 1.6 “Dead Animals” shall mean animals or portions thereof equal to or greater than ten (10) pounds in weight that have died from any cause, except those slaughtered or killed for human use.
- 1.7 “Effective Date” means any contract executed between the City and any Company on or after December 1, 2009.
- 1.8 “Term” shall mean a period of one year from the effective date.
- 1.9 “Environmental Laws” means all applicable laws, directives, rules, ordinances, codes, guidelines, regulations, governmental, administrative or judicial orders or decrees or other legal requirements of any kind, including, without limitation, common law, whether currently in existence or hereafter promulgated, enacted, adopted or amended, relating to safety, preservation or protection of human health and the environment (including ambient air, surface water, groundwater, land, or subsurface strata) and/or relating to the handling, treatment, transportation or disposal of waste, substances or materials, including, without limitation, any matters related to releases and threatened releases of materials and substances.
- 1.11 “Area” shall mean the area within the boundaries of the incorporated areas of the City of Milton, as they exist as of the Effective Date in addition to future boundary changes as outlined in section 1.1.
- 1.12 “Garbage” shall have the meaning set forth at Georgia Department of Natural Resources, Environmental Protection Division (“Georgia EPD Chapter 391-3-4-.01(21)).
- 1.13 “Hazardous Materials” means any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substances, regulated under or pursuant to any Environmental Laws. The term Hazardous Materials also includes any pollutant, contaminant, hazardous or toxic substance, constituent or material, including, without limitation, petroleum products and their derivatives, or other substance that is, after the date first written above, deemed hazardous by any judicial or governmental entity, body or agency having jurisdiction to make that determination.
- 1.14 “Hazardous Waste” means any waste regulated under or pursuant to any Environmental Laws, including, but not limited to, any solid waste which has been defined as a hazardous waste in regulations promulgated by the Board of Natural Resources, Chapter 291-3-11. The term Hazardous Waste also includes Hazardous Materials and any waste that is, after the Effective Date of this Agreement, deemed hazardous by any judicial or governmental entity, board, body or agency having jurisdiction to make that determination. The term “Hazardous Waste” will be construed to have the broader, more

encompassing definition where a conflict exists in the definitions employed by two or more governmental entities having concurrent or overlapping jurisdiction over Hazardous Waste.

- 1.15 “Residential Unit” shall mean any structure, whether single family, multi-family, or otherwise whose primary purpose is for living.
- 1.16 “Commercial Unit” shall mean any structure, whether free standing or designed to serve multiple tenants, whose primary purpose is for conducting business.
- 1.17 “Construction Site” shall mean any parcel of land or real property having land disturbance, clearing & grading, demolition, improvements & betterments, renovation, remodeling and/or new construction work performed thereon or about the real property or premises whether or not a land disturbance and/or building permit is required.
- 1.18 “Recycling” shall have the meaning set forth at Georgia Department of Natural Resources, Environmental Protection Division (“Georgia EPD”) Chapter 391-3-4-.01(57).
- 1.19 “Waste” means all putrescible and non putrescible solid, semi-solid, and liquid wastes, including residential or commercial garbage, trash, refuse, paper, rubbish, ashes, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes.
- 1.20 “Yard Trimmings” shall have the meaning set forth at Georgia Department of Natural Resources, Environmental Protection Division (“Georgia EPD”) Chapter 391-3-4-.01(77).
- 1.21 “Customer” shall mean any firm, person, entity, corporation or organization that contracts with a Company for the collection and disposal of solid waste material as defined in this ordinance, and including but not limited to construction/demolition debris, dead animals, garbage, waste, storm debris, yard trimmings, and recyclable material.
- 1.22 "Gross Receipts" shall mean the total amount collected by the Company from any and all Customers for services rendered under authority of this Ordinance as a result of charges for service. Gross receipts shall not include the Infrastructure Maintenance Fee identified in this ordinance.

Section 2. Grant of Non-Exclusive Contract.

The City shall hereby grant to Companies a non-exclusive contract pursuant to the terms set forth herein to use the public streets, alleys, roads and thoroughfares within the City for the purpose of operating and engaging in the business of collecting and disposing of Waste; including, but not limited to, contracting with Customers and providing service pursuant to contract therefore, placing and servicing containers, operating trucks, vehicles and trailers, and such other operations and activity as are customary and/or incidental to such business and service.

Section 3. Term.

The term of any agreement shall be for a period of one (1) year beginning on the effective date of the Contract execution and terminating on the first anniversary of said date. The Company shall begin performance under this contract immediately after the effective date of the Contract execution.

Section 4. Scope and Nature of Operation.

- 4.1 Residential and Commercial Refuse and Waste. The Company may collect and deliver for disposal all Residential and Commercial Refuse and Waste accumulated within the corporate limits of the City by the Company's Customers and the words "refuse", "garbage", "trash" and "waste" when used in this Ordinance are used for convenience and, unless the context shows otherwise, refer to yard trimmings, recycling, storm debris, garbage, and construction/demolition debris. The Company will furnish the personnel and equipment to collect refuse, provide the services described herein, and as contracted for with its Customers, in an efficient and businesslike manner.
- 4.2 Service Provided-Company shall provide container, bin and other collection service for the collection of Residential and Commercial Refuse and Waste according to the individual Customer agreements and applicable City regulations and shall make provision for the special collection of such refuse and waste upon request. The Company shall cause or require its equipment, containers and bins to be kept and maintained in a manner to not cause or create a threat to the public health and shall keep the same in a good state of repair.
- 4.3 Collection Operation- (a) Save and except as provided in this Section, collection shall not start before 7:30 AM or continue after 7:30 PM at any location. Company may request variances to this collection period provided that collections: (i) are made in a manner that does not cause or result in loud noise; and (ii) that are made at a location which will not cause the disturbance of persons occupying the premise or neighboring property must first be confirmed prior to the request. All requests for variances of times must be submitted to the City Manager, or his designee, and include documentation on the hardship created by the collection operation period. Should such a collection operation variance be granted and the city receive two complaints about the collection operation in any six month time period, the City shall verify and substantiate the factual basis for any complaints. Should the complaints be substantiated, the collection operation variance will be revoked. The frequency of collection shall be determined by each individual customer agreement.
- 4.4 Holidays- The Company shall observe such holidays as it, in its sole discretion, determines appropriate. Notification must be given by the Company to it's Customers of the holidays and resulting collection cycles.
- 4.5 All Companies must maintain a local customer service telephone number while conducting business within the City. The telephone number must be publicly listed in a phone book and available through directory assistance. Each Company providing trash receptacles, whether commercial or residential, must mark each receptacle with the Company's name and telephone number in letters not less than four (4) inches in height. Each Company must provide a mechanism to accept, investigate, and respond to customer complaints. Companies are strongly encouraged to use multi-media devices including interactive websites, e-mail, fax, and automated telephone systems. Service calls received by the City as a result of non-Company performance will result in the consideration of revocation of a non-exclusive contract or the City's choice to not renew an existing agreement.

- 4.6 Any invoice, bill, statement, or other device intended to request remittance by the customer to the Company of funds for payment of service shall include at a minimum, the Company's telephone number and payment methods available to customers.
- 4.7 All Companies providing residential service or service to residential multi-family units must provide a recycling program to all customers. This program is intended to promote recycling programs throughout the City by reducing the amount of waste landfilled. Commodities may be commingled by the consumer and collected commingled by the hauler. Recycled commodities which must be offered in all programs are as follows: brown, clear, and green glass; steel and tin cans; aluminum cans, foil, pie pans, plastic items (#1, #2, and #3); cardboard, cereal boxes and any non-waxed paper containers; brown paper grocery bags; newspapers; magazines; telephone books; junk mail; office papers; and school papers. Customers shall be charged for the recycling program by the Company regardless of utilization of the service. Haulers are to include this service with their residential rate structure; however, the charge for recycling shall be shown separate from other services provided.
- 4.8 All Companies providing commercial service must offer and promote a recycling program to all customers. This program is intended to promote recycling programs throughout the City by reducing the amount of waste landfilled.
- 4.9 All Companies providing residential service must offer the collection of yard trimmings to all customers. This program is intended to assist in the collection and disposal of grass clippings; leaves; pine cones and needles; twigs, limbs, and trunks of trees meeting size limitations set by Company; bushes, brush, and all other general debris generated from the maintenance of residential yards and lawns.
- 5.0 It shall be the Company's obligation and responsibility to educate all Customers on industry trends and best practices relating to solid waste collection, removal, and disposal. Such education programs must consist of the following elements: recycling; holiday schedules; new customer information; and any service related items. All Companies have the obligation to inform Customers of any non-collected trash or items placed for collection by the Customer but not covered under the agreement between the Customer and the Company. Further, it shall be the Company's obligation and responsibility to educate Customers on days of collection for each specific service provided. All education and communication between the Company and Customers should promote the placement of residential collectibles at the curb the night before pick-up. Receptacles, containers, or bagged materials shall not be left at the curb for longer than a twenty-four (24) hour period.

Section 5. Vehicles to be Covered and Identified.

All vehicles used by Company for the collection and transportation of refuse shall be covered at all times while loaded and in transit to prevent the blowing or scattering of refuse onto the public streets or properties adjacent thereto, and such vehicles shall be clearly marked with the Company's name and telephone number in letters not less than four (4) inches in height.

- 5.1 Company must provide a comprehensive and proactive driver safety education program which encourages safety on City streets. Such program must be demonstrated and conveyed to the City. Company must comply with all other regulatory agencies, both local, state, or otherwise with respect to commercial vehicle operation within the City. Service calls received by the City as a result of non-Company performance will result in the

consideration of revoking a non-exclusive contract or the City's choice to not renew an existing agreement.

- 5.2 Company must manage collection services delivered within the City to minimize the number of vehicles on City roads. Coordination between haulers and service providers is strongly encouraged to manage service vehicles on residential streets and neighborhoods.
- 5.3 Should Company utilize "Scout" trucks to facilitate collection in residential areas where it is not feasible to use standard collection vehicles, such vehicles must be covered at all times while loaded and in transit should they exceed 30 miles per hour or be driven more than 300 yards on a public street.

Section 6. Regulation of Containers.

The Company may rent, lease, provide or define specifications for containers to any customer within the corporate limits of the City for refuse storage and collection purposes subject to the following requirements:

- 6.1 All containers shall be constructed and maintained according to industry practice;
- 6.2 All containers shall be equipped with stable covers to prevent blowing or scattering of refuse while being transported for disposal of their contents;
- 6.3 All containers, save and except those being used for the purpose of collecting and storing rubble, building and scrap construction materials, shall be equipped with covers suitable to prevent blowing or scattering refuse and access to the container by animals while the container is at the site designated by Customer;
- 6.4 All containers shall be periodically cleaned, maintained, serviced and kept in a reasonably good state of repair, to prevent the unreasonable accumulation of refuse residues, to avoid excessive odor and harborage for rodents and flies resulting from excessive residues remaining after collection of containers; and
- 6.5 All containers shall be clearly marked with the Company's name and telephone number in letters not less than four (4) inches in height.
- 6.6 All containers shall not be on public rights of way and shall be located so as to not interfere, block, obstruct or impede the normal use of any sidewalk, street, alley driveway or fire lane, or to block, obstruct or impede sight distance at street, road or alley intersections.
- 6.7 All containers, bins, or other collection instruments must be kept free from graffiti, rust, broken and non-operational parts and pieces, and litter in and around the area.
- 6.8 It shall be the responsibility of each Company to educate their Customers on the regulations of containers and maintain industry standards, policies, and procedures, which promote an aesthetically pleasing environment in and around all refuse and waste containers and receptacles.

Section 7. Disposal of Refuse.

The Company will deliver all Waste collected by it from its customers within the City, except for materials which the Company may select for recovery and recycling, to a disposal facility that is permitted by the EPD to accept such refuse and waste. Rules and regulations governing hours of

operation and disposal practices at the disposal facility will be observed and followed by the Company while engaged in the disposal of refuse pursuant to this Ordinance. Any items collected as part of a recycling program must be delivered to a facility where recovery and reuse occurs.

Should any company choose to offload or dispose of materials collected by one vehicle into another for transport to the final disposal facility, Company shall make every available effort to perform such refuse transfer on property owned by the Company or privately owned property where the Company has an agreement with the property owner to perform such activity. In the event any transfer occurs on public land, including streets, alleys, rights-of-ways, roads, thoroughfares, avenues, parkways, expressways, or other areas designed and designated for public travel, Company shall make every effort available to clean the area after completion of the transfer to insure the area is maintained at the same or better level than if the area was not used for this activity. In the event the City receives complaints regarding this practice, Company shall be required to cease from this activity at the location of the complaint.

Section 8. Contract and Rental Fees.

8.1 Contract Fee- The streets, rights-of-way, and public easements to be used by the Company in the operation of its business within the boundaries of the City as such boundaries now exist and exist from time to time during the term of this contract, are valuable public properties acquired and maintained by the City at great expense to its taxpayers, and the City will incur costs to regulate and administer this Ordinance. In consideration of such benefits, costs and expenses, the Company shall through the term of its Contract collect an "Infrastructure Maintenance Fee" equal to 5% of the Company's gross receipts to Customers within the City (exclusive of Sales Tax). The term "Infrastructure Maintenance Fee" shall be used on all bills, invoices, or statements sent by any Company to a Customer under this Ordinance.

8.1.1 Fees Paid- The Infrastructure Maintenance Fee shall be payable quarterly to the City and delivered to the City in conjunction with a statement indicating the derivation and calculation of such payment. Each such quarterly payment shall be due on the 15th day of the second month following the end of the quarterly period for which said payment is due. The quarterly payments shall be due on February 15, May 15, August 15, and November 15 of each year during the term hereof, with the February 15 payment being based upon the Company's gross receipts during the calendar quarter ending the prior December 31 and being payment for the rights and privileges granted hereunder for said calendar quarter, the May 15 payment being based upon the Company's gross receipts during the calendar quarter ending the prior March 31 and being payment for the rights and privileges granted hereunder for said calendar quarter, the August 15 payment being based upon the Company's gross receipts during the calendar quarter ending the prior June 30 and being payment for the rights and privileges granted hereunder for said calendar quarter, and the November 15 payment being based upon the Company's gross receipts during the calendar quarter ending the prior September 30 and being payment for the rights and privileges granted hereunder for said calendar quarter. During the implementation of this ordinance, all bills generated by Companies after December 1, 2006 shall include the Infrastructure Maintenance Fee. The City shall provide material relating to the education and marketing efforts of the Infrastructure Maintenance Fee as well as provide education and training to Company employees to ensure a consistent message is conveyed to constituents of the City of Milton. For purposes of verifying the amount of such fee, the books of

the Company shall at all reasonable times be subject to inspection by the duly authorized representatives of the City.

- 8.1.2 No Other Rental Fees- The Contract fee shall be in lieu of any and all other City-imposed rentals or compensation or contract, privilege, instrument, occupation, excise or revenue taxes or fees and all other exactions or charges (except ad valorem property taxes, special assessments for local improvements, city sales tax, and such other charges for utility services imposed uniformly upon persons, firms or corporations then engaged in business within the City) or permits upon or relating to the business, revenue, installations and systems, fixtures, and any other facilities of the Company and all other property of the Company and its activities, or any part thereof, in the City which relate to the operations of the Company pursuant to this Ordinance; provided, that this shall not be construed to prevent the Company from being required to pay any and all applicable fees and charges in effect from time to time for dumping at a landfill or transfer station.
- 8.1.3 Credit for Fees Paid- Should the City not have the legal power to agree that the payment of the foregoing sums of money shall be in lieu of contracts, fees, street of alley rentals or charges, easement or ordinance fees or charges aforesaid, then City agrees that it will apply so much of said sums of money paid as may be necessary to Company's obligations, if any, to pay any such contract, ordinance charges, other charges, fees, rentals, easement, taxes or charges.
- 8.1.4 Reporting – Any Company providing service pursuant to this Ordinance or a resulting Contract shall from time to time provide the City with the necessary statistics regarding waste collected and disposed which shall allow the City to comply with State reporting requirements. Such information shall be in the manner and format requested by the City and provide adequate details for the City to maintain compliance with local, state, federal, and all other guidelines relating to solid waste collection, removal, and disposal.
- 8.1.5 Dedicated Revenue – The Infrastructure Maintenance Fee collected by the City under this ordinance shall be dedicated to the following: (i) maintenance of the City's streets, corridors, alleys, thoroughfares, and transportation routes; (ii) administration of contract compliance between Customers and Companies where service is received as provided in this Ordinance; and (iii) collection of litter and trash within the City.

Section 9. Compliance with Law.

The Company shall conduct under this Ordinance in compliance with the material provisions of all applicable local, state and federal laws, rules and regulations, and with the general specifications contained in this Ordinance.

Section 10. Insurance Provided by Company.

- 10.1 Minimum Coverage Requirements- The Company shall maintain throughout the term of its Contract, property damage coverage, general liability insurance, and automobile liability insurance for any automobile owned or operated by Company, with an insurance company authorized and licensed to do business in the State of Georgia and acceptable to the City, insuring against claims for liability and damages for the benefit of the City. The insurance shall include the City as an additional insured. General liability coverage insurance under this section shall be a minimum of One Million and No/100 Dollars (\$1,000,000) per occurrence with a Two Million and No/100 Dollars

(\$2,000,000) aggregate. Automobile liability insurance under this section shall, at a minimum, have limits of One Million and No/100 Dollars (\$1,000,000) for each occurrence. Additionally, an umbrella coverage of One Million and No/100 Dollars (\$1,000,000) on both automobile liability insurance and general liability insurance is required.

- 10.2 Employer's Liability- If the Company is required by Georgia Statute, the Company shall maintain throughout the term of the Contract resulting from this Ordinance the requisite statutory workers' compensation insurance, and a minimum of One Hundred Thousand and No/100 Dollars (\$100,000) employer's liability insurance. Company shall be required to show compliance to this section by submitting documentation of such coverage from an approved carrier licenses in the State of Georgia, or documentation explaining the exemption from employer's liability insurance should they not meet the state requirements to carry such coverage.
- 10.3 Certificate of Insurance- The insurance policy, or policies, obtained by the Company in compliance with this section shall be approved by the City Manager or his designee in the City Manager's or his designee's reasonable discretion, and the certificate of insurance for the insurance policy shall be filed and maintained with the City during the term of the Contract resulting from this Ordinance with a copy of the endorsement required under Section 10.4 to be attached or made a part of such certificate.
- 10.4 Endorsements- All insurance policies maintained pursuant to this Ordinance shall contain the following conditions by endorsement:
- 10.4.1 Additional Insured- The City shall be an additional insured and the term "owner" and "City" shall include all authorities, Boards, Bureaus, Commissions, Divisions, Departments and offices of the City and the individual members, officers, employees and agents thereof in their official capacities and/or while acting on behalf of the City.
- 10.4.2 Other Insurance Clause- The policy clause "Other Insurance" shall not apply to the City when the City is an insured on the policy;
- 10.4.3 No Recourse- Companies issuing the insurance policies shall not recourse against the City for payment of any premium or assessment.
- 10.5 Increase Requirements-The City may chose to amend this Ordinance to make reasonable adjustments to the insurance coverage and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry.

Section 11. Indemnification and Hold Harmless.

The Company agrees to indemnify, defend and save harmless the City, its agents, officers and employees, against and from any and all claims by or on behalf of any person, firm, corporation or other entity arising from any negligent act or omission or willful misconduct of the Company, or any of its agents, contractors, servants, employees or contractors, and from and against all costs, counsel fees, expenses and liabilities incurred in or about any such claim or proceeding brought thereon. Promptly after receipt from any third party by City of a written notice of any demand, claim or circumstance that, immediately or with the lapse of time, would give rise to a claim or the commencement (or threatened commencement) of any action, proceeding or investigation (an "Asserted

Claim”) that may result in losses for which indemnification may be sought hereunder, the City shall give written notice thereof (the “Claims Notice”) to the Company provided, however, that a failure to give such notice shall not prejudice the City’s right to indemnification hereunder except to the extent that the Company is actually and materially prejudiced thereby. The Claims Notice shall describe the Asserted Claim in reasonable detail, and shall indicate the amount (estimated, if necessary) of the losses that have been or may be suffered by the City when such information is available. The Company may elect to compromise or defend, at its own expense and by its own counsel, any Asserted Claim. If the Company elects to compromise or defend such Asserted Claim, it shall, within twenty (20) business days following its receipt of the Claims Notice (or sooner, if the nature of the Asserted Claim so required) notify the City of its intent to do so, and the City shall cooperate, at the expense of the Company, in the compromise of, or defense against, such Asserted Claim. If the Company elects not to compromise or defend the Asserted Claim, fails to notify the City of its election as herein provided or contests its obligation to provide indemnification under this Agreement, the City may pay, compromise or defend such Asserted Claim with all reasonable costs and expenses borne by the Company. Notwithstanding the foregoing, neither the Company nor the City may settle or compromise any claim without the consent of the other party; provided, however, that such consent to settlement or compromise shall not be unreasonably withheld. In any event, the City and the Company may participate at their own expense, in the defense of such Asserted Claim. If the Company chooses to defend any Asserted Claim, the City shall make available to the Company any books, records or other documents within its control that are necessary or appropriate for such defense.

Section 12. Forfeiture and Terminating of Contract.

- 12.1 Material Breach- In addition to all other rights and powers retained by the City under this Ordinance or otherwise, the City reserves the right to declare any resulting Contract from this Ordinance forfeited and to terminate the Contract and all rights and privileges of the Company hereunder in the event of a material breach of the terms and conditions hereof. A material breach by Company shall include, but shall not be limited to, the following:
- 12.1.1 Fees- Failure to pay the fees set out in Section 8;
 - 12.1.2 Telephone Listings- Failure to keep and maintain a local telephone listing and office or answering service that is available by phone without long distance charge during regular business hours for service to the public, and which telephone or office shall, at minimum, provide and maintain the following services:
 - (a) Coordinate and provide information concerning deposits, payments and accounts to Customers and prospective Customers;
 - (b) Respond to Customer and prospective Customer questions and issues about billings, accounts, deposits and services;
 - (c) Coordination with the City with respect to private sector and public works projects and issues related to or affecting the Company's operation; and
 - (d) Immediate response, upon request, to police, fire and other emergency situations in which the public health and safety requires action with respect to or assistance regarding Company's property.
 - 12.1.3 Failure to Provide Service- Failure to materially provide the services provided for in this Ordinance;
 - 12.1.4 Misrepresentation- Material misrepresentation of fact in the application for or negotiation of any contract resulting from this Ordinance; or

- 12.1.5 Conviction- Conviction of any director, officer, employee, or agent of the Company of the offense of bribery or fraud connected with or resulting from the award of a contract from this Ordinance.
- 12.2 Operation Information- Material misrepresentation of fact knowingly made to the City with respect to or regarding Company's operations, management, revenues, services or reports required pursuant to this Ordinance.
- 12.3 Economic Hardship- Company shall not be excused by mere economic hardship nor by misfeasance or malfeasance of its directors, officers or employees.
- 12.4 Forfeiture and Proceedings- Any unwarranted and intentional neglect, failure or refusal of the Company to comply with any material provision of this Ordinance or resulting Contract within thirty (30) days after written notice from City setting forth the specific provision and noncompliance, said notice to be mailed to Company at its principal place of business by certified mail, return receipt requested, shall be deemed a breach of this Ordinance, and the City Council, upon notice to Company and hearing, may, for good cause declare a Contract forfeited and exclude Company from further use of the streets of the City under this Ordinance, and the Company shall thereupon surrender all rights in and under this Ordinance and Contract.
- 12.4.1 Proceedings- In order for the City to declare a forfeiture pursuant to Sections 12.1, 12.2, 12.3, or 12.4, the City shall make a written demand that the Company comply with any such provision, rule, order, or determination under or pursuant to this Ordinance. If such violation by the Company continues for a period of thirty (30) days following such written demand without written proof that the corrective action has been taken or is being actively and expeditiously pursued, the Council may take under consideration the issue of termination of the resulting Contract from this Ordinance. The City shall cause to be served upon Company, at least twenty (20) days prior to the date of such a Council meeting, a written notice of intent to request such termination and the time and place of the meeting. Notice shall be given of the meeting and issue which the Council is to consider.
- 12.4.2 Hearing - The Council shall hear and consider the issue, hear any person interested therein, and shall determine whether or not any violation by the Company has occurred.
- 12.4.3 Forfeiture- If the Council shall determine that the violation by the Company was the fault of Company and within its control, the Council may declare the contract forfeited and terminated, or the Council may grant to Company a period of time for compliance.

Section 13. Transfer, Sale or Conveyance by Company.

The Company shall not transfer, assign, sell or convey any rights granted under any resulting Contract from this Ordinance without the prior approval of the City Council; provided that this section shall not apply to vehicles, replacements, maintenance, upgrades or modifications of equipment, machinery, containers and buildings by Company for the purpose of maintaining and continuing its operation within the City; and provided further that Company may, in its sole discretion and upon written notice to the City, transfer, assign, sell or convey their rights under this Ordinance to a wholly owned subsidiary of the Company or to an affiliated entity that is under common control with Company (i.e. has a common parent entity).

Section 14. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the assets and property of the Company used for and dedicated to providing service pursuant to this Ordinance, the Company shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Company has taken place and the provisions of this Ordinance governing the consent of the Council to such change in control of the Company shall apply. Upon the foreclosure or judicial sale, or the leasing of all or a substantial part of the property and assets of the Company dedicated to and used for the purposes of providing service pursuant to this Ordinance, without the prior approval of the Council, the Council may, upon hearing and notice, terminate any Contract resulting from this Ordinance.

Section 15. Receivership and Bankruptcy.

15.1 Cancellation Option - The Council shall have the right to cancel any Contract resulting from this Ordinance one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Company, whether in receivership, reorganization, bankruptcy, other action or proceeding, whether voluntary or involuntary, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, unless:

15.1.1 Trustee Compliance- Within one hundred twenty (120) days after his election or appointment, such receiver trustee shall have fully complied with all the provisions of this Ordinance and remedied all defaults thereunder; or

15.1.2 Trustee Agreement- Such receiver or trustee, within one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction, whereby the receiver or trustee assumes and agrees to be bound by each and every provision of this Ordinance granted to the Company.

Section 16. Retention of City Police Powers.

The City retains and reserves all of its police powers and the rights, privileges, and immunities that it now has under the law to regulate, patrol and police the streets and public ways within the City, and the granting of any Contract as a result of this Ordinance shall in no way interfere with the improvements to, or maintenance of, any street, alley or public way, and the rights of the City to use said streets, alleys and public ways.

Section 17. Amendments of City Ordinances and Regulations.

The City reserves the right and power, pursuant to its police power, after due notice to Company, to modify, amend, alter, change or eliminate any rules, regulations, fees, charges and rates of the City, and to impose such additional conditions, that are not inconsistent with the rights granted by this Ordinance, upon the Company and all persons, firms or entities of the same class as the Company, as may be reasonably necessary in the discretion of the City Council to preserve and protect the public, health, safety and welfare and/or insure adequate service to the public.

Section 18. Taxes.

The Company shall promptly pay all lawful ad valorem taxes, levies and assessments, if any, that are imposed upon the Company. Absent an administrative or judicial challenge, or appeal, the failure to pay any such tax, levy or assessment shall be a breach of this Ordinance.

Section 19. Public Necessity.

The Council hereby finds and declares that the public welfare, convenience and necessity require the service which is to be furnished by the Company.

Section 20. Solvability.

If any section, paragraph, subdivision, clause, part or provision hereof shall be adjudged invalid or unconstitutional the same shall not affect the validity hereof as a whole or any part or provision other than the part or parts held invalid or unconstitutional.

Section 21. Captions and Headings.

The use of captions or headings for the various sections of this Ordinance are for convenience of parties only and do not reflect the intent of the parties. The rule of interpretation to solve ambiguities in a contract against the party drafting such contract shall not apply to this Ordinance.

Section 22. No Suspension of Laws.

All provisions of the ordinances of the City as now existing or as may be amended from time to time, and all provisions of the statutes of the State of Georgia applicable to general law cities shall be a part of any resulting contract from this Ordinance as fully as if the same had been expressly stated herein, and said the City retains and may exercise all of the governmental and police powers and all other rights and powers not directly inconsistent with the terms, conditions and provisions of this Ordinance.

Section 23. Peaceful Employment.

From and after the effective date of this ordinance, the City and the Company shall be and are hereby authorized and entitled to act in reliance upon the terms, conditions and provisions of this Ordinance and any resulting Contract and, subject thereto, the Company shall collect rates for service, operate and conduct its business and work within the City, and enjoy the benefits and privileges of this Ordinance during the term hereof.

Section 24. Open Meetings.

It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public, and public notice of the time, place, and purpose of said meeting was given, as required by the Open Meetings Act, Georgia Code.

Section 25. Endorsements and Records.

The City Clerk is directed to make endorsements as appropriate over his/her official hand and the seal of the City on the form provided at the conclusion of this Ordinance, for the public record and convenience of the citizens, of the date upon which this Ordinance is finally passed and adopted.

Section 26. Acceptance by Company.

Within thirty (30) days after the passage of this Ordinance, or within thirty (30) days of establishing a business within the corporate City limits, all Companies operating a Residential or Commercial Refuse Waste service shall file with the City its acceptance of the terms and provisions of this Ordinance, and request for Contract. The acceptance and request for Contract shall be in writing on the Company's letterhead and provide as follows:

City of Milton
Attention: City Manager
13000 Deerfield Parkway,
Suite 107A/B
Milton, GA 30004

_____ (the "Company"), acting by and through an officer who is acting within its official capacity and authority, hereby accepts the City of Milton Solid Waste Ordinance to operate a refuse and solid waste collection and disposal system within the City as said Ordinance is set forth and provided herewith. The Company agrees to be bound and governed by each term, provision and condition of the Ordinance, to accept and to give the benefits provided by the Ordinance, and to perform each service and duty set forth and provided for in the Ordinance in a businesslike and reasonable manner and in compliance with the Ordinance.

Company: _____

By: _____

Printed Name: _____

Title: _____

THIS ORDINANCE PASSED AND APPROVED on the _____ day of _____, 2009.

Approved:

Joe Lockwood, Mayor

Attest:

Jeanette R. Marchiafava, City Clerk
(Seal)

Approved as to Form and Content:

Ken Jarrard, City Attorney



To: Honorable Mayor and City Council Members

From: Matt Marietta, Assistant to the City Manager

Date: Submitted on October 22, 2009 for the November 2, 2009 Council Meeting

Agenda Item: FIRST PUBLIC HEARING - A Resolution Continuing the Wired and Wireless Enhanced 911 Charge, and Establishing a Concurrent Enhanced 911 Charge on VoIP, for all such Communications within the City of Milton

City Manager's Office Recommendation

Advertise and hold a public hearing regarding the attached resolution continuing the Enhanced 911 charge on wired and wireless communications in the City of Milton and including a charge on Voice over Internet Protocol (VoIP) services.

Background

State law allows for each telecommunications line established within the corporate limits of the City of Milton to charge a fee to support the provision of emergency 911 services. The resolution continues that fee, and clarifies the current charge through the explicit addition of language addressing VoIP. The VoIP change will take effect 120 days after its inclusion in the resolution.

Funding and Fiscal Impact

This resolution provides funding to support our Enhanced 911 Service that is currently provided by an intergovernmental agreement with the City of Alpharetta.

Alternatives:

The City may assume the costs for 911 provision and begin to fund it out of the Maintenance and Operating budget.

Concurrent Review:

Chris Lagerbloom, City Manager
Deb Harrell, Police Chief

STATE OF GEORGIA
COUNTY OF FULTON

RESOLUTION NO.

**A RESOLUTION AMENDING RESOLUTION NO. 09-10-106, A RESOLUTION
APPOINTING MEMBERS TO THE CITY OF MILTON DESIGN REVIEW BOARD
BY ADDING BOARD MEMBER JULIE PINCKNEY FOR DISTRICT 5**

BE IT RESOLVED by the City Council of the City of Milton, GA while in regular session on November ____, 2009 at 6:00 p.m. as follows:

SECTION 1. That Murthy (Morty) Rallapalli (District 5) is hereby appointed to fill the unexpired term of Board member Mike Stephens commencing on November 2, 2009 and ending on December 31, 2009;

SECTION 2. That this Resolution shall become effective upon its adoption.

RESOLVED this ____ day of October 2009.

Approved:

Joe Lockwood, Mayor

Attest:

Jeanette R. Marchiafava, City Clerk
(Seal)

STATE OF GEORGIA

RESOLUTION NO. _____

COUNTY OF FULTON

**AMENDMENT OF RESOLUTION NO. 09-10-107, A RESOLUTION TO CREATE A
STAKEHOLDER ADVISORY COMMITTEE FOR CITY OF MILTON
TRANSPORTATION PLAN BY ADDING COMMITTEE MEMBER FOR DISTRICT 5**

BE IT RESOLVED by the City Council of the City of Milton, GA while in regular session on the _____ day of November, 2009 at 6:00 pm. as follows:

SECTION 1. That Julie Pinckney (District 5) is hereby appointed to fill the unexpired term of Vic Jones commencing on November 2, 2009 and ending on December 31, 2009; and

SECTION 2. That this Resolution shall become effective upon its adoption.

RESOLVED this _____ day of November, 2009.

Approved:

Joe Lockwood, Mayor

Attest:

Jeanette R. Marchiafava, City Clerk



To: Honorable Mayor and City Council Members

From: Stacey Inglis, Finance Director

Date: November 2, 2009 Council Meeting

Agenda Item: Approval of a Resolution for the Supplemental Lease Agreement with Georgia Municipal Association for Police Vehicle Purchase

CMO (City Manager's Office) Recommendation:

Adopt the attached resolution authorizing a supplemental lease agreement in the amount of \$20,500 to fund the purchase of a Ford Explorer for the Police Chief.

Background:

As the police fleet ages, the vehicles typically see more mechanical issues that require extended service periods. Additionally, due to the routine emergency driving required of our police officers, there is the constant potential for an accident to occur which takes a vehicle out-of-service. When we are up to full staff (as we currently are), there are not enough vehicles in the police fleet to accommodate this eventuality. We are purchasing an administrative quality vehicle (fewer police-package accoutrements and a smaller, more fuel efficient engine) so that a patrol-capable (more police-package accoutrements and a V-8 pursuit engine) can be put into the patrol fleet as a spare.

A capital lease is designed to assist in the management of cash flow for capital expenditures. The vehicle is leased over its useful life and at the end of the lease term, the City will own it.

Discussion:

The resolution before you is a supplement of the Master Lease Agreement with the Georgia Municipal Association that was signed on February 13, 2007. This financing program utilizes GMA's economy-of-scale to offer cities the lowest rates possible. It also provides flexible payment structures and does not have pre-payment penalties, balloon payments or upfront fees.

For this lease supplement, the City will be charged a rate of 3.90% and have a term of three years. The annual installments are approximately \$7,200.

Alternatives:

An alternative to the lease program is the traditional cash outlay needed to purchase the vehicle.

Concurrent Review:

Chris Lagerbloom, City Manager
Paul Higbee, Attorney at Law

SCHEDULE F

RESOLUTION FOR SUPPLEMENTAL LEASES

A RESOLUTION TO AUTHORIZE AND
DIRECT AN OFFICER OF THE CITY
TO EXECUTE ONE OR MORE LEASE SUPPLEMENTS FOR A LEASE
OR LEASES UNDER THE GMA DIRECT LEASING PROGRAM; TO DESIGNATE
SUCH LEASES AS QUALIFIED TAX-EXEMPT OBLIGATIONS;
TO PROVIDE AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

BE IT RESOLVED by the City Council of the City of Milton, GA while in regular session on November ____, 2009 at 6:00 p.m. as follows:

WHEREAS, the City has entered into a Master Lease (the "Master Lease") dated as of February 13, 2007, with Georgia Municipal Association, Inc. for the leasing from time to time of certain equipment, machinery or other personal property pursuant to Supplemental Leases;

NOW THEREFORE, BE IT RESOLVED OR AS FOLLOWS BY THE GOVERNING BODY OF THE CITY:

1. The City Manager of the City is hereby authorized and directed to execute and deliver a Lease Supplement pursuant to the Master Lease to put into effect one or more leases for 2009 Ford Explorer (the "Leased Property"); said officer of the City is authorized and directed in the name and on behalf of the City to execute and deliver (i) one or more Lease Supplements for items of the Lease Property in substantially the form attached to the Master Lease, with such changes and additions as may be approved by said officer, and (ii) such other documents as may be deemed by such officer to be necessary or desirable to effect the purposes hereof or of the Master Lease, and such execution shall constitute conclusive evidence that the executed document has been authorized and approved hereby; the aforesaid officer is further authorized to do all things necessary or appropriate to effectuate the purposes hereof.
2. An appropriation from unappropriated and unreserved funds in the City's current operating budget is hereby made for the "Rentals" and the "Termination Payment" during the "Starting Term" under such Lease Supplements, and the budget of the City is hereby amended to reflect such appropriation to the extent necessary.
3. The lease or leases contemplated by the said Lease Supplements are hereby designated "Qualified Tax-Exempt Obligations" within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, and said officer shall be authorized to confirm such designation by execution of appropriate documents in connection therewith.
4. This authorization shall be effective immediately.

CLERK'S CERTIFICATE

The undersigned hereby certifies that she is the Clerk of the City of Milton, Georgia (the "City"), and that the foregoing is a true copy of the Resolution adopted by the governing body of the City at a meeting duly held on November 2, 2009, at which a quorum was present and acting throughout, and that the same has not been rescinded or modified and is now in full force and effect.

Given under the seal of the City, this November 2, 2009.

(SEAL)

Jeanette R. Marchiafava, City Clerk