

INTERGOVERNMENTAL AGREEMENT BETWEEN DEKALB COUNTY, GEORGIA AND THE CITY OF STONECREST, GEORGIA FOR RIGHT-OF-WAY ACQUISITION, AND FOR OTHER PURPOSES

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is entered into by and between DeKalb County, Georgia (“County”) and the City of Stonecrest, Georgia (“City”). The County and the City may be referred to herein as a “Party” or collectively as the “Parties.” The County and the City are executing this Agreement with respect to the following matters:

Recitals

WHEREAS, DeKalb County, Georgia is a constitutionally created political subdivision of the State of Georgia;

WHEREAS, the City of Stonecrest is a municipality created by the 2016 Georgia General Assembly pursuant to Senate Bill 208; and

WHEREAS, the County has been approved to receive funds from the Georgia Department of Transportation (“GDOT”) for certain transportation improvement projects to include the Panola Road Corridor Improvement Project–PI#0006879 per the Atlanta Regional Commission’s (“ARC”) Transportation Improvement Program (“the Project”); and

WHEREAS, the County and City desire to work cooperatively to effectuate the Project by the County to coincide with the City’s intent to make improvements to City roads, streets, and sidewalks; and

WHEREAS, the County and City desire to enter into this Intergovernmental Agreement (“Agreement”) to allow the County to execute the right-of-way acquisition phase of the Project in compliance with GDOT requirements and the City will reimburse the County for any and all expenses not covered by GDOT funds and/or any funds required to be reimbursed to GDOT in the event construction does not occur for the Project; and

WHEREAS, the County and the City desire to maintain a mutually beneficial, efficient and cooperative relationship that will promote the interests of the citizens of both jurisdictions.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, promises, terms, mutual obligations and conditions set forth below, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the County and the City agree as follows:

Terms

Section 1. Right-of-way acquisition services for the Project will consist of acquiring all necessary rights-of-way and easements on Panola Road from SR 212 (Browns Mill Road) to Fairington Road in accordance with the final plans authorized by GDOT via a notice to proceed to DeKalb County;

right-of-way acquisition services include, but are not limited to, title searches, appraisals, actual land and improvements acquisition, other acquisition services, relocation, demolition, closing and legal services related to any required condemnations for an estimated 146 parcels (“ROW Acquisition”).

Section 2. The County will remain the sponsor of the Project with GDOT. The County is wholly responsible for ensuring compliance with all policies, procedures and agreements with GDOT necessary to receive funding for the Project. The parties acknowledge that funding for the ROW Acquisition will be provided on a reimbursement basis to the County by GDOT and a portion of the ROW Acquisition will be paid through local funding from the County. The County portion shall be reimbursed to the County by the City as indicated in Section 4 below.

Section 3. The County will be responsible for the ROW Acquisition for the Project. The County shall be responsible for managing the ROW Acquisition and shall pay all required costs, to be reimbursed by the City pursuant to Section 4 below. Any change approved by GDOT to the scope of work for the ROW Acquisition, the ROW Acquisition price or the time period for completion of ROW Acquisition shall be adopted and approved by the Governing Authority of the County, and the City hereby agrees to provide reimbursement for any such changes.

Section 4. The City shall be responsible for reimbursing the County for the cost of the County’s portion of the ROW Acquisition budget approved by GDOT for the ROW Acquisition for the Project within the City’s corporate limits, to include costs to complete any final design tasks needed to obtain GDOT approval to bid the Project, and any other costs exceeding the amount reimbursed to the County by GDOT. The County will provide monthly reimbursement requests to the City including invoices for the work completed to date, proof of payment by the County, the amount to be reimbursed by GDOT and the amount to be reimbursed by the City. The City shall make reimbursement payments to the County no later than 30 days after submittal of the County’s monthly reimbursement request. Notwithstanding the foregoing or any other term or provision in this Agreement, the Parties acknowledge and agree that the total amount of costs, expenses or payments for which the City shall be obligated to reimburse the County for the ROW Acquisition and/or the Project shall not exceed two million dollars (\$2,000,000.00) (“City Reimbursement Cap”). The Parties further acknowledge and agree that the County shall not pay for any ROW Acquisition costs and/or Project costs that exceed the City Reimbursement Cap. If the Project is not completed, Section 6 below will govern the Parties financial obligations.

Section 5. The term of this Agreement shall begin on the Effective Date (which is the later of the dates each Party signs this Agreement) and shall continue for five years, with an automatic renewal for an additional year at the end of the five-year term, if the ROW Acquisition delineated herein has not been completed and finalized. This Agreement will terminate upon completion of the ROW Acquisition phase of the Project and payment by the City of all amounts due for reimbursement to the County.

Section 6. The Parties agree to mutually work with GDOT and ARC to obtain additional federal and/or state funding to complete the construction phase of the Project. If for any reason construction of the Project does not proceed or is not completed and GDOT requests reimbursement of the funds disbursed to the County for the Project, the City agrees to reimburse

the County for any funds the County is required to repay GDOT.

Section 7. All required notices shall be given by certified first class U.S. Mail, return receipt requested. The Parties agree to give each other non-binding duplicate facsimile notice. All notices sent to the addresses listed below shall be binding unless said address is changed in writing no less than fourteen (14) days before such notice is sent. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the Parties at the following addresses:

If to the County: Executive Assistant
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030
 Fax: 404-687-3585

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

If to the City: City Manager
 City of Stonecrest
 3120 Stonecrest Blvd.
 Stonecrest, Georgia 30038
 Fax:

With a copy to: City Attorney
 City of Stonecrest
 3120 Stonecrest Blvd.
 Stonecrest, Georgia 30038
 Fax:

Section 8. This Agreement may be extended beyond the term delineated herein by mutual written consent of both Parties so long as such extension is approved by official action of the City Council and approved by official action of the County Governing Authority.

Section 9. Neither Party shall assign any of the obligations or benefits of this Agreement.

Section 10. This Agreement constitutes the sole contract between the City and the County. The terms, conditions, and requirements of this Agreement may not be modified, except by Amendment. No verbal agreement or conversation with any officer, agent, or employee of either the County or the City, either before or after the execution of the Agreement, shall affect or modify any of the terms or obligations herein contained. No representations, oral or written, shall be binding on the Parties unless expressly incorporated herein. No Amendment shall be enforceable unless approved by official action of the City and County as provided by law or in this Agreement.

Section 11. If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed, and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature. This Agreement is governed by the laws of the state of Georgia without regard to conflicts of law principles thereof. Should any Party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that the agents of all Parties have participated in the preparation hereof. If any provision of this Agreement, or any portion thereof, should be ruled void, invalid, unenforceable or contrary to public policy by any court of competent jurisdiction, then any remaining portion of such provision and all other provisions of this Agreement shall survive and be applied, and any invalid or unenforceable portion shall be construed or reformed to preserve as such of the original words, terms, purpose and intent as shall be permitted by law.

Section 12. This Agreement shall inure to the benefit of and be binding upon the respective parties' successors.

Section 13. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be first negotiated in good faith by the parties via mediation. Mediation shall be held at the DeKalb Mediation Center, with a mediator selected by the parties. Mediation must be held prior to either party initiating formal legal action.

Section 14. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, DeKalb County and the City of Stonecrest have executed this Agreement in three counterparts, each to be considered as an original by their authorized representative, on the day and date hereinabove written.

DEKALB COUNTY, GEORGIA

ATTEST:

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia
Date: _____

BARBARA H. SANDERS-NORWOOD
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

WILLIAM "TED" RHINEHART
Deputy Chief Operating Officer of
Infrastructure, DeKalb County, Georgia

SHAHEEM M. WILLIAMS
Assistant County Attorney

CITY OF STONECREST, GEORGIA

ATTEST:

(SEAL)
JASON LARY
Mayor
Date: _____

BRENDA JAMES
City Clerk

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

MICHAEL HARRIS
City Manager

WINSTON DENMARK
City Attorney