

**INTERGOVERNMENTAL AGREEMENT
FOR PARK AND GREENSPACE
BETWEEN
DEKALB COUNTY, GEORGIA and
THE CITY OF TUCKER, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (hereinafter the “County”) and the City of Tucker, Georgia (herein after the “City”).

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

WHEREAS, The City is a municipality incorporated by the Georgia General Assembly in 2015; and

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

WHEREAS, in 2001, the County issued its Special Recreation Tax District General Obligation Bonds, Series 2001, in the aggregate principal amount of \$125 million (the “2001 Park Bonds”) for the purpose of acquiring land for additional parks and natural areas, preserving greenspace, protecting clean water and improving existing parks and for facilities within the unincorporated portion of the County as such boundaries existed in 2001;

WHEREAS, while the 2001 Park Bonds remained outstanding from 2001 through 2015, the owners of taxable property located within the current boundaries of the City paid ad valorem taxes to the County, and a portion of such taxes was used to pay a portion of the debt service on the 2001 Park Bonds;

WHEREAS, in recognition of the financial contribution made by such owners to the payment of the 2001 Park Bonds, the County desires to transfer a portion of the remaining proceeds of the 2001 Park Bonds to the City to assist the City with the repair and improvement of John’s Homestead Park, subject to the conditions and restrictions herein, for the mutual use and enjoyment by residents fo the City and the County;

WHEREAS, the County seeks to preserve parks and greenspace for the use and enjoyment of all County and City residents; and

NOW THEREFORE, in consideration of the following mutual obligations, the County and City (collectively hereinafter, the “Parties”) agree as follows:

**ARTICLE 1
PURPOSE, INTENT, AND CONSIDERATION**

1.1 The purpose of this Agreement is to provide the terms by which, in exchange for the negotiated and contracted for contribution, the City shall stabilize the facility located at 3071 Lawrenceville Highway, Tucker, DeKalb County, Georgia, consisting of approximately 1.41 acres and known as Parcel ID Number 18 225 01 038, as further described in the legal description attached hereto as Exhibit “A” (hereinafter, the “Property”).

1.2 Pursuant to the terms of this Agreement, the Parties agree to fund and develop park greenspace on the Property for the use and enjoyment of their respective residents. As part of this Property transfer, the City shall conduct all necessary and appropriate due diligence identified by the City Attorney. In exchange and consideration for the mutual promises in the provisions herein, the Parties hereby agree that the County shall contribute an amount equal to Ninety Eighty Thousand Seven Hundred Sixty Dollars and 48/100 Cents (\$98,760.48) from the proceeds of the 2001 Park Bonds (the 2001 Park Bonds Proceeds”), which shall include all necessary and appropriate due diligence costs and expenses, and the 2001 Park Bonds Proceeds shall be used by the City for the purpose of paying all or a portion of the costs of rehabilitating the Property.

1.3.1 As part of this Agreement, the City agrees that it shall:

- a. Stabilize the Property.
- b. Execute and enter into all covenants, restrictions, and easements to be recorded as outlined herein; and

ARTICLE 2 UTILITY EASEMENT

The City shall execute all easement documents requested by the County which are related to and necessary for the County to access, connect, and repair all stormwater, sewer, and water pipes, drainage, and utilities located on the Property (collectively, the “Utility Easement”). To be included therein, the Parties hereby agree that the Utility Easement shall not imply or constitute the acceptance of liability on the part of the County for the repair or maintenance of utilities located on the Property, and the City hereby waives, releases and, to the extent allowed by law, indemnifies the County, its officials, agents and employees from any and all claims related to or stemming from the Property or Utility Easement.

ARTICLE 3 COVENANTS AND RESTRICTIONS

The Parties further covenant and agree that the Property and deed are hereby restricted as follows:

- a) The Property shall be maintained by the City as a public park in perpetuity.
- b) Residents of the County shall have the same unfettered access to the Property, including but not limited to any trails, amenities, activities, services, equipment and facilities located therein, now or in the future, as is allowed for residents of the City at the same cost charged to City residents.
- c) The City shall only use the County’s contribution to the Property to stabilize the structure located on the Property. In the event that the City fails to stabilize the structure on the Property, (1) the City shall pay to the County an amount equal to the 2001 Park Bonds Proceeds transferred in this transaction; and (2) all other terms of this Agreement shall be null and void.

The Parties covenant and agree that the provisions in this Section shall be recorded as part of the real estate records and deed to the City and the obligations in this Section shall continue to be binding covenants upon the Parties after expiration or termination of this Agreement.

ARTICLE 4 MUTUAL WAIVER AND RELEASE

4.1 As of the effective date of the deed transferring the Property, the City hereby waives and releases, any right to pursue or initiate any legal claims against the County related to the transfer of the Property except for the right to assert claims to enforce the terms of this Agreement. The City agrees never to file any demand, claim, interpleader, charge, lawsuit or any other legal proceeding with any court, arbitration forum or government agency asserting any matter, claim or cause of action that is settled or released by this Agreement.

4.2 As of the effective date of the deed transferring the Property, the County hereby waives and releases any right to pursue or initiate any legal claims against the City related to the transfer of the Property except for the right to assert claims to enforce the terms of this Agreement. The County agrees never to file any demand, claim, interpleader, charge, lawsuit or any other legal proceeding with any court, arbitration forum or government agency asserting any matter, claim or cause of action that is settled or released by this Agreement.

ARTICLE 5 REMEDIES

The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

ARTICLE 6 NOTICES

All required notices shall be given by certified first class U.S. Mail, return receipt requested. The parties agree to give each other non-binding duplicate facsimile or e-mail notice. Future changes in address shall be effective upon written notice being given by the City to the County Executive Assistant or by the County to the City Manager via certified first class U.S. mail, return receipt requested. Notices shall be addressed to the parties at the following addresses:

If to the County: Executive Assistant
1300 Commerce Drive, 6th Floor
Decatur, Georgia 30030
(404) 371-2174
(404) 687-3585 (f)
zwilliams@dekalbcountyga.gov

With a copy to: County Attorney
1300 Commerce Drive, 5th Floor
Decatur, Georgia 30030
(404) 371-3011
(404) 371-3024 (f)
vernstes@dekalbcountyga.gov

If to the City: City Manager
City of Tucker
Tucker City Hall
4119 Adrian Street
Tucker, Georgia 30084
(678) 488-6063
thanlin@tuckerga.gov

With a copy to: City Attorney
City of Tucker
Tucker City Hall
4119 Adrian Street
Tucker, Georgia 30084

**ARTICLE 7
AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual consent of the Parties so long as such amendment is in writing and approved by official action of the City Council and approved by official action of the County Governing Authority.

**ARTICLE 8
NON-ASSIGNABILITY**

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

**ARTICLE 9
ENTIRE AGREEMENT**

The Parties acknowledge, one to the other, that the terms of this Agreement constitute the entire understanding and Agreement of the Parties regarding the subject matter of the Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement and supersedes all prior oral or written agreements or understandings. No representation oral or written not incorporated in this Agreement shall be binding upon the City or the County. All parties must sign any subsequent changes in the Agreement.

**ARTICLE 10
SEVERABILITY, VENUE AND ENFORCEABILITY**

If a court of competent jurisdiction renders any provision of this Agreement (or portion of a provision) to be invalid or otherwise unenforceable, that provision or portion of the provision will be severed and the remainder of this Agreement will continue in full force and effect as if the invalid provision or portion of the provision were not part of this Agreement. No action taken pursuant to this Agreement should be deemed to constitute a waiver of compliance with any representation, warranty, covenant or agreement contained in this Agreement and will not operate or be construed as a waiver of any subsequent breach, whether of a similar or dissimilar nature.

This Agreement is governed by the laws of the State of Georgia without regard to conflicts of law principles thereof. Should any part 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 thereof.

**ARTICLE 11
BINDING EFFECT**

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

**ARTICLE 12
COUNTERPARTS**

This agreement may be execute 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, the County and City have executed this Agreement through their duly authorized officers on the day and year indicated below.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the County and City have executed this Agreement on the ____ day of _____, 2020 through their duly authorized officers as of the signatures as indicated below.

DEKALB COUNTY, GEORGIA

ATTEST:

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

(SEAL)

Barbara H. Sanders-Norwood
Clerk of the Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Director
Recreation, Parks & Cultural Affairs

County Attorney

CITY OF TUCKER, GEORGIA

ATTEST:

July 6, 2020

Mayor

(SEAL)

City Clerk

APPROVED AS TO FORM:

City Attorney