

**INTERGOVERNMENTAL AGREEMENT**

**THIS INTERGOVERNMENTAL AGREEMENT** (this “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between **CITY OF TUCKER, GEORGIA**, a Georgia municipal corporation, whose mailing address is 4119 Adrian Street, Tucker, Georgia 30084 (“City”) and **DEKALB COUNTY**, a political subdivision of the State of Georgia, whose mailing address is 1300 Commerce Drive, Decatur, Georgia 30030 (“County”).

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

**WHEREAS**, County owns approximately 1.11 acres of land located in Land Lot 225 of the 18<sup>th</sup> District of County commonly known as 4316 Church Street, Tucker, Georgia which is more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the “Property”); and

**WHEREAS**, on November 17, 2009, County declared the Property as surplus, and authorized the sale of the Property to the highest responsible bidder, either by sealed bids or auction after due notice had been given; and

**WHEREAS**, County has not sold the Property and no auction has been conducted in an attempt to sell the Property; and

**WHEREAS**, County has now elected to proceed in conformity with O.C.G.A. § 36-9-3(a)(3)(A) which provides a specific exemption to the requirement that counties may only sell their real property to the highest responsible bidder, either by sealed bids or auction after due notice has been given, and allows counties to sell, transfer or convey real property to another body politic; and

**WHEREAS**, City is a body politic and has determined that acquiring the Property from the County for its current market value will advance the development of trade, commerce, industry and employment opportunities of County and will further the statutory purpose for which City was created; and

**WHEREAS**, the purchase and sale proposed in this Agreement will enhance and otherwise redevelop the Property, all for the promotion of the general welfare of the area served by County and City; and

**WHEREAS**, the Property is not subject to the provisions of O.C.G.A. § 36-31-11.1, as the Property is not “park” property or a “fire station” as defined in O.C.G.A. § 36-31-11.1 by virtue of that certain quitclaim deed from the Tucker Community Association to DeKalb County dated January 29, 1964, and recorded at Deed Book 1849 page 136, Dekalb County Records, conveying the property to DeKalb County; and

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

**WHEREAS**, the County Board of Commissioners previously declared the Property as surplus on November 17, 2009; and

**WHEREAS**, on September \_\_\_\_, 2020, the County Board of Commissioners approved a resolution allowing the County to sell the Property to the City for its market value; and

**WHEREAS**, as determined by appraisal dated February 6, 2020, prepared by Matthew J. Rahn, MAI, State of Georgia No. CG303999 for the firm Carr, Rahn & Associates, Inc., the Property has a fair market value of \$230,000.00; and

**WHEREAS**, the Chief Executive Officer of County or his designated representative has been authorized by the County Board of Commissioners to tender delivery of a quitclaim deed for the Property;

**NOW, THEREFORE**, for and in consideration of the mutual agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by County and the City, the parties hereby agree as follows:

1. General Representations by City. City makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Creation and Authority. City is a municipal corporation of the State of Georgia duly created and validly existing under the laws of the State of Georgia. City has all requisite power and authority under the laws of the State of Georgia to acquire and own the Property.

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

2. General Representations by County. County makes the following representations and warranties as the basis for the undertakings on its part herein contained:

(a) Creation and Authority. County is a political subdivision of the State of Georgia duly created and validly existing under the laws of the State of Georgia. County has all requisite power and authority under the laws of the State of Georgia to own and sell the Property.

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

3. Agreement to Sell and Purchase.

(a) Conveyance. County hereby agrees to convey the Property to City, free and clear of all mortgages, security deeds, other security instruments, liens, encumbrances and restrictions (including condemnation proceedings) of any kind and nature other than the following "Permitted Title Exceptions": (i) zoning ordinances affecting the Property, (ii) the matters shown on Exhibit B attached hereto. The purchase price for the Property (herein called the "Purchase Price") shall be **TWO HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$230,000.00)**. The Purchase Price, and subject to the prorations and adjustments hereinafter described, shall be paid by City to County at Closing (defined below) by wire delivery of funds through the Federal Reserve System to an account designated in writing by County.

(b) AS IS, WHERE IS. Subject to the foregoing Section 3(a), the Property is being sold in an "AS IS" condition and "WITH ALL FAULTS" as of the date of this Agreement and of Closing (as hereinafter defined). Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by County or any employee, staff member, commissioner, officer, legal representative, agent, person, firm, or any representative acting or purporting to act on behalf of County as to the condition of the Property or the value, or income potential thereof or as to the ability to have the Property rezoned from its current zoning designation to any other zoning designation, or to have the Property developed, or as to any other fact or condition that has or might affect the Property, now or in the future, or the condition, value, or income potential of the Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement, which along with the Resolutions passed by the Board of Commissioners of County as of \_\_\_\_\_, 2020 (which Resolution is attached hereto as Exhibit C and made a part hereof), alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for investigation, neither party relying upon any statement or representation by the other unless such statement or representation is specifically embodied or referenced in this Agreement. To the extent that County has provided to City information from any inspection, engineering or environmental reports concerning harmful or toxic substances, County makes no representations or warranties with

respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. City acknowledges that City has sole responsibility to inspect fully the Property and investigate all matters relevant thereto and City shall rely solely upon the results of City's own inspections or other information obtained or otherwise available to City, rather than any information that may have been, or could have been, provided by County to City.

(c) Objections to Title. City shall have thirty (30) days beginning on the date of the Agreement to examine title to the Property ("Due Diligence Period") and to furnish County a statement of objections to County's title to the Property, which objections, should they exist at the time of Closing would make County unable to convey at Closing title to the Property provided for in sub paragraph 3(d) below. County shall, after receipt by County of such written statement of objections, have until the date of Closing in which to cure all such objections and if necessary, the date of Closing shall be extended for the period required to allow County said thirty (30) days to cure or satisfy the objections. If County cannot, after reasonable efforts, cure such objections, then City may as its sole remedy, either (i) terminate this Agreement or (ii) waive such objections and proceed to Closing with no adjustment for such matters (and such matters shall be deemed approved and become Permitted Title Exceptions). County shall, at or prior to Closing, pay all taxes and assessments which constitute a lien against the Property (other than those not then due and payable) and pay all indebtedness secured by the Property and obtain cancellations of all loan instruments affecting the Property.

(d) Closing and Conveyance of the Property. At the Closing, each party shall execute and deliver all documents reasonably necessary to effect and complete the terms of this Agreement. City shall pay the Purchase Price to County and County shall convey to City, by quitclaim deed, good and marketable fee simple title to the Property, insurable as such by a title insurance company licensed to do business in the State of Georgia, subject only to (i) ad valorem taxes and assessments not then due and payable, (ii) zoning ordinances affecting the Property, (iii) general utility easements of record servicing the Property, (iv) those matters listed on Exhibit B attached hereto and (v) such other exceptions to title as City shall have approved or which have been deemed approved as provided above.

(e) Closing Costs and Prorations. At the Closing, County and City shall pay their own respective costs incurred with respect to the consummation of the purchase and sale of the Property as contemplated herein, including, without limitation, attorneys' fees. Notwithstanding the foregoing, it is expressly agreed that County shall pay all costs related to the payoff and cancellation of liens, if any (including, any mortgages, deeds to secure debt, deeds of trust or other monetary encumbrances or liens affecting the Property). City shall pay the costs of examination of title to the Property and owner's title insurance therefor, and City shall pay the cost of recording the Quitclaim Deed, any mortgage recording or intangibles tax and all other taxes, costs, fees or expenses relating to City's financing of the Property and the cost of the Survey. No prorations of property taxes shall be made as the parties hereby acknowledge and agree that the Property is exempt from all ad valorem taxes and special assessments. Stormwater fees shall be prorated as of the date of Closing.

(f) Possession of Property. County shall deliver possession of the Property to City at the time of Closing.

(g) Survey. City shall obtain, within thirty (30) days after the date of execution of this Agreement, a survey from a Georgia Registered Land Surveyor, showing the Property to be conveyed under this Agreement. Promptly upon receipt of said survey, City will cause County and their legal counsel to be provided with a copy thereof. The survey shall indicate the total number of acres of the Property to the nearest hundredth of an acre. The survey shall form the basis of the legal description to be used for the conveyance of the Property. In the event County disagrees with said survey, County shall have the right, at County's expense, to have a new survey of the Property prepared. In the event City does not accept County's survey, City's and County's surveyors shall name a third surveyor to survey the Property, the cost to be divided equally between County and City.

(h) Inspection. Commencing on the date hereof and continuing as long as this Agreement shall remain in force, City shall have the right to go on the Property personally or through agents, employers and contractors for the purpose of making boundary line and topographical surveys of same, soil tests, environmental tests or assessments, hydrological tests, boring and percolation tests and such other tests, analyses and investigations of the Property as City deems desirable.

City shall defend, reimburse, indemnify and hold County harmless from and against all losses, liabilities, damages, obligations, payments, costs, and expenses (including reasonable attorney's fees incurred in connection therewith) caused to or brought against County by any action or inaction of City or its agents which may be asserted against County by reason, in whole or in part, of the entry upon the Property by City or its agents or their respective inspection activities.

(i) Release. City, to the extent permitted by law, and except for willful acts by County, hereby releases County from any and all liability for any and all damages, penalties, fines, claims, demands, causes of action, liens, suits, liabilities, costs (including, without limitation, cleanup and remedial action costs), judgments and expenses of every kind and nature arising out of or in connection with any hazardous materials, substances, wastes or other environmentally regulated substances placed or located on, in or under the Property. This release shall survive the Closing.

4. Closing. The consummation of this Agreement (the "Closing") shall occur as follows:

(a) Within fifteen (15) days after expiration of the Due Diligence Period, and upon the satisfaction of the condition set forth on Exhibit D, attached hereto, but in any event no later than **[outside date]**.

(b) The Closing shall take place at the offices of Gregory, Doyle, Calhoun & Rogers, LLC, located at 2951 Flowers Road South, Suite, 220, Atlanta, GA 30341 at 11:00 a.m. local time, or at such other time and place as may be agreed upon in writing by both County and City. All funds to be paid at Closing shall be wired to Gregory, Doyle, Calhoun & Rogers trust account by 10:00 a.m. on the date of the Closing.

5. Notices. All notices, demands or requests required or permitted to be given pursuant to this Agreement shall be in writing and should be deemed to have been properly given or served and shall be effective upon being deposited in the United States mail, postpaid or registered or certified with return receipt requested or sent by overnight mail by a national recognized overnight mail carrier, provided, however, the time period in which a response to any notice, demand or request must be given shall commence on the date of receipt by the addressee thereof. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been given shall constitute receipt of the notice, demand or request sent. Any such notice, demand or request shall be sent to the following:

**City:**

City of Tucker  
Attn: City Manager  
4119 Adrian Street  
Tucker, Georgia 30084  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**WITH COPY TO:**

City of Tucker  
Attn: City Attorney  
4119 Adrian Street  
Tucker, Georgia 30084  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
E-mail: \_\_\_\_\_

**County:**

DeKalb County  
Attention: Zachary Williams  
1300 Commerce Drive, Suite 300  
Decatur, Georgia 30030  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: [zwilliams@dekalbcountyga.gov](mailto:zwilliams@dekalbcountyga.gov)

**WITH COPY TO:**

**Legal Counsel to County:**

Gregory, Doyle, Calhoun & Rogers, LLC  
Attention: Clay W. Reese, Esq.  
2951 Flowers Road South  
Suite 220  
Atlanta, GA 30341  
Phone: 770-457-7000

Fax: 770-455-3555  
Email: creese@gdcrlaw.com

6. Brokerage Commissions. Each party hereto represents to each other party hereto that it has not engaged any broker or agent in connection with this Agreement.

7. Miscellaneous.

(a) Time is of the essence of this Agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia and should any party institute suit concerning this Agreement, venue shall be in the Superior Court of DeKalb County, Georgia.

(c) The Special Stipulations attached hereto as Exhibit D are incorporated herein by reference as if fully set forth and are fully binding upon the City and County. In the event the terms of the Special Stipulations conflict with the terms of this Agreement, the terms of the Special Stipulations shall govern.

(d) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute one and the same instrument. Delivery of any signature page via telecopy or other electronic facsimile transmission shall be deemed equivalent to physical delivery of the original signature page. Any signature page of any counterpart hereof, whether bearing an original signature or an electronic facsimile transmission of a signature, may be appended to any other counterpart hereof to form a completely executed counterpart hereof.

(e) 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.

(f) This Agreement shall survive the Closing and shall not be merged into any of the documents executed at Closing. Time is of the essence herein.

(g) This Agreement shall apply to, inure to the benefit of and be binding upon and enforceable against County and the City.

(h) No recourse shall be had for the enforcement of any obligation, covenant, promise, or agreement of County contained in this Agreement or for any claim based hereon or otherwise in respect hereof against any member of a governing body, officer, or employee, as such, in his/her individual capacity, past, present, or future, of County, or any successor body, whether by virtue of any constitutional provision, statute, or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being expressly agreed and understood that, as to County, this Agreement is solely a corporate obligation of County payable only from the funds and assets of County herein specifically provided to be subject to such obligation and that no personal liability

September 13, 2020

whatsoever shall attach to, or be incurred by, any member of a governing body, officer, or employee, as such, past, present, or future, of County, and that all personal liability of that character against every such member of a governing body, officer, and employee is, by the execution of this Agreement and as a condition of and as part of the consideration for the execution of this Agreement, expressly waived and released. The immunity of members of a governing body, officers, and employees of County under the provisions contained in this Section shall survive the Closing and the expiration and/or termination of this Agreement.

*[signatures begin on following page]*



*[signature page to Intergovernmental Agreement]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement under seal as of the first date written above.

As to the City executed  
in the presence of:

**CITY:**

**CITY OF TUCKER, GEORGIA**, a  
municipal corporation

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

**[EXECUTION CONTINUED ON FOLLOWING PAGE]**

*[signature page to Intergovernmental Agreement]*

As to County, executed  
in the presence of:

**COUNTY:**

DEKALB COUNTY, a political  
Subdivision of the State of Georgia

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Chief Executive Officer

(SEAL)

**ATTEST:**

By: \_\_\_\_\_  
BARBARA H. SANDERS, CCC  
Clerk of the Chief Executive Officer  
and Board of Commissioners of  
DeKalb County, Georgia

**[EXECUTION CONTINUED ON FOLLOWING PAGE]**

*[signature page for Intergovernmental Agreement]*

**APPROVED AS TO FORM:  
GREGORY, DOYLE, CALHOUN &  
ROGERS, LLC**

By: \_\_\_\_\_  
Printed Name: Clay W. Reese  
Title: Member  
DeKalb County, Georgia

**APPROVED AS TO SUBSTANCE:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### Legal Description

All that tract or parcel of land lying and being in Land Lot 225 of the 18<sup>th</sup> District of DeKalb County, Georgia and being more particularly described as follows:

Beginning at the iron on the northerly side of a dirt street, known as Church Street, formerly known as Club Drive, which runs parallel to and just south of LaVista Road, in Tucker, Georgia and for the purpose of this description, Church Street is deemed to have a 50 foot right-of-way. Said point of beginning being 375 feet easterly from the northeast corner of Fourth Street and said Church Street, based on Fourth Street having a 60 foot right-of-way, (said beginning point being 380.1 feet easterly from the northeast corner of Fourth Street and said Church Street, based on Fourth Street having a 50 foot right-of-way); thence northerly along the line of property belonging to the Tucker Methodist Church, 177 feet to an iron pin; then easterly, forming an interior angle of 96 degrees 35 minutes with the preceding course, 75 feet to an iron pin; thence continuing easterly, forming an interior angle of 174 degrees 54 minutes with the preceding course, 75 feet to an iron pin; thence continuing easterly, forming an interior angle of 178 degrees 21 minutes with the preceding course, 125 feet to an iron pin; thence southerly, forming an interior angle of 89 degrees 50 minutes with the preceding course, 201 feet to an iron pin on the northerly side of said Church Street; thence westerly along the northerly side of said Church Street, 274.1 feet to the iron pin at the point of beginning, and being described in accordance with a plat of survey made by B.J. Goble, Jr., dated January 16, 1964.

This is the same property transferred to DeKalb County from the Tucker Community Association, Inc., dated January 29, 1964 and recorded in Deed Book 1849, Page 136. This property is currently known as tax parcel 18 225 05 013, 4316 Church Street, Tucker, Georgia.

**EXHIBIT B**

**PERMITTED TITLE EXCEPTIONS**

1. All taxes for the year 2021 and subsequent years, not yet due and payable.

September 13, 2020

**EXHIBIT C**

**COUNTY RESOLUTION AUTHORIZING THE SALE**

**EXHIBIT D**

**SPECIAL STIPULATIONS**

This Agreement is made contingent on the occurrence and satisfaction of all of the following terms and conditions as set forth and referenced herein as Special Stipulations. In the event that any of the following terms and conditions do not occur, this Agreement shall terminate, and the parties shall be relieved of any further obligations hereunder. The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph in the Agreement, shall control:

1. County obtaining the approval of the Board of Commissioners of DeKalb County authorizing the sale of the Property to the City.
2. City obtaining the approval of the City Council of the City of Tucker authorizing the acquisition of the Property from the County for the Purchase Price.