

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
DEKALB COUNTY, GEORGIA and
THE CITY OF BROOKHAVEN, GEORGIA**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia (“County”) and the City of Brookhaven, Georgia (“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 2012; 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, 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 (collective, 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 County’s negotiated and contracted for contribution to the Top End I-285 Regional Trails Master Plan the City of Brookhaven will work with Kimley-Horn and Associates, Inc. (“Kimley-Horn, Inc.”) to develop a master plan with the Georgia Department of Transportation’s (“GDOT”) to integrate pedestrian trails along the north end of Interstate 285. The master plan will contemplate transportation alternatives for City and County citizens, reduce automobile congestion and promote wellness and exercise.

1.2 Pursuant to the terms of this Agreement, the City agrees to coordinate and distribute funding to the Kimley-Horn, Inc. to develop a master plan to integrate pedestrian trails into GDOT improvements located along the north end of Interstate 285 for the use and enjoyment of City and County residents. In exchange and consideration for the mutual terms and provisions herein, the parties hereby agree that the County shall contribute a total amount not to exceed Thirty Thousand Dollars and Zero Cents (\$30,000.00).

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

- a. Ensure that the County is named as a sponsor on the Peachtree Gateway Partnership website;

- b. Provide the County with copies the final master plan prior to submission to the GDOT; and
- c. Return all funding to the County if Kimley-Horn, Inc. fails to complete and submit a master plan to GDOT by the time this Agreement is terminated.

**ARTICLE 2
TERM & TERMINATION**

2.1 This Agreement shall commence on the effective date set forth herein for a period of one year (the “Term”), beginning on April 1, 2021 and shall automatically terminate on March 31, 2022, unless otherwise terminated as provided herein. The parties reserve the right to renew this Agreement by amending said Term in writing subject to approval by the applicable governing authorities.

2.2. The County or the City may terminate this Agreement without cause at its option by providing thirty (30) days written notice to the other party.

**ARTICLE 3
MUTUAL WAIVER AND RELEASE**

3.1 As of the effective date of this Agreement, the City hereby waives and releases, any right to pursue or initiate any legal claims against the County related to the distribution of funding 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.

3.2 As of the effective date of this Agreement, the County hereby waives and releases any right to pursue or initiate any legal claims against the City related to the distribution of funding 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 4
REMEDIES**

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

**ARTICLE 5
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 (COO)
 1300 Commerce Drive, 6th Floor
 Decatur, Georgia 30030

With a copy to: County Attorney
 1300 Commerce Drive, 5th Floor
 Decatur, Georgia 30030

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

With a copy to: City Attorney
 City of Brookhaven
 Brookhaven City Hall
 4362 Peachtree Road, NE
 Brookhaven, Georgia 30319

**ARTICLE 6
AMENDMENT OF AGREEMENT**

This Agreement may be amended at any time by mutual consent of both 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 7
NON-ASSIGNABILITY**

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

**ARTICLE 8
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 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, the County and City have executed this Agreement through their duly authorized officers on the day and year indicated below.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the County and City have executed this Agreement on the ____ day of _____, 2021 through their duly authorized officers as of the signatures as indicated below.

DEKALB COUNTY, GEORGIA

ATTEST:

(SEAL)

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

Barbara H. Sanders-Norwood
Clerk of the Chief Executive Officer and the
Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Name:

County Attorney

CITY OF BROOKHAVEN, GEORGIA

ATTEST:

(SEAL)

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney