



DeKalb County Government

Manuel J. Maloof Center
1300 Commerce Drive
Decatur, Georgia 30030

Agenda Item Substitute

File #: 2019-4375
File Status: Preliminary Item

11/19/2019

Public Hearing: YES NO

Department: Recreation, Parks and Cultural Affairs

SUBJECT: Conveyance of real property to and intergovernmental agreement with the City of Avondale Estates.

Commission District(s): Districts 4 and 6

Lanier Gardens Park Conveyance to the City of Avondale

Information Contact: Chuck O. Ellis, Director RPCA

Phone Number: 404-371-2475

PURPOSE:

To convey to the City of Avondale Estates the 1.3 acre property located at 2699 East College Avenue, 714 Arcadia Avenue, and 752 Arcadia Avenue, Avondale Estates, Georgia, known as Lanier Gardens, and to approve the intergovernmental agreement between DeKalb County and the City of Avondale Estates outlining the terms of this transaction.

NEED/IMPACT:

The City requested this conveyance and shall be responsible for the continued maintenance of Lanier Gardens for continued mutual public use by city and county residents.

FISCAL IMPACT:

Pursuant to intergovernmental agreement.

RECOMMENDATION:

To approve the conveyance of the 1.3 acre property located at 2699 East College Avenue, 714 Arcadia Avenue, and 752 Arcadia Avenue, Avondale Estates, Georgia, known as Lanier Gardens, to the City of Avondale Estates; to approve the intergovernmental agreement between DeKalb County and the City of Avondale Estates that outlines the terms of this transaction, subject to final review by the County Attorney; and to authorize the chief executive officer to execute all necessary documents to complete the action.

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

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is entered into by and between DeKalb County, Georgia (“County”) and the City of Avondale Estates, Georgia (“City”).

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

WHEREAS, the City is a municipality incorporated by the Georgia General Assembly;

WHEREAS, the County and City desire to preserve park 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 **Property description.** The purpose of this Agreement is to provide the terms by which the County shall convey and the City shall own the 1.3 acre property located at 2699 East College Avenue (Tax Parcel ID No. 15-248-07-001), 714 Arcadia Avenue (Tax Parcel ID No. 15-248-07-002), and 752 Arcadia Avenue (Tax Parcel ID No. 15-248-08-001), Avondale Estates, GA, 30002, also known as Lanier Gardens, as reflected and attached hereto as Exhibit “A” (hereinafter, the “Property”).

1.2 **Due Diligence.** In exchange for good and valuable consideration, acknowledged by the parties herein, the Property shall be conveyed from the County to the City. The City shall be responsible for conducting and completing all necessary and appropriate due diligence, including any environmental studies, as identified by the City or the City Attorney.

1.3 **Maintenance.** The City agrees to maintain the Property as a public park and greenspace in perpetuity, subject to the covenants and restrictions in this Agreement. The City agrees to provide all park services associated with the Property; to preserve park greenspace on the Property for the mutual use and enjoyment of the City and County’s respective residents; and to maintain the Property and any park or recreational facilities used therefore whether now or hereinafter constructed.

1.4 **Monument.** The City agrees to keep and maintain the monument located on the Property within the bounds of the Property in perpetuity. The City agrees to provide all maintenance and upkeep associated with the monument and will incorporate the monument into all current and future master plans for the Property.

1.5 **Covenants and Restrictions.** The Parties further covenant and agree that the Property and deed are hereby restricted in perpetuity as follows:

- a) The Property shall be acquired by the City and owned and maintained by the City as a public park in perpetuity;
- b) Residents of the County shall have the same unfettered access to the Property as a public park, including but not limited to any and all greenspace, trails, amenities, activities, services, equipment and facilities located therein, now or in the future, as is allowed for residents of the County at the same cost charged to residents of the City; and
- c) The County and City covenant and agree that the provisions and restrictions in this Agreement shall be a binding restrictive covenant, shall run with the land, and shall be recorded as part of the real estate records cross-referencing the City's deed for this Property. All obligations and restrictions herein shall continue to be binding covenants upon the Property that run with the land after expiration or termination of this Agreement.

1.6 Term. This agreement shall be effective upon execution and shall automatically renew each subsequent year for a period not exceeding fifty (50) years unless amended or terminated as provided herein.

ARTICLE 2 MUTUAL WAIVER AND RELEASE

2.1 The City hereby waives and releases, any right to pursue or initiate any legal claims against the County related to 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.

2.2 The County hereby waives and releases any right to pursue or initiate any legal claims against the City related to 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 3 REMEDIES

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

ARTICLE 4 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 electronic (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

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

If to the City:

City Manager
City of Avondale Estates
21 North Avondale Estates Plaza
Avondale Estates, GA 30002

With a copy to:
City Attorney
City of Avondale Estates
21 North Avondale Estates Plaza
Avondale Estates, GA 30002

**ARTICLE 5
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 6
NON-ASSIGNABILITY**

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

**ARTICLE 7
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 8
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 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 thereof.

**ARTICLE 9
BINDING EFFECT**

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

**ARTICLE 10
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.

[SIGNATURE PAGE FOLLOW]

IN WITNESS WHEREOF, the County and City have executed this Agreement through their duly authorized officers as of the _____ day of _____, 2019, based on 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:

Chuck Ellis
Director, Parks & Recreation

County Attorney

CITY OF AVONDALE ESTATES, GEORGIA

ATTEST:

Frank Auman
Mayor

(SEAL)

Bonnie Warne
City Clerk

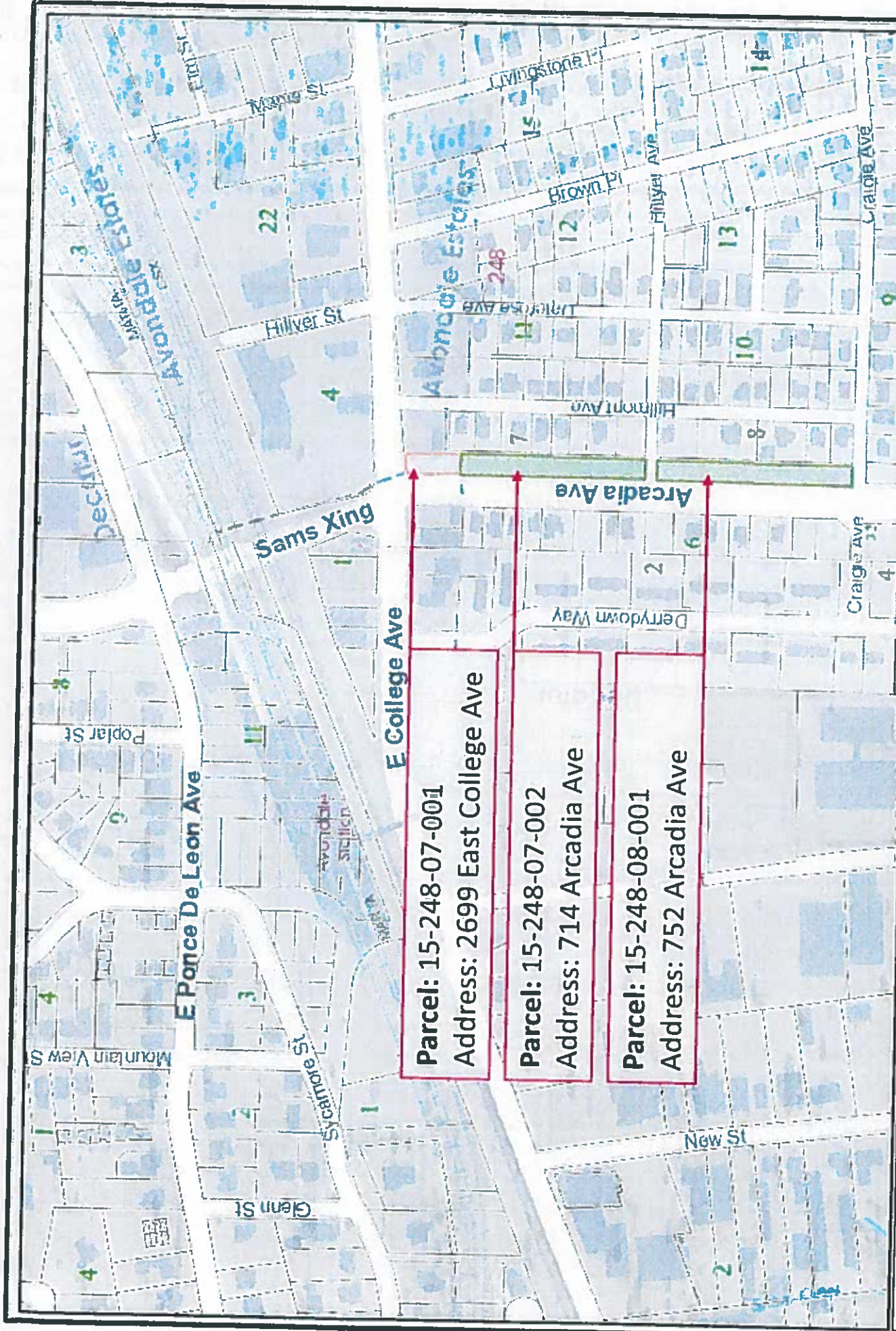
APPROVED AS TO FORM:

Brian Anderson
City Attorney

November 14, 2019

Exhibit "A"

Property Map



- Parcel: 15-248-07-001
Address: 2699 East College Ave
- Parcel: 15-248-07-002
Address: 714 Arcadia Ave
- Parcel: 15-248-08-001
Address: 752 Arcadia Ave

De Kalb County GIS Disclaimer
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Lanier Gardens Park

0 0.0175 0.035 0.07 0.105 0.14 mi

Date Printed: 3/5/2019

