

**INTERGOVERNMENTAL AGREEMENT  
FOR THE TRANSFER OF THE REMINGTON ROAD PROPERTY  
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 City and County have entered into a contract for the purchase of 1664 Remington Road to be authorized and paid from park bond proceeds from DeKalb County, Georgia which have been earmarked for greenspace, park, recreational acquisition and development; 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 negotiated and contracted for contribution, the City shall purchase the future park property known as 1664 Remington Road, Brookhaven, DeKalb County, Georgia, consisting of approximately 1.73 acres and known as Parcel ID Number 18 326 01 047, as further described per the legal description attached hereto as Exhibit "A" (hereinafter, the "Property").

1.2 Pursuant to the terms of this Agreement, the County and City 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 terms and provisions herein, the parties hereby agree that the County shall contribute a total amount not to exceed Three Hundred and Fifty-Three Thousand Dollars and Zero Cents (\$353,400) (hereinafter the "Purchase Price") which shall include all necessary and appropriate due diligence costs and expenses.

- 1.3 As part of this Agreement, the City agrees that it shall:
- a. Execute and enter into all covenants, restrictions, and easements to be recorded as outlined herein; and
  - b. Return the Property to its natural state as soon as practicable in cooperation with the City Arborist.

## **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 Remington Road 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 returned to its natural state and 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; and
- c) The City shall not construct any parking lot, parking structure, or facility on the Property. In the event that the City constructs a parking lot or parking structure for motor vehicles, the Property and all park bond proceeds shall be transferred back to DeKalb County, Georgia and all other terms of this Agreement shall be null and void.

The County and City 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 (COO) 1300 Commerce Drive, 6 <sup>th</sup> Floor Decatur, Georgia 30030
With a copy to:	County Attorney 1300 Commerce Drive, 5 <sup>th</sup> 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 7  
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 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 PAGES FOLLOW]

**DEKALB COUNTY, GEORGIA**

\_\_\_\_\_  
Michael L. Thurmond  
Chief Executive Officer  
DeKalb County, Georgia

(SEAL)

**ATTEST:**

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

**APPROVED AS TO SUBSTANCE:**

\_\_\_\_\_  
Zachary L. Williams  
Executive Assistant/Chief Operating Officer

**APPROVED AS TO FORM:**

\_\_\_\_\_  
O.V. Brantley  
County Attorney

**CITY OF BROOKHAVEN, GEORGIA**

\_\_\_\_\_  
Mayor John Ernst

(SEAL)

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney