

**INTERGOVERNMENTAL AGREEMENT
FOR THE PURCHASE AND DEVELOPMENT OF PARK GREENSPACE AT THE PINE
GROVE AVENUE 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 has negotiated a contract for the purchase of 1174 Pine Grove Avenue NE to be authorized and paid partially from park bond proceeds from DeKalb County, Georgia’s bonds issued in 2001 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 contracted-for contribution, the City shall purchase, for use and development as future park greenspace, property located at 1174 Pine Grove Avenue NE, Brookhaven, DeKalb County, Georgia, consisting of approximately 0.8 acres and known as Parcel ID Number 18 200 08 022, 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 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 Four Hundred Thousand Dollars and Zero Cents (\$400,000.00) (hereinafter the “Purchase Price”). If the Property has not been developed and opened to all County residents as a park greenspace within two years of execution of this Intergovernmental Agreement, the

City shall return the \$400,000.00 Purchase Price back to the County before the end of the 25th month.

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

- a. Develop the Property as a future park greenspace; and
- b. Execute and enter into all covenants, restrictions, and easements to be recorded as outlined herein; and
- c. Develop the Property as a park greenspace 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 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 developed as a park 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.
- c) The City shall not construct any parking lot or parking facility on the Property. In the event that the City constructs parking spaces 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 Property and the obligations in this Section shall continue to be binding covenants upon the Parties after expiration or termination of this Agreement.

830 Glenwood Ave., SW
Suite 510-220
Atlanta, GA 30316

**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.

[SIGNATURE PAGE FOLLOWS]

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

DEKALB COUNTY, GEORGIA

ATTEST:

Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

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

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Zachary L. Williams
Executive Assistant/Chief Operating Officer

Viviane H. Ernstes
County Attorney

CITY OF BROOKHAVEN, GEORGIA

ATTEST:

Mayor John Ernst

City Clerk

APPROVED AS TO FORM:

City Attorney