

INTERGOVERNMENTAL AGREEMENT
Between
DEKALB COUNTY, GEORGIA and
THE CITY OF DECATUR, GEORGIA
for GREENSPACE FACILITIES AT CHILDREN'S HOME PROPERTY

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between DeKalb County, Georgia ("County") and the City of Decatur, 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; 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, pursuant to Article IX, Section III, Paragraph 1 of the Constitution of the State of Georgia, the County and City are authorized to enter into intergovernmental agreements for periods not exceeding fifty (50) years for joint services, for the provision of services, or for the joint or separate use of facilities or equipment if such contract deals with activities, services and facilities that the contracting parties are authorized by law to undertake or provide, including; and

WHEREAS, the City, through the City of Decatur Public Facilities Authority, is in the process of acquiring approximately 77 acres of largely undeveloped property in unincorporated DeKalb County known as the United Methodist Children's Home, which consists of DeKalb County tax parcel i.d. numbers 15-233-07-001 and 15-234-05-108 (the "Children's Home Property"); and

WHEREAS, the City intends to use a large portion of the Children's Home Property for the provision of greenspace, which will be enjoyed and utilized by the citizens of Decatur and DeKalb County; and

WHEREAS, the portion of the Children's Home Property that the City intends to set aside as greenspace consists of approximately 22.5 acres in the northeast portion of the Children's Home Property, which includes forest land, a stream, a small lake and wetlands (the "Greenspace Area"); and

WHEREAS, the Greenspace Area is depicted on the attached Exhibit A; and

WHEREAS, the County desires to use certain proceeds from the Special Recreation Tax District General Obligation Bonds, Series 2001 for acquisition, construction and equipping of certain greenspace, park, and trail projects at the Children's Home Property (the "Projects") (as such term is defined below); and

WHEREAS, the County and City seek to preserve parks, natural areas and greenspace for the use and enjoyment of all County and City residents; and

NOW THEREFORE, in consideration of the following mutual obligations, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and City (collective, the "Parties") agree as follows:

**ARTICLE 1
PAYMENT**

On or before July 26, 2017, the County shall pay to the City **Eight Hundred Thousand Dollars (\$800,000)** from the proceeds of the Special Recreation Tax District General Obligation Bonds, Series 2001 (the "Funds"), which Funds shall be used by the City solely for the purpose of undertaking the Projects, as such term is defined below.

**ARTICLE 2
PROJECTS**

Within a reasonable amount of time, but not more than ten (10) years from the date of receipt of the funds, the City will undertake certain greenspace, pond and trail projects within the Greenspace Area, which are listed on Exhibit B (the "Projects"). Such Projects shall be owned and maintained by the City and/or the City of Decatur Public Facilities Authority.

**ARTICLE 3
USE BY DEKALB RESIDENTS**

The City agrees that it shall allow the residents of the unincorporated area of DeKalb County the same access to the Greenspace Area as will be allowed for residents of the City and at the same cost charged to City residents, if any. The County expressly acknowledges that the City intends to annex the Children's Home Property following acquisition, expressly acknowledges and agrees that such annexation will not affect the validity of the use of the Funds by the City pursuant to this Agreement, and covenants that it will not seek return of all or any portion of the Funds on the basis of such annexation.

**ARTICLE 4
COOPERATION**

The City expressly acknowledges and concurs with the County's desire to provide connectivity between County trails, paths, and sidewalks and those that are currently existing or that may be constructed in the future in the Greenspace Area. Therefore, The City agrees to cooperate in good faith with the County to provide such connectivity and to execute all reasonably necessary instruments to accomplish such connectivity, including executing permanent easements and temporary construction easements that may be requested by the County for access and/or connection to such trails, paths, and sidewalks, so long as such connectivity is determined by the City's engineers and professional designers to be technically feasible and advisable within the Greenspace Area.

**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
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 Decatur
509 N. McDonough Street
Decatur, GA 30030

With a copy to: City Attorney
City of Decatur
Wilson Morton & Downs, LLC
Two Decatur Town Center
125 Clairemont Avenue, Suite 420
Decatur, GA 30030

**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. Notwithstanding the foregoing, the City may assign its interest in this Agreement to the City of Decatur Public Facilities Authority.

**ARTICLE 8
ENTIRE 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 9
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 provision of this Agreement require judicial interpretation, it is agreed that the arbitrator or 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 10
REMEDIES AND DISPUTE RESOLUTION**

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

10.2 Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

10.3 Claims shall be heard by a single arbitrator, unless the claim amount exceeds \$500,000, in which case the dispute shall be heard by a panel of three arbitrators. Where the claim is to be heard by single arbitrator, the arbitrator shall be selected pursuant to the list process provided for in the Commercial Arbitration Rules unless the parties to the arbitration are able to select an arbitrator independently by mutual agreement. The arbitrator shall be a lawyer with at least 10 years of active practice in commercial law and/or local government law. Where the claim is to be heard by a panel of three arbitrators, selection shall occur as follows. Within 15 days after the commencement of arbitration, the city or cities party to the arbitration shall select one person to act as arbitrator and the County shall select one person to act as an arbitrator. The two selected arbitrators shall then select a third arbitrator within ten days of their appointment. If the arbitrators selected by the parties are unable or fail to agree upon the third arbitrator, the third arbitrator shall be selected by the American Arbitration Association. This third arbitrator shall be a former judge in the State or Superior Courts of Georgia or a former federal district judge.

10.4 The arbitration shall be governed by the laws of the State of Georgia.

10.5 The standard provisions of the Commercial Rules shall apply.

10.6 Arbitrators will have the authority to allocate the costs of the arbitration process among the parties, but will only have the authority to allocate attorneys' fees if a particular law permits them to do so, specifically including O.C.G.A. § 9-15-14.

10.7 The award of the arbitrators shall be accompanied by a written opinion that includes express findings of fact and conclusions of law.

**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.

DEKALB COUNTY, GEORGIA

By: _____ (SEAL)
Michael L. Thurmond
Chief Executive Officer
DeKalb County, Georgia

Date: _____

ATTEST:

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

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM AND LEGAL VALIDITY:

Zachary L. Williams
Executive Assistant/Chief Operating Officer

O.V. Brantley
County Attorney

June 19, 2017

CITY OF DECATUR, GEORGIA

By: _____ (SEAL)

Date: _____

ATTEST:

City Clerk

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM AND LEGAL VALIDITY:

Peggy Merriss
City Manager

Bryan A. Downs
City Attorney

EXHIBIT B

PROJECTS

1. Construction of new walking, biking and/or pedestrian trails.
2. Improvements to existing walking trails.
3. Preparation of master plan for greenspace areas and walking, biking and pedestrian trails.
4. Removal of invasive species.
5. Improvements for pond access, including construction of observation deck.
6. Improvements to pond.