

1. Agenda

Documents:

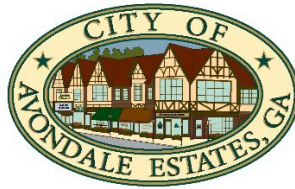
[BOMC-9-28-22-RM-AGENDA.PDF](#)

2. Meeting Called To Order/Adoption Of Agenda
3. Commissioner Comments
4. Recognition Of Moricle Family's Record-Breaking Sticker Ball
5. Approval Of Minutes
6. Consider Approval Of An Intergovernmental Agreement With DeKalb County To Acquire The Park/Greenspace Known As Lanier Gardens

Documents:

[LANIER GARDENS IGA 9.22.22 DRAFT.PDF](#)

7. Public Comment
8. Adjournment



**BOARD OF MAYOR AND COMMISSIONERS  
REGULAR MEETING  
SEPTEMBER 28<sup>TH</sup>, 2022  
5:30 P.M.**

**AGENDA**

- Item #1 Meeting Called to Order
- Item #2 Adoption of Agenda
- Item #3 **Commissioner Comments**
- Item #4 **Recognition of Moricle Family's Record-Breaking Sticker Ball**
- Item #5 **Approval of Minutes**  
September 14<sup>th</sup> regular meeting  
September 14<sup>th</sup> work session
- Item #6 **Consider Approval of an Intergovernmental Agreement with DeKalb County to Acquire the Park/Greenspace Known as Lanier Gardens**
- Item #7 Public Comment
- Item #8 Adjournment

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

**WHEREAS**, the City is engaged in a "Complete Streets" project with the Georgia Department of Transportation to improve E. College Avenue and a small portion of the "Lanier Gardens" park property is needed for right-of-way in connection with such project.

**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 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 and right 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.

1.5 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. Notice 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.

**ARTICLES  
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 executed 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 as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022, based on the signatures as indicated below.

**DEKALB COUNTY, GEORGIA**

**ATTEST:**

\_\_\_\_\_(SEAL)

Michael. Thurmond  
Chief Executive Officer  
DeKalb County, Georgia

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:**

\_\_\_\_\_(SEAL)

Jonathan Elmore,  
Mayor

Gina Hill,  
City Clerk

**APPROVED AS TO FORM:**

Stephen Quinn  
City Attorney

**Exhibit "A"**

**Property Map**



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