

After Recording Return To:

Fincher Denmark LLC
100 Hartsfield Centre Pkwy
Atlanta, Georgia 30349
Attention: Alicia Thompson, Esq.

**STATE OF GEORGIA
COUNTY OF DEKALB**

UTILITY USE AND EASEMENT AGREEMENT

THIS UTILITY USE AND EASEMENT AGREEMENT (this “Agreement”) is made and entered into this ____ day of _____, 2023 by and between CITY OF STONECREST, GEORGIA, (“Grantor”), a political subdivision of the State of Georgia, and EAST METRO DEKALB COMMUNITY IMPROVEMENT DISTRICT (“Grantee”), a district in the political subdivision of the State of Georgia (collectively, the “Parties”).

W I T N E S S E T H:

WHEREAS, Grantor is the owner of certain real property located in Dekalb County, Georgia (“County”) and Grantee seeks to provide camera services within the right-of-way of the City, being more particularly described on Exhibit “A” attached hereto and by this reference made a part hereof (the “Project Parcel”);

WHEREAS, Grantee desires to establish access to right-of-ways within the City to install traffic cameras on intersections for the substantial improvements on the Project Parcel in connection with the installations (the “Project Parcel Improvements”);

WHEREAS, in order to enable Grantee to construct, or cause to be constructed, the Project Parcel Improvements on the Project Parcel, Grantee will require access, and the ability to connect to certain utility lines located on other property owned by Grantor as more particularly set forth herein; and

WHEREAS, Grantor wishes to grant, and Grantee wishes to receive, certain easements, hereinafter described, over, upon and across the property below described.

NOW, THEREFORE, in consideration of Ten and No/100ths Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants and benefits to be provided hereunder, the parties hereto agree as follows:

1. UTILITY EASEMENT. Grantor hereby declares, establishes, creates and grants to Grantee a non-exclusive perpetual easement for the installation of cameras and any other utility necessary to operate the Project Parcel Improvements (the “Utility Easement”), which such grant shall include ingress and egress over, through, under, upon and across the Project Parcel and the real property described in Exhibit “B” attached hereto and by this reference made a part hereof (the “Utility Easement Area”), which such Utility Easement shall be appurtenant to the Project Parcel. Grantee shall have the right to publicly dedicate any of the connecting utility lines installed pursuant to this Utility Easement. The Utility Easement shall include a perpetual right for Grantee to install, replace and maintain any cameras and connections constructed in the Utility Easement Area.

2. GENERAL ACCESS EASEMENT. Grantor hereby grants and conveys to Grantee a non-exclusive perpetual easement and right of way on, over and across that intersections, roadways and right-of-ways upon the Easement Area for the purpose of camera surveillance of pedestrians and vehicles, whether by day or by night, to go, pass, repass, egress, ingress, over, upon and along, and giving access to, to and from such private rights of way, now or hereafter existing, to the Project Parcel and adjacent public rights of way. Grantor hereby specifically retains the right, from time to time, to relocate any of the above roadways; provided, however, that in no event shall such relocation prevent or deny Grantee access to and from the Project Parcel as provided in this Section 2.

3. INDEMNIFICATION OF GRANTOR. Grantee hereby indemnifies and holds harmless Grantor from any and all claims, liabilities, demands, costs and expenses, including court costs and attorneys’ fees actually incurred at standard hourly rates, arising out of or related to any claim, liability or damage incurred by Grantor as the result of the grant of the rights and easements to Grantee in this Agreement, the exercise of such rights by Grantee or Grantee’s interference with existing easement rights granted by Grantor to third parties, including all personal injury or property damage occurring on the Easement Areas, provided that such claim, liability, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property on the Easement Areas, and only to the extent caused by the negligent acts or omissions of the Grantee or any party directly or indirectly engaged by Grantee. Grantee shall not interfere materially in the daily operations of any improvements existing or which may exist on the Easement Areas. The foregoing indemnities shall survive the expiration or termination of this Agreement.

4. GRANTOR RESERVATIONS. Grantor reserves, for itself, the right of non-exclusive access over, in, through, under and across the Easement Areas. Grantor retains, reserves and shall continue to enjoy use of any portion of the Easement Areas for any and all purposes which do not interfere with the use by Grantee of the Easement Areas as herein provided and which are not inconsistent with the rights granted to Grantee hereunder.

5. RUNS WITH LAND/BINDING EFFECT. All covenants and provisions of this Agreement shall be deemed to run with the land, burden the property affected thereby and shall be

binding upon the affected property and owner thereof. The terms and conditions hereof shall be binding upon, and inure to the benefit of the successors, assigns and successors-in-title of the respective parties hereto.

6. USE OF EASEMENTS. The easements and rights declared, established, created and granted to Grantee in this Agreement may be utilized by Grantee and its respective guests, patrons, invitees, contractors, agents, servants, licensees, tenants and employees in connection with the development, use and operation of the improvements on the Project Parcel.

7. TERMINATION OF EASEMENTS. Either party may terminate the Project Agreement within ninety (90) days' notice to the other party. Within ninety (90) days after the notice is given the easement shall terminate, and all operation must cease, and all cameras must be dismantled and removed at the sole expense of the Grantee. In the event of the termination or expiration of the cooperation agreement, any rights or easements granted hereunder by Grantor to Grantee, which rights are confined solely within the physical boundaries of the Project Parcel, shall automatically terminate to such extent and have no further force and effect. Notwithstanding the foregoing, nothing contained in this Section 9 shall be construed to alter, modify or change any of the rights granted hereunder from Grantor to Grantee with respect to property other than the Project Parcel encumbered by this Agreement.

8. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

9. RECITALS; MODIFICATION. The recitals set forth above are incorporated herein by reference as fully and with the same force and effect as if set forth herein at length. This Agreement shall not be modified or amended except by an agreement in writing executed by the parties hereto.

10. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

11. NOTICES. All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been properly given or served and shall be effective either upon the second (2nd) business day after being deposited in the United States mail, postpaid and registered or certified with return receipt requested; or upon confirmed delivery, when sent by facsimile transmission or by private courier service for same-day or overnight delivery. Rejection or other refusal to accept delivery or inability to deliver because of changed address of which no notice has been given, shall constitute receipt of the notice, demand or request sent. Any such notice, demand or request shall be sent to the respective addresses set forth below:

To Grantor: City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, GA 30038
Attn: Hari Karikaran
City Engineer

To Grantee: East Metro Community Improvement District
2724 Wesley Chapel Rd
Decatur, GA 30034
Attn: Christopher T. Sanders
Executive Director

With copies to: Fincher Denmark LLC
100 Hartsfield Centre Pkwy
Atlanta, Georgia 30349
Attention: Chanel Patrick, Esq.

By notice in accordance with the above to all parties shown above, the parties hereto may designate from time to time a change of address for all such notices.

12. ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and all prior discussions and agreements between the parties with respect to the subject matter hereof are merged herein. Any agreement hereunder made shall be ineffective to change, modify or discharge this Agreement unless such agreement hereafter made is in writing and signed by the parties hereto.

13. SEVERABILITY. If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. EXHIBITS. Any exhibit referred to in this Agreement is incorporated herein by reference and forms a part of this Agreement for all purposes.

15. LIENS. Grantee covenants with and for the benefit of Grantor that Grantee will perform all work under this Agreement in a manner which will not cause, suffer or permit any lien, notice of lien or claim of lien to attach to or encumber the Easement Areas for labor or services performed or materials supplied at the request of Grantee or its agents upon or to the Easement Areas. In the event of any such lien, claim or notice of lien being filed, Grantee will remove or bond such claim within thirty (30) days after written notice thereof.

16. VENUE. This Agreement shall be deemed to have been made and performed in Stonecrest, Georgia. For the purpose of venue, all suits or causes of action arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.

17. MODIFICATIONS. This Agreement constitutes the sole contract between the Grantor and Grantee. The terms, conditions, and requirements of this Agreement may not be modified, except by Change Order. No verbal agreement or conversation with any officer, agent, or employee of the Grantee, either before or after the execution of the Agreement, shall affect or modify any of the terms or obligations herein contained. No representations, oral or written, shall be binding on the parties unless expressly incorporated herein. No Change Order shall be enforceable unless approved by official action of the Grantee as provided by law or in this Agreement.

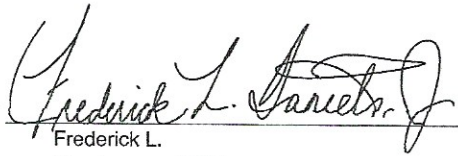
18. WARRANTIES. Each party warrants and represents that it is authorized to execute and enter into this Agreement.

[SIGNATURES BEGIN ON THE FOLLOWING PAGE]

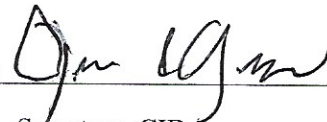
WHEREFORE, the parties have made and executed this Project Agreement the day and year first above written.

EAST METRO DEKALB
COMMUNITY IMPROVEMENT DISTRICT

CITY OF STONECREST, GEORGIA

By: 
Frederick L.
Chairman, CID

By: _____

Attest: 
Secretary, CID

(OFFICIAL SEAL)

ATTEST:

City Clerk

APPROVED AS TO FORM:

W. Charlton Allen
Attorney for CID

APPROVED AS TO FORM:

City Attorney

EXHIBIT A
LEGAL DESCRIPTION

All that tract or parcel of land being and lying in Land noted in the City of Stonecrest, Georgia and being particularly commencing marked as shown in Exhibit "B" the 12-foot Flock Pole set in the concrete sidewalk at the intersection described as follows:

THENCE along the southern right-of-way line of Panola Road and the southwesterly right-of-way line of Covington Hwy at 2293b Panola Rd, Lithonia, GA 30058. THENCE along the right-of-way line facing Southbound $33^{\circ} 43' 19.9128''$ N, 33 degrees 43 minutes 19.92 seconds North; thence $84^{\circ} 10' 1.8876''$ W, 84 degrees 10 minutes 1.884 seconds West for a distance of 7.7 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Panola Road and the northwesterly right-of-way line of Covington Hwy at 2304 Panola Rd, Lithonia, GA 30058. THENCE along the right-of-way line facing Westbound $33^{\circ} 43' 20.586''$ N, 33 degrees 43 minutes 20.58 seconds North; thence $84^{\circ} 9' 59.92''$ W, 84 degrees 9 minutes 59.92 seconds West for a distance of 7.6 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Panola Road and the northwesterly right-of-way line of West Fairington Pkwy at 3054 Panola Rd F, Stonecrest, GA 30038. THENCE along the right-of-way line facing Westbound $33^{\circ} 41' 53.177''$ N, 33 degrees 41 minutes 53.177 seconds North; thence $84^{\circ} 10' 20.69''$ W, 84 degrees 10 minutes 20.69 seconds West for a distance of 8.4 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Panola Road and the northwesterly right-of-way line of West Fairington Pkwy at 3007 Panola Rd, Stonecrest, GA 30038. THENCE along the right-of-way line facing Southbound $33^{\circ} 41' 59.87''$ N, 33 degrees 41 minutes 59.87 seconds North; thence $84^{\circ} 10' 27.19''$ W, 84 degrees 10 minutes 27.19 seconds West for a distance of 8.9 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Snapfinger Woods and the northeasterly right-of-way line of Panola Road at 5349 Snapfinger Woods Dr, Decatur, GA 30035. THENCE along the right-of-way line facing Eastbound $33^{\circ} 42' 32.34''$ N, 33 degrees 42 minutes 32.34 seconds North; thence $84^{\circ} 10' 16.49''$ W, 84 degrees 10 minutes 16.49 seconds West for a distance of 7.3 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Snapfinger Woods and the northwesterly right-of-way line of Panola Road at 5349 Snapfinger Woods Dr, Decatur, GA 30035. THENCE along the right-of-way line facing Westbound $33^{\circ} 42' 32.34''$ N, 33 degrees 42 minutes 32.34 seconds North; thence $84^{\circ} 10' 16.49''$ W, 84 degrees 10 minutes 16.49 seconds West for a distance of 7.3 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Snapfinger Woods and the northwesterly right-of-way line of Panola Road at 2750 Panola Rd, Lithonia, GA 30058. THENCE along the right-of-way line facing Eastbound $33^{\circ} 42' 29.04''$ N, 33 degrees 42 minutes 29.04 seconds North; thence $84^{\circ} 10' 2.28''$ W, 84 degrees 10 minutes 2.28 seconds West for a distance of 8.4 feet to the POINT OF BEGINNING.

THENCE along the northern right-of-way line of Snapfinger Woods and the northwesterly right-of-way line of Panola Road at 2700 Panola Rd, Lithonia, GA 30058. THENCE along the right-of-way line facing Westbound $33^{\circ} 42' 29.99''$ N, 33 degrees 42 minutes 29.99 seconds North; thence $84^{\circ} 10' 5.7''$ W, 84 degrees 10 minutes 5.7 seconds West for a distance of 9.2 feet to the POINT OF BEGINNING.

**EXHIBIT B
EASEMENT AREA PLAT**

