

**INTERGOVERNMENTAL AGREEMENT FOR THE USE AND DISTRIBUTION
OF PROCEEDS FROM THE ONE PERCENT SPECIAL PURPOSE
LOCAL OPTION SALES TAX**

THIS AGREEMENT is made and entered this the ____ day of _____, 2017 by and between DeKalb County, a political subdivision of the State of Georgia (hereinafter the “County”), and the City of Avondale Estates, the City of Brookhaven, the City of Chamblee, the City of Clarkston, the City of Decatur, the City of Doraville, the City of Dunwoody, the City of Lithonia, the City of Pine Lake, the City of Stonecrest, the City of Stone Mountain, and the City of Tucker, municipal corporations of the State of Georgia (hereinafter collectively the “Municipalities” and, individually, as the context requires, “Municipality”). This Agreement does not include the portion of the City of Atlanta located in DeKalb County, which is specifically excluded from the levy and receipt of SPLOST proceeds at this time pursuant to O.C.G.A. § 48-8-109.5(f).

WITNESSETH:

WHEREAS, the parties to this Agreement consist of the County and the Municipalities; and

WHEREAS, the parties anticipate that the DeKalb County Governing Authority will approve and sign a resolution requesting the DeKalb County Board of Registrations and Elections to call a Referendum on the issue of the imposition of a Special Purpose Local Option Sales Tax (the “SPLOST”) and an Equalized Homestead Option Sales Tax (the “EHOST”); and

WHEREAS, O.C.G.A. § 48-8-110 et seq. (the “Act”), authorizes the levy of a one percent County Special Purpose Local Option Sales Tax (the “SPLOST”) for the purpose of financing capital outlay projects, as that term is defined and described by the Act (“capital outlay projects” or “projects”), for the use and benefit of the County and qualified municipalities within the County; and

WHEREAS, the County and Municipalities met to discuss possible projects for inclusion in the SPLOST referendum on the ___ day of _____, 2017; and

WHEREAS, the County and the Municipalities have reviewed O.C.G.A. § 48-8-109.5(e) and agreed upon a method to request the State Revenue Commissioner for the Georgia Department of Revenue (“Revenue Commissioner”) to strictly divide the SPLOST proceeds so that payments to the County and the Municipalities account for annexations and new cities created after the most recent decennial census; and

WHEREAS, the County and the Municipalities are authorized to enter into this Agreement by Georgia law, specifically including Article IX, Section III, Paragraph 1 of the Constitution of the State of Georgia and O.C.G.A. § 48-8-109.5(e).

NOW, THEREFORE, in consideration of the mutual promises and understandings made in this Agreement, and for other good and valuable consideration, the County and the Municipalities consent and agree as follows:

Section 1. Projects

- (A) All capital outlay projects, to be funded in whole or in part from County SPLOST proceeds, are listed in Exhibit A, which is attached hereto and made part of this Agreement.
- (B) The capital outlay projects, to be funded in whole or in part from the Municipalities' SPLOST proceeds, are listed in Exhibit B, which is attached hereto and made part of this Agreement.

Section 2. Representations and mutual covenants

- (A) The County makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:
 - (i) The County is a political subdivision duly created and organized under the Constitution of the State of Georgia; and
 - (ii) The governing authority of the County is duly authorized to execute, deliver and perform this Agreement; and
 - (iii) This Agreement is a valid, binding, and enforceable obligation of the County; and
 - (iv) The County will take all actions necessary to call an election to be held in all voting precincts in the County on the 7th day of November, 2017, for the purpose of submitting to the voters of the County for their approval, the question of whether or not a SPLOST shall be imposed on all sales and uses within the special district of DeKalb County for a period of six (6) years, commencing on the 1st day of April, 2018, to raise an estimated \$[_____] to be used for funding the projects specified in Exhibit A and Exhibit B; and
 - (v) Each County project funded by SPLOST proceeds shall be maintained as a public facility and in public ownership.
- (B) Each of the Municipalities, on its own behalf, makes the following representations and warranties, which may be specifically relied upon by all parties as a basis for entering this Agreement:
 - (i) The Municipality is a municipal corporation duly created and organized under the Laws of the State of Georgia; and
 - (ii) The governing authority of the Municipality is duly authorized to execute, deliver and perform this Agreement; and
 - (iii) This Agreement is a valid, binding, and enforceable obligation of the Municipality; and

- (iv) The Municipality is a qualified municipality as defined in O.C.G.A. § 48-8-110 (4); and
 - (v) The Municipality is located entirely within the geographic boundaries of the special tax district created in the County; and
 - (vi) Each Municipality's projects funded by SPLOST proceeds shall be maintained as public facilities and in public ownership.
- (C) It is the intention of the County and Municipalities to comply in all applicable respects with O.C.G.A. §§ 48-8-109.1 *et seq.* and 48-8-110 *et seq.* and all provisions of this Agreement shall be construed in light of the applicable provisions found in O.C.G.A. §§ 48-8-109.1 *et seq.* and 48-8-110 *et seq.*
- (D) The County and Municipalities agree to promptly proceed with the acquisition, construction, equipping, installation, and execution of the projects specified in Exhibit A and Exhibit B of this Agreement, or any other capital outlay projects as defined and authorized under O.C.G.A. §§ 48-8-109.1 *et seq.* and 48-8-110 *et seq.* that are approved for such purposes hereafter.
- (E) The County and the Municipalities agree to maintain thorough and accurate records concerning their respective receipt and expenditure of SPLOST proceeds.

Section 3. Conditions Precedent

- (A) The obligations of the County and Municipalities pursuant to this Agreement are conditioned upon the adoption of a resolution of the County calling for the imposition of the EHOST and SPLOST in accordance with the provisions of O.C.G.A. § 48-8-109.1 *et seq.* and O.C.G.A. § 48-8-110 *et seq.*
- (B) This Agreement is further conditioned upon the approval of the proposed imposition of the EHOST and SPLOST by the voters of the County in a referendum to be held in accordance with the provisions of O.C.G.A. § 48-8-109.1 *et seq.* and O.C.G.A. § 48-8-110 *et seq.*
- (C) This Agreement is further conditioned upon the collecting of the SPLOST revenues by the Revenue Commissioner and transferring same to the County and Municipalities in conformity with the requirements of O.C.G.A. § 48-8-109.1 *et seq.* and O.C.G.A. § 48-8-110 *et seq.*

Section 4. Effective Date and Term of the Tax

The SPLOST, subject to approval in an election to be held on November 7, 2017, shall continue for a period of six (6) years with collections beginning on April 1, 2018 or the date the state revenue commissioner specifies as the collection start date.

Section 5. Effective Date and Term of this Agreement

This Agreement shall commence upon the date of its execution and shall terminate upon the later of:

- (i) The official declaration by the DeKalb County Board of Registration and Elections of the failure of the election described in this Agreement;
- (ii) The expenditure by the County and all of the Municipalities of the last dollar of money collected from the Special Purpose Local Option Sales Tax after the expiration of the Special Purpose Local Option Sales Tax; or
- (iii) The completion of all projects described in Exhibit A and Exhibit B or approved for development with SPLOST proceeds hereafter.

Section 6. County SPLOST Fund; Separate Accounts; No Commingling

- (A) A special fund or account shall be created by the County and designated as the 2017 DeKalb County Special Purpose Local Option Sales Tax Fund (“SPLOST Fund”). The County shall select a bank with an office or branch physically located within DeKalb County which shall act as a depository and custodian of the SPLOST Fund upon such terms and conditions as may be acceptable to the County.
- (B) Each Municipality shall create a special fund to be designated as the 2017 “*municipality name*” Special Purpose Local Option Sales Tax Fund. Each municipality shall select a bank with an office or branch physically located within DeKalb County which shall act as a depository and custodian of the SPLOST proceeds received by each Municipality upon such terms and conditions as may be acceptable to the Municipality.
- (C) All SPLOST proceeds shall be maintained by the County and each Municipality in the separate accounts or funds established pursuant to this Section. SPLOST proceeds shall not be commingled with other funds of the County or Municipalities and shall be used exclusively for the purposes detailed in this Agreement. No funds other than SPLOST proceeds and accrued interest shall be placed in such funds or accounts.

Section 7. Procedure for Disbursement of SPLOST Proceeds

- (A) Pursuant to O.C.G.A. § 48-8-115, proceeds of the SPLOST shall be collected by the Revenue Commissioner and one percent (1%) of the amount of the SPLOST proceeds collected beginning April 1, 2018 shall be paid into the general fund of the state treasury in order to defray the costs of administration.

- (B) The remaining ninety-nine percent (99%) of the amount collected from the SPLOST (the “SPLOST proceeds”) beginning April 1, 2018 shall be distributed to the County and each Municipality by the Revenue Commissioner pursuant to the percentages set forth below and the parties agree that such percentages shall remain unchanged until the expiration of this six (6) year Special Purpose Local Option Sales Tax:

Avondale Estates	
Brookhaven	
Chamblee	
Clarkston	
Decatur	
Doraville	
Dunwoody	
Lithonia	
Pine Lake	
Stone Mountain	
Stonecrest	
Tucker	
Unincorporated-DeKalb	

The above-described distribution percentages shall be set forth in a Tax Certificate of Distribution, the form of which is attached hereto as Exhibit C, to be forwarded to the Revenue Commissioner at a date and time of his/her choosing. In the event of an annexation of previously unincorporated areas of the County by a Municipality or in the event of the creation and voter approval of a new municipality within the previously unincorporated areas of the County, the County agrees to fund and develop projects within such newly incorporated areas in the same manner, at the same rate and subject to the same standards of priority as similar projects are funded and developed at that time in the unincorporated area of the County.

- (C) Upon receipt by the County or Municipality of SPLOST proceeds collected by the Revenue Commissioner, the County and each Municipality shall immediately deposit said proceeds in a separate fund established by each government entity in accordance with Section 6 of this Agreement. The monies in each SPLOST fund shall be held and applied to the cost of acquiring, constructing, installing, and executing, which includes project management, oversight auditing, and reporting, the County’s and the Municipalities’ respective capital outlay projects listed in Exhibit A and Exhibit B.

- (D) Should any Municipality cease to exist as a legal entity before all funds are distributed under this Agreement, that Municipality's share of the funds subsequent to dissolution shall be paid to the County as part of the County's share unless an Act of the Georgia General Assembly makes the defunct Municipality part of another successor municipality. If such an act is passed, the defunct Municipality's share shall be paid to the successor Municipality in addition to all other funds to which the successor Municipality would otherwise be entitled.

Section 8. Expenses

The County shall be responsible for the cost of holding the SPLOST election.

Section 9. Audits

During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the SPLOST Fund and each Municipal SPLOST fund shall be audited in accordance with O.C.G.A. § 48-8-121 (a)(2) by the County's Auditor for the County projects and by each Municipality's auditor for the respective Municipality's projects. The County and each Municipality receiving SPLOST proceeds shall be responsible for the cost of their respective audits.

Section 10. Notices

All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given when delivered personally or sent by registered or certified United States mail, postage prepaid to the following addresses. The parties agree to give each other non-binding duplicate email 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.

DeKalb County:

Chief Executive Officer
Executive Assistant
DeKalb County, Georgia
1300 Commerce Drive
Decatur, Georgia 30030

With a copy to:

County Attorney
DeKalb County, Georgia
1300 Commerce Drive
Decatur, Georgia 30030

City of Decatur:

City Manager
City of Decatur
509 N. McDonough Street
Decatur, Georgia 30030

With copy to:

City Attorney
City of Decatur
509 N. McDonough Street
Decatur, Georgia 30030

City of Pine Lake

City Administrator
City of Pine Lake
P.O. Box 1325
Pine Lake, Georgia 30072

With copy to:

City Attorney
City of Pine Lake
P. O. Box 1325
Pine Lake, Georgia 30072

City of Brookhaven

City Manager
City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30339

With copy to:

City Attorney
City of Brookhaven
4362 Peachtree Road
Brookhaven, Georgia 30339

[The respective attorneys for the parties are authorized to insert correct titles and addresses for all remaining parties in this section in the final agreement to be executed by the parties.]

Section 11. Entire Agreement

This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the County and the Municipalities with respect to distribution and use of the proceeds from the Special Purpose Local Option Sales Tax. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to distribution and use of said SPLOST. No representation oral or written not incorporated in this Agreement shall be binding upon the County or the Municipalities.

Section 12. Amendments

This Agreement shall not be amended or modified except by agreement in writing executed by the County and the Municipalities.

Section 13. Severability, Non-Waiver, Applicable Law, 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 hereof.

Section 14. Compliance with Law

During the term of this Agreement, the County and each Municipality shall comply with all State law applicable to the use of the SPLOST proceeds, specifically including O.C.G.A. § 48-8-110, et seq.

Section 15. Dispute Resolution

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.

- (A) 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.
- (B) The arbitration shall be governed by the laws of the State of Georgia.
- (C) The standard provisions of the Commercial Rules shall apply.
- (D) 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.
- (E) The award of the arbitrators shall be accompanied by a written opinion that includes express findings of fact and conclusions of law.

Section 16. No Consent to Breach

No consent or waiver, express or implied, by any party to this Agreement, to any breach of any covenant, condition or duty of another party shall be construed as a consent to or waiver of any future breach of the same.

Section 17. 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 the Municipalities acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered for final execution by the County on the date indicated herein.

DEKALB COUNTY, GEORGIA

_____(SEAL)
MICHAEL L. THURMOND
Chief Executive Officer

ATTEST:

BARBARA NORWOOD SANDERS, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM AND
LEGAL VALIDITY:**

ZACHARY WILLIAMS
Chief Operating Officer

O.V. BRANTLEY
County Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM AND
LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

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Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

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Attest:

_____(SEAL)

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Municipal Clerk

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AND LEGAL VALIDITY:**

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City Attorney

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Attest:

_____(SEAL)

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Municipal Clerk

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**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

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Municipal Clerk

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AND LEGAL VALIDITY:**

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AND LEGAL VALIDITY:**

City Manager

City Attorney

CITY OF _____, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

**APPROVED AS TO FORM
AND LEGAL VALIDITY:**

City Manager

City Attorney

EXHIBIT "A"

EXHIBIT "B"

EXHIBIT "C"

**SPECIAL PURPOSE LOCAL OPTION SALES AND USE TAX
CERTIFICATE OF DISTRIBUTION
UNDER EQUALIZED HOMESTEAD OPTION SALES TAX**

TO: State Revenue Commissioner

Pursuant to O.C.G.A. § 48-8-109.5(e) of Part 2 of Article 2A of Chapter 8 Of Title 48 of the Official Code of Georgia Annotated, the "Equalized Homestead Option Sales Tax Act of 2015", relating to the distribution of proceeds of the tax under Part 1 of Article 3 of said chapter, the County Special Purpose Local Option Sales & Use Tax, the governing authorities for DeKalb County and all municipalities located within the special district coterminous with the boundaries of DeKalb County, except that portion of the City of Atlanta in DeKalb County, hereby certify that the proceeds of the combination county/city special purpose local option sales and use tax generated in such district shall be strictly divided in the following percentage amounts as determined by the attached intergovernmental agreement between the parties named below. Such proceeds shall be distributed by the State Revenue Commissioner as follows:

- City of Avondale Estates, Georgia shall receive _____ %
- City of Brookhaven, Georgia shall receive _____ %
- City of Chamblee, Georgia shall receive _____ %
- City of Clarkston, Georgia shall receive _____ %
- City of Decatur, Georgia shall receive _____ %
- City of Doraville, Georgia shall receive _____ %
- City of Dunwoody, Georgia shall receive _____ %
- City of Lithonia, Georgia shall receive _____ %
- City of Pine Lake, Georgia shall receive _____ %
- City of Stonecrest, Georgia shall receive _____ %
- City of Stone Mountain, Georgia shall receive _____ %
- City of Tucker, Georgia shall receive _____ %
- County of DeKalb, Georgia shall receive _____ %

This certificate shall continue in effect until _____.

As required by O.C.G.A. § 48-8-109.5(f), this certificate specifically excludes that portion of the City of Atlanta located in DeKalb County.

Executed on behalf of the governing authorities of the county and municipalities located wholly within the special district of DeKalb County, this _____ day of _____ 20 ____.

MAYOR OF THE CITY OF

MAYOR OF THE CITY OF

MAYOR OF THE CITY OF

MAYOR OF THE CITY OF

MAYOR OF THE CITY OF

MAYOR OF THE CITY OF

CHIEF EXECUTIVE OFFICER
DeKalb County, Georgia