

MEMORANDUM

To: Mayor and City Council
From: David Howell, City Attorney
Date: June 18, 2018
Subject: **IGA with DeKalb County for Distribution of 2018 HOST**

ITEM DESCRIPTION

Approval of an intergovernmental agreement with DeKalb County for the distribution of HOST and related matters

BACKGROUND

With the passage of a SPLOST referendum in November, Dunwoody transitioned from a distribution of HOST to a distribution of SPLOST. This change took effect on April 1, 2018. Up to that point, the existing HOST law did not contemplate a HOST distribution other than a full year. However, for 2018, there will be three months of HOST to be distributed among the County and cities. Absent clear direction or a consensus of how to distribute the funds, the State made a distribution of all HOST proceeds to the County for January through March with instruction to execute an IGA with all cities for the equitable distribution to each entity.

As directed by this Council on June 11, 2018, the legal department negotiated with the DeKalb County Attorney's Office to obtain an IGA which provides for an initial distribution of HOST proceeds as well as a true-up provision. The County tentatively agreed to these terms and will be voting on it at their next meeting.

RECOMMENDED ACTIONS

Staff recommends adopting the IGA with DeKalb County for the distribution of 2018 HOST proceeds and related matters.

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**INTERGOVERNMENTAL AGREEMENT FOR THE 2018 DISTRIBUTION
OF HOMESTEAD OPTION SALES TAX PROCEEDS AND EQUALIZED
HOMESTEAD OPTION SALES TAX PROCEEDS**

THIS AGREEMENT is made and entered into this ____ day of _____, 2018 by and between DeKalb County, a political subdivision of the State of Georgia (hereinafter the “County”), and the City of Dunwoody, a municipal corporation of the State of Georgia (hereinafter “Dunwoody”).

WITNESSETH:

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

WHEREAS, pursuant to O.C.G.A. § 48-8-109.1 *et seq.* (the “Act”), a referendum election was held in DeKalb County, Georgia on November 7, 2017 in which voters approved suspending the one percent Homestead Option Sales and Use Tax (“HOST”) and replacing the tax with a one percent Equalized Homestead Option Sales and Use Tax (“EHOST”), for the purpose of applying one-hundred percent of the proceeds collected from EHOST toward reducing ad valorem property tax millage rates within the County and all municipalities located within DeKalb County;

WHEREAS, pursuant to the Act, HOST is levied in DeKalb County until April 1, 2018, at which time EHOST becomes effective;

WHEREAS, the Act does not provide a method for the distribution of HOST and EHOST proceeds during partial years;

WHEREAS, the State Revenue Commissioner for the Georgia Department of Revenue (“Revenue Commissioner”) collected HOST proceeds within DeKalb County from January 1, 2018 through March 31, 2018 (“2018 HOST Proceeds”) and disbursed the 2018 HOST Proceeds to the County governing authority;

WHEREAS, the County and the cities of Avondale Estates, Brookhaven, Chamblee, Clarkston, Decatur, Doraville, Lithonia, Pine Lake, Stonecrest, Stone Mountain, and Tucker (hereinafter collectively the “Municipalities” and, individually, as the context requires, “Municipality”) have agreed, pursuant to a separate intergovernmental agreement, on a specific equalization amount to be paid by the County to the governing authority of each Municipality;

WHEREAS, the County and Dunwoody have agreed upon a different method to calculate the 2018 equalization amount to be paid by the County to Dunwoody from the 2018 HOST Proceeds;

WHEREAS, the County, the Municipalities and Dunwoody have agreed on a method to calculate the total homestead exemption provided in 2018 for all homestead properties in DeKalb County;

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WHEREAS, the County, the Municipalities and Dunwoody have reviewed the applicable law and agreed upon a method to request the Revenue Commissioner to disburse proceeds collected from EHOST during 2018;

WHEREAS, the County and Dunwoody 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. § 48-8-104(c)(2); and

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

Section 1. 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.
- (B) Dunwoody, 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) Dunwoody is a municipal corporation duly created and organized under the Laws of the State of Georgia; and
 - (ii) The governing authority of Dunwoody is duly authorized to execute, deliver and perform this Agreement; and
 - (iii) This Agreement is a valid, binding, and enforceable obligation of Dunwoody; and
 - (iv) Dunwoody is located in part or entirely within the geographic boundaries of the special tax district created in the County.
- (C) It is the intention of the County and Dunwoody to comply in all applicable respects with O.C.G.A. §§ 48-8-100 *et seq.* and 48-8-109.1 *et seq.* and all provisions of this Agreement shall be construed in light of the applicable provisions found in O.C.G.A. §§ 48-8-100 *et seq.* and 48-8-109.1 *et seq.*
- (D) The County and Dunwoody agree to maintain thorough and accurate records concerning their respective receipt and expenditure of HOST and EHOST proceeds.

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Section 2. Conditions Precedent

The obligations of the County and Dunwoody pursuant to this Agreement are conditioned upon the collection of both the HOST and EHOST taxes by the Revenue Commissioner and transferring same to the County and Dunwoody in conformity with this Agreement and the applicable provisions of O.C.G.A. § 48-8-100 *et seq.* and O.C.G.A. § 48-8-109.1 *et seq.*

Section 3. 2018 HOST Equalization Payment for Dunwoody

- (A) The County represents and warrants that the Revenue Commissioner disbursed all 2018 HOST Proceeds to the County, which amount totals \$29,577,395.96.
- (B) The parties acknowledge and agree, in accordance with O.C.G.A. § 48-8-104, that the parties are required to utilize a portion of the 2018 HOST proceeds to fund capital outlay projects.
- (C) The parties expressly agree that the estimated amount due to Dunwoody for capital outlay projects (the “Dunwoody Equalization Payment”) from the 2018 HOST Proceeds is \$1,476,947.03.
- (D) The County shall remit the Dunwoody Equalization Payment to Dunwoody within 30 days of the execution of this Agreement.
- (E) The parties agree after 2018 millage rates are adopted by the County Governing Authority, and no later than August 20, 2018, the County and Dunwoody shall both independently calculate the equalization payment for Dunwoody in the same manner as O.C.G.A. § 48-8-104 using: (1) 2018 HOST Proceeds, (2) 2018 County millage rates, (3) the 2018 County tax digest certified by the Revenue Commissioner and as otherwise specified in O.C.G.A. § 48-8-104(d) (the “Actual Figure”). The difference between the Dunwoody Equalization Payment and the Actual Figure shall be the true-up amount (“True-Up Amount”). If the Actual Figure is greater than the Dunwoody Equalization Payment, the County shall pay the True-Up Amount to Dunwoody. If the Actual Figure is less than the Dunwoody Equalization Payment, then Dunwoody shall pay the True-Up Amount to the County. If the Actual Figure and the Dunwoody Equalization Payment are equal then neither party shall be responsible for paying the True-Up Amount. The True-Up Amount must be paid by the responsible party no later than September 28, 2018.
- (F) The parties agree that the County shall retain that portion of the 2018 HOST Proceeds dedicated toward capital outlay projects remaining after the County remits all equalization payments due the Municipalities and Dunwoody for 2018.
- (G) The parties agree upon remittance of the Dunwoody Equalization Payment, and if applicable, the True-Up Amount, all 2018 HOST Proceeds are properly disbursed and distributed in accordance with O.C.G.A. §§ 48-8-100 *et seq.* and 48-8-109.1 *et seq.* to Dunwoody and that no further 2018 HOST Proceeds are due and owing to Dunwoody.

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Section 4. Distribution of 2018 EHOST Proceeds

- (A) The parties agree, in accordance with O.C.G.A. § 48-8-109.5, that EHOST proceeds collected by the Revenue Commissioner shall be disbursed as follows:
- (i) One percent of EHOST proceeds shall be paid by the Revenue Commissioner into the general fund of the state treasury in order to defray the costs of administration.
 - (ii) After one percent of EHOST proceeds are subtracted to defray the cost of administration, the Revenue Commissioner, as required by O.C.G.A. § 48-8-109.5(c)(2)(A), shall disburse 2018 EHOST proceeds to the County to roll back, and eliminate if possible, the 2018 millage rates for any county ad valorem property tax line items levied uniformly throughout the county on homestead properties, which in this case are commonly referred to as the general fund taxes and taxes to defray the cost of hospital services. Because EHOST proceeds will only be collected for nine months in 2018, the County does not anticipate excess proceeds to be distributed pursuant to O.C.G.A. § 48-8-109.5(c)(2)(B) to the County, Dunwoody and all the Municipalities, including that portion of the City of Atlanta located in DeKalb County.
- (B) On or before August 1, 2018, the County shall provide to the Revenue Commissioner, Dunwoody and each Municipality, including that portion of the City of Atlanta located in DeKalb County, written certification of the amount of EHOST proceeds necessary to roll back and eliminate the millage rates for all county ad valorem property tax line items levied uniformly throughout DeKalb County on homestead properties.
- (C) On or before August 1, 2018, the County, Dunwoody and the Municipalities shall provide to the Revenue Commissioner written certification of the EHOST proceeds necessary to roll back and eliminate if possible: (1) the millage rates for any county ad valorem property tax line items levied only in unincorporated portions of the county on homestead properties; and (2) the millage rates for any municipal ad valorem property tax line items levied in every municipality located wholly or partially in the county on homestead properties but not in unincorporated portions of the county.
- (D) In the event the amount of EHOST proceeds necessary to eliminate the millage rates for all county ad valorem property tax line items identified in O.C.G.A. § 48-8-109.5(c)(2)(A) is reached, the County shall immediately provide written notification to the Revenue Commissioner, Dunwoody and the Municipalities, including that portion of the City of Atlanta located in DeKalb County.
- (E) The County and Dunwoody agree that excess proceeds, if any, shall be distributed pursuant to O.C.G.A. § 48-8-109.5(c)(2)(B) to the County, Dunwoody and the Municipalities, including that portion of the City of Atlanta located in DeKalb County.

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Section 5. 2018 Homestead Exemption

The amount of proceeds used by the County to calculate the 2018 homestead exemption shall be the sum of (1) the amount of 2018 HOST Proceeds remaining after the proceeds dedicated toward capital outlay projects are subtracted and (2) an amount equal to 75% of the total HOST sales and use taxes collected within DeKalb County during 2017.

Section 6. Effective Date and Term of this Agreement

This Agreement shall commence upon the date of its execution and shall terminate on April 1, 2019, unless amended or superseded.

Section 7. Entire Agreement

This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the County and Dunwoody with respect to the distribution and use of the proceeds from the Homestead Option Sales and Use Tax and the Equalized Homestead Option Sales and Use Tax for the 2018 calendar year. 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 HOST and EHOST taxes. No representation oral or written not incorporated in this Agreement shall be binding upon the County or Dunwoody.

Section 8. Amendments

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

Section 9. 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.

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Section 10. Compliance with Law

During the term of this Agreement, the County and Dunwoody shall comply with all State law applicable to the use of the HOST and EHOST proceeds, specifically including O.C.G.A. § 48-8-100 *et seq.* and O.C.G.A. § 48-8-109.1 *et seq.*

Section 11. 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 12. 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.

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Section 13. 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 Dunwoody 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 SANDERS-NORWOOD, CCC
Clerk to the Board of Commissioners
and Chief Executive Officer

APPROVED AS TO SUBSTANCE:

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

ZACHARY L. WILLIAMS
Chief Operating Officer

VIVIANE H. ERNSTES
Interim County Attorney

June 13, 2018

CITY OF DUNWOODY, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney