



4800 Ashford Dunwoody Road
 Dunwoody, Georgia 30338
 dunwoodyga.gov | 678.382.6700

To: Mayor and City Council
From: J. Jay Vinicki, Assistant City Manager
Date: 13 April 2020
Subject: **Intergovernmental Agreement for the Distribution of EHOST Proceeds**

ITEM DESCRIPTION

Intergovernmental Agreement for the Distribution of EHOST Proceeds between DeKalb County and the Municipalities within DeKalb.

EMEGENCY NATURE

This item is being brought under the emergency called Council meeting, due to it having been originally scheduled for the cancelled March 23, 2020 meeting. This is an intergovernmental agreement between DeKalb County and all its inclusive cities. The IGA, itself, was negotiated over the latter part of 2019 and its passage by all parties is necessary for 2020 tax bills to be calculated correctly should EHOST have to be distributed to the cities.

BACKGROUND

The Equalized Homestead Option Sales Tax (EHOST) was passed by county voters in 2017 allowing for a new distribution of sales taxes to reduce property taxes. Available funding would first be used to reduce countywide taxes, then any remaining funding would be used to reduce individualized and municipal taxes under an equal and uniform rate.

The cities and county worked to develop a method to calculate and distribute any excess funding, the result of which is in the intergovernmental agreement (IGA) before you. In summary, it works as follows:

- EHOST proceeds are distributed throughout the year until all countywide homestead taxes are forgiven.
- If in a given year, there will be excess funding; then the excess funding will be distributed to each city and the unincorporated part of the county based on its share of the percentage of the homesteaded digest percentage for that year.

Denis Shortal Mayor
 Eric Linton, ICMA-CM City Manager
 Sharon Lowery, CMC City Clerk

Pam Tallmadge City Council Post 1
 Jim Riticher City Council Post 2
 Tom Lambert City Council Post 3

Terry Nall City Council Post 4
 Lynn Deutsch City Council Post 5
 John Heneghan City Council Post 6

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- Those proceeds will then be used to give a credit (not a reduction of the tax rate) to all Dunwoody homeowners, based on the share calculated above.

The budget as passed by the County Board of Commissioner anticipates a possible \$3-4 million available this year countywide, however, the rate of credit for a Dunwoody homeowner cannot be calculated until all individual county and city digests are received from the County Tax Commissioner in May.

RECOMMENDED ACTIONS

Approval of the intergovernmental agreement.

October 29, 2019

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

THIS AGREEMENT for the distribution of Equalized Homestead Option Sales and Use Tax proceeds (the “Agreement”) is made and entered into this _____ day of _____, _____ by and between DeKalb County, a political subdivision of the State of Georgia (hereinafter the “County”), and the City of Atlanta, 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”).

WITNESSETH:

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

WHEREAS, the County and Municipalities are authorized to enter into this Agreement by Georgia law, specifically Article IX, Section III, Paragraph 1 of the Constitution of the State of Georgia;

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 Municipalities;

WHEREAS, pursuant to the Act, the State Revenue Commissioner of the Georgia Department of Revenue (“Revenue Commissioner”) must disburse EHOST proceeds to the County and Municipalities; first to reduce and eliminate if possible, county ad valorem property tax line items levied uniformly throughout the county on homestead properties; then, any remaining EHOST proceeds must be used to reduce homestead property taxes, at an equal and uniform rate, across both county millage rates levied only in unincorporated portions of the county on homestead properties and municipal millage rates levied in every municipality located either wholly or partially in the county on homestead properties;

WHEREAS, the County and Municipalities, having reviewed the applicable law, have agreed upon a specific method to request the Revenue Commissioner to disburse proceeds collected from EHOST and also agreed on a method to calculate the equalized homestead exemption applicable to county and municipal homestead property tax millage rates;

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:

October 29, 2019

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) 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 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 Municipalities to comply in all applicable respects with O.C.G.A. § 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. § 48-8-109.1 *et seq.*
- (D) The County and Municipalities agree to maintain thorough and accurate records concerning their respective receipt and expenditure of EHOST proceeds.

Section 2. Conditions Precedent

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

October 29, 2019

Section 3. Definitions

- (A) Remaining Proceeds: the amount of EHOST proceeds disbursed by the Revenue Commissioner in the previous year remaining after rolling back and eliminating the millage rates for the County Hospital Fund and General Fund taxes in the current year.
- (B) Gross Homestead Digest: the total assessed value of all qualified homestead property located in DeKalb County.
- (C) Unincorporated Homestead Digest Percentage: the percentage of the Gross Homestead Digest applicable to unincorporated DeKalb County.
- (D) Municipal Homestead Digest Percentage: the percentage of the Gross Homestead Digest applicable to a Municipality.
- (E) Remaining Proceeds Credit: the Remaining Proceeds amount divided by the Gross Homestead Digest value for the current year.

Section 4. Distribution of 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 shall disburse EHOST proceeds to the County. If in any given year there are Remaining Proceeds, the Revenue Commissioner shall disburse Remaining Proceeds to the County and Municipalities according to subsection (iv) below. If there are no Remaining Proceeds for any given year, the Revenue Commissioner shall disburse all EHOST proceeds to the County only.
 - (iii) In any year in which there are Remaining Proceeds, the County must provide written notification of such proceeds to the Revenue Commissioner and the Municipalities by no later than September 1st of the year. The County's notification must certify the following information:
 - (a) The amount of Remaining Proceeds for the current year.
 - (b) The Gross Homestead Digest value for the current year.
 - (c) The Unincorporated Homestead Digest Percentage and each Municipal Homestead Digest Percentage for the current year.
 - (d) Any Municipality that does not levy a municipal ad valorem property tax.

October 29, 2019

- (iv) If the Revenue Commissioner receives a notice of Remaining Proceeds from the County, the Revenue Commissioner shall disburse the Remaining Proceeds amount to the County and each Municipality according to the Unincorporated Homestead Digest Percentage and each respective Municipal Homestead Digest Percentage. Except, for any Municipality that does not levy a municipal ad valorem property tax, the Revenue Commissioner shall disburse such Municipality's respective share of the Remaining Proceeds to the County. All other EHOST proceeds for such years shall be disbursed to the County.

Section 5. Use of EHOST Proceeds

EHOST proceeds disbursed to the County and Municipalities shall be utilized as follows:

- (A) First, to roll back, and eliminate if possible, the millage rates for the County general and hospital tax funds.
- (B) Then, if there are Remaining Proceeds, the Remaining Proceeds Credit shall be applied to the millage rates for any county ad valorem property tax line items levied only in the unincorporated portions of the county on homestead properties, commonly referred to as the County Police and Designated Funds; and shall also be applied to the millage rates for any municipal ad valorem property tax line items levied in each individual municipality located wholly or partially in the county on homestead properties. For any Municipality that does not levy a municipal ad valorem property tax, the Remaining Proceeds Credit shall be applied to the millage rates for any county ad valorem property tax line items levied within the boundaries of the Municipality.

Section 6. Effective Date and Term of this Agreement

This Agreement shall commence upon the date of its execution and shall terminate on the date on which EHOST is no longer levied in DeKalb County or fifty (50) years from the date of its execution, whichever is earlier.

Section 7. 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 the distribution and use of EHOST. 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 EHOST taxes. No representation oral or written not incorporated in this Agreement shall be binding upon the County or the Municipalities.

Section 8. Amendments

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

October 29, 2019

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.

Section 10. 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 EHOST proceeds, specifically 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.

October 29, 2019

- (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 to or waiver of the right to enforce, express or implied, by any party to this Agreement, any breach of any covenant, condition or duty of another party shall be construed as a consent to or waiver of any future right to enforce a breach of the same.

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.

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October 29, 2019

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 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
County Attorney

October 29, 2019

**CITY OF ATLANTA,
GEORGIA**

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

**CITY OF AVONDALE ESTATES,
GEORGIA**

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF BROOKHAVEN, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF CHAMBLEE, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF CLARKSTON, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF DECATUR, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF DORAVILLE, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF DUNWOODY, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF LITHONIA, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

CITY OF PINE LAKE, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

October 29, 2019

**CITY OF STONE MOUNTAIN,
GEORGIA**

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

May 16, 2018

CITY OF STONECREST, GEORGIA

Attest:

_____(SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney

May 16, 2018

CITY OF TUCKER, GEORGIA

Attest:

_____ (SEAL)

Mayor

Municipal Clerk

APPROVED AS TO SUBSTANCE:

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

City Manager

City Attorney