

## HABERSHAM COUNTY BOARD OF COMMISSION

### EXECUTIVE SUMMARY

**SUBJECT:** Intergovernmental Agreement (IGA) between Habersham County and Cities Regarding Use and Distribution of Proceeds Generated by the 2018 Transportation (Roads & Bridges) Special Purpose Local Option Sales Tax

**DATE:** July 2, 2018

**RECOMMENDATION**

**POLICY DISCUSSION**

**BUDGET INFORMATION:** N/A

**STATUS REPORT**

**ANNUAL-  
CAPITAL-**

**OTHER**

**COMMISSION ACTION REQUESTED ON:** July 16, 2018

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**PURPOSE:** An intergovernmental agreement (IGA) between Habersham County and the cities of Alto, Baldwin, Cornelia, Mount Airy, Demorest, Clarkesville, and Tallulah Falls for the distribution and use of a one percent (1%) Roads and Bridges Special Purpose Local Option Sales Tax (R&B SPLOST).

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#### **BACKGROUND / HISTORY:**

1. Habersham County funds a large percentage of our roads and bridges capital projects with SPLOST VI funds. However, due to other projected needs, roads and bridges could, potentially, be drastically reduced if SPLOST 2021 is approved.
  2. The County and the cities have discussed options to fund roads and bridges projects. The options seem to be a property tax increase or to pursue the R&B SPLOST.
  3. Habersham County is currently on an approximately 40-year repaving cycle while the life cycle of a newly paved road is approximately 15 years. This has resulted in a large volume of substandard roads and bridges.
  4. State law requires an intergovernmental agreement between the County and all qualified cities, all of ours, to impose a 1% sales tax. Without an IGA, the maximum percentage is 0.75% and the distribution is determined by a state formula.
  5. At the required meeting between the County and cities, each local government agreed to approve the IGA and let the voters decide.
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**FACTS AND ISSUES:** Habersham County has been meeting with representatives of each of the cities to discuss the possibility of holding the R&B SPLOST vote in November.

- a. The R&B SPLOST is the fairest way to fund roads and bridges in that all users would contribute. It would reduce the tax burden on the property owners by having all users pay. Anyone that purchases something in Habersham County would contribute.
  - b. The total collections over the five-year life of the R&B SPLOST is anticipated to be approximately \$35.5 million with the County share approximately \$27.1 million.
  - c. The \$27.1 million is expected to allow the County to leverage an additional \$14.0 million in state and federal grants.
  - d. The R&B SPLOST IGA must be approved prior to the July 30, 2018 BOC meeting where the Call for Referendum will be decided and the call must be approved at least 90 days prior to
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the election date of November 6, 2018. If approved by the voters, collections will begin on April 1, 2019.

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**OPTIONS:** The Board of Commissioners could act on this IGA as follows:

1. Approval of the IGA;
  2. Denial of the IGA;
  3. Commission defined alternative.
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**RECOMMENDED SAMPLE MOTION:** I move that Commission approve the Intergovernmental Agreement between Habersham County and the cities of Alto, Baldwin, Cornelia, Mount Airy, Demorest, Clarkesville, and Tallulah Falls for the distribution and use of a one percent (1%) Roads and Bridges Special Purpose Local Option Sales Tax.

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**DEPARTMENT:**

Prepared by: Mike Beecham \_\_\_\_\_

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**ADMINISTRATIVE  
COMMENTS:** \_\_\_\_\_

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\_\_\_\_\_ **DATE:** \_\_\_\_\_

County Manager

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**A RESOLUTION OF THE BOARD OF COMMISSIONERS FOR HABERSHAM COUNTY, GEORGIA AUTHORIZING AND APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE DISTRIBUTION OF A ONE PERCENT SALES AND USE TAX AUTHORIZED BY ARTICLE 5A OF CHAPTER 8 OF TITLE 48 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED AND FOR OTHER PURPOSES**

WHEREAS, Section 48-8-260, *et seq.* of Official Code of Georgia Annotated (“O.C.G.A.”) (the “Act”) authorizes the imposition of a single county one percent (1.0%) sales and use Transportation Special Purpose Local Option Sales Tax (“TSPLOST” or “Tax”) for capital outlay projects in the special districts created pursuant to O.C.G.A. § 48-8-261(a) which correspond with the geographical boundaries of the counties of the State of Georgia ; and

WHEREAS, O.C.G.A. § 48-8-261(b) authorizes the imposition of the TSPLOST for the purpose of generating funds to be used and expended on transportation capital outlay project or projects, to be owned or operated or both either by the county, one or more municipalities, or any combination thereof, and O.C.G.A. § 48-8-262 authorizes the distribution of proceeds from the Tax to the county governing authority and any qualified municipalities in accordance with an intergovernmental agreement entered into for such purpose; and

WHEREAS, the parties anticipate that Habersham County will approve and sign a Resolution authorizing the Board of Elections and Registration of Habersham County to call a Referendum on the issue of the imposition of a single county one percent (1.0%) Tax to begin on April 1, 2019 and to conclude on March 31, 2024; and

WHEREAS, the law authorizing a Referendum on the issue of the imposition of the Tax was amended during the 2016 Legislative Session of the Georgia General Assembly (HB 106), and again was amended during the 2017 Legislative Session of the Georgia General Assembly (HB 134); and

WHEREAS, the City of Alto, Georgia, the City of Baldwin, Georgia, the City of Clarksville; Georgia, the City of Cornelia, Georgia, the City of Demorest, Georgia, the City of Mount Airy, Georgia and the City of Tallulah Falls, Georgia (collectively, the "Cities") and Habersham County, Georgia (the "County") have determined that it is in the best interest of the citizens of the Cities and the County that the Tax be imposed in the County for the purpose of funding transportation capital outlay projects (the "Projects"); and

WHEREAS, the Board of Commissioners of the County delivered or mailed a written notice (the "Notice") to the chairman or chief elected officer in each municipality located in the County regarding the imposition of the Tax; and

WHEREAS, the Notice contained the date, time, place and purpose of a meeting at which the Board of Commissioners of the County and the governing authority of each municipality met

and discussed the possible projects for inclusion in the referendum, including municipally owned or operated projects; and

WHEREAS, the Notice was delivered or mailed at least 10 days prior to the date of the meeting, and the meeting was held at least 30 days prior the issuance of a call for the referendum; and

WHEREAS, the parties desire to execute an Intergovernmental Agreement (“Tax IGA”) to control the distribution and use of the Tax proceeds received solely by Habersham County and the municipalities located with Habersham County; and

WHEREAS, Article IX, Section III, Paragraph I of the Constitution of the State provides that, in pertinent part, any county, municipality or other political subdivision of the State may contract for any period not exceeding fifty years with each other or with any public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, for such activities, services or facilities which the county, municipality or public authority is authorized by law to undertake or provide; and

WHEREAS, in accordance with the Act, the Board of Commissioners of Habersham County, Georgia will approve and sign a Resolution on July 30, 2018 (the “Resolution”), to impose, levy and collect the Tax within the County conditioned upon the approval by a majority of the qualified voters residing within the County voting in a referendum thereon to be held on November 6, 2018, and said resolution shall be delivered to the Board of Elections and Registration of Habersham County, as election superintendent for the County, who shall issue a call for the referendum as described in said resolution; and

WHEREAS, the County has determined that at the present time it does not wish to issue any Bonds for the County Projects describe in the Tax IGA; and

WHEREAS, the Municipalities have determined that at the present time they do not wish to issue any Bonds for the City Projects described in the Tax IGA; and

WHEREAS, for the purpose of the distribution of proceeds for the April 1, 2019 through March 31, 2024 Tax, the Special District shall be known as the boundaries of Habersham County; and

WHEREAS, the Municipalities have certified they are qualified municipalities and are eligible to receive distributions of the one percent (1.0%) Tax Proceeds; and

WHEREAS, the parties hereto are interested in serving the needs of the residents of Habersham County by planning and performing transportation projects within the County and the Municipalities; and

WHEREAS, the parties intend that the transportation projects which are the subject of this Agreement shall benefit residents of Habersham County and the Municipalities; and

WHEREAS, the County and the Municipalities located within Habersham County are committed to continue to work together to improve the County's transportation infrastructure; and

WHEREAS, the County and the Municipalities have identified transportation needs that are important to the current and future well-being of their residents and have determined that proceeds from the Tax should be used to address a portion of these needs.

WHEREAS, the Cities and the County desire to enter into an Intergovernmental Agreement, dated as of the same date as called meeting of the Board of Commissioners on July 30, 2018 (the "Agreement"), as authorized by Article IX, Section III, Paragraph I(a) of the Georgia Constitution and the Act, with respect to the Projects; and

WHEREAS, the Cities are the only municipalities within the County; and

WHEREAS, a form of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Habersham County as follows:

Section 1. The execution, delivery and performance of the Agreement are hereby authorized and approved. The Agreement shall be executed by the Chairman or Vice Chairman and attested to by the Clerk. The Agreement shall be in substantially the form attached hereto, subject to such changes, insertions or deletions as may be approved by the Chairman or Vice Chairman, and the execution of the Agreement by the Chairman or the Vice Chairman as herein authorized shall be conclusive evidence of any such approval.

Section 2. From and after the execution and delivery of the Agreement, the proper officers of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents and certificates as may be necessary to carry out and comply with the purposes and intent of this resolution or the provisions of the Agreement.

Section 3. All acts and doings of the officers of the County which are in conformity with the purposes and intent of this resolution and in furtherance of the execution, delivery and performance of the Agreement are hereby ratified and approved.

Section 4. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

Section 5. All other resolutions, or parts thereof, in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 6. This resolution shall take immediate effect upon its adoption.

Adopted this 30th day of July, 2018.

HABERSHAM COUNTY, GEORGIA

(SEAL)

By: \_\_\_\_\_  
Chairman

ATTEST:

By: \_\_\_\_\_  
Clerk

CLERK'S CERTIFICATE

The undersigned Clerk of Habersham County, Georgia (the "County") DOES HEREBY CERTIFY that the foregoing pages of typewritten matter pertaining to an Intergovernmental Agreement, constitute a true and correct copy of the Resolution adopted on July 30, 2018 by the County in a meeting duly called and assembled, which was open to the public and at which a quorum was present and acting throughout, and that the original of such Resolution appears of record in the Minute Book of the County which is in the undersigned's custody and control.

WITNESS my hand and the official seal of Habersham County, Georgia, this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Clerk

(SEAL)

**Exhibit "A"**

**INTERGOVERNMENTAL AGREEMENT FOR THE USE AND DISTRIBUTION OF  
PROCEEDS GENERATED BY THE 2018 TRANSPORTATION SPECIAL PURPOSE  
LOCAL OPTION SALES TAX REFERENDUM**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA"), made and entered into the 30<sup>th</sup> day of July, 2018, among HABERSHAM COUNTY, GEORGIA, a political subdivision of the State of Georgia (the "County"), the CITY OF ALTO, GEORGIA ("Alto"), the CITY OF BALDWIN, GEORGIA ("Baldwin"), the CITY OF CLARKESVILLE, GEORGIA ("Clarkesville"), the CITY OF CORNELIA, GEORGIA ("Cornelia"), the CITY OF DEMOREST, GEORGIA ("Demorest"), the CITY OF MOUNT AIRY, GEORGIA ("Mount Airy") and the CITY OF TALLULAH FALLS, GEORGIA ("Tallulah Falls"), each a municipal corporation of the State of Georgia (singularly, "City" and collectively, the "Cities" or "Municipalities").

**WITNESSETH:**

WHEREAS, Article IX, Section III, Paragraph I(a) of the Georgia Constitution (the "Intergovernmental Contracts Clause") authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, O.C.G.A. Section 48-8-260, *et seq.* (the "Tax Act") authorizes the imposition of a single county one percent (1.0%) sales and use Transportation Special Purpose Local Option Sales Tax ("TSPLOST" or "Tax") for transportation capital outlay projects in the special districts created pursuant to O.C.G.A. § 48-8-261(a) which correspond with the geographical boundaries of the counties of the State of Georgia; and

WHEREAS, O.C.G.A. § 48-8-261(b) authorizes the imposition of the Tax for the purpose of generating funds to be used and expended on transportation capital outlay project or projects, to be owned or operated or both either by the county, one or more municipalities, or any combination thereof, and O.C.G.A. § 48-8-262 authorizes the distribution of proceeds from the Tax to the county governing authority and any qualified municipalities in accordance with an intergovernmental agreement entered into for such purpose; and

WHEREAS, the parties anticipate that Habersham County will approve and sign a Resolution authorizing the Board of Elections and Registration of Habersham County to call a Referendum on the issue of the imposition of a single county one percent (1.0%) sales and use TSPLOST to begin on April 1, 2019 and to conclude on March 31, 2024; and

WHEREAS, the law authorizing a Referendum on the issue of the imposition of the Tax was amended during the 2016 Legislative Session of the Georgia General Assembly (HB 106), and again was amended during the 2017 Legislative Session of the Georgia General Assembly (HB 134); and

WHEREAS, the parties desire to execute an Intergovernmental Agreement (“Tax IGA”) to control the distribution and use of the Tax proceeds received solely by Habersham County and the municipalities located within Habersham County; and

WHEREAS, Article IX, Section III, Paragraph I of the Constitution of the State provides that, in pertinent part, any county, municipality or other political subdivision of the State may contract for any period not exceeding fifty years with each other or with any public agency, public corporation, or public authority for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, for such activities, services or facilities which the county, municipality or public authority is authorized by law to undertake or provide; and

WHEREAS, in accordance with the Act, the Board of Commissioners of Habersham County, Georgia will approve and sign a Resolution on July 30, 2018 (the “Resolution”), to impose, levy and collect the Tax within the County conditioned upon the approval by a majority of the qualified voters residing within the County voting in a referendum thereon to be held on November 6, 2018, and said resolution shall be delivered to the Board of Elections and Registration of Habersham County, as election superintendent for the County, who shall issue a call for the referendum as described in said resolution; and

WHEREAS, the County has determined that at the present time it does not wish to issue any Bonds for the County Projects describe in the Tax IGA; and

WHEREAS, the Municipalities have determined that at the present time they do not wish to issue any Bonds for the City Projects described in the Tax IGA; and

WHEREAS, for the purpose of the distribution of proceeds for the April 1, 2019 through March 31, 2024 Tax, the Special District shall be known as the boundaries of Habersham County; and

WHEREAS, the Municipalities have certified they are qualified municipalities and are eligible to receive distributions of the one percent (1.0%) Tax Proceeds; and

WHEREAS, the parties hereto are interested in serving the needs of the residents of Habersham County by planning and performing transportation projects within the County and the Municipalities; and

WHEREAS, the parties intend that the transportation projects which are the subject of this Agreement shall benefit residents of Habersham County and the Municipalities; and

WHEREAS, the County and the Municipalities located within Habersham County are committed to continue to work together to improve the County’s transportation infrastructure; and

WHEREAS, the County and the Municipalities have identified transportation needs that are important to the current and future well-being of their residents and have determined that proceeds from the Tax should be used to address a portion of these needs.



NOW, THEREFORE, for and in consideration of the foregoing and in consideration of the mutual promises and understandings herein made and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the County and the Cities DO HEREBY AGREE, as follows:

## **ARTICLE 1.**

### **EFFECTIVE DATE AND TERM OF THE TAX**

This Agreement shall become effective upon its execution and shall continue in effect until the earlier of (a) the failure of the referendum referred to in Article 5 or (b) the termination of the Tax in accordance with the Tax Act and the distribution of all funds collected therefrom in accordance with this Agreement. Said Tax, if approved by referendum, shall commence April 1, 2019 and continue to, through and including March 31, 2024.

## **ARTICLE 2.**

### **ADMINISTRATIVE EXPENSES**

Pursuant to O.C.G.A. § 48-8-269, one percent (1.0%) of the amount of the Tax proceeds collected beginning April 1, 2019, shall be paid into the General Fund of the State of Georgia ("State") treasury in order to defray the costs of administration of the Georgia Department of Revenue. One-half of one percent (0.5%) of the tax proceeds (County oversight) shall be allocated to the County by the State to provide for any costs associated with the administration of the Tax Program. Such cost shall include the annual audit and the overall program administration, at a minimum. Any County oversight funds that remain from these proceeds after the final audit at the end of the tax shall be redistributed based on the percentages provided under this section. The remaining ninety-eight and one-half percent (98.5%) of the amount collected from the Tax proceeds (hereinafter known as the "net proceeds") beginning April 1, 2019, and ending March 31, 2024, shall be distributed by the State of Georgia to the County, and shall be allocated to each jurisdiction based on the percentages shown in the table below in Article 4.

## **ARTICLE 3**

### **REPRESENTATIONS**

Each City makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The City is a municipal corporation duly created and organized under the Constitution and laws of the State of Georgia (hereinafter the "State"). Under the Constitution and laws of the State, the City is authorized to execute, deliver and perform its obligations under this Agreement. The City has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

- (b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.
- (c) The authorization, execution, delivery and performance by the City of this Agreement do not violate any ordinances of the City or the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.
- (d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the City, threatened against or affecting the City (or, to the knowledge of the City, any meritorious basis therefor) (i) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (ii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.
- (e) The City is not in violation of the laws or Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.
- (f) The City is a "qualified municipality" within the meaning of the Sales and Use Tax Act. The Cities contain no less than 50% of the aggregate municipal population located within the County.

The County makes the following representations as the basis for the undertakings on its part herein contained:

- (a) The County is a political subdivision duly created and organized under the Constitution and laws of the State. Under the Constitution and laws of the State, the County is authorized to execute, deliver and perform its obligations under this Agreement. The County has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the County.
- (b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the County, except as shall have been obtained as of the date hereof.
- (c) The authorization, execution, delivery and performance by the County of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.
- (d) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the County,

threatened against or affecting the County (or, to the knowledge of the County, any meritorious basis therefor) (i) contesting or questioning the existence of the County or the titles of the present officers of the County to their offices or (ii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

- (e) The County is not in violation of the laws or the Constitution of the State and is not in default under any existing court order, administrative regulation or other legal decree, or any agreement, indenture, mortgage, lease, note or other instrument to which it is a party or by which it is bound.

#### **ARTICLE 4.**

#### **DISTRIBUTION OF NET PROCEEDS**

##### DISTRIBUTION PERCENTAGES

City of Alto	1.3%
City of Baldwin	3.8 %
City of Clarkesville	3.2 %
City of Cornelia	8.7 %
City of Demorest	3.8 %
City of Mount Airy	2.6 %
City of Tallulah Falls	0.3 %
Habersham County	<u>76.3%</u>
<b>Total</b>	<b>100.00 %</b>

- (a) To facilitate the distribution of net proceeds, the parties agree that the sum of Thirty-Five Million Five Hundred Sixty-Seven Thousand Four Hundred Seventy-Two Dollars (\$35,567,472) shall represent an estimate of the maximum net proceeds to be derived from the subject Tax during its five year term.
- (b) The parties agree that the aggregate total distribution received by the Municipalities shall amount to Twenty-Three and Seven Tenths percent (23.7%) of the net proceeds distributed by the State, with the remaining Seventy-Six and Three Tenths percent (76.3%) of the net proceeds distributed by the State to be received by the County.

- (c) The parties agree that no project will be given preference in the funding and distribution process in such a way that the monthly distribution formula is affected.
- (d) Should any jurisdiction choose not to be a party to this Agreement, said jurisdiction's allocation of the net proceeds shall be 0%.

## **ARTICLE 5.**

### **DEFINITION OF AUTHORIZED TRANSPORTATION PURPOSES**

In recognition of the need for transportation improvements across the County and the Municipalities, the parties agree that the total net proceeds shall be utilized for transportation purposes as defined in O.C.G.A. § 48-8-260 and § 48-8-121.

## **ARTICLE 6.**

### **PROJECT PROVISIONS**

- (a) The projects and purposes ("Transportation Projects and Purposes") to be funded from the net proceeds of the Tax pursuant to this Agreement, shall include roads, bridges, public transit, rails, airports, buses, and all accompanying infrastructure and services necessary to provide access to these; and roads, streets, sidewalks, bicycle paths, and bridge purposes, e.g., acquisition of rights of way, construction, renovation, and improvement of roads, including resurfacing, relocation of utilities, improvement of surface-water drainage, and patching leveling milling, widening, shoulder preparation, culvert repair, and other repairs necessary for their preservation, and all other purposes allowed by law. The estimated dollar amounts allocated for such transportation purposes shall be those amounts attributable to the County and Municipalities according to the designated percentage of the total amount of Tax proceeds received. The parties acknowledge and agree that 30% of the estimate revenues are being expended on projects that are consistent with the Statewide Strategic Transportation Plan as defined in O.C.G.A. § 32-2-22.
- (b) All Transportation Projects included in this Agreement shall be funded in whole or in part from net proceeds from the Tax authorized by law except as otherwise agreed in writing by the parties.

## **ARTICLE 7.**

### **EFFECTIVE DATE AND TERM OF THIS AGREEMENT**

- (a) This Agreement shall become effective on July 30, 2018. If the November 6, 2018 Referendum concerning the imposition of the Tax is not approved by a majority of the voters of Habersham County, this Agreement shall expire and shall be of no force and effect after November 6, 2018.

- (b) Except as otherwise provided herein, the Tax which is the subject of the November 6, 2018 Referendum shall continue for a period of five years from April 1, 2019, until March 31, 2024, unless otherwise terminated earlier pursuant to O.C.G.A. § 48-8-264.

**ARTICLE 8.**

**CALLING REFERENDUM; COLLECTION TERM**

The County agrees that it will take all actions necessary to call a referendum, to be held in all the voting precincts in the County, on the 6<sup>th</sup> day of November, 2018, or on such other date as the County and the Cities shall mutually agree, for the purpose of submitting to the qualified voters of the County for their approval, the question of whether or not the Sales and Use Tax shall be imposed for 20 calendar quarters (five years) for the purpose of funding the Projects. The County shall pay all costs relating to the referendum.

The County shall administer the Tax Fund to effectuate the terms of this Agreement and shall be responsible for the cost of holding the Tax election. The County shall be reimbursed for the costs of the election from the proceeds deposited in the Tax Fund.

**ARTICLE 9.**

**DIVISION OF TAX AND ALLOCATION OF EXCESS FUNDS**

- (a) The Tax proceeds shall be divided among the County and Cities according to the following percentages:

County	76.3
Alto	1.3
Baldwin	3.8
Clarkesville	3.2
Cornelia	8.7
Demorest	3.8
Mount Airy	2.6
Tallulah Falls	<u>0.3</u>
	100.00

- (b) Any net proceeds over and above the amount estimated in Section 3(A) of this Agreement during the quarter during which this amount is reached shall be allocated in accordance with the percentages set forth in this Agreement and shall be used solely for the transportation purposes listed herein. Each party shall expend its portion of the excess net proceeds from the 2018 Tax Program on the Transportation Projects and Purposes as outlined in Exhibit "A" to this Agreement.

## **ARTICLE 10.**

### **DISTRIBUTION OF TAX PROCEEDS**

The net proceeds from the Tax shall be maintained in the parties' separate accounts and utilized exclusively for the purposes specified in this Agreement. The parties acknowledge that the Tax proceeds are not guaranteed. Proceeds received under the amount estimated in the Referendum question shall be allocated in accordance with the percentages set forth in the Agreement and shall be used on the Transportation Projects and Purposes as outlined as Exhibit "A" to this Agreement.

- (a) A special fund or account shall be created by the County and designated as the 2018 Habersham County Transportation Special Purpose Local Option Sales Tax Fund ("Tax Fund"). The County shall select a local bank which shall act as a depository and custodian of the Tax 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 2018 Transportation Special Purpose Local Option Sales Tax Fund ("Tax Fund"). Each Municipality shall select a local bank which shall act as a depository and custodian of the Tax proceeds received by each Municipality upon such terms and conditions as may be acceptable to the Municipality.
- (c) All Tax proceeds shall be maintained by the County and each Municipality in the separate accounts or funds established pursuant to this Article. Except as provided in Article 13, Tax 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 Tax proceeds shall be placed in such funds or accounts

## **ARTICLE 11.**

### **RECORD KEEPING**

- (a) The County shall keep detailed records of the Tax Fund, including all of its sub-accounts. The Cities shall have the right to review and copy of all such records upon request to the County. Likewise, the Cities shall keep detailed records of its City Tax Fund. The County shall have the right to review and copy of all such records upon request.
- (b) The County and the Cities shall keep a record of each and every of its Projects for which the proceeds of the Tax are used. A schedule shall be included in each annual audit which shows for each such Project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or the disclaimer of an opinion, as to whether the

schedule is presented fairly in all material respects in relation to the financial statements taken as a whole. In the event that a City does not comply with the requirements of this paragraph, the County nor any other City shall be held liable in any manner for such noncompliance. In the event that the County does not comply with the requirements of this paragraph, no City shall be held liable in any manner for such noncompliance.

(c) (1) At the end of each party's fiscal year wherein net proceeds from the Tax are distributed, each party shall cause an audit of the distribution and use of its portion of the net proceeds from the Tax to be completed. Each party to this Agreement shall pay the cost of each such annual audit that it conducts. Each party shall public each of its annual audits as required by law.

(2) In addition to the audit required by paragraph (c)(1) of this Agreement, at the end of each calendar year wherein net proceeds from the Tax are distributed, the City and the County shall participate in a joint annual audit of the entire Tax program approved by the voters during the November 6, 2018 Referendum. The purpose of this joint annual audit is to ensure compliance with the Resolution that resulted in the call of the Tax Referendum. Habersham County shall choose the auditor to conduct the annual audit. The cost of such joint annual audit shall be paid from proceeds collected by the County as described under Article 2 of this document.

## **ARTICLE 12.**

### **COMPLETION OF PROJECTS**

Any Tax proceeds held by a County or Municipality at the end of the five year period shall, for the purposes of this Agreement, be deemed excess funds and disposed of as provided under O.C.G.A. § 48-8-269.20.

## **ARTICLE 13.**

### **PUBLICATION OF PROJECTS**

Pursuant to O.C.G.A. § 48-8-269.6, not later than December 31 of each year, the County and each municipality receiving proceeds from the Tax, shall publish annually, in a newspaper of general circulation in the boundaries of the County and in a prominent location on the Municipalities' and the County's website, a simple nontechnical report, or consolidated schedule of projects, which shows the purpose of the amounts expended in prior years, and amounts expended in the current year. The report shall also include a statement of what corrective action the Municipality or County intends to implement with respect to each purpose which is underfunded or behind schedule.

## **ARTICLE 14.**

### **PROCEDURE FOR DISBURSEMENT OF TAX PROCEEDS**

- (a) Upon receipt by the County of Tax proceeds collected by the State Department of Revenue, the County shall immediately deposit said proceeds in the Tax Fund.
- (b) The County, following deposit of the Tax proceeds in the Tax Fund, shall within 10 business days disburse the Tax proceeds due to each Municipality according to the schedule listed herein. The proceeds shall be deposited in the separate funds established by each Municipality in accordance with Article 10 of this Agreement.
- (c) 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.

## **ARTICLE 15.**

### **MISCELLANEOUS**

- (a) Any controversy arising under this Agreement shall be submitted to arbitration pursuant to the provisions of O.C.G.A. Sections 9-9-30 et seq., as amended (the "Arbitration Code"). Such arbitration shall in all respects be governed by the provisions of the Arbitration Code, and the parties hereto shall comply with and be governed by the provisions of the Arbitration Code.
- (b) This Agreement shall not be amended or modified except by agreement in writing executed by all Parties hereto.
- (c) Each party to this Agreement shall comply with all applicable local, state and federal statutes, ordinances, rules and regulations.
- (d) 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.
- (e) All notices, consents, waivers, directions, requests, or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally or sent by registered or certified United States mail, postage prepaid, as follows:
- (f) Should any phrase, clause, sentence or paragraph herein contained be held invalid or unconstitutional, it shall in nowise affect the remaining provisions of this Agreement, which said provisions shall remain in full force and effect.



- (g) This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.
- (h) This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.
- (i) This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the County and the City with respect to the distribution and use of the Tax proceeds. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the County and the City with respect to distribution and use of the Tax proceeds.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers, have caused this Agreement to be executed in multiple counterparts under seals as of the day and year first above written.

HABERSHAM COUNTY, GEORGIA

(SEAL)

By: \_\_\_\_\_  
Victor Anderson, Chairman

Attest:

\_\_\_\_\_  
Clerk

CITY OF ALTO, GEORGIA

(SEAL)

By: Audrey Turner  
Mayor

Attest:

Penny Rogers  
Clerk



CITY OF BALDWIN, GEORGIA

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk



CITY OF CLARKESVILLE, GEORGIA

By: Bonnie Aycock  
Mayor

Attest:

Blenda Smith  
Clerk

CITY OF CORNELIA, GEORGIA




(SEAL)

By: James C. Irby, Jr.  
James C. Irby, Jr. Mayor

Attest:

Janie D. Henderson  
Janie Henderson, City Clerk

CITY OF DEMOREST, GEORGIA

By:   
Mayor

(SEAL)

Attest:

  
Clerk

CITY OF MOUNT AIRY, GEORGIA

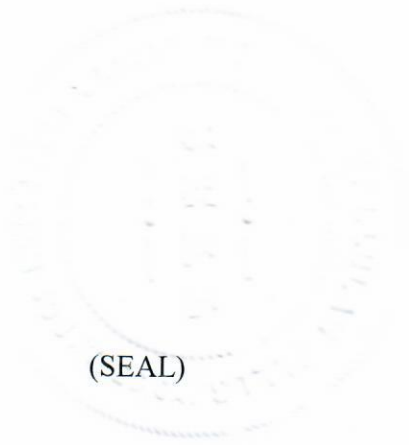


Attest:

Shen Benson  
Clerk  
7/2/18

By: Gary E. Moore  
Mayor

CITY OF TALLULAH FALLS, GEORGIA



(SEAL)

By: Sam Dabbs  
Mayor

Attest:

J. D. [Signature]  
Clerk