COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Chairman Steve Brown
Meeting Date:	Thursday, September 5, 2013	Type of Request:	Public Hearing

Wording for the Agenda:

Public Hearing on staff's recommendation to enter into an Intergovernmental Agreement for the Use and Distribution of Proceeds from the 2013 Special Purpose Local Option Sales Tax for Capital Outlay Projects.

Background/History/Details:

Fayette County desires to enter into an agreement by and between the Town of Brooks, the City of Fayetteville, the City of Peachtree City, and the Town of Tyrone for the use and distribution of proceeds from the 2013 Special Purpose Local Option Sales Tax for Capital Outlay Projects.

O.C.G.A. Secs 48-8-110, et seq, authorizes the levy of a one percent County Special Purpose Local Option Sales Tax for the purpose of financing capital outlay projects for the use and benefit of the County and qualified municipalities within the County. The County and its municipalities have deemed it in their best interest to improve public services in the Special District by carrying out capital outlay projects, and the most feasible plan for providing funds to pay the costs of such capital outlay projects is to impose a special one percent sales and use tax. The County and municipalities have negotiated a division of the Special Purpose Local Option Sales Tax as authorized.

What action are you seeking from the Board of Commissioners?

Conduct a public hearing. Approval of staff's recommendation to enter into an Intergovernmental Agreement for the Use and Distribution of Proceeds from the 2013 Special Purpose Local Option Sales Tax for Capital Outlay Projects.

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	No	If so, when?	
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

STATE OF GEORGIA

COUNTY OF FAYETTE

INTERGOVERNMENTAL AGREEMENT FOR THE USE AND DISTRIBUTION OF PROCEEDS FROM THE 2013 SPECIAL PURPOSE LOCAL OPTION SALES TAX FOR CAPITAL OUTLAY PROJECTS

THIS AGREEMENT is made and entered this the _____ day of _____, 2013 by and between Fayette County, a political subdivision of the State of Georgia (the "County"), and the Town of Brooks, the City of Fayetteville, the City of Peachtree City, and the Town of Tyrone, municipal corporations of the State of Georgia (the "Municipalities", individually and collectively).

W I T N E S S E T H

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 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 _____, 2013, in conformance with the requirements of O.C.G.A. § 48-8-111(a); and

WHEREAS, the County and Municipalities deem it to be in the best interest of the special district of Fayette County created by Section 48-8-110.1(a) of the Official Code of Georgia Annotated (the "Special District") to improve public services in the Special District by carrying out the hereinafter described capital outlay projects, and the most feasible plan for providing funds to pay the costs of such capital outlay projects is to impose a special one percent sales and use tax (the "Sales Tax"), pursuant to Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated (the "Sales Tax Law"); and

WHEREAS, the Sales Tax Law allows the proceeds of the Sales Tax to be distributed pursuant to the terms of a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia between the County and one or more "qualified municipalities" (as defined in the Sales Tax Law) located within the Special District containing a combined total of no less than 50 percent of the aggregate municipal population located within the Special District; and

WHEREAS, the County and the Municipalities have negotiated a division of the Special Purpose Local Option Sales Tax proceeds as authorized by the Act.

NOW, THEREFORE, in consideration of the mutual promise 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. **Representations of the County.** The County makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:

(A) The County is a political subdivision duly created and organized under the Constitution of the State of Georgia;

(B) The governing authority of the County is duly authorized to execute, deliver, and perform this Agreement;

(C) This Agreement is a valid, binding, and enforceable obligation of the County; and

(D) The County will take all actions necessary to call an election to be held in all voting precincts in the County on the 5th day of November, 2013, 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 Fayette County for a period of eight (8) quarters (two (2) years), to raise an estimated $41,245,988.00 to be used for funding the projects specified herein.

Section 2. **Representation of each Municipality.** Each of the Municipalities makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement;

(A) Each Municipality is a municipal corporation duly created and organized under the Laws of the State of Georgia;

(B) The governing authority of each Municipality is duly authorized to execute, deliver, and perform this Agreement;

(C) This Agreement is a valid, binding, and enforceable obligation of each Municipality;

(D) Each Municipality is a qualified municipality as defined in O.C.G.A. § 48-8-110(4); and

(E) Each Municipality is located entirely or partially within the geographic boundaries of the special tax district created in the County.

Section 3. **Obligations of all Parties.**

(A) It is the intention of the County and Municipalities to comply in all respects with O.C.G.A. § 48-8-110 et seq. and all provisions of this Agreement shall be construed in light of O.C.G.A. § 48-8-110 et seq.

(B) The County and Municipalities agree to promptly proceed with the acquisition, construction, equipping, and installation of the projects specified in this Agreement and in accordance with the priority order referenced herein.

(C) The County and Municipalities agree that each approved SPLOST project associated with this Agreement shall be maintained as a public facility and in public ownership. If ownership of a project financed pursuant to this Agreement is transferred to private ownership, the proceeds of the sale shall, for the purposes of this Agreement, be deemed excess funds and disposed of as provided under O.C.G.A. § 48-8-121(g)(2).

(D) The County and Municipalities agree to maintain thorough and accurate records concerning receipt of SPLOST proceeds and expenditures for each project undertaken by the respective county or municipality as required fulfilling the terms of this Agreement.

(E) The County and Municipalities agree that all capital outlay projects included in this Agreement shall be funded from proceeds from the SPLOST, except as otherwise agreed.

Section 4. **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 SPLOST in accordance with the provisions of O.C.G.A. § 48-8-111(a).

(B) This Agreement is further conditioned upon the approval of the proposed imposition of the SPLOST by the voters of the County in a referendum to be held in accordance with the provisions of O.C.G.A. § 48-8-111(b) through (e).

(C) This Agreement is further conditioned upon the collecting of the SPLOST revenues by the State Department of Revenue and transferring same to the County.

Section 5. **Effective Date and Term of the Tax.** The SPLOST, subject to approval in an election to be held on November 5, 2013, shall continue for a period of two (2) years.

Section 6. **Effective Date and Term of this Agreement.** This Agreement shall commence upon the date of its execution and shall terminate upon the later of:

(A) The official declaration of the failure of the election described in this Agreement;

(B) The expenditure of 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

(C) The completion of all projects described herein.

Section 7. **County SPLOST Fund; Separate Accounts; No Commingling.**

(A) A special fund or account shall be created by the County and designated as the 2013 Fayette County Special Purpose Local Option Sales Tax Fund ("SPLOST Fund"). The

County shall select a local bank 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) The Town of Brooks shall create a special fund to be designated as the Brooks Special Purpose Local Option Sales Tax Fund.

(C) The City of Fayetteville shall create a special fund to be designated as the Fayetteville Special Purpose Local Option Sales Tax Fund.

(D) The City of Peachtree City shall create a special fund to be designated as the Peachtree City Special Purpose Local Option Sales Tax Fund.

(E) The Town of Tyrone shall create a special fund to be designated as the Tyrone Special Purpose Local Option Sales Tax Fund.

(F) Each Municipality shall select a local bank 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.

(G) All SPLOST proceeds shall be maintained by the County and each Municipality in the separate accounts or funds established pursuant to this Section. Except as provided in Section 6, 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 shall be placed in such funds or accounts.

Section 8. <u>Procedure for Disbursement of SPLOST Proceeds.</u>

(A) Upon receipt by the County of SPLOST proceeds collected by the State Department of Revenue, the County shall immediately deposit said proceeds in the SPLOST Fund. The monies in the SPLOST Fund shall be held and applied to the cost of acquiring, constructing, and installing the County capital outlay projects listed herein and disbursed to the municipalities as provided herein.

(B) The County, following deposit of the SPLOST proceeds in the SPLOST Fund, shall within ten (10) business days disburse the SPLOST proceeds due to each Municipality according to the schedule contained herein. The proceeds shall be deposited in the separate funds established by each Municipality in accordance with Section 7 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.

Section 9. **Projects.** The County shall call a referendum on whether to impose the Sales Tax to fund the following capital outlay projects in the following estimated amounts:

(A) Level Two Countywide Projects to be owned or operated or both by the County, as described in Exhibit "A", which is attached hereto and made a part hereof by this reference;

(B) Projects to be owned or operated or both by the County in the unincorporated areas of the County, as described in Exhibit "B", which is attached hereto and made a part hereof by this reference;

(C) Projects to be owned or operated or both by the Town of Brooks, as described in Exhibit "C", which is attached hereto and made a part hereof by this reference;

(D) Projects to be owned or operated or both by the City of Fayetteville, as described in Exhibit "D", which is attached hereto and made a part hereof by this reference;

(E) Projects to be owned or operated or both by the City of Peachtree City, as described in Exhibit "E", which is attached hereto and made a part hereof by this reference; and

(F) Projects to be owned or operated or both by the Town of Tyrone, as described in Exhibit "F", which is attached hereto and made a part hereof by this reference.

Section 10. **Distribution of Sales Tax Proceeds.** The County shall apply the proceeds of the Sales Tax to fund the following capital outlay projects in the following order of priority:

(A) First, an amount equal $41,245,988.00 shall be set aside to fund the projects specified in Subsections (A) through (F) of Section 9 herein. Said amount shall be disbursed in the following percentages:

45.8444%	shall be paid to Fayette County;
0.4917%	shall be paid to the Town of Brooks;
14.9624%	shall be paid to the City of Fayetteville;
32.2464%	shall be paid to the City of Peachtree City; and
6.4551%	shall be paid to the Town of Tyrone.

(B) Second, any sales tax proceeds collected in excess of those funds specified in Section 10(A) above shall be disbursed to the Municipalities to fund the projects specified in Subsections (C) through (F) of Section 9 herein as soon as practicable in the following percentages:

0.9080%	shall be paid to the Town of Brooks;
27.6286%	shall be paid to the City of Fayetteville;
59.5439%	shall be paid to the City of Peachtree City; and
11.9195%	shall be paid to the Town of Tyrone.

Section 11. **Completion of Projects.**

(A) The County and Municipalities acknowledge that the costs shown for each project described herein are estimated amounts.

(B) If a county project has been satisfactorily completed at a cost less than the estimated cost listed for that project herein, the County may apply the remaining unexpended funds to any other county project listed herein.

(C) If a municipal project has been satisfactorily completed at a cost less than the estimated cost listed for that project herein, the Municipality may apply the remaining unexpended funds to any other project included for that Municipality herein.

(D) The County and Municipalities agree that each approved SPLOST project associated with this Agreement shall be completed or substantially completed within five (5) years after the termination of the SPLOST. Any SPLOST 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. § 48-8-121(g)(2).

Section 12. **Expenses.** The County shall administer the SPLOST Fund to effectuate the terms of this Agreement and shall be reimbursed for the actual costs of administration of the SPLOST Fund. Furthermore, the County and Municipalities shall be jointly responsible on a per capita basis for the cost of holding the SPLOST election. The County shall be reimbursed for the costs of the election from each municipality at the following percentages of the total costs of the election:

Town of Brooks	0.4917%;
City of Fayetteville	14.9624%;
City of Peachtree City	32.2464%; and
Town of Tyrone	6.4551%.

Section 13. **Audits.** During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the SPLOST Fund and each Municipal fund shall be audited annually by an independent certified public account firm in accordance with O.C.G.A. § 48-8-121(a)(2). The County and each Municipality receiving SPLOST proceeds shall be responsible

for the cost of their respective audits. The County and the Municipalities agree to cooperate with the independent certified public accounting firm in any audit by providing all necessary information. Each Municipality shall provide the County a copy of the audit of the distribution and use of the SPLOST proceeds by the Municipality.

Section 14. **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, as follows:

For Fayette County:
County Administrator
140 Stonewall Avenue, West
Suite 100
Fayetteville, Georgia 30214

For the Town of Brooks:
Mayor, Town of Brooks
953 Highway 85 Connector
Brooks, Georgia 30205

For the City of Fayetteville:
City Manager, City of Fayetteville
City Hall
240 South Glynn Street
Fayetteville, Georgia 30214

For the City of Peachtree City:
City Manager, City of Peachtree City
151 Willowbend Road
Peachtree City, Georgia 30269

For the Town of Tyrone:
Mayor, Town of Tyrone
Tyrone Town Hall
881 Senoia Road
Tyrone, Georgia 30290

Section 15. **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.

Section 16. **Amendments.** This Agreement shall not be amended or modified except by agreement in writing executed by the governing authorities of the County and the Municipalities.

Section 17. **Governing Law.** This Agreement shall be deemed to have been made and shall be construed and enforced in accordance with the laws of the State of Georgia.

Section 18. **Severability.** Should any phrase, clause, sentence, or paragraph of this Agreement be held invalid or unconstitutional, the remainder of the Agreement shall remain in full force and effect as if such invalid or unconstitutional provision were not contained in the Agreement unless the elimination of such provision detrimentally reduces the consideration that any party is to receive under this Agreement or materially affects the operation of this Agreement.

Section 19. **Compliance with Law.** The County and the Municipalities shall comply with all applicable local, State, and Federal statutes, ordinances, rules, and regulations.

Section 20. **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 22. **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.

[SIGNATURES BEGIN ON NEXT PAGE]

TOWN OF BROOKS, GEORGIA

(SEAL)

_____
Daniel C. Langford, Jr., Mayor

Attest:

_____
Town Clerk

CITY OF FAYETTEVILLE, GEORGIA

(SEAL)

_____
Greg Clifton, Mayor

Attest:

_____
City Clerk

CITY OF PEACHTREE CITY, GEORGIA

(SEAL)

_____
Don Haddix, Mayor

Attest:

_____
City Clerk

TOWN OF TYRONE, GEORGIA

(SEAL)

_____
Eric Dial, Mayor

Attest:

_____
Town Clerk

FAYETTE COUNTY, GEORGIA
BOARD OF COMMISSIONERS

(SEAL)

_____
Steve Brown, Chairman

Attest:

_____
County Clerk