

INTERGOVERNMENTAL AGREEMENT
FOR AD VALOREM TAX BILLING AND COLLECTION

This document shall hereinafter be known as the INTERGOVERNMENTAL AGREEMENT for the service delivery of ad valorem tax billing and collection by the DEKALB COUNTY TAX COMMISSIONER (the "Agreement"), made by and between the CITY OF LITHONIA (hereinafter the "City"), a municipal corporation chartered by the State of Georgia and DEKALB COUNTY, GEORGIA, a political subdivision of the State of Georgia (hereinafter "County") on behalf of the DEKALB COUNTY TAX COMMISSIONER (hereinafter "Tax Commissioner") (hereinafter, collectively, the "parties"), each of whom has been duly authorized to enter into the Agreement.

WITNESSETH

WHEREAS, the Georgia Constitution of 1983, Article IX, Section 2, Para. 3(b)(1) prohibits, except as otherwise provided by law, cities or counties from exercising governmental authority within each other's boundaries except by contract; and

WHEREAS, pursuant to Article IX, Section 3, Para. 1 of the Constitution of Georgia of 1983, the City and County are authorized to contract with one another for joint services, for the provision of services, or for the joint and separate use of facilities and equipment, for periods not exceeding fifty (50) years and as authorized by law; and

WHEREAS, the City is authorized to collect taxes and has the authority to contract with the County for the collection of taxes within the City's jurisdictional boundaries; and

WHEREAS, the duly elected Tax Commissioner of DeKalb County, Georgia is empowered by the Constitution and Laws of the State of Georgia to collect state, county, and municipal ad valorem property taxes, sanitation assessments, and applicable fees, including but not limited to stormwater, water, sewer, and utility charges.

WHEREAS, by virtue of the office, the Tax Commissioner has all the requisite statutory powers to bill and collect ad valorem property taxes, issue executions, and to act as Ex-Officio Sheriff in the levy and sale of delinquent properties; and

WHEREAS, all parties hereto are interested in serving the needs of the citizens of the City and County by providing for the consolidation of ad valorem tax billings and collection procedures; and

WHEREAS, pursuant to O.C.G.A. § 48-5-359.1, the Tax Commissioner of DeKalb County is authorized to contract for and to accept, receive, and retain compensation from the City and County for the billing and collection of municipal taxes and applicable fees in addition to that compensation provided by law to be paid to the Tax Commissioner by the County; and

WHEREAS, the City, County, and Tax Commissioner desire to replace in their entirety all prior agreements related to the billing and collection of ad valorem taxes by the Tax Commissioner, and hereby set forth the terms and conditions upon which the duly elected Tax Commissioner of DeKalb County, Georgia will provide ad valorem tax billing and collection services from the date of this Agreement forward; and

WHEREAS, the City, County, and Tax Commissioner have duly authorized the execution of this Agreement; and

WHEREAS, this Agreement only becomes effective on the date that the City will begin paying for the services as set forth in this Agreement; and

NOW THEREFORE, in consideration of the mutual obligations recited below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual promises contained herein, the County and City do agree and consent to the following:

I. PURPOSE AND INTENT

The purpose of this Agreement is to provide tax billing and collection services within the City by the Tax Commissioner

II. DEFINITIONS

All definitions shall be defined as reflected in the DeKalb County, Georgia Code of Ordinances.

III. TERM OF AGREEMENT

This Agreement shall commence on the date of execution set forth herein for a term of 12 months. If not terminated pursuant to the termination provisions provided herein, this Agreement shall automatically renew without further action by the City or County on an annual basis for one (1) year, for a total lifetime Agreement of fifty (50) years, unless previously terminated in accordance with the termination provisions of this Agreement. This Agreement shall replace, in their entirety, all prior agreements entered into by the City, County and/or Tax Commissioner regarding the billing or collection of ad valorem taxes. At the conclusion of this term, the City will be solely responsible for providing all tax billing and collection services within its boundaries, unless extended by mutual Agreement of both governing bodies.

Commented [WJA1]: May want to consider adding language that all prior agreements are effectively terminated once this agreement is executed. Are there any issues surrounding terminating prior agreement and implementing new agreement (e.g. unpaid fees to TC owed by city)?

IV. SERVICES

4.1 The Tax Commissioner will perform the computation, annual billing, collection, depositing, accounting, reporting, and distribution (paying over) of municipal ad valorem property

taxes for the City as the Tax Commissioner is permitted by law, including the assessment of penalties and interest in the same manner as other taxes, as well as any and all remedies permitted for the collection of municipal and County taxes, including issuing executions, levying upon properties, conducting tax sales, and pursuing collections through bankruptcy proceedings. Nothing in this Agreement shall preclude the County's and Tax Commissioner's right to continue to collect and increase or decrease such additional taxes and fees belonging to the County, County Departments, or Tax Commissioner.

4.2 The Tax Commissioner will determine the methods, details, and means of performing the services herein above described with the general understanding that the City desires that the municipal taxes be managed and itemized separately upon the annual County tax statement.

4.3 Effective for the 2017 tax year, the DeKalb County Tax Commissioner shall bill all ad valorem taxes, fees, and charges relating to real property, personal property, public utilities, mobile homes, and heavy equipment within the City for and on behalf of the City.

4.4 Billings issued by the Tax Commissioner on behalf of the City shall consist of line items identified as City taxes, City sanitation fees, City stormwater fees, street light district fees, and related taxes, fees, and such other legally taxable or assessable charges as applicable as provided and requested by the City.

4.5 The City agrees to provide the Tax Commissioner all values, assessments, and exemptions, if applicable, by June 1 of each year. The City is required to provide millage rates necessary for computation of such taxes by the later of the date the County sets its millage rate and June 1 of each year. County agrees to furnish City with any change in date.

4.6 The Tax Commissioner shall have the right to determine the method, details and means of providing the services herein, including, but not limited to, whether City taxes are included as part of or separate from the County tax bills and statements.

4.7 The Tax Commissioner shall be responsible for collection of the City's taxes, fees and other charges in such manner as the Tax Commissioner is permitted by law to collect. The Tax Commissioner will have available any and all remedies permitted by law for the collection of municipal taxes, including but not limited to, issuing executions, levying upon properties, conducting tax sales, and pursuing collection through the bankruptcy proceedings. For the purposes of this Agreement, the Tax Commissioner shall be authorized as the agent of the City for the limited purpose of the services outlined herein, including the billing and collecting of ad valorem taxes, including tax sale and levy proceedings.

4.8 Within sixty (60) days of receipt of collected funds, the Tax Commissioner shall pay to the City any amounts collected on behalf of the City. The obligation to transfer funds belonging to the City shall be the sole responsibility of the Tax Commissioner of DeKalb County and shall survive the termination of this Agreement.

4.9 The Tax Commissioner shall maintain an electronic record and accounting of all amounts, including taxes, fees and penalties, that are billed, collected and distributed on behalf of the City, and will provide the City and County with a copy of such accounting within thirty (30) days of any written request for the same.

4.10 The City shall be solely responsible for the collection of all past-due or delinquent fees and charges that cannot be collected in the same manner as taxes under Georgia law (e.g. stormwater fees).

Commented [WJA2]: Consider changing to (e.g.)

V. RELEASE AND INDEMNIFICATION

It is the intent of the parties to be covered under the auspices of any applicable immunity granted by law. To the extent permitted by law, the City hereby agrees to defend, indemnify, and hold harmless the County and its officers, employees, or agents from any and all claims, liability, losses or damages, including attorneys' fees and costs of defense which the County or its officers, employees, or agents may incur as a result of any claim, demand, suit, or cause of action or proceeding of any kind or nature arising out of, relating to, or resulting from the County or Tax Commissioner's actions or inactions in performing under this Agreement. The County and City shall promptly notify each other of all such claims, shall cooperate with the defense and resolution of each claim, and shall not settle or otherwise dispose of the claim without first consulting with all parties hereto. The indemnification under this Agreement shall survive termination of this Agreement for any claims that may be filed after the termination date of this Agreement, provided that such claims are based upon actions or alleged actions that occurred during the term of this Agreement.

VI. COMPENSATION AND CONSIDERATION

In exchange for good and valuable consideration, the recital of which all parties acknowledge receipt thereof, and in consideration for the terms and services outlined in this Agreement, the City will pay to the County the actual costs associated with the collection of taxes by the Tax Commissioner on behalf of the City subject and pursuant to the following payment terms:

6.1 For the initial 2017 tax year, the City shall pay the County, by check or electronic fund transfer, the later of June 1st of the tax year, or within 30 days of the mailing of an invoice by the County, a fee of two dollars per parcel, not to exceed \$25,000.00 plus \$200.00 of which \$200.00 shall be retained by the County for reimbursement of the cost to the County for providing service to the City. The remaining amount shall be distributed annually as an annual salary supplement to the Tax Commissioner by the County pursuant to O.C.G.A. 48-5-359.1 for such services, duties and responsibilities necessary to collect City taxes.

Commented [BA3]: For Stonecrest only.

Commented [WJA4]: Should this be "no later than June 1st of the tax year".

Commented [WJA5]: This reads somewhat ambiguous to me. (i.e. the references to \$25,000.00.

Commented [WJA6]: What remaining amount?

6.2 For all subsequent tax years, the City shall pay the County, by check or electronic

Commented [BA7]: For Stonecrest only.

fund transfer, no later than June 1st of the tax year, or within 30 days of the mailing of an invoice by the County, a fee of two dollars per parcel, not to exceed \$25,000.00, plus \$200.00 of which \$200.00 shall be retained by the County for reimbursement of the cost to the County for providing service to the City. The remaining amount shall be distributed annually as an annual salary supplement to the Tax Commissioner by the County pursuant to O.C.G.A. 48-5-359.1 for such services, duties and responsibilities necessary to collect City taxes.

Commented [WJA8]: Should this be "no later than"

Commented [WJA9]: Same comments as above.

Commented [WJA10]:

6.3 The City shall notify the Tax Commissioner when payment has been rendered to the County within 2 business days of such payment.

6.4 The County shall distribute said salary supplement to Tax Commissioner on the first payroll check following the receipt of payment from the City.

6.5 The amounts for subsequent years may be modified based on changes to City boundaries, the annexation of additional parcels, or by adjustment of the number of parcels from year to year within the City.

Commented [WJA11]: May want to consider incorporating formula for increase or decrease based on these variables and incorporating this into the agreement. I've done this in PDK corporate leases; otherwise, you may have future dispute on how much the modification should be.

VII. TERMINATION

7.1 The City may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the County. If the City intends to terminate this Agreement for cause, the City must notify the County in writing, specifying the cause, extent and effective date of the termination. The County shall have thirty three (33) days after the date of the written notice from the City to cure the stated cause for termination.

7.2 The County may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the County intends to terminate this Agreement for cause, the County must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the County to cure the stated cause for termination.

7.3 The Tax Commissioner may terminate this Agreement with or without cause by giving one hundred and eighty (180) days prior written notice to the City. If the Tax Commissioner intends to terminate this Agreement for cause, the Tax Commissioner must notify the City in writing, specifying the cause, extent and effective date of termination. The City shall have thirty three (33) days after the date of the written notice from the Tax Commissioner to cure the stated cause for termination.

7.4 The parties reserve all available remedies afforded by law to enforce any term or condition of this Agreement.

7.5 In the event that the City fails to pay the County or Tax Commissioner in accordance with the terms as set forth herein, the County and Tax Commissioner shall not be obligated in any manner whatsoever to bill and collect ad valorem taxes for City, or to provide any of the billing or collection-related services outlined herein.

7.6 Subject to the terms herein, this Agreement may be extended at any time during the term by mutual written consent of all parties so long as such consent is approved by official action of the City Council and approved by official action of the County governing authority.

VIII. NOTICES

All required notices shall be given by first class mail and addressed as follows, except that any notice of termination shall be mailed certified via U.S. Mail, return receipt requested.

- | | |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------|
| If to the County: | Executive Assistant
Manual Maloof Building
1300 Commerce Drive, 6 th Floor
Decatur, Georgia 30030 |
| With a copy to: | County Attorney
1300 Commerce Drive, 5 th Floor
Decatur, Georgia 30030 |
| If to the Tax Commissioner: | Tax Commissioner
4380 Memorial Drive, Suite 100
Decatur, Georgia 30032 |
| With a copy to: | County Attorney
1300 Commerce Drive, 5 th Floor
Decatur, Georgia 30030 |
| If to the City: | Cheryl Foster, City Administrator
6920 Main Street
Lithonia, Georgia 30058 |
| With a copy to: | Winston A. Denmark, City Attorney
Fincher, Denmark LLC
8024 Fair Oaks Court
Jonesboro, Georgia 30236 |

IX. GENERAL PROVISIONS

- A. 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.
- B. Applicable law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Georgia.
- C. Venue. This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of actions arising out of this Agreement shall be brought in the courts of DeKalb County, Georgia.
- D. Third parties. This Agreement is for the benefit of the parties hereto, only, and is not intended to benefit any third party or to give rise to any duties to or causes of action for any third party.
- E. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto as to all matters contained herein. All subsequent changes in the Agreement must be in writing and signed by all parties. This Agreement is for the benefit of the parties hereto only and is not intended to benefit any third party or to give rise to any duties to or causes of action for any third party.
- F. Successors and Assigns. Neither party will assign, sublet or transfer its interest in this Agreement without the written consent of the other. Nothing herein will be construed as creating any personal liability on the part of any officers, agents or officials of either party.
- G. Merger. The parties acknowledge that the terms of this Agreement constitute the entire understanding and agreement between the City, County and Tax Commissioner of DeKalb County for ad valorem tax billing and collection services and as to all other provisions, rights and remedies under this Agreement.
- H. Severability. In the event any section of this Agreement is declared and adjudged to be invalidated or unconstitutional, such declaration or adjudication will not affect the remaining portions of this Agreement.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this Agreement to be signed, sealed and delivered for final execution on the date indicated herein:

[SIGNATURE PAGES FOLLOW]

This ____ day of _____, 2017.

DEKALB COUNTY, GEORGIA

ATTEST:

MICHAEL L. THURMOND
Chief Executive Officer
DeKalb County, Georgia

BARBARA H. SANDERS, CCC, CMC
Clerk of the Chief Executive Officer
and Board of Commissioners of
DeKalb County, Georgia

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

IRVIN J. JOHNSON
Tax Commissioner
DeKalb County, Georgia

County Attorney

CITY OF LITHONIA, GEORGIA

_____(SEAL)
Mayor Deborah Jackson

Leah Rodriquez, City Clerk

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Cheryl Foster, City Administrator

Winston A. Denmark, City Attorney

ATTEST:

Leah Rodriquez, City Clerk