*This model excise tax ordinance is provided only for general informational purposes and to assist Georgia cities in identifying issues to address in a local excise tax ordinance. The ordinance is not and should not be treated as legal advice. You should consult with your legal counsel before drafting or adopting any ordinance and before taking any action based on this model. This model ordinance has been developed to help cities continue to collect taxes on energy used in manufacturing as allowed under O.C.G.A. § 48-13-110 et seq. and has been developed in conjunction with a model intergovernmental agreement for the collection of an excise tax on energy used in manufacturing. During the 2012 legislative session the Georgia General Assembly enacted legislation which will phase out the state and local sales and use tax on energy used in manufacturing starting in 2013. If a city wishes to maintain replace the revenue lost at the local level it must do so by enacting a local excise tax and, in many cases, must work in conjunction with the county to ensure the collection of such tax. GMA would like to thank Joe Scheuer, with ACCG, for his help and cooperation in drafting these model documents.*

**Model Excise Tax Ordinance**

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE BY THE MAYOR AND CITY COUNCIL FOR THE CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ RELATING TO THE PROVISION OF A LOCAL EXCISE TAX ON ENERGY USED IN MANUFACTURING; TO PROVIDE FOR IMPLEMENTATION AND IMPOSITION OF AN EXCISE TAX ON ENERGY SOLD OR USED IN MANUFACTURING; TO PROVIDE FOR RATES; TO PROVIDE FOR A PHASE-IN PERIOD; TO PROVIDE FOR A TIME FOR IMPOSITION; TO PROVIDE FOR RECOVERY OF THE EXCISE TAX; TO PROVIDE FOR ADMINISTRATIVE PROCEDURES; TO PROVIDE FOR AUDITS; TO PROVIDE FOR ALLOWED EXPENDITURES OF THE PROCEEDS; TO PROVIDE FOR TERMINATION; TO PROVIDE AN EFFECTIVE DATE TO COMMENCE COLLECTIONS; TO PROVIDE FOR ADMINISTRATION; TO PROVIDE AUDIT REQUIREMENTS; TO PROVIDE DEFINITIONS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE AN EFFECTIVE DATE; TO REPEAL ALL ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT HEREWITH; AND FOR OTHER PURPOSES.

SECTION ONE

Chapter \_\_\_\_\_\_ of the Municipal Code of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is amended by adding a new Article, to be numbered Article \_\_\_\_\_\_\_\_, which shall include the following language:

Article \_\_\_\_\_\_

Sec. \_\_\_\_\_\_\_\_\_. Short Title.

This Article shall be known as the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Energy Excise Tax Ordinance.”

Sec. \_\_\_\_\_\_\_\_\_. Findings and Intent.

This ordinance is adopted to address the interest of public finance. Georgia law authorizes counties and municipalities to impose an excise tax on the sale or use of energy but the imposition of the excise tax on the sale or use of energy in the law is contingent upon the enactment of an ordinance of the municipality in question. In order for the municipality to properly impose such excise tax the municipality must follow all of the provisions of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, one provision of which is the enactment of this Article.[[1]](#footnote-1)

Sec.\_\_\_\_\_\_\_\_\_\_. Definitions.

1. ‘Dealer’ shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
2. ‘Energy’ shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
3. ‘Local Sales and Use Tax’ shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.
4. ‘Purchaser’ shall have the same meaning as provided for in the Official Code of Georgia Annotated, Section 48-13-110.

Sec. \_\_\_\_\_\_\_\_\_\_. Energy Excise Tax Imposed.

(1) In accordance with the provisions of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, there is imposed within the territorial limits of the municipality, an excise tax on the sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated but for the exemption found in the Official Code of Georgia Annotated, Section 48-8-3.2.

***(In the following subsection (2) GMA is providing two options. The first option contains generic language that references a state statute and, hopefully, will not need to be amended if there is a change in the language of state law. The second option contains the specific language of that state statute, which cities may choose to use so businesses can clearly see in the local ordinance the types of machinery or equipment which are allowed to receive the exemption.***

(2) The sales or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated but for the exemption found in the Official Code of Georgia Annotated, Section 48-8-3.2 includes, but is not limited to, the items listed in subsection (e) of the same Code Section.

***OR***

(2) The sale or use of energy when such sale or use would have constituted a taxable event for purposes of sales and use tax under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated but for the exemption found in the Official Code of Georgia Annotated, Section 48-8-3.2 includes, but is not limited to, the sales and use of energy that is necessary and integral to the manufacture of tangible personal property such as:

(a) Machinery or equipment used to convey or transport industrial materials, work in process, consumable supplies, or packaging materials at or among manufacturing plants or to convey and transport finished goods to a distribution or storage point at the manufacturing plant. Specific examples may include, but are not limited to, forklifts, conveyors, cranes, hoists, and pallet jacks;

(b) Machinery or equipment used to gather, arrange, sort, mix, measure, blend, heat, cool, clean, or otherwise treat, prepare, or store industrial materials for further manufacturing;

(c) Machinery or equipment used to control, regulate, heat, cool, or produce energy for other machinery or equipment that is necessary and integral to the manufacture of tangible personal property. Specific examples may include, but are not limited to, boilers, chillers, condensers, water towers, dehumidifiers, humidifiers, heat exchangers, generators, transformers, motor control centers, solar panels, air dryers, and air compressors;

(d) Testing and quality control machinery or equipment located at a manufacturing plant used to test the quality of industrial materials, work in process, or finished goods;

(e) Starters, switches, circuit breakers, transformers, wiring, piping, and other electrical components, including associated cable trays, conduit, and insulation, located between a motor control center and exempt machinery or equipment or between separate units of exempt machinery or equipment;

(f) Machinery or equipment used to maintain, clean, or repair exempt machinery or equipment;

(g) Machinery or equipment used to provide safety for the employees working at a manufacturing plant, including, but not limited to, safety machinery and equipment required by federal or state law, gloves, ear plugs, face masks, protective eyewear, hard hats or helmets, or breathing apparatuses, regardless of whether the items would otherwise be considered consumable supplies;

(h) Machinery or equipment used to condition air or water to produce conditions necessary for the manufacture of tangible personal property, including pollution control machinery or equipment and water treatment systems;

(i) Pollution control, sanitizing, sterilizing, or recycling machinery or equipment;

(j) Industrial materials bought for further processing in the manufacture of tangible personal property for sale or further processing or any part of the industrial material or by-product thereof which becomes a wasteful product contributing to pollution problems and which is used up in a recycling or burning process;

(k) Machinery or equipment used in quarrying and mining activities, including blasting, extraction, and crushing; and

(l) Energy used at a manufacturing plant.

Sec. \_\_\_\_\_\_\_\_\_\_. Energy Excise Tax Rate and Phase-In.

1. The rate of the excise tax levied and collected pursuant to this Article shall be phased in over a four-year period as directed by the Official Code of Georgia Annotated, Sections 48-13-112(a)(3) and 48-13-112(b) and as set forth below:

(a) For the period commencing January 1, 2013, and concluding at the last moment of December 31, 2013, such excise tax shall be at a rate equivalent to 25 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in the Official Code of Georgia Annotated, Section 48-8-3.2;

(b) For the period commencing January 1, 2014, and concluding at the last moment of December 31, 2014, such excise tax shall be at a rate equivalent to 50 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in the Official Code of Georgia Annotated, Section48-8-3.2;

(c) For the period commencing January 1, 2015, and concluding at the last moment of December 31, 2015, such excise tax shall be at a rate equivalent to 75 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in the Official Code of Georgia Annotated, Section 48-8-3.2; and

(d) On or after January 1, 2016, such excise tax shall be at a rate equivalent to 100 percent of the total amount of local sales and use tax in effect in such special district that would be collected on the sale, use, storage, or consumption of energy but for the exemption in the Official Code of Georgia Annotated, Section 48-8-3.2.

(2) In accordance with Official Code of Georgia Annotated, Section 48-8-3.2 (c)(4), if a project of regional significance under Official Code of Georgia Annotated, Section 48-8-3(92) is started in the special district, it shall not be subject to the phase-in period contained in paragraphs (a), (b), and (c) of subsection (1) of this section, and the sale, use, storage, or consumption of energy in connection therewith shall be subject to the rate specified in paragraph (d) of subsection (1) of this section notwithstanding the January 1, 2016 limitation in that paragraph (d).

***(For the determination of the imposition of the rate for cities after January 1, 2016, it is important to know your options. If a city imposes a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated be sure to use that option.)***

(3) Following such initial imposition during the phase-in time period, on or after January 1, 2016, the rate of the excise tax levied and collected by the governing authority of the city shall be directed by the Official Code of Georgia Annotated, Section 48-13-112(d). Such rate shall be controlled by the maximum amount of local sales and use tax in effect in the special district, but in no event more than 2 percent.

***OR***

(3) Following such initial imposition during the phase-in time period, on or after January 1, 2016, the rate of the excise tax levied and collected by the governing authority of the city shall be directed by the Official Code of Georgia Annotated, Section 48-13-112(d). Such rate shall not be more than 3 percent because the municipality levies a water and sewer projects and costs tax pursuant to Article 4 of Chapter 8 of this Title 48 of the Official Code of Georgia Annotated.

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(4) In the event the total rate of local sales and use taxes in effect in the special district decreases from 2 percent to 1 percent, the rate of the excise tax under this Article shall likewise be reduced at the same time such local sales and use tax rate reduction becomes effective.

(5) In the event the total rate of local sales and use taxes in effect in the special district increases from 1 percent to 2 percent, the rate of the excise tax under this article shall likewise be increased at the same time such local sales and use tax rate increase becomes effective.

Sec. \_\_\_\_\_\_\_\_\_\_. Energy Excise Tax Imposition, Remittance and Recovery.

(1) The excise tax levied and collected pursuant to this Article shall be imposed at the time and be recoverable as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).

(2) The excise tax shall be a debt of the purchaser of energy until it is paid and shall be recoverable at law in the same manner as authorized for the recovery of other debts as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).

(3) The dealer collecting the excise tax shall remit the excise tax to the city if the city is the governing authority imposing the excise tax as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).

(4) Every dealer subject to an excise tax under this Article shall be liable for the excise tax at an applicable rate on the charges actually collected or the amount of the excise taxes collected from the purchasers, whichever is greater as governed by the Official Code of Georgia Annotated, Section 48-13-112(c).

Sec. \_\_\_\_\_\_\_\_\_\_. Exemption Certificates.

(1) The governing authority of the city, or the collecting officer appointed under this Article, shall make diligent efforts to identify all energy providers and purchasers in the city and to ascertain whether such purchasers have completed a uniform exemption certificate provided by the Georgia Department of Revenue seeking to qualify such purchaser under the exemption found in the Official Code of Georgia Annotated, Section 48-8-32.2. Such certificate shall be utilized by such governing authority or collecting officer for the purpose of determining the applicability of the excise tax under this Article.

(2) An energy provider shall be authorized to rely upon such uniform exemption certificates provided by the Georgia Department of Revenue. The energy provider shall not be liable for failing to collect and remit the excise tax imposed under this Article if a purchaser has failed to submit the uniform exemption certificate provided by the Georgia Department of Revenue to such energy provider.

Sec. \_\_\_\_\_\_\_\_\_\_. Commencement of Collections and Due Date.

(1) The excise tax imposed pursuant to this ordinance shall become effective on \_\_\_\_\_\_\_\_\_\_\_.[[2]](#footnote-2)

(2) The excise tax levied pursuant to this Article shall be imposed only at the time that sales and use tax on the sale and use of such energy would have been due and payable under the Official Code of Georgia Annotated, Section 48-8-30 but for the exemption in Official Code of Georgia Annotated, Section 48-8-3.2.

(3) The excise tax shall be due and payable in the same manner as would otherwise be required under Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated.

(4) All sales and purchases taxable under this Article during the preceding calendar month shall be due and payable to the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ monthly on or before the twentieth day of every month and each respective month in which such taxes are collected, and payment shall be accompanied by a return for the preceding monthly period showing the gross sales and purchases arising from all sales and purchases taxable under this Article during the preceding calendar month.

Sec. \_\_\_\_\_\_\_\_\_\_. Expenditure of Proceeds.

The proceeds of the excise tax levied and collected pursuant to this Article shall not be subject to any use or expenditure requirements provided for under any of the local sales and use taxes but shall be authorized to be expended in the same manner as otherwise would have been required under such local sales and use taxes or may be expended for any lawful purpose as governed by the Official Code of Georgia Annotated, Section 48-13-112(c). Any proceeds received by the city pursuant to this Article shall be deposited in the general fund of the city.

Sec. \_\_\_\_\_\_\_\_\_\_. Termination of Municipal Excise Tax.

1. If the city has levied and collected an excise tax within the corporate limits of municipality under this Article because the county in which the city is located has refused or failed to enter into an intergovernmental agreement with each municipality wishing to participate in such excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(a)(1) and then the county determines to commence proceedings for the imposition of the excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(b)(2), then the excise tax levied and collected by the municipality shall cease to the extent as provided for by the Official Code of Georgia Annotated, Section 48-13-115(b)(2).
2. If the county has commenced proceedings for the imposition of the excise tax as allowed by the Official Code of Georgia Annotated, Section 48-13-115(b)(2) and the excise tax levied and collected by the municipality has terminated and the municipality has chosen to participate in the county excise tax, then this Article shall remain effective for the purposes of Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated and particularly for the rates required by the Official Code of Georgia Annotated, Section 48-13-112.

Sec. \_\_\_\_\_\_\_\_\_\_. Administrative Provisions and Audit.

1. The city governing authority shall be authorized to designate a collecting officer for collection and administration of the excise tax under this ordinance.
2. The collecting officer shall be authorized to provide for procedures necessary to the proper implementation of this ordinance, including, but not limited to, periodic auditing of dealers collecting and remitting the excise tax.

(3) The collecting officer, or designee, may examine the books, papers, records, financial reports, equipment and other facilities of and locations within the city of any purchaser which is required to remit the excise tax to the energy dealer under this Article.

(4) As part by the audit report required by the Official Code of Georgia Annotated, Section 36-81-7 the auditor shall include, in a separate schedule, a report of the revenues pertaining to the excise tax under this Article.

SECTION TWO

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION THREE

If any section, clause, sentence or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this ordinance.

SECTION FOUR

This ordinance shall become effective immediately upon its adoption by the City Council, except that the imposition of the excise tax shall become effective as governed by Sec. \_\_\_\_\_\_\_\_\_\_, Commencement of Collections and by the Official Code of Georgia Annotated, Section 48-13-116.

SO ORDAINED, this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2012

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mayor

 City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk of Council

**ENERGY EXCISE TAX MODEL**

**INTERGOVERNMENTAL AGREEMENT**

STATE OF GEORGIA

\_\_\_\_\_\_\_\_\_ COUNTY

INTERGOVERNMENTAL AGREEMENT FOR THE ALLOCATION AND DISTRIBUTION OF PROCEEDS FROM THE ENERGY EXCISE TAX

 THIS INTERGOVERNMENTAL AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_\_\_\_ **COUNTY, GEORGIA**, a political subdivision of the State of Georgia, (the “County”), and the **CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_**, the **CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_**, and the **CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_**, municipal corporations of the State of Georgia, (the “Participating Municipalities”, individually and collectively).

**W I T N E S S E T H:**

 **WHEREAS**, Article IX, Section III, Paragraph I(a) of the Constitution of Georgia (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 50 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**, the City is authorized pursuant to Article 6 of Chapter 13 of Title 48 of O.C.G.A. (the “Energy Excise Tax Act”) to levy and collect an excise tax on the sale or use of energy (“Energy Excise Tax”) when such sale or use would have constituted a taxable event for purposes of the sales and use tax under Article 1 of Chapter 8 of Title 48 of the O.C.G.A., but for the exemption in O.C.G.A. Section 48-8-3.2; and

 **WHEREAS**, pursuant to O.C.G.A. Section 48-13-113, the County and the Municipalities of the County have met together and conferred to discuss whether or not the Energy Excise Tax should be levied within the special district within \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County; and

 **WHEREAS**, pursuant to O.C.G.A. Section 48-13-114, the County and the Participating Municipalities have determined that an Energy Excise Tax should be levied; and

**WHEREAS**, O.C.G.A. Section 48-13-114(a)(1) requires the County and the Participating Municipalities within the County to execute an intergovernmental agreement which provides for the distribution of proceeds in accordance with O.C.G.A. Section 48-13-114(c) prior to the adoption of an ordinance by the County levying and imposing the Energy Excise Tax.

 **NOW, THEREFORE**, in consideration of the mutual promises and undertakings made in this Agreement, the benefits flowing to the parties hereto and to the citizens of each under this Agreement, and for good and valuable consideration the County and the Participating Municipalities consent and agree as follows:

**SECTION 1**

**REPRESENTATIONS & 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:

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

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

(3) This Agreement is a valid, binding, and enforceable obligation of the County.

(B) Each Participating Municipality makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:

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

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

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

(4) Each Participating Municipality is located wholly or partially within the geographic boundaries of the special district created in the County.

(C) It is the intention of the County and each Participating Municipality to comply in all respects the provisions of the Energy Excise Tax Act and all provisions of this Agreement shall be construed in light of the provisions of the Energy Excise Tax Act.

(D) The County and each Participating Municipality agree to maintain thorough and accurate records concerning the receipt of proceeds under this Agreement.

**SECTION 2**

**CONDITIONS PRECEDENT**

(A) The obligations of the County and each Participating Municipality pursuant to this Agreement are conditioned upon the adoption of an ordinance by the County and each Participating Municipality levying and imposing the Energy Excise Tax in accordance with the provisions of the Energy Excise Tax Act.

(B) This Agreement is further conditioned upon the collecting of Energy Excise Tax revenues by the County and the transferring of those revenues to the general fund of the County and the general fund of each Participating Municipality.

**SECTION 3**

**ADMINISTRATION AND COLLECTION COSTS**

In accordance with O.C.G.A. Section 48-13-114(b), the proceeds of the Energy Excise Tax shall be allocated and distributed by the governing authority of the County at the end of each calendar month, and, of such proceeds, an amount equal to 1 percent of such proceeds collected by the county shall be paid into the general fund of the county to defray the costs of collection and administration.

**SECTION 4**

**ALLOCATION & DISTRIBUTION OF REMAINDER PROCEEDS**

(A) In accordance with O.C.G.A. Section 48-13-114 (b) and (c), the remainder of the proceeds following the subtraction of costs of collection and administration under Section 3 of this Agreement shall be allocated and distributed by the governing authority of the County pursuant to this Agreement as provided in this Section.

(B) Such remaining proceeds shall be allocated and distributed by the governing authority of the County within 30 days following the end of each calendar month to the general fund of the county and to the general fund of each participating municipality in accordance with the applicable provisions of O.C.G.A. Section 48-13-114 (c)(1) or (2) as follows:

(1) If two local sales and use taxes are in effect in the special district, an amount equal to one-half of the proceeds shall be distributed to the county general fund and the general fund of each participating municipality located in the county according to the same proportionate share as specified under the distribution provisions of the first local sales and use tax and an amount equal to one-half of the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in such county according to the same proportionate share as specified under the distribution provisions of the second local sales and use tax; or

(2) If only one such local sales and use tax is in effect in the special district, then the proceeds of the excise tax shall be distributed to the county general fund and the general fund of each participating municipality located in the county according to the same proportionate share as specified under the distribution provisions of the local sales and use tax.

(C) Such remaining proceeds shall not be subject to any use or expenditure requirements provided for under the provisions of law of the local sales and use taxes which are now subject to exemption under O.C.G.A. Section 48-8-3.2 and are authorized to be expended in the same manner as would have otherwise required under such local sales and use tax provisions of law or to be expended for any lawful purpose.

**SECTION 5**

**COUNTY ORDINANCE ADOPTION**

In accordance with O.C.G.A. Section 48-13-114 (a)(1), following the execution of this Agreement by the County and each Participating Municipality, the County agrees to adopt timely an ordinance levying the Energy Excise Tax pursuant to Article 6 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated.

**SECTION 6**

**ENTIRE AGREEMENT**

This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements between the County and the Participating Municipalities with respect to all matters relating to the imposition, levy, collection, administration, allocation, and distribution of proceeds of the Energy Excise 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 such matters.

**SECTION 7**

**AMENDMENT OR MODIFICATION OF AGREEMENT**

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

**SECTION 8**

**GOVERNING LAW**

This Agreement shall be deemed to have been made and shall be construed and enforced in accordance with the Constitution and laws of the State of Georgia.

**SECTION 9**

**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 10**

**COMPLIANCE WITH LAW**

The County and each Participating Municipality shall comply with all applicable local, state, and federal statutes, ordinances, rule, and regulations.

**SECTION 11**

**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 12**

**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.

***(OPTIONAL) SECTION 13***

***EFFECTIVE DATE OF ENERGY EXCISE TAX***

*The County and each Participating Municipality agree that the Energy Excise Tax shall become effective date on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_[[3]](#footnote-3)*

 ***(OPTIONAL) SECTION 14***

***MEDIATION***

*The County and each Participating Municipality agree to submit any controversy arising under this Agreement to mediation for a resolution. The parties to the mediation shall mutually select a neutral party to serve as mediator. Costs of mediation shall be shared equally among the parties to the mediation.*

 **IN WITNESS WHEREOF**, the County and the Participating Municipalities, acting by and through their duly authorized agents, have caused this Agreement to be executed in multiple counterparts under seals on the date indicated herein.

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY, GEORGIA**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Chairperson, Board of Commissioners

(SEAL)

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk

**CITY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, GEORGIA** BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor

(SEAL)

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk

**CITY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, GEORGIA** BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor

(SEAL)

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk

**CITY OF\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, GEORGIA** BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mayor

(SEAL)

ATTEST: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk

**MODEL RESOLUTION APPROVING ENERGY EXCISE TAX**

**INTERGOVERNMENTAL AGREEMENT & AUTHORIZING THE MAYOR TO EXECUTE IGA ON BEHALF OF THE CITY**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_\_\_\_\_\_\_, GEORGIA, APPROVING AND AUTHORIZING EXECUTION, BY THE MAYOR OF THE CITY OF \_\_\_\_\_\_\_\_\_\_\_, GEORGIA, CITY COUNCIL OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY, THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ AND OTHER CERTAIN MUNICIPALITIES OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY CONCERNING AN ENERGY EXCISE TAX ENACTED PURSUANT TO ARTICLE 6 OF CHAPTER 13 OF TITLE 48 OF THE O.C.G.A.; REPEALING PRIOR RESOLUTIONS IN CONFLICT; AND FOR OTHER PURPOSES.

 **WHEREAS**, the County is authorized pursuant to Article 6 of Chapter 13 of Title 48 of O.C.G.A. (the “Energy Excise Tax Act”) to levy and collect an excise tax on the sale or use of energy (“Energy Excise Tax”) when such sale or use would have constituted a taxable event for purposes of the sales and use tax under Article 1 of Chapter 8 of Title 48 of the O.C.G.A., but for the exemption in O.C.G.A. Section 48-8-3.2; and

 **WHEREAS**, pursuant to O.C.G.A. Section 48-13-113, the County and the Municipalities of the County have met together and conferred to discuss whether or not the Energy Excise Tax should be levied within the special district within \_\_\_\_\_\_\_\_ County; and

 **WHEREAS**, pursuant to O.C.G.A. Section 48-13-114, the County and the Participating Municipalities have determined that an Energy Excise Tax should be levied; and

**WHEREAS**, O.C.G.A. Section 48-13-114(a)(1) requires the County and the Participating Municipalities within the County to execute an intergovernmental agreement which provides for the distribution of proceeds in accordance with O.C.G.A. Section 48-13-114(c) prior to the adoption of an ordinance by the County levying and imposing the Energy Excise Tax.

 **NOW, THEREFORE**, **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**, **GEORGIA** as follows:

**SECTION 1**

The attached intergovernmental agreement addressing the imposition, levy, collection, administration, allocation, and distribution of proceeds of the Energy Excise Tax between \_\_\_\_\_\_\_\_\_\_\_\_County and the City of \_\_\_\_\_\_\_\_\_\_\_\_\_, the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is hereby approved by the City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**SECTION 2**

The mayor of the city council of the City of \_\_\_\_\_\_\_\_\_\_\_\_\_ is authorized to execute such intergovernmental agreement on behalf of such city council and affix the seal of the city thereto.

**SECTION 3**

All resolutions or parts of resolutions, in conflict herewith are repealed.

This \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Georgia.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Mayor

 City of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Clerk of Council

1. NOTE: If the county will be imposing the tax and one or more municipalities are to participate, then an intergovernmental agreement is required under O.C.G.A. Section 48-13-114 to provide for the distribution of proceeds. [↑](#footnote-ref-1)
2. Under O.C.G.A. 48-13-116 (a)(1), the effective date of the tax cannot be sooner than January 1, 2013. The actual date is the first day of the next succeeding month following the adoption date of this ordinance unless otherwise specified in the intergovernmental agreement. [↑](#footnote-ref-2)
3. 3 O.C.G.A. Section 48-13-116 (a)(1) provides that the energy excise tax becomes effective on the 1st day of the next succeeding month following adoption of the ordinance levying that tax UNLESS otherwise specified in the intergovernmental agreement. Note, however, in no event shall the tax be imposed prior to January 1, 2013. [↑](#footnote-ref-3)