

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE GEORGIA STATE FINANCING AND INVESTMENT COMMISSION**

**THE GEORGIA DEPARTMENT OF TRANSPORTATION**

**AND**

**THE GEORGIA DEPARTMENT OF REVENUE**

This Memorandum of Understanding (hereinafter "MOU"), dated \_\_\_\_\_, 2012 is entered into by and between the Georgia State Financing and Investment Commission, Construction Division (hereinafter "GSFIC Construction"), the Georgia State Financing and Investment Commission, Finance Division (hereinafter "GSFIC Finance") (hereinafter collectively "GSFIC"), the Georgia Department of Transportation (hereinafter "GDOT"), and the Georgia Department of Revenue (hereinafter "Revenue") for the purposes of administering the Transportation Investment Act of 2010, O.C.G.A. Title 48 Chapter 8 Article 5 (hereinafter "the Act"). Heretofore mentioned agencies shall collectively be known as "the Parties." The Parties to this MOU are agencies and instrumentalities of the State of Georgia.

**WHEREAS**, GSFIC, GDOT, and Revenue are constitutionally and statutorily empowered to enter into this agreement pursuant to 1983 Ga. Constitution Article IX, Sec. III, Para. I, as an intergovernmental Memorandum of Understanding not exceeding 50 years;

**WHEREAS**, pursuant to O.C.G.A. §48-8-249(b) *et. seq.*, GSFIC is responsible for the proper application of the proceeds received from the special district tax for the Approved Investment List(s) for each special district; and

**WHEREAS**, pursuant to O.C.G.A. §32-2-2 *et. seq.*, GDOT is authorized to plan, designate, improve, manage, control, construct, and maintain a state highway system and to have control of and responsibility for all construction, maintenance, or any other work upon the state highway system and all other work which may be designated to be done by the department by title 32 or any other law; and

**WHEREAS**, pursuant to O.C.G.A. §48-2-1 *et. seq.*, Revenue is authorized to administer and collect certain taxes that are authorized under Georgia law; and

**WHEREAS**, the Georgia General Assembly adopted the Act which creates 12 special districts of the State and authorizes elections to be held in each special district which would allow each

district independently of any other district to approve and authorize the imposition of a special district transportation sales and use tax to fund transportation projects within the special district; and

**WHEREAS**, the proper implementation of the Act places responsibilities on each of the Parties to this agreement including: Revenue to administer and collect the tax and disburse the tax proceeds to GSFIC, GSFIC to maintain and administer the tax proceeds in a trust fund on behalf of the special district and ensure proper application of the proceeds for projects identified on the Approved Investment Lists, and GDOT to manage or cause to be managed the budget and associated project elements for the projects on the Approved Investment Lists to be constructed with tax proceeds; and

**WHEREAS**, the proceeds of the special district tax are not funds of the State and are held in trust by GSFIC on behalf of the special districts imposing the tax; and

**WHEREAS**, the Parties agree that the proper implementation of the Act requires the cooperation of the Parties to perform their duties and responsibilities as set forth in the Act.

**IN FURTHERANCE OF THIS MUTUAL GOAL**, the Parties here to agree as follows:

#### **SECTION I: All Parties**

1. The Parties acknowledge the creation of a Citizen's Review Panel for each special district and agree that GDOT shall have primary responsibility to provide data and information as requested by the Citizen's Review Panel created by O.C.G.A. §48-8-251. The Parties acknowledge that they may be asked to consider recommendations from the Citizen's Review Panel, prepare reports and gather information at the request of the Citizen's Review Panel, and assist the Citizen's Review Panel in the preparation of an annual report to be provided to the General Assembly.

2. **Access to Records:** The Parties shall have access to any books, documents, papers, and records of the other Parties as they pertain to implementation of the Act. Records of all expenses and expenditures shall be kept on the basis of generally accepted accounting principles and shall be available to Parties at mutually convenient times after a written request is made. Pursuant to the provisions outlined in O.C.G.A. §48-2-15, Revenue cannot disclose confidential and privileged tax information.

3. **Notices:** Except as otherwise required by law, all notices, requests, demands and other communications provided for or necessary for the implementation of the Act shall be in writing and either mailed or transmitted electronically to:

**If to Revenue:**

Frank O'Connell, Director  
Office of Tax Policy  
1800 Century Blvd  
Atlanta, Georgia 30345  
Email: [Frank.OConnell@dor.ga.gov](mailto:Frank.OConnell@dor.ga.gov)

**If to GSFIC, Construction:**

Marvin Woodward, Deputy Director  
270 Washington Street,  
Atlanta, GA 30334.  
Email: [Marvin.Woodward@spo.ga.gov](mailto:Marvin.Woodward@spo.ga.gov)

**If to GSFIC, Financing and Investment:**

Susan Ridley, Director  
270 Washington Street  
Atlanta, GA 30334.  
Email: [Susan.Ridley@gsfic.ga.gov](mailto:Susan.Ridley@gsfic.ga.gov)

**If to GDOT:**

Keith Golden, Commissioner  
600 West Peachtree Street  
Atlanta, GA 30303  
Email: [kgolden@dot.ga.gov](mailto:kgolden@dot.ga.gov)

In the event that any of the above-identified individuals are no longer serving at their identified positions, any notices, requests, demands and other communications shall be sent to the



current individual serving in that position. In the event that any of the above-identified positions no longer exist, any notices, requests, demands and other communications shall be sent to an equivalent position within the Party, as identified by the Party.

4. **Execution in Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

5. **Termination:** Any Party may at any time, without any reason or cause, terminate this Agreement by giving all other Parties written notice no later than thirty (30) days before the intended termination date. This Agreement shall expire upon the completion of the projects on the special district's Approved Investment List(s) for which the special tax was collected. Termination shall not relieve any Party of its obligations to fulfill its statutory duties related to the Act.

6. **Definition of "Project Element":** Per O.C.G.A. §48-8-249(b)(2), requests for payment made to GSFIC shall include "certification of the completion of the project or project element for which funds are requested." For purposes of such payment requests, project element shall mean any incurred cost component meeting eligible project cost components associated with the project. Eligible project cost components of the project are those outlined in O.C.G.A. §48-8-242(2), and as further defined in the Eligible Project Cost Policy referenced in this Agreement.

7. The Approved Investment Lists of each special district from which the Parties shall operate for purposes of this Agreement is attached hereto as **exhibit A**.

8. The Parties recognize that investment of the tax proceeds will be guided by three priorities: 1) first and foremost, the preservation of principal; 2) the assurance of liquidity to meet the cash flow needs to support the projects on the Approved Investment Lists and program in a timely manner; and 3) to maximize interest earnings. Pursuant to state law, the parties acknowledge that all interest earning, if there are any, shall be accounted for by special tax district, and shall be utilized for administrative costs of the Parties in management of the TIA program. Any interest earnings will first be used to meet direct GSFIC operational expenses related to the TIA program, including but not limited to trustee services, investment services, and personnel costs. GSFIC has the authority to invest the tax proceeds generated by the Act, and is empowered to utilize the interest earnings from the investment of the tax proceeds for payment of operating expenses determined by GSFIC to be related to GSFIC's administration of the Act. GSFIC will consider contractual expenses incurred by GDOT in furtherance of functions delegated to GDOT by GSFIC that are related to the management, execution, schedule, and delivery of projects on the Approved investment Lists as part of the operating expenses of GSFIC that are eligible for reimbursement from any available excess earnings.

9. The Parties acknowledge that tax proceeds received from Revenue and deposited in GSFIC-administered trust funds are the sole source of payment by GSFIC of payment requests from GDOT, although it is recognized that additional revenue sources may be used by GDOT and others to deliver the projects on the Approved Investment Lists.

10. In accordance with O.C.G.A. §48-8-249, GDOT will consult with GSFIC quarterly, or more often as necessary, regarding the execution, schedule, and delivery of projects on the Approved Investment Lists.

11. If the local governments and/or regional commission(s) located in the special tax district(s) implementing the tax establish a regional advisory council or other organization for the purpose of interfacing or coordinating with the State regarding the implementation of the projects on the Approved Investment Lists, GDOT shall have the primary responsibility for providing information and coordinating with the regional advisory council or other organization.

12. Prior to execution of program contract with GSFIC, GDOT shall, by separate policy, contract, or agreement, determine a process acceptable to GSFIC for producing and managing project budgets, project elements, and amendments.

13. By March 1, 2013, GDOT shall provide to GSFIC preliminary monthly draw schedule of tax proceeds for the first 16 months of the program. Subsequent to this initial 16-month period, GSFIC and GDOT shall meet quarterly as required by statute to develop future cash flow needs.

14. Prior to the payment of invoices by GSFIC, GDOT shall, by separate policy, written statement, or administrative rule, establish protocols acceptable to GSFIC for establishing prioritization of payments should tax proceed balances fall below minimum reserve requirements as established by GSFIC.

15. Prior to execution of program contracts with GSFIC, GDOT shall, by separate policy, written statement, or administrative rule, develop an Eligible Project Cost Policy acceptable to GSFIC that complies with O.C.G.A. §48-8-242 which defines the specific eligible project costs to be paid or reimbursed by the tax proceeds.

16. Prior to execution of program contracts with GSFIC, GDOT shall, by separate policy, written statement, or administrative rule, determine whether expenses incurred prior to the availability of tax proceeds will be reimbursed and establish procedures acceptable to GSFIC to determine whether those expenses are eligible project costs.



17. The Parties shall not be obligated to provide additional funds for projects should tax proceeds be insufficient to fund the projects as specified on the Approved Investment Lists.

18. GDOT's obligation to any contractor performing work pursuant to a contract for a project identified on exhibit A is limited to the proceeds of the tax collected pursuant to the Act and any other monies collected by GDOT in furtherance of the project. The obligation of GSFIC to reimburse or make any payment to any Party or any contractor is limited to the amount of tax proceeds collected and disbursed to GSFIC by Revenue pursuant to the Act.

## **SECTION II: The Georgia Department of Revenue**

1. Revenue shall, pursuant to O.C.G.A. §48-8-246, exclusively administer and collect any tax imposed by a special district under the provisions of the Act for the use and benefit of the special district imposing the tax.

2. Revenue shall, pursuant to O.C.G.A. §48-8-248, disburse the proceeds of the tax collected by the State Revenue Commissioner in each special district as soon as practicable to GSFIC. In so doing, Revenue shall identify the amount of tax proceeds to be maintained in a trust fund by GSFIC for each special district imposing the tax so said proceeds can be kept separate from any other GSFIC funds and so that each special district is credited with the appropriate portion of the tax proceeds.

3. Revenue shall distribute proceeds of the tax monthly to GSFIC in a manner consistent with all other local option sales taxes. This distribution will encompass sales tax collections received from returns, assessments and audit collections, along with deductions for sales tax refunds processed during the distribution period. The monthly distribution period is primarily derived from the activity occurring one month prior to the month of distribution. However, the parties acknowledge that some of the collections/proceeds/refunds that are included in each monthly distribution may also include funds derived from assessments, audit collections, and refunds for earlier periods, possibly several months or years prior to the month of distribution. In addition, returns having errors or missing information require additional time to process and therefore will be distributed several months after receipt.

4. Not later than December 15 of each year, Revenue shall publish a report which shall include information for each project on the Approved Investment Lists. Information for each project shall include: original estimated cost, current estimated cost, amounts expended in prior years, and amounts expended in the current year. O.C.G.A. §48-8-250 provides a complete description of the information to be provided in the annual report. GSFIC shall provide the required information to Revenue for the prior fiscal year no later than November

30 each year. GDOT shall fully cooperate with GSFIC's independent auditor and shall provide the required project and financial information to GSFIC no later than August 31 in order to allow GSFIC to conduct the audit required by O.C.G.A. §48-8-249(d).

5. As directed in O.C.G.A. §48-8-245(c)(3), Revenue shall either provide a link to a separately-maintained website or shall provide on Revenue's website the information required by statute.

6. Revenue shall maintain a monthly report of the gross amount of tax collected in each special tax district pursuant to the Act

### **SECTION III: The Georgia State Financing and Investment Commission**

1. All tax proceeds collected by Revenue and disbursed to GSFIC for the use and benefit of each special district shall be maintained in a trust fund and administered by GSFIC on behalf of the special district imposing the tax. Such tax proceeds shall be kept separate from other GSFIC funds. GSFIC shall have the authority to invest the tax proceeds, and to utilize the interest earnings from the investment of the tax proceeds for payment of operating expenses incurred by any authorized entity related to the administration of the Act.

2. Pursuant to O.C.G.A. §48-8-249, GSFIC shall be responsible for the proper application of the proceeds received from the tax for the projects on the Approved Investment List for each special district.

3. Pursuant to a separate contract, GSFIC shall delegate to GDOT the management of the budget, procurement, schedule, execution, and delivery of the projects contained in the Approved Investment Lists for all transportation projects except bus and rail mass transit systems and passenger rail in any special district the boundaries of which are not wholly contained within a single metropolitan planning organization.

4. Upon entering into the contracts contemplated in paragraph 3 above, GSFIC shall dispense funds upon the request of GDOT, which request shall include certification of the completion of the project or project element for which funds are requested. Requests for payment will be processed by GSFIC within 15 working days of the receipt of the certification of completion by GSFIC.

5. GSFIC shall have the right to review and audit the use of funds dispensed to GDOT upon reasonable notice given to GDOT.

6. GSFIC shall maintain an adequate record-keeping system for each project on the Approved Investment Lists.



7. An annual audit shall be paid from the special district tax proceeds and conducted by an independent auditing firm as selected by GSFIC. Said audit report shall comply with the provisions contained in O.C.G.A. §48-8-249(5)(d), and shall include a schedule which shows for each project the original estimated cost, the current estimated cost, amounts expended in prior years, and amounts expended in the current year. GDOT shall cooperate in the preparation of the annual audit and shall provide all information needed to complete the audit as described in O.C.G.A. §48-8-249(5)(d). It is recognized that projects may include funds from sources other than tax proceeds. For purposes of the annual audit, GDOT shall identify the source of all funds, including funds from sources other than tax proceeds.

8. GSFIC shall establish a mechanism to ensure that twenty-five percent (25%) of the proceeds received from the tax authorized by the Act shall be distributed on an ongoing basis as they are received by GSFIC to the local governments within the special district in which the tax is imposed if such special district's boundaries are not coterminous with a metropolitan planning organization in accordance with O.C.G.A. §48-8-249 (e).

9. GSFIC shall establish a mechanism to ensure that fifteen percent (15%) of the proceeds received from the tax authorized by the Act shall be distributed on an ongoing basis as they are received by GSFIC to the local governments within the special district in which the tax is imposed if such special district's boundaries are wholly contained within a single metropolitan planning organization in accordance with O.C.G.A. §48-8-249 (e).

10. If a special district receives from the tax net proceeds in excess of its Approved Investment List, GSFIC shall distribute such excess proceeds among local governments of the special district in accordance with O.C.G.A. §48-8-249(e).

11. If upon completion of projects on a special district's Approved Investment List net tax proceeds are in excess of the actual costs of the projects, GSFIC shall distribute such excess proceeds among the local governments of the special district in accordance with O.C.G.A. §48-8-249 (e).

12. GSFIC shall prepare, maintain, and publish a report reflecting actual revenue collections and distributions on a semi-annual basis. GSFIC will publish monthly tax collection projections, updated semi-annually, for the purpose of assisting GDOT and the local governments in cash flow planning and management.

13. Pursuant to O.C.G.A. §48-8-242(2)(K), GSFIC shall, in consultation with GDOT, establish the minimum level of reserves for each special district necessary to ensure timely payment of invoices in the event tax collections for a special district fall below projections.

#### **SECTION IV: The Georgia Department of Transportation**



1. In accordance with O.C.G.A. §48-8-243, the Parties acknowledge that GDOT has delivered the Approved Investment List for each special district to GSFIC.
2. GDOT shall enter into a separate contract with GSFIC whereby GSFIC delegates to GDOT and GDOT accepts and agrees to be responsible for the management of the budget, schedule, execution, and delivery of the projects contained in the Approved Investment Lists for all transportation projects except bus and rail mass transit systems and passenger rail in any special district the boundaries of which are not wholly contained within a single metropolitan planning organization.
3. In managing projects that are funded with special district transportation sales and use tax proceeds, GDOT shall determine whether a project should be designed and constructed by GDOT, by a local government, or by another public or private entity. In making this determination, GDOT shall consider the elements identified in O.C.G.A. §48-8-249(c).
4. GDOT shall provide all information requested by GSFIC pertaining to a project's cost and scope prior to beginning construction. GDOT shall certify completion of the project or project element for which funds are requested before GSFIC will pay or reimburse from tax proceeds.
5. GDOT is responsible for all standards in design and construction of GDOT projects for which special district transportation sales and use tax proceeds will be requested from GSFIC.
6. Pursuant to O.C.G.A. § 48-8-242, "LARP factor" means the sum of one-fifth of the ratio between the population of a local government's jurisdiction and the total population of the special district in which such local government is located plus four-fifths of the ratio between the paved and unpaved centerline road miles in the local government's jurisdiction and the total paved and unpaved centerline road miles in the special district in which such local government is located. GDOT shall provide to GSFIC, no later than July 31 of each year, the updated LARP factor for the then current fiscal year for each region with an approved special district tax. The parties agree that the LARP factor for a given fiscal year will apply to proceeds collected in that fiscal year.

**IN WITNESS WHEREOF,**

**GEORGIA DEPARTMENT OF REVENUE**

By: Douglas MacGinnitie

Douglas MacGinnitie, Commissioner

Witness: Tommy Chivers

GEORGIA STATE FINANCING AND INVESTMENT COMMISSION

Construction Division

By: Steven L. Stancil

Steven L. Stancil, Director

Witness: April King

GEORGIA STATE FINANCING AND INVESTMENT COMMISSION

Financing and Investment Division

By: Susan Ridley

Susan Ridley, Director

Witness: Kelly Guler

GEORGIA DEPARTMENT OF TRANSPORTATION

By: Keith Golden

Keith Golden, Commissioner

Angela O. Winstanley Attest  
(Seal)  
Angela O. Winstanley  
Treasurer