

STATE OF GEORGIA     )  
  )  
COUNTY OF COBB     )

**INTERGOVERNMENTAL AGREEMENT  
FOR THE USE AND DISTRIBUTION OF PROCEEDS FROM THE 2016 SPECIAL  
PURPOSE LOCAL OPTION SALES TAX  
FOR CAPITAL OUTLAY PROJECTS**

THIS AGREEMENT is made and entered this the \_\_\_\_\_ day of July, 2014, by and between Cobb County, a political subdivision of the State of Georgia (the "County"), and the City of Acworth, the City of Austell, the City of Kennesaw, the City of Marietta, the City of Powder Springs and the City of Smyrna, municipal corporations of the State of Georgia. (the "Municipalities", individually and collectively).

WITNESSETH:

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 20<sup>th</sup> day of June, 2014 in conformance with the requirements of O.C.G.A. § 48-8-111 (a); and

WHEREAS, the County and the Municipalities have negotiated a division of the SPLOST proceeds as authorized by the Act, and have agreed to responsibilities and services to be performed for the benefit of the other

NOW, THEREFORE, in consideration of the mutual promises and understandings made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the Municipalities consent and agree as follows:

**Section 1. Representations and 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 into this Agreement

- (i) The County is a political subdivision duly created and organized under the Constitution of the State of Georgia;
- (ii) The governing authority of the County is duly authorized to execute, deliver and perform this Agreement;

- (iii) This Agreement is a valid, binding, and enforceable obligation of the County; and
- (iv) The County will take all actions necessary to call an election to be held in all voting precincts in the County on the 4<sup>th</sup> day of November, 2014 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 Cobb County for a period of \_\_\_\_\_ quarters, commencing on the 1st day of January, 2016, to raise an estimated \$\_\_\_\_\_ to be used for funding the projects specified in Exhibit A<sup>1</sup> attached hereto and specifically made a part hereof.

B. Each of the Municipalities makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering into this Agreement

- (i) Each Municipality is a municipal corporation duly created and organized under the Laws of the State of Georgia;
- (ii) The governing authority of each Municipality is duly authorized to execute, deliver and perform this Agreement;
- (iii) This Agreement is a valid, binding, and enforceable obligation of each Municipality;
- (iv) Each Municipality is a qualified municipality as defined in O.C.G.A. § 48-8-110 (4); and
- (v) Each Municipality is located entirely or partially within the geographic boundaries of the special tax district created in the County.

C. 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.*

D. The County and Municipalities agree to promptly proceed with the acquisition, construction, equipping and installation of the projects specified in Exhibit A, Tier 1 of this Agreement and in accordance with the priority order referenced in Section 8 of this Agreement and Exhibit A.

E. During the term of this Agreement, the County and Municipalities agree that each approved SPLOST facility 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 additional SPLOST funds for use by the original recipient

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<sup>1</sup> Exhibit A is a list of projects anticipated to be funded with SPLOST proceeds; Tier 1 includes projects anticipated to be fully funded based on projected estimated costs, while Tier 2 is a list of projects to be implemented only if funding remains available after funding of all Tier 1 projects. Any reference to Exhibit A shall mean both tiers unless otherwise specified.

(County/Municipality) or may be disposed of as provided by other applicable law.

F. The County and Municipalities agree to maintain thorough and accurate records concerning receipt of SPLOST proceeds and expenditures thereof for each project undertaken by the county or respective municipality as required by State Law and to fulfill the terms of this Agreement as more fully set forth in Section 11 hereof

### **Section 2. 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 3. Effective Date and Term of the Tax**

The SPLOST, subject to approval in an election to be held on November 4, 2014, shall continue for a period of \_\_\_\_\_ years with collections beginning on January 1, 2016.

### **Section 4. Effective Date and Term of This Agreement**

This Agreement shall commence upon the date of its execution and shall terminate upon the later of:

- (i) The official declaration of the failure of the election described in this Agreement;
- (ii) The expenditure by the County and all of the Municipalities of the last dollar of money collected from the SPLOST after the expiration of same; or
- (iii) The completion of all projects described in Exhibit A, Tier 1 where actual SPLOST proceeds are adequate to complete such projects, and those projects actually undertaken with SPLOST funds in Exhibit A, Tier 2.

### **Section 5. County SPLOST Fund: Separate Accounts; No Commingling**

A. A special fund or account shall be created by the County and designated as the 2016 Cobb County Special Purpose Local Option Sales Tax Fund (the "County SPLOST Fund"). The County shall select a bank which shall act as a depository and custodian of the County SPLOST Fund upon such terms and conditions as may be acceptable to the County.

B. Each Municipality shall create a special fund to be designated as the 2016 [ *municipality*

*name]* Special Purpose Local Option Sales Tax Fund. Each Municipality shall select a 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.

C. 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.

D. Any investment by the County or any Municipality of SPLOST funds shall be in accordance with O.C.G.A. §36-80-3 and other applicable law.

### **Section 6. Procedure for Disbursement of SPLOST Proceeds**

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 County SPLOST Fund and disburse said funds as provided in Paragraph B of this Section.

B. The County, following deposit of the SPLOST proceeds in the County SPLOST Fund, shall disburse the SPLOST proceeds to each Municipality on a monthly basis within ten (10) days of receipt of funds from the State Department of Revenue on a schedule as follows:

(i) The total of each month's revenue received from the State will be reduced by 1/\_\_\_ of \_\_\_\_\_ Dollars and NO/100 (\$\_\_\_\_), which is the projected cost of certain County-wide capital outlay projects as identified on Exhibit A, and such amount shall remain in the County SPLOST Fund.

(ii) Of the remaining monthly revenue, \_\_\_\_\_% will be disbursed to the Municipalities based upon the ratio that the population of each municipality bears to the total population of the County per the 20\_\_ Census projections, and \_\_\_\_\_% shall remain in the County SPLOST fund.<sup>2</sup>

(iii) For projects that are to be jointly carried out between the County and a Municipality ("Joint Projects"), where the County is the sponsoring agency, additionally and prior to the disbursement set forth in subsection (ii) above, the County will retain 1/\_\_\_ of the involved Municipality's agreed upon share of the Joint Project. If the Municipality is the sponsoring agency, the County will disburse to the involved Municipality 1/\_\_\_ of the County's share of the Joint Project at the same time of the disbursement set forth in subsection (ii) above. Joint Projects and the relative sponsorship of each is noted on Exhibit A.

(iv) The proceeds shall be deposited in the separate funds established by each Municipality in accordance with Section 5 of this Agreement.

C. Should any Municipality cease to exist as a legal entity before all funds are distributed under

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<sup>2</sup> Attached hereto and specifically made a part hereof is Exhibit B which, for illustrative purposes only, provides a One Month Estimated Disbursement Schedule based on anticipated SPLOST revenues.

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. In either event, the projects of such defunct Municipality as listed in Exhibit A, Tier 1 will be funded by the County with and to the extent of the Municipality's available share of SPLOST proceeds. In the event that a qualified municipality shall come into existence after the date of this Agreement, such municipality shall not be entitled to share in SPLOST proceeds.

D. Should the County or any Municipality obtain additional funding from sources other than SPLOST for funding of projects included in the SPLOST project list, the SPLOST funds not expended may be shifted to the funding of other projects included in Exhibit A, Tier 1, unless all such projects are fully funded and completed when, in such event, said funds may be expended on projects included in Exhibit A, Tier 2.

### **Section 7. Projects**

All County and Municipality capital outlay projects anticipated to be funded in whole or in part from SPLOST proceeds, are listed in Exhibit A, Tier 1 which is attached hereto and made part of this Agreement. Exhibit A, Tier 2 contains a list of projects to be implemented only if SPLOST funding is available after funding of all of the projects listed in Exhibit A, Tier 1.

### **Section 8. Priority and Order of Project Funding; Joint Project Funding**

A. **Priority of Funding.** SPLOST proceeds shall be distributed to the Municipalities in accordance with Section 6. B. of this Agreement. Exhibit A shows the priority or order in which Municipal projects will be fully or partially funded. Except as provided in Paragraph B and Paragraph C of Section 9 of this Agreement, any change to the priority in which Municipality projects will be funded, funding participation for Joint Projects, or schedule affecting any particular Municipality shall be accomplished by a memorandum of understanding between the County and the affected Municipality.

B. **Joint Project Funding.**

- (i) In the event that a Joint Project is undertaken jointly by the County and a Municipality and said project has a funding overage or underage, the savings or shortfall shall be shared in a manner proportionate to the scheduled contribution of each. The sponsoring agency shall promptly return to the non-sponsoring agency any such unused amounts retained or received from the non-sponsoring agency associated with such Joint Project.
- (ii) In the event of a funding shortfall, however, the affected parties shall enter into a memorandum of understanding with respect to the particular project prior to any additional funds being committed or expended. The County and Municipalities acknowledge that project budgets to be shared by the Joint Project participants have been established based on planning level estimates. Potentially, during design, real or personal property procurement, and/or construction, circumstances may arise that impact the initial estimated budget. Unless the involved participants agree to jointly allocate additional funds, or one participant agrees to unilaterally allocate additional funds, the involved Parties agree the Joint Project

will have to be managed or modified to meet the initial estimated budget, unless the Joint Project is jointly determined to be infeasible. If the Joint Project is deemed infeasible, the sponsoring agency shall promptly return to the non-sponsoring agency any such unused amounts retained or received from the non-sponsoring agency associated with such Joint Project.

### **Section 9. Completion of Projects**

A. The County and Municipalities acknowledge that the costs shown for each project described in Exhibit A are estimated amounts. The County and Municipalities reserve the right to modify their estimated projects budgets as circumstances dictate.

B. If a county project has been satisfactorily completed at a cost less than the estimated cost listed for that project in Exhibit A, Tier 1 because of project savings, receipt of additional funding or other reasons, the County may apply the remaining unexpended funds to any other county project in Exhibit A, Tier 1, unless all Exhibit A, Tier 1 projects have been fully funded and completed, at which time the unexpended funds may be applied to projects in Exhibit A, Tier 2. If a county project costs more than estimated, the shortfall may be covered by other available SPLOST funds to which the County is entitled.

C. If a municipal project has been satisfactorily completed at a cost less than the estimated cost listed for that project in Exhibit A, Tier 1 because of project savings, receipt of additional funding or other reasons, the Municipality may apply the remaining unexpended funds to any other project included for that Municipality in Exhibit A, Tier 1, unless all Exhibit A, Tier 1 projects have been fully funded and completed, at which time the unexpended funds may be applied to projects in Exhibit A, Tier 2. If a municipal project costs more than estimated, the shortfall may be covered by other available SPLOST funds to which such Municipality is entitled.

D. The County and Municipalities agree that each approved SPLOST project associated with this Agreement shall be completed or substantially completed within seven years of the termination of the SPLOST, excepting circumstances beyond the control of the sponsoring County or Municipality which prevents such timely completion, including lack of total funding. The County and Municipalities retain their discretion to make decisions that fall within the authorization of the SPLOST referendum and law, including but not limited to making adjustments in the plans and budgets for approved projects made necessary by changing circumstances, and making determinations as to whether a project remains feasible. There shall be no obligation on the part of the County or the Municipalities to fund or construct the projects listed in Exhibit A, Tier 2 as those projects are included for the limited purpose of being able to utilize any unanticipated SPLOST funds if such become available pursuant to the terms of this Agreement.

E. To the extent SPLOST receipts as allocated pursuant to Section 6 of this Agreement exceed the amounts needed to complete all County and Municipality projects described in Exhibit A, Tier 1 and Tier 2, such proceeds shall be distributed to the County and among the Municipalities in the same percentages as specified in Section 6. B.(ii) herein.

## **Section 10. Expenses**

The County shall administer the SPLOST Fund to effectuate the terms of this Agreement. The County shall be entitled to retain any interest accruing on SPLOST funds held by the County in the County SPLOST Fund, and each Municipality shall be entitled to retain any interest on SPLOST funds held by the Municipality in its Municipal SPLOST fund. Interest on SPLOST funds shall only be used to fund approved SPLOST projects.

## **Section 11. Audits; Reports; Indemnification**

- A. During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the County SPLOST Fund and each Municipal SPLOST fund shall be audited annually by an independent certified public accounting 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.
- B. Each Municipality shall provide to the County Comptroller and the County shall provide to the Municipal Finance Officer no later than 180 days of the close of each Municipality's and County's fiscal year an audited report.
- C. The County and each Municipality shall comply with the reporting requirements of O.C.G.A. §48-8-122. Under said provision, not later than December 31 of each year, the governing authority of each County and Municipality receiving any SPLOST proceeds shall publish annually, in a newspaper of general circulation in the boundaries of such local government, a simple, nontechnical report which shows for each project or purpose in the resolution or ordinance calling for imposition of the tax the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years, and amounts expended in the current year. In the case of road, street, and bridge purposes, such information shall be in the form of a consolidated schedule of the total original estimated cost, the total current estimated cost if it is not the original estimated cost, and the total amounts expended in prior years and the current year for all such projects and not a separate enumeration of such information with respect to each such individual road, street, or bridge project. The report shall also include a statement of what corrective action the local government intends to implement with respect to each project which is underfunded or behind schedule and a statement of any surplus funds which have not been expended for a project or purpose.
- D. In addition to the legal reporting requirements set forth in O.C.G.A. § 48-8-122, the Municipalities will provide documentation to the County and the 2016 One Percent Sales Tax Citizens' Oversight Committee annually verifying that the Municipalities projects included in the 2016 SPLOST are being administered in accordance with applicable law and that no SPLOST funds are being utilized for purposes other than those allowed.
- E. The County and the Municipalities shall each be responsible for its own compliance with applicable laws and the provisions of this Agreement, and for any agreements, contracts, and expenditures related in any manner to this Agreement and the SPLOST proceeds, and shall

indemnify and hold harmless all other parties to this Agreement from any claims, damages, fines or penalties filed, incurred, or assessed related to same.

**Section 12. 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:

*See Exhibit C*

**Section 13. 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 SPLOST and services rendered for the benefit of and on behalf of all parties. 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 2016 SPLOST funds.

**Section 14. Amendments**

Except as provided in Section 8., 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 15. 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 16. 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 17. Compliance with Law**

The County and the Municipalities shall comply with all applicable local, State, and Federal statutes, ordinances, rules and regulations.

### **Section 18. 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 19. 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.

### **Section 20. Dispute Resolution**

A. The County and Municipalities acknowledge that disputes under this Agreement may arise from time to time, and agree that, subject to the other provisions of this Agreement, each shall attempt to resolve such disputes according to the provisions of this section. The County and Municipalities do not intend to limit the kind of dispute or disagreement arising under this Agreement which may be submitted to the Dispute Resolution procedures set forth in this section.

B. Request for Clarification: In the event of an issue or question by the County or any Municipality regarding any aspect of this Agreement, the parties involved shall attempt to resolve that issue or answer that question amicably before proceeding to legal remedies. Such resolution efforts shall include communications between the parties outlining the particular issues, proposed solutions, and any other items necessary to resolve the situation. The parties agree that the request for clarification and any responses thereto should be completed no later than 30 calendar days after the request for clarification is made.

C. Escalation: In the event that a request for clarification pursuant to Paragraph B above does not result in a mutually agreeable solution to the dispute, either the County or Municipality shall have the right to have the other party appoint a designated representative that has authority to settle the dispute (or recommend to its governing body such settlement) and that is at a higher level of management than the person with direct responsibility for administration of this Agreement to communicate with an equal-leveled representative of the requesting party.

D. Mediation: Any claim, controversy or dispute between the County and Municipality(ies) that cannot be settled through negotiation or pursuant to Paragraph B or C above, may be resolved through non-binding mediation. If the County and Municipality agree to submit the dispute to non-binding mediation, the following mediation provisions shall apply: (1) the parties shall agree to a mediator who is engaged in the practice of law; (2) if the parties cannot agree on who the mediator will be, the County Manager and the City Manager of the Municipality involved in the dispute, or if there is more than one Municipality involved in the dispute, the City Manager unanimously designated to represent all of said Municipalities will agree on a mediator; (3) the mediation shall take place within 30 days after agreement on the mediator; and (4) each party participating in the mediation shall bear its own costs and attorneys' fees, and shall share equally in the fees and expenses of the mediator.

E. Alternative Remedies: Notwithstanding the provisions of this section, any party may seek any available remedy at law or equity upon a breach of this Agreement, and nothing contained herein shall be a prerequisite to seeking of such relief.

F. Waiver: The exercise of any of the remedies set forth in this Section shall not limit or constitute a waiver of the County's or Municipalities' rights to pursue additional remedies set forth herein, except where otherwise agreed to in writing.

**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.

By: \_\_\_\_\_  
Timothy D. Lee, Chairman  
Cobb County Board of Commissioners

Attest:

By: \_\_\_\_\_  
Candace Ellison, Clerk  
Cobb County Board of Commissioners

SEAL

DRAFT

**CITY OF ACWORTH**

By: \_\_\_\_\_  
Tommy Allegood, Mayor

Attest:

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

SEAL

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CITY OF AUSTELL

CITY OF AUSTELL

By: \_\_\_\_\_  
Joe Jerkins, Mayor

\_\_\_\_\_

Attest:

\_\_\_\_\_

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

\_\_\_\_\_

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CITY OF KENNESAW

By: \_\_\_\_\_  
Mark Matthews, Mayor

Attest:

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

SEAL

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CITY OF MARIETTA

By: \_\_\_\_\_  
R. Steve Tumlin, Jr., Mayor

Attest:

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

SEAL

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**CITY OF POWDER SPRINGS**

By: \_\_\_\_\_  
Patricia Vaughn, Mayor

Attest:

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

SEAL

DRAFT

CITY OF SMYRNA

By: \_\_\_\_\_  
A. Max Bacon, Mayor

Attest:

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

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