

STATE OF GEORGIA

COUNTY OF WHITFIELD

**Intergovernmental Agreement
For The Use and Distribution of Proceeds From
the 2019 Special Purpose Local Option Sales Tax
For Capital Outlay Projects**

THIS AGREEMENT is made and entered this the ____ day of November, 2018 (this “Agreement”), by and among Whitfield County, Georgia, a political subdivision of the State of Georgia (the “County”), the City of Dalton, the City of Tunnel Hill, the City of Varnell and the Town of Cohutta, each a qualified municipality of the State of Georgia (the “Municipalities,” individually and collectively).

WITNESSETH:

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

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

WHEREAS, under the terms of the Sales Tax Law, it is necessary for Municipalities to enter into this Agreement with the County relating to the provision of governmental services and facilities by the County and Municipalities, as authorized by Article IX, Section III, Paragraph I of the Constitution of the State of Georgia, prior to the call of the election with respect to the SPLOST; and

WHEREAS, the County and the Municipalities met on the 9th day of October, 2018 to discuss possible projects for inclusion in the SPLOST referendum in conformance with the requirements of O.C.G.A. § 48-8-111(a) and have had continuing discussions on projects for inclusion in the SPLOST through the date of this Agreement; and

WHEREAS, the County and Municipalities have negotiated a division of the SPLOST proceeds as authorized by the Sales Tax Law, and

WHEREAS, it is projected that the SPLOST will raise an estimated amount of \$100,000,000 over six (6) years; and

WHEREAS, the City of Tunnel Hill will receive the exact amount equal to \$577,166 for the capital outlay projects listed in Section A of Exhibit A attached hereto (the “Tunnel Hill Projects”); and

WHEREAS, the City of Varnell will receive the exact amount equal to \$1,175,908 for the capital outlay projects listed in Section B of Exhibit A attached hereto (the “Varnell Projects”); and

WHEREAS, the Town of Cohutta will receive the exact amount equal to \$445,685 for the capital outlay projects listed in Section C of Exhibit A attached hereto (the “Cohutta Projects”); and

WHEREAS, assuming collection of the total amount projected, the County will receive approximately \$76,338,911 for the capital outlay projects listed in Sections D and E of Exhibit A attached hereto (the “County Projects”); and

WHEREAS, assuming collection of the total amount projected, the City of Dalton will receive approximately \$21,462,331 for the capital outlay projects listed in Section F of Exhibit A attached hereto (the “Dalton Projects” and, together with the Dalton Projects, the Tunnel Hill Projects and the Varnell Projects, collectively, the “Municipality Projects”)); and

WHEREAS, the County and the Municipalities desire to enter into this Agreement to meet the provisions of O.C.G.A. § 48-8-115(b)(1); and

WHEREAS, the County has been asked to submit to the qualified voters of the County at an election to be held March 19, 2019, the question of whether the voters will approve the SPLOST; and

WHEREAS, it is necessary that the County and the Municipalities provide for the division of funds representing the proceeds from the revenues produced by the SPLOST; and

WHEREAS, it is necessary that the County and the Municipalities set forth their respective legal rights, responsibilities, and obligations regarding the construction, ownership, and operation of the County Projects and the Municipality Projects; and

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

Section 1. Representations and Mutual Covenants

A. The County makes the following representations and warranties that may be specifically relied upon by all parties as a basis for entering 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 March 19, 2019 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 Whitfield County for a period of 24 quarters, commencing on July 1, 2019 (or such other dates as may be approved by the State Department of Revenue), to raise an estimated \$100,000,000 to be used for funding the projects specified in Exhibit A attached hereto.

B. Each of the Municipalities makes the following representations and warranties that may be specifically relied upon by all parties as a basis for entering 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. The County delivered or mailed on September 27, 2018 a written notice to the mayors of the Municipalities, of a meeting that was held at Edwards Park on October 9, 2018, at which the governing authorities of the County and of such Municipalities met to discuss the possible projects for inclusion in the SPLOST. The County and Municipalities have had continuing discussions since the noticed meeting on October 9, 2018.

D. 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.*

E. The County and Municipalities agree to promptly proceed with the acquisition, construction, equipping and installation of the County Projects and Municipality Projects specified in Exhibit A of this Agreement.

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

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

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 proceeds 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 March 19, 2019, shall continue for a period of 24 quarters with collections beginning on July 1, 2019 (or at such other date as may be approved by the State Department of Revenue).

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 referendum described in this Agreement; or

- (ii) The expenditure by the County and the Municipalities of the last dollar of money collected from the SPLOST after the expiration of the SPLOST.

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 2019 Whitfield County Special Purpose Local Option Sales Tax Fund (“SPLOST Fund”). The County shall select a bank that shall act as a depository and custodian of the 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 City of [with their respective city name inserted] Special Purpose Local Option Sales Tax Fund. Each Municipality shall select a local bank which shall act as a depository and custodian of the SPLOST proceeds received by each Municipality upon such terms and conditions as may be acceptable to each such Municipality.

C. All SPLOST proceeds shall be maintained by the County and each Municipality in a separate account or fund established pursuant to this Section. SPLOST proceeds shall not be commingled with other funds of the County or Municipalities and shall be used exclusively for the purposes detailed in this Agreement. No funds other than SPLOST proceeds shall be placed in such funds or accounts.

Section 6. Procedure for Disbursement of SPLOST Proceeds

A. Upon receipt by the County of the SPLOST proceeds collected by the State Department of Revenue, the County shall immediately deposit said proceeds in the SPLOST Fund. Except as provided in Section 7 hereof, the monies in the SPLOST Fund shall be held and applied to the cost of acquiring, constructing and installing the County Projects listed in Exhibit A attached hereto and as provided in Paragraph B of this Section.

B. Except as provided in Section 7 hereof, the County shall remit and distribute the SPLOST proceeds on a monthly basis, within 15 days of receipt, assuming the County continues to receive such money on a monthly basis. The proceeds shall be deposited in the separate funds or accounts established by the County and 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 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 shall be paid to the successor Municipality in addition to all other funds to which the successor Municipality would otherwise be entitled.

Section 7. Bond Financed Projects

A. If the SPLOST is approved by the voters, the County may request that the City of Dalton Building Authority (the “Authority”) issue its revenue bonds (the “Bonds”) to finance a portion of the County Projects listed in Sections D and E in Exhibit A attached hereto (the “Bond Financed Projects”). Net proceeds of the Bonds shall be deposited into a special trust account of the County to be used for the acquisition, construction and installation of a portion of the Bond Financed Projects.

B. Notwithstanding anything herein to the contrary, if the Authority issues its revenue bonds to finance the Bond Financed Projects, the SPLOST proceeds received in any year pursuant to the imposition of such tax, following the amounts initially distributed to the Tunnel Hill Projects, the Varnell Projects and the Cohutta Projects as described in Section 9 below, shall only be used for paying debt service requirements on the Bonds until such time as there is on deposit in a separate trust fund (to be maintained by a bank with trust powers on behalf of the County) (the “Debt Service Account”) sufficient monies to pay all principal and interest on the Bonds coming due in that year (a “Bond Year”). After the Debt Service Account has sufficient monies therein to pay the principal and interest coming due on the Bonds in the then current Bond Year, all remaining proceeds of the SPLOST subsequently received in said Bond Year (the “Excess Distributions”) shall be allocated and distributed between the County and City of Dalton according to the priority schedule provided in Exhibit A attached hereto. Notwithstanding the foregoing sentence, the amount of proceeds of the SPLOST deposited into the Debt Service Account in each Bond Year, less an amount equal 33.3% of the interest of the Bonds that financed County Projects, listed in Section (D)(1) in Exhibit A, in such Bond Year, shall be deducted from the amount of Excess Distributions allocated and distributed to the County for such Bond Year. The County will be responsible for distributing such remaining proceeds and will meet the requests of the City of Dalton when it determines that proceeds of the SPLOST are available therefor.

C. The County shall remit and distribute the Excess Distributions on a monthly basis, assuming the County continues to receive such money on a monthly basis. The proceeds shall be deposited in the separate funds or accounts established by the County and the City of Dalton in accordance with Section 6 of this Agreement.

Section 8. Projects

A. All capital outlay projects, to be funded in whole or in part from the proceeds of the SPLOST, are listed in Exhibit A, which is attached hereto and made part of this Agreement.

B. The County shall hold title to and shall be solely responsible for acquiring, constructing, equipping, installing, operating, maintaining, and insuring the County Projects.

C. Each of the Municipalities shall hold title to and shall be solely responsible for acquiring, constructing, equipping, installing, operating, maintaining, and insuring its respective Municipality Projects.

Section 9. Priority and Order of Project Funding

From the commencement date of the SPLOST, the SPLOST proceeds shall be allocated and distributed first to pay the costs of the Tunnel Hill Project, the Varnell Projects and the Cohutta Projects pro rata. Once distributions have been made for the Tunnel Hill Project, the Varnell Projects and the Cohutta Projects in the amounts provided in Exhibit A of this Agreement, the County Projects and the Dalton Projects shall be fully or partially funded and constructed in accordance with the priority schedule found in Exhibit A of this Agreement. Except as provided in Paragraphs B and C of Section 10 of this Agreement, any change to the priority or the schedule must be agreed to in writing by all parties to this Agreement.

Section 10. Completion of Projects

A. The County and Municipalities acknowledge that the costs shown for each project described in Exhibit A are estimated amounts.

B. If a County Project has been satisfactorily completed at a cost less than the estimated cost listed for that project in Exhibit A, the County may apply the remaining unexpended funds to any other County Project in Exhibit A.

C. If a Municipality Project has been satisfactorily completed at a cost less than the estimated cost listed for the project in Exhibit A, the Municipality may apply the remaining unexpended funds to any other Municipality Project included for such Municipality in Exhibit A.

D. The County and Municipalities agree that each approved projects associated with this Agreement shall be completed or substantially completed within five years of the termination of the SPLOST. Any SPLOST proceeds held by the County or Municipality at the end of the five year period shall, for the purposes of this Agreement, be deemed excess funds and disposed of as provided under O.C.G.A. § 48-8-121(g)(2).

Section 11. Certificate of Completion

Within thirty (30) days after the acquisition, construction or installation of a Municipality Project listed in Exhibit A is completed, the Municipality owning such Municipality Project shall file with the County a certificate of completion signed by the Mayor or chief elected official of the respective Municipality, setting forth the date on which the project was completed, and the final cost of the Municipality Project.

Section 12. Excess SPLOST Proceeds

In the event that the SPLOST raises more than \$100,000,000 with the County and the Municipalities having been allocated the amounts set forth in Exhibit A of this Agreement, SPLOST receipts above \$100,000,000 shall be divided 65/35 between the County and the City of Dalton, respectively, and allocated among the County Projects and the Dalton Projects in the reasonable discretion of the governing body of the County or the City of Dalton receiving such receipts and any excess proceeds shall be applied in accordance with Georgia law.

Section 13. Expenses

The County shall administer the SPLOST Fund to effectuate the terms of this Agreement and shall be responsible for the actual costs of administration of the SPLOST Fund. Furthermore, the County shall be responsible for the cost of holding the SPLOST election.

Section 14. Audits

A. During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the SPLOST Fund and each Municipality 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 Municipalities agree to cooperate with the respective independent certified public accounting firms in any audit by providing all necessary information.

B. Each Municipality shall provide the County a copy of the audit of the distribution and use of the SPLOST proceeds by the Municipality.

Section 15. 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:

WHITFIELD COUNTY: Whitfield County Board of Commissioners
Attention: Chairman
301 W. Crawford Street
Dalton, Georgia 30720

CITY OF DALTON: City of Dalton
Attention: Mayor
300 West Waugh Street
Dalton, Georgia 30722

CITY OF TUNNEL HILL: City of Tunnel Hill
Attention: Mayor
201 G. Vaughn Pkwy
Tunnel Hill, Georgia 30755

CITY OF VARNELL: City of Varnell
Attention: Mayor
P.O. Box C
Varnell, Georgia 30756

TOWN OF COHUTTA: Town of Cohutta

Attention: Mayor
5102 Red Clay Road
Cohutta, Georgia 30710

Section 16. 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. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to distribution and use of said SPLOST.

Section 17. Amendments

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

Section 18. 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 19. 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 20. Compliance with Law

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

Section 21. No Consent to Breach

No consent or waiver, express or implied, by any party to this Agreement, to any breach of any covenant, condition or duty of another party shall be construed as a consent to or waiver of any future breach of the same.

Section 22. Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 23. Mediation

The County and Municipalities 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 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.

WHITFIELD COUNTY, GEORGIA

By: _____
R. Lynette Laughter, Chairman
Board of Commissioners of Whitfield County

Attest:

By: _____
Blanca Cardona, Clerk

CITY OF DALTON, GEORGIA

By: _____
Dennis Mock, Mayor

Attest:

By: _____
Bernadette Chattam, City Clerk

CITY OF TUNNEL HILL, GEORGIA

By: _____
Kenny Gowin, Mayor

Attest:

By: _____
Melinda Griffin, City Clerk

CITY OF VARNELL, GEORGIA

By: _____
Tom Dickson, Mayor

Attest:

By: _____
Pam Garrison, City Clerk

TOWN OF COHUTTA, GEORGIA

By: _____
Ron Shinnick, Mayor

Attest:

By: _____
City Clerk

EXHIBIT A

The total revenues from the SPLOST (2019) to be collected over the 24-quarter period beginning on July 1, 2019 and ending on June 30, 2025 (or such other dates as may be approved by the State Department of Revenue) is estimated to total \$100,000,000. Except as provided in Section 7 of this Agreement, all projects shall be funded in accordance with the table below. SPLOST funds shall first be allocated to Priority 1 projects. After Priority 1 projects are fully funded, SPLOST proceeds will be allocated to amounts budgeted to be spent each year by the County for the Priority 2 projects. After Priority 2 projects are funded each year as described in the preceding sentence, SPLOST proceeds will be allocated each year to Priority 3 projects pro rata in accordance with the provisions of the Agreement as follows:

PROJECTS

	<u>Description</u>	<u>Estimated Costs</u>	<u>Priority</u>
A. City of Tunnel Hill			
	1. Sidewalks; Sewer Improvements and expansion	\$480,000	1
	2. Police Vehicles	100,000	1
	Subtotal Tunnel Hill:	\$577,166¹	
B. City of Varnell			
	<u>Parks and Recreation</u>		1
	1. Replace playground	\$100,000	
	2. Add additional facilities to track/Splash pad	100,000	
	3. Renovate Recreation ballfield area	250,000	
	4. Install a dog park	15,000	
	5. Add sidewalks to Spring Area	25,000	
	6. Pave parking lot at Springs	25,000	
	<u>Public Safety</u>		1
	7. 5 police cars/equipment	\$225,000	
	8. Purchase computers/printer	25,000	
	9. Parking cover	25,000	
	10. Tint windows	3,000	
	<u>Sanitation</u>		1
	11. New Sanitation Truck	\$240,000	

	<u>Pay off Capitalization</u>		1
	12. Sanitation Truck	\$69,100	
	<u>Solid Waste</u>		1
	13. Sewage System for Marla Drive.	\$100,000	
	Subtotal Varnell:	\$1,175,908¹	
C. Town of Cohutta			
	1. Body Cameras	\$124,536	1
	2. Park Improvements; City Hall renovations; Equipment; Tree Work; Storage Buildings	320,000	1
	Subtotal Cohutta:	\$445,685¹	
	Total for Tunnel Hill; Varnell and Cohutta:	\$2,198,758	

¹ The amount of SPLOST proceeds allocated to the Tunnel Hill Projects, Varnell Projects and Cohutta shall be the exact amounts listed in this column. After such exact amounts have been distributed to the City of Tunnel Hill, the City of Varnell and the Town of Cohutta, all remaining SPLOST proceeds shall be disbursed the County and the City of Dalton in accordance with this Agreement.

* * *

	<u>Description</u>	<u>Estimated Costs</u>	<u>Percentage of Remaining SPLOST Proceeds After Priority 1 and Priority 2 Projects</u>	<u>Priority</u>
D. Whitfield County (Level 1 Projects)				
	1. Extensive renovations primarily to the older portion of the Courthouse campus, renovations to the Jail facility, and demolition of Administrative Buildings 1 and 2 and	\$33,543,173 ²	N/A	2

² If the actual costs of the County Projects described in this paragraph (D)(1) is greater than \$33,543,173, all costs above \$33,543,173 shall be deemed part of these projects and shall be paid prior to paying any Priority 3 projects. If the actual costs of the County Projects described in this paragraph (D)(1) is less than \$33,543,173, the County and the City of Dalton shall split the excess available SPLOST proceeds in accordance with Section 12 of this Agreement.

	construction of new administration facilities, including renovation of Gillespie Drive gymnasium for accountability court use			
E. Whitfield County (Remaining Projects)			66.6%	
	1. Acquisition payments for Fire Station 12; renovations to fire stations; fire engines; quick response vehicles; Sheriff vehicles	\$5,072,743		3
	2. Construction of new animal control facility	\$1,500,000		3
	3. Library Capital Improvements, Building and Technology	\$500,000		3
	4. MPO road projects matching funds, bridge and culvert repair and construction; general road paving	\$17,300,000		3
	5. Design and Construction of southside park infrastructure, community center/natatorium; renovations at Edwards Park, including lighting, sewer improvements; miscellaneous enhancements and equipment; Grant Farm improvements; and design and construction of Westside park athletic fields and community center	<u>\$18,422,995</u>		3
	Subtotal Whitfield:	\$76,338,911		
F. City of Dalton			33.4%	
	1. Airport T-Hangar Facility	\$690,000		3
	2. Police vehicles; police equipment; Property and Evidence building/lab;			3

	fire engines and aerial apparatus, rescue equipment for fire department	\$5,000,000		
	3. Renovations to John Davis Recreation Center; renovations to Heritage Park; Haig Mill trail connection	\$7,500,000		3
	4. Renovations to Dalton-Whitfield Senior Center and vehicle purchase	\$455,000		3
	5. Streets, Bridges and Stormwater Projects	<u>\$7,817,331</u>		3
	Subtotal Dalton:	\$21,462,331		
	TOTAL	\$100,000,000*	100%	

* Total is slightly off due to rounding.