

**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 _____, 2018, by and between RABUN COUNTY, a political subdivision of the State of Georgia (the "County"), and the City of Clayton ("Clayton"), the City of Tallulah Falls ("Tallulah Falls"), the City of Tiger ("Tiger"), the City of Mountain City ("Mountain City"), the City of Sky Valley ("Sky Valley"), and the City of Dillard ("Dillard"), municipal corporations of the State of Georgia (the "City" or "Cities," individually and collectively).

WITNESSETH:

WHEREAS, Article IX, Section III, Paragraph I(a) of the Georgia Constitution (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 fifty 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, 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, representatives of the County and Cities met on several different occasions during 2018 to discuss possible projects for inclusion in the SPLOST referendum that is to be held on the 19th day of March, 2019, in conformance with the requirements of O.C.G.A. § 48-8-111(a); and

WHEREAS, the County and Cities agree that all procedural and substantive requirements required by the Act to formalize this Intergovernmental Agreement and the meeting of the parties have been satisfied;

WHEREAS, the County and the Cities have negotiated a division of the SPLOST proceeds as authorized by the Act; and

WHEREAS, the Act authorizes the County and the Cities to enter into an "intergovernmental agreement" (as defined in the Act) pursuant to the Intergovernmental Contracts Clause in order to, among other things, identify the Projects that will be funded with the SPLOST.

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 Cities 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 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; and
 - (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 19th of March, 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 Rabun County for a period of 24 quarters (six years), commencing on the 1st day of October, 2019, to raise an estimated \$20,000,000.00 to be used for funding the County Projects and City Projects specified in Exhibit "A."
- B. Each of the Cities makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:
- (i) Each City is a municipal corporation duly created and organized under the Laws of the State of Georgia;
 - (ii) The governing authority of each City is duly authorized to execute, deliver and perform this Agreement;
 - (iii) This Agreement is a valid, binding, and enforceable obligation of each City;
 - (iv) Each City is a qualified municipality as defined in O.C.G.A. § 48-8-110(4); and
 - (v) Each City 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 Cities 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 Cities agree to promptly proceed with the acquisition, construction, equipping and installation of the projects specified in Exhibit "A" (attached hereto and incorporated herein) of this Agreement and in accordance with the proceeds disbursement schedule specified in Exhibit "B" (attached hereto and incorporated herein) and in further conformance with those priorities that may otherwise be established under this Agreement or otherwise by each of the respective parties hereto. The Cities agree that the amounts reflected in Exhibit "A" represent the full amount of SPLOST proceeds to which they are respectively entitled under this Agreement.
- E. The County and Cities 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 within ten (10) years of the SPLOST expiration, 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).
- F. The County and Cities agree that all capital outlay projects included in this Agreement shall be funded from proceeds from the SPLOST except as otherwise agreed.
- G. The County and Cities agree to maintain thorough and accurate records concerning receipt of SPLOST proceeds and expenditures of each project undertaken by the respective county or city and to publish information related to use of tax proceeds as required to fulfill the terms of this Agreement and O.C.G.A. § 48-8-122.

Section 2. Conditions Precedent

- A. The obligations of the County and Cities 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 of those proceeds 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 October 1, 2019.

Section 4. Effective Date and Term of This Agreement

- A. 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; or
 - (ii) Until the SPLOST terminates in accordance with the Act, all funds collected therefrom have been distributed in accordance with this Agreement, and all payments on the Debt (if applicable) have been made.
- B. It is the intention of the parties' to this Agreement that upon the Cities receiving their full disbursement of SPLOST proceeds as provided in Exhibits "A" and "B," and upon the County Projects being fully funded, that any excess funds shall be retained for the exclusive use of the County for any lawful purpose including but not limited to those uses set forth in O.C.G.A. § 48-8-121(g)(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 2019 Rabun County Special Purpose Local Option Sales Tax Fund ("SPLOST Fund"). The County shall select a local bank which 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 City shall create a special fund to be designated as, respectively, the 2019 Clayton, Tallulah Falls, Dillard, Sky Valley, Tiger, or Mountain City Special Purpose Local Option Sales Tax Fund. Each City shall select a local bank, which shall act as a depository and custodian of the SPLOST proceeds received by each City upon such terms, and conditions as may be acceptable to the City.
- C. All SPLOST proceeds shall be maintained by the County and each City 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 Cities 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. By virtue of the parties' entry into this Agreement and based upon the Act, the SPLOST shall be collected for a period of six years.
- B. Upon receipt by the County of SPLOST proceeds collected by the State Department of Revenue, the County shall immediately deposit said proceeds in the SPLOST

Fund. Following deposit of the SPLOST proceeds in the SPLOST Fund, the County shall within ten (10) business days disburse the SPLOST proceeds in accord with the schedule in Exhibit "B." Upon receipt of such funds by the each City, said proceeds shall be deposited in the separate funds established by each City in accordance with Section 5 of this Agreement.

- C. Should any City cease to exist as a legal entity before all funds are distributed under this Agreement, that City'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 City part of another successor municipality. If such an act is passed, the defunct City's share shall be paid to the successor City in addition to all other funds to which the successor City would otherwise be entitled.

Section 7. Projects

All capital outlay projects, to be funded in whole or in part from SPLOST proceeds, are listed in Exhibit "A."

Section 8. Priority and Order of Project Funding

- A. All of the County Projects identified in Exhibit "A" shall be of equal priority unless and until the County adopts a lawful resolution establishing a priority for said projects.
- B. All of the City Projects identified in Exhibit "A" shall be deemed of equal priority. This equal priority notwithstanding, the Cities shall retain the separate right via separate resolution to establish a priority and order of project funding as they shall individually determine appropriate and that is otherwise in accord with the Act.

Section 9. Completion of Projects

- A. The County and Cities acknowledge that the costs shown for each project described in Exhibit "A" are estimates of the actual cost of the projects identified therein.
- B. If a County Project has been satisfactorily completed at a cost less than the allocation of SPLOST proceeds identified for that project in Exhibit "A," the County may apply the remaining unexpended funds to any other County Project in Exhibit "A;" or, in the event that all County Projects are fully funded, the County may apply any excess funds to any lawful use including but not limited to those uses set forth in O.C.G.A. § 48-8-121(g)(2).
- C. If a City Project has been satisfactorily completed at a cost less than the allocation of SPLOST proceeds identified for that project in Exhibit "A," the City may apply the remaining unexpended funds to any other project included for that City in Exhibit "A" (if any). If a City has funds remaining after all projects identified in

Exhibit "A" are completed, such funds shall be deemed excess funds and shall be disposed of in accord with O.C.G.A. § 48-8-121(g)(2).

- D. The County and Cities agree that each approved SPLOST project associated with this Agreement shall be completed or substantially completed within six years of the termination of the SPLOST. Any SPLOST proceeds held by a County or City at the end of the six 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 10. Certificate of Completion

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

Section 11. Expenses

The County shall administer the SPLOST Fund to effectuate the terms of this Agreement and shall be reimbursed for the actual costs of administration of the SPLOST Fund. Furthermore, the County and Cities shall be jointly responsible on a per capita basis for the cost of holding the SPLOST election. The County shall be reimbursed for the costs of the election, including but not limited to the Cities' share of such costs, out of SPLOST proceeds deposited in the SPLOST Fund.

Section 12. Audits

- A. During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the SPLOST Fund and each City 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 City receiving SPLOST proceeds shall be responsible for the cost of their respective audits. The County and the Cities agree to cooperate with the independent certified public accounting firm in any audit by providing all necessary information.
- B. Each City shall provide the County a copy of the audit of the distribution and use of the SPLOST proceeds by the City.

Section 13. Notices

All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be in writing and deemed properly given when delivered

personally or sent by registered or certified United States mail, return receipt requested, postage prepaid, as follows:

<u>Rabun County</u>	Chairman, Rabun County Board of Commissioners 25 Courthouse Square, Suite 201 Clayton, Georgia 30525
<u>City of Clayton</u>	Mayor, City of Clayton 99 N. Church St. Clayton, Georgia 30535
<u>City of Dillard</u>	Mayor, City of Dillard 892 Franklin St. Dillard, Georgia 30537
<u>City of Mountain City</u>	Mayor, City of Mountain City P.O. Box 493 Mountain City, Georgia 30562
<u>City of Sky Valley</u>	Mayor, City of Sky Valley 3444 Highway 246 Dillard, Georgia 30537
<u>City of Tiger</u>	Mayor, City of Tiger 3010 Old 441 South Tiger, Georgia 30576
<u>City of Tallulah Falls</u>	Mayor, City of Tallulah Falls P.O. Box 56 Tallulah Falls, Georgia 30573

Future changes in address shall be effective only upon written notice being given by the City or County making the change to the other parties hereto via one of the delivery methods described in this Section.

Section 14. Entire Agreement

This Agreement, including any attachments or exhibits hereto, constitutes all of the understandings and agreements existing between the County and the Cities 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 15. Amendments

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

Section 16. 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 18. Severability

Should any phrase, clause, sentence, or paragraph of this Agreement, or any part thereof, be held invalid or unconstitutional by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and 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 18. Compliance with Law

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

Section 19. 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 20. No Third Party Rights

This Agreement shall be exclusively for the benefit of the parties hereto and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.

Section 21. Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be an original and all of which together shall constitute but one and the same instrument.

Section 22. Mediation

The County and Cities 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 Cities 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.

COUNTY OF RABUN, GEORGIA

By: _____
Greg James, Chairman

(Seal)
Attest:

Clerk

MUNICIPALITY OF TALLULAH FALLS

By: _____
Teri Dobbs, Mayor

(Seal)
Attest:

Clerk

MUNICIPALITY OF TIGER

By: _____
Thomas H. Ramey, Jr., Mayor

(Seal)
Attest:

Clerk

MUNICIPALITY OF MOUNTAIN CITY

By: _____
Grace Watts, Mayor

(Seal)
Attest:

Clerk

MUNICIPALITY OF SKY VALLEY

By: Bob MacNair
Bob MacNair, Mayor

(Seal)
Attest:

Glen Faust
Clerk

MUNICIPALITY OF DILLARD

By: _____
William Robinson, Mayor

(Seal)
Attest:

Clerk

MUNICIPALITY OF CLAYTON

By: _____
Jordan Green, Mayor

(Seal)
Attest:

Clerk

Exhibit A

PROJECT PROVISIONS

The Cities and the County agree to the following SPLOST proceed allocations for the following capital outlay projects:

<u>County Projects</u>	<u>SPLOST allocation¹</u>
Sheriff's Building	\$1,000,000
Administration-Courthouse	\$3,000,000
Jail	\$4,000,000
Water and Sewer	\$5,000,000
Roads and Bridges	\$2,500,000
Total	\$15,500,000

<u>Clayton Projects</u>	<u>SPLOST allocation</u>
Roads and Streets	\$1,500,000
Water and Sewer System Improvements	\$500,000
City Hall Maintenance and Repair	\$240,000
Public Safety	\$60,000
Total	\$2,300,000

<u>Dillard Projects</u>	<u>SPLOST allocation</u>
Roads and Bridges	\$170,000
Water and Sewer System Improvements	\$170,000
City Complex Renovations	\$100,000
Total	\$440,000

<u>Sky Valley Projects</u>	<u>SPLOST allocation</u>
Buildings	\$50,000
Equipment	\$100,000
Roads and Streets	\$240,000
Total	\$390,000

¹ The County may be entitled to receive more than \$15,500,000 in accordance with Exhibit "B."

Mountain City Projects

SPLOST allocation

City Complex Renovations	\$310,000
Roads and Bridges	\$250,000
Public Safety	\$90,000
Total	\$650,000

Tiger Projects

SPLOST allocation

Roads and Bridges	\$350,000
Parks and Recreation	\$150,000
Total	\$500,000

Tallulah Falls Projects

SPLOST allocation

Water and Sewer System Improvements	\$120,000
Roads and Bridges	\$50,000
Public Buildings	\$50,000
Total	\$220,000

Exhibit "B"

DISBURSEMENT FORMULA

The Cities and the County agree to the following disbursement formula:

- a. All SPLOST proceeds received shall be disbursed in equal shares between the parties to this Agreement until such time as the City receiving the least percentage of SPLOST proceeds has received its entire allotment of SPLOST proceeds (as set forth in Exhibit "A"). Upon receipt of that allotment, the City that has received its entire allotment of SPLOST proceeds shall no longer receive any further proceeds or otherwise be part of the distribution.
- b. Consequently, and by way of example, the initial SPLOST proceeds shall be disbursed via a monthly one-seventh ($1/7$) split to each party to this Agreement. Upon Tallulah Falls receiving its entire \$220,000 allotment under this Agreement, the next monthly disbursement shall be via a one-sixth ($1/6$) split to each remaining party until such time as Sky Valley has received its entire \$390,000 allotment, in which case the next monthly disbursement shall be via a one-fifth ($1/5$) split to each remaining party. Upon Dillard receiving its entire \$440,000 allotment under this Agreement, the next monthly disbursement shall be via a one-fourth ($1/4$) split to each remaining party, until such time as Tiger has received its entire \$500,000 allotment, in which case the next monthly disbursement shall be via a one-third ($1/3$) split to each remaining party. This methodology shall continue until all the Cities have received their respective allotments in accord with Exhibit "A."
- c. After the Cities have received their respective allotments of SPLOST proceeds in accord with Exhibit "A," all remaining SPLOST proceeds shall be retained exclusively and solely by the County for such use as is provided by law or such use as is otherwise required under this Agreement.