

STATE OF GEORGIA
COUNTY OF BEN HILL

**INTERGOVERNMENTAL AGREEMENT
FOR THE USE AND DISTRIBUTION OF PROCEEDS FROM
THE 2023 SPECIAL PURPOSE LOCAL OPTION SALES TAX
FOR CAPITAL OUTLAY PROJECTS**

THIS AGREEMENT is made and entered this the 28 day of November, 2022 by and between Ben Hill County, a political subdivision of the State of Georgia, (the "County") and the City of Fitzgerald, municipal corporation of the State of Georgia (the "City").

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 City within the County; and

WHEREAS, the County and City met to discuss possible projects for inclusion in the SPLOST referendum on the 31st day of May, 2022 in conformance with the requirements of O.C.G.A. § 48-8-111(a); and

WHEREAS, the County and the City have negotiated a division of the Special Purpose Local Option Sales Tax proceeds as authorized by the Act.

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 City 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 21st day of March, 2023 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 use within Ben Hill County for

a period of 24 quarters, commencing on the 1st day of July, 2023, to raise an estimated \$16,000,000.00 to be used for funding the projects specified in Exhibit A attached hereto.

- B. The City makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:
- (i) The City is a municipal corporation duly created and organized under the Laws of the State of Georgia;
 - (ii) The governing authority of the City is duly authorized to execute, deliver and perform this Agreement;
 - (iii) This Agreement is a valid, binding, and enforceable obligation of the Municipality;
 - (iv) The City is a qualified municipality as defined in O.C.G.A. § 48-8-110(4); and
 - (v) The City is located entirely or partially within the geographic boundaries of the County.
- C. It is the intention of the County and City 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 City agree to promptly proceed with the acquisition, construction, equipping and installation of the projects specified in Exhibit A of this Agreement and in accordance with the priority order referenced in Section 9 of this Agreement.
- E. The County and City 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 purpose of this Agreement, be deemed excess proceeds and disposed of as provided under O.C.G.A. § 48-8-121(g)(2).
- F. The County and City agree to maintain thorough and accurate records concerning receipt of SPLOST proceeds and expenditures for each project undertaken by the respective county or city as required fulfilling the terms of this Agreement

Section 2. Conditions Precedent

- A. The obligations of the County and City 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 provision 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 March 21, 2023, shall continue for a period of 24 quarters with collections beginning on July 1, 2023.

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:

- a. The official declaration of the failure of the election described in this Agreement;
- b. The expenditure by the County and City of the last dollar of money collected from the Special Purpose Local Option Sales Tax after the expiration of the Special Purpose Local Option Sales Tax; or
- c. The completion of all projects described in Exhibit A.

Section 5. Division/Allocation of Tax Collections

The County and City agree that the collections of the 1% SPLOST shall be divided and/or allocated as follows: fifty-five percent (55%) to the County and forty-five percent (45%) to the City. If the SPLOST funds collected exceed \$16,000,000, the funds collected above \$16,000,000 shall be divided as follows: fifty-five percent (55%) to the County and forty-five percent (45%) to the City.

Section 6. County SPLOST Fund; City SPLOST Fund; Separate Accounts; No Commingling

- A. A special fund or account(s) shall be created by the County and designated as the 2023 Ben Hill County Special Purpose Local Option Sales Tax Fund ("SPLOST Fund"). The County shall select a 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. The City shall create a special fund to be designated as the 2023 City of Fitzgerald Special Purpose Local Option Sales Tax Fund. The City shall select a bank which shall act as a depository and custodian of the SPLOST proceeds received by the City upon such terms and conditions as may be acceptable to the City.
- C. All SPLOST proceeds shall be maintained by the County and City in the separate accounts or funds established pursuant to this Section. Except as provided in this Agreement, SPLOST proceeds shall not be commingled with other funds of the County or City 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 7. 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 SPLOST Fund. The monies in the SPLOST Fund shall be held and applied to the cost of acquiring, constructing, and installing the capital outlay projects listed in Exhibit A and as provided in Paragraph B of this Section.
- B. The County, following deposit of the SPLOST proceeds in the SPLOST Fund, shall within 10 business days disburse the SPLOST proceeds due to the City according to the schedule in Exhibit A. The proceeds shall be deposited in the separate funds established by City in accordance with Section 5 of this Agreement.
- C. Should the City cease to exist as a legal entity before all funds are distributed under this Agreement, the 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. If such an act is passed, the defunct City's share shall be paid to the successor in addition to all other funds to which any successor would otherwise be entitled.
- D. Should the City and County consolidate prior to the distribution of all funds under this Agreement, the 1% SPLOST proceeds for the County and City shall be paid to the consolidated government, which shall be responsible for and held liable for completion of both the County's and the City's projects and would assume the responsibilities of both prior governments under the provisions of Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated.

Section 8. Projects

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

Section 9. Priority and Order of Project Funding

- A. Projects shall be fully or partially funded and constructed in accordance with the schedule found in Exhibit A of this Agreement and with the remainder of this paragraph.
- B. Joint Projects shall include Humane Society projects, Department of Leisure Services projects, landfill vehicles and equipment, airport terminal renovations, and Fitzgerald-Ben Hill County Development Authority projects.
- C. Except for Joint Projects, the County and the City will prioritize their respective projects as suitable based upon 1% SPLOST proceeds collection, project costs and need. The County and the City shall disburse funds for the joint projects based on the pro rata percentage estimated for the joint projects and the actual amount collected. The County and the City will separately or jointly work with the Department of Leisure Services to identify, prioritize, and promote their respective Department of Leisure Services projects.

Section 10. Completion of Projects

- A. The parties acknowledge that the costs shown for each project described in Exhibit A are estimated amounts and that the projects will be fully or partially funded and constructed in accordance with said exhibits.
- 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 in accordance with state law.
- C. If a City project has been satisfactorily completed at a cost less than the estimated cost listed for that project in Exhibit A, the City may apply the remaining unexpended funds in accordance with state law.
- D. The parties agree that they will attempt to complete or substantially complete each approved SPLOST project associated with this agreement within seven years of the termination of the SPLOST. Any SPLOST proceeds held by a party at the end of the seven year period shall, for the purposes of this Agreement, be deemed surplus 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 City project listed in Exhibit A is completed, the City shall file with the County a Certificate of Completion signed by the Mayor of the City, setting forth the date on which the project was completed, and the final cost of the project.

Section 12. Expenses

The County shall administer the SPLOST Fund to effectuate the terms of this Agreement and shall be reimbursed an administrative fee of one tenth of one percent (.1%) of the total expenditures of the SPLOST Fund. Said administrative fee shall be computed by the County auditor and withheld annually from SPLOST proceeds.

Section 13. Audits

- A. During the term of this Agreement, the distribution and use of all SPLOST proceeds deposited in the SPLOST funds shall be audited annually by an independent certified public accounting firm in accordance with O.C.G.A. § 48-8-121(a)(2). The parties shall be responsible for the cost of their respective audits. The parties agree to cooperate with the independent certified public accounting firm in any audit by providing all necessary information.
- B. The City shall provide the County a copy of the audit of the distribution and use of the SPLOST proceeds by the City.

Section 14. 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:

To the County:
Ben Hill County, Georgia
Attn: Board of Commissioners
402-A E. Pine Street
Fitzgerald, Georgia 31750

To the City:
City of Fitzgerald, Georgia
Attn: Mayor and Council
302 E. Central Avenue
Fitzgerald, Georgia 31750

Section 15. Entire Agreement

This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the parties with respect to distribution and use of the proceeds from this Special Purpose Local Option Sales Tax. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to distribution and use of said SPLOST.

Section 16. Amendments

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

Section 17. 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 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 19. Compliance with Law

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

Section 20. 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 21. 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.

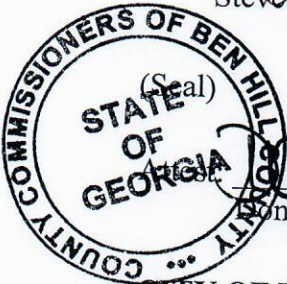
Section 22. Mediation

The County and City 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 City 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 BEN HILL, GEORGIA

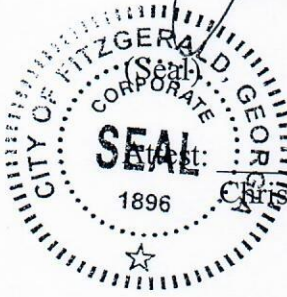
By: Steve Taylor
Steve Taylor, Chairman



Donna Prather
Donna Prather, County Clerk

CITY OF FITZGERALD, GEORGIA

By: Jason Holt
Jason Holt, Mayor



Christina Evans
Christina Evans, Clerk