

**INTERGOVERNMENTAL AGREEMENT BETWEEN**  
**THE CITY OF CUMMING AND FORSYTH COUNTY ON**  
**SPLOST V and SPLOST VI**

WHEREAS, the City of Cumming (the "City") is the only qualified municipality located in Forsyth County, Georgia (the "County");

WHEREAS, the County passed a resolution (the "SPLOST VI Resolution") on October 30, 2007 calling for a referendum election for the extension of a Special Purpose Local Option Sales Tax commonly referred to as SPLOST VI;

WHEREAS, the voters of Forsyth County approved the SPLOST VI referendum in the election held on February 5, 2008;

WHEREAS, the City and County did not reach an intergovernmental agreement ("IGA") either before or after the February 5, 2008 election;

WHEREAS, the City in two separate lawsuits challenged the legality of the SPLOST VI Resolution both before and after the election;

WHEREAS, following rulings by the trial court in both SPLOST VI lawsuits, but prior to final judgment being entered, the City and County have reached a settlement which will resolve all issues between them as to SPLOST VI in a manner consistent with the referendum approved by the voters on February 5, 2008;

WHEREAS, the County filed suit against the City on SPLOST V seeking a declaratory judgment related to the remaining proceeds to be remitted to the City on SPLOST V and the parties having reached a settlement resolving all issues between them as to SPLOST V in a manner consistent with the SPLOST V Intergovernmental Agreement and SPLOST V referendum election;

WHEREAS, the City and County believe that the best interests of their respective citizens will be served by tendering the \$10 million of bond proceeds earmarked for an Aquatic Center to the City, in order that the City can combine its remaining SPLOST V Aquatic Center funds with the County's additional \$10 million in funds to construct a City-owned state-of-the-art public Aquatic Center on property adjacent to Pilgrim Mill Road that will be for the equal benefit and use of the citizens and residents of the County and the City;

WHEREAS, the City and County further believe that the distribution of \$2.5 million in County funds to the City for use by the City in constructing all or a portion of those projects identified by the City in the City's SPLOST VI project list (attached hereto and incorporated herein as Exhibit "A"), will serve and benefit the citizens of the City and the County, and the City's willingness to undertake one or more of these projects provides a valuable service to the County; and,



WHEREAS, the City and County believe the best interests of their respective citizens will be served by funding of the projects identified in this Agreement, as well as the other projects that are to be funded by SPLOST VI proceeds.

NOW, THEREFORE, in consideration of the mutual benefits to the parties hereto and all of the citizens they represent and other good and valuable consideration as set forth hereinbelow, the City and the County enter into this Intergovernmental Agreement ("IGA") related to SPLOST V and SPLOST VI and further agree as follows:

1. County Projects. The specific capital outlay projects and purposes that the County will fund with its portion of SPLOST VI proceeds are identified in the January 17, 2008, resolution passed by the County, a copy of which is attached hereto as Exhibit B and expressly incorporated herein. The estimated dollar amounts allocated for each project or purpose are also listed in Exhibit B. The foregoing notwithstanding the County retains all available discretion under the SPLOST laws as they may be amended from time to time to expend SPLOST VI proceeds in accordance with its judgment.
2. City Projects. The City will fund with its portion of SPLOST VI proceeds the parking deck identified in Exhibit A, which parking deck was also specifically identified in the County's SPLOST VI Resolution and was listed on the SPLOST Referendum ballot approved by the voters. The estimated dollar amount allocated for the parking deck project is listed in Exhibit A. The foregoing notwithstanding the City retains all available discretion under the SPLOST laws as they may be amended from time to time to expend SPLOST VI proceeds in accordance with its judgment.
3. Procedure for Distribution of Proceeds and Priority of Projects. The County will receive SPLOST VI tax proceeds from the Georgia Department of Revenue. Upon receipt, the County will within five (5) business days remit and pay to the City 4.29% of the gross amount received monthly from the Georgia Department of Revenue. The County shall retain 95.71% of the gross amount received monthly from the Georgia Department of Revenue and from retained amount the County shall pay first its bond debt approved as part of SPLOST VI and second fund its projects.
4. SPLOST VI Accounts and Audit. The proceeds received by the City and County from the SPLOST VI tax shall be maintained by each entity in separate accounts and utilized exclusively for the specified purposes as set forth herein and in the exhibits attached hereto. Each entity shall maintain all records and comply with all audit requirements set forth in O.C.G.A. §48-8-110 et seq.
5. Aquatic Center.
  - a. In a referendum approved by the voters on February 5, 2008, the County was authorized to issue Park and Greenspace bonds ("P&G Bonds) in the total amount of \$100 million. Within ten (10) days of the closing of the P&G Bonds or



December 31, 2008, whichever occurs first, the County shall pay to the City the sum of \$10 million to be used by the City toward the cost of an Aquatic Center. The City will deposit the \$10 million into a separate interest bearing account (the "Aquatic Center Fund"). The City will use the \$10 million plus accrued interest in the Aquatic Center Fund along with the remaining balance from SPLOST V for the Aquatic Center of \$4,804,291.00 solely for the acquisition, design, construction and equipping of an Aquatic Center on Pilgrim Mill Road to be owned and operated by the City or its designee for the benefit and equal access of all citizens of the City and the County. The City will provide the County as part of the City's annual audit report a copy of all income to and expenditures from the Aquatic Center Fund.

b. No less than 80% of the expenditures from the Aquatic Center Fund shall be utilized for aquatic-related features, aquatic-related activities, and related infrastructure expenses for the Aquatic Center. The buildings and facilities of the Aquatic Center may be used for swim team meets, competitive events, school use and such other special uses as designated by the City that would temporarily suspend general public use, but shall be available for general public use no less than 60% of the normal operating hours per month.

c. The Aquatic Center shall contain an outdoor pool.

d. Competition pools at the Aquatic Center will be built to competition-pool standards.

e. It is anticipated that the site grading for construction of the Aquatic Center on Pilgrim Mill Road will need to take place at the same time as the site is graded for the contiguous construction of the North Georgia College campus on the same site. As of the execution of this IGA, North Georgia College has not established a firm timetable for the construction of its campus on Pilgrim Mill Road. The City will coordinate the construction of the Aquatic Center with North Georgia College with the goal of substantially completing the Aquatic Center by December 31, 2010. However, in any event, the Aquatic Center shall be substantially complete by December 31, 2011.

f. Upon the County's tender to the City of \$10 million from the County's P&G Bond, the City is to hold said funds in the Aquatic Center Fund. In the event that positive arbitrage occurs due to the City earning interest governmentally-financed bonds, and in the event that an arbitrage rebate is assessed by the federal government, the City agrees to pay its prorata portion of any such rebate.

6. Other City Projects. By December 31, 2008, the County shall pay to the City the sum of \$2,500,000.00 to be used by the City toward any of the projects listed by the City in Exhibit A. The City will use the funds for right of way acquisition, design or construction within a reasonable time period, but no later than December 31, 2011.

7. With respect to the Aquatic Center and all other projects to be funded under this Agreement, the County shall have no further funding obligation under the Agreement except as may be agreed by a future Intergovernmental Agreement –

this language notwithstanding, the City shall be authorized to expend any existing or future SPLOST V proceeds to which it is entitled for projects that may also be funded under this Agreement; and, nothing shall prohibit future SPLOST (i.e., SPLOST VII) proceeds from being used for these projects or purposes.

8. SPLOST V Payments. Within five (5) business days of the execution of this IGA, the County shall pay to the City all funds withheld from the April 2008 payment with interest at the same rate accrued by the County on said sum through the date of payment. The County will remit in accordance with the SPLOST V IGA 15% of all payments received from the Georgia Department of Revenue for SPLOST V to the City through the remainder of receipt of SPLOST V revenues. The parties agree that a partial SPLOST V payment was made by the County to the City on April 30, 2008.
9. Consent Orders of Dismissal. Consent Orders of Dismissal shall be tendered fully and finally resolving all pending litigation related to SPLOST V and SPLOST VI, and any appeals associated with those cases shall be immediately dismissed. The contemplated Consent Orders of Dismissal shall specifically provide that in tendering such dismissals, neither the City nor the County are waiving or prejudicing their rights with respect to legal theories or arguments raised in said cases. Both parties covenant and agree not to sue the other over any cause of action accruing prior to the date of execution of this IGA related to SPLOST V or SPLOST VI.
10. SEVERABILITY. If any Section, subsection, sentence, clause, phrase or any portion of this Agreement be declared invalid or unconstitutional by any court of competent jurisdiction, or if the provisions of any part of this Agreement as applied to any particular situation or set of circumstances shall be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the portions of this Agreement not so held to be invalid or unconstitutional.

SO AGREED AND EFFECTIVE THE DATE OF THE LAST PARTY TO SIGN:

CITY OF CUMMING

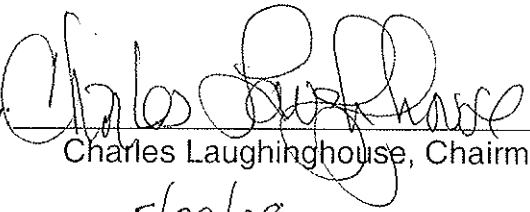
By: H. Ford Gravitt 5-28-08  
H. Ford Gravitt, Mayor

Date: 5/28/08


Attest: Gerald Blackburn  
Gerald Blackburn, City Administrator

[signatures continue on the following page]

FORSYTH COUNTY

By:   
Charles Laughinghouse, Chairman

Date: 5/29/08

Attest:   
Sonya Bush, Clerk