

RESOLUTION

WHEREAS, Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated (the "Act") authorizes the imposition of a one percent sales and use tax for the purpose, among other things, of financing certain capital outlay projects and retiring certain general obligation debt; and

WHEREAS, the City of Cumming (the "City") and Forsyth County, Georgia (the "County") have determined that it is in the best interest of the citizens of the City and the County that the Sales and Use Tax be imposed in the County to raise approximately \$200,000,000 for the purpose of funding capital outlay projects; and

WHEREAS, the Board of Commissioners of the County delivered or mailed a written notice (the "Notice") to the Mayor of the City regarding the imposition/continuation of the Sales and Use Tax; and

WHEREAS, the Notice contained the date, time, place and purpose of a meeting at which designated representatives of the County and the City met and discussed the possible projects for inclusion in the referendum, including municipally owned or operated projects; and

WHEREAS, the Notice was delivered or mailed at least 10 days prior to the date of the meeting, and the meeting was held at least 30 days prior the issuance of a call for the referendum; and

WHEREAS, the Cities and the County desire to enter into an Intergovernmental Agreement, to be dated as of the first day of the month of its execution (the "Agreement"), as authorized by Article IX, Section III, Paragraph I(a) of the Georgia Constitution and the Act, with respect to the Projects; and

WHEREAS, the City is the only municipality within the County; and

WHEREAS, a form of the Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, as follows:

Section 1. The execution, delivery and performance of the Agreement are hereby authorized and approved. The Agreement shall be executed by the Chairman or Vice-Chairman and attested to by the Clerk. The Agreement shall be in substantially the form attached hereto, subject to such changes, insertions or deletions as may be approved by the Chairman or Vice-Chairman, and the execution of the Agreement by the Chairman or Vice-Chairman as herein authorized shall be conclusive evidence of any such approval.

Section 2. From and after the execution and delivery of the Agreement, the proper officers of the County are hereby authorized, empowered and directed to do all such acts

and things and to execute all such documents and certificates as may be necessary to carry out and comply with the purposes and intent of this resolution or the provisions of the Agreement.

Section 3. All acts and doings of the officers of the County which are in conformity with the purposes and intent of this resolution and in furtherance of the execution, delivery and performance of the Agreement are hereby ratified and approved.

Section 4. If any section, paragraph or provision of this resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this resolution.

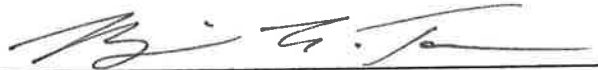
Section 5. All other resolutions, or parts thereof, in conflict with the provisions of this resolution are, to the extent of such conflict, hereby repealed.

Section 6. This resolution shall take immediate effect upon its adoption.

Adopted this 21st day of July, 2011.

FORSYTH COUNTY, GEORGIA

(SEAL)

By: 
Chairman

ATTEST:

By: 
Clerk

Exhibit A

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, (this "Agreement") is made and entered into as of July 21, 2011, by and between FORSYTH COUNTY, GEORGIA, a political subdivision of the State of Georgia (the "County") and the CITY OF CUMMING, GEORGIA, a municipal corporation of the State of Georgia (the "City").

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, the County is authorized pursuant to O.C.G.A. Section 48-8-110 *et seq.*, as amended (the "Sales and Use Tax Act") to levy and collect a one percent sale and use tax (the "Sales and Use Tax") for the purpose of funding capital outlay projects (the "Projects"); and

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

WHEREAS, the County and the City are entering into this Agreement to identify the Projects that will be funded with the Sales and Use Tax;

NOW, THEREFORE, for and in consideration of the premises and undertakings as hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and the City DO HEREBY AGREE, as follows:

ARTICLE 1.

EFFECTIVE DATE

This Agreement shall become effective upon its execution and shall continue in effect until the Sales and Use Tax terminates in accordance with the Sales and Use Tax Act and until all funds have been distributed in accordance with this Agreement.

ARTICLE 2.

REPRESENTATIONS

The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation duly created and organized under the Constitution and laws of the State. Under the Constitution and laws of the State, the City is authorized to execute, deliver, and perform its obligations under this Agreement. The City has duly authorized the execution, delivery, and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery, and performance by the City of this Agreement do not violate any ordinances of the City or the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note, or other instrument to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the City, threatened against or affecting the City (or, to the knowledge of the City, any meritorious basis therefore) (i) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (ii) wherein an unfavorable decision, ruling, or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

(e) The City is not in violation of the laws or Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note, or other instrument to which it is a party or by which it is bound.

(f) The City is a "qualified municipality" within the meaning of the Sales and Use Tax Act.

The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) The County is a political subdivision duly created and organized under the Constitution and laws of the State. Under the Constitution and laws of the State, the County is authorized to execute, deliver, and perform its obligations under this

Agreement. The County has duly authorized the execution, delivery, and performance of this Agreement. This Agreement is a valid, binding, and enforceable obligation of the County.

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery, and performance of this Agreement by the County, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery, and performance by the County of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note, or other instrument to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the County, threatened against or affecting the County (or, to the knowledge of the County, any meritorious basis therefore) (i) contesting or questioning the existence of the County or the titles of the present officers of the County to their offices or (ii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Agreement or (B) materially adversely affect the transactions contemplated by this Agreement.

(e) The County is not in violation of the laws or the Constitution of the State and is not in default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note, or other instrument to which it is a party or by which it is bound.

ARTICLE 3.

PROJECT PROVISIONS

The County and the City agree, as follows:

(a) The Projects shall consist of "County Projects" and "City Projects." The County Projects, the City Projects, and their estimated costs are set forth below:

<u>County Projects</u>	<u>Estimated Costs</u>
Courthouse and jail	\$100,000,000
Roads, streets, bridges and sidewalks	71,900,000
Public safety	3,900,000
Animal shelter	3,000,000
Library	2,800,000
Parks and recreation	2,400,000
Administration building	2,500,000
Water	1,000,000

<u>City Projects</u>	<u>Estimated Costs</u>
Parks and recreation	\$2,000,000
Roads, streets, bridges, sidewalks and street lamps	10,500,000

(b) The County shall own and operate the County Projects. The City Projects shall be owned and operated by the City.

(c) The County shall be responsible for paying or providing for all the costs of operating, maintaining and insuring the County Projects. The City shall be responsible for paying or providing for all the costs of operating, maintaining and insuring the City Projects.

(d) The County shall supervise or cause the supervision of the acquisition, construction and equipping of the County Projects. The City shall supervise or cause the supervision of the acquisition, construction and equipping of the City Projects.

ARTICLE 4.

THE DEBT

(a) The ballot shall contain the language required by the Sales and Use Tax Act for the authorization of up to \$89,080,000 of debt (the "Debt"). The Debt may be issued by the County in whole or in part and in one or more series for purposes of funding the courthouse and jail, the costs of issuing the debt, and capitalized interest. The County acknowledges that it is solely responsible for the payment of the Debt, including any and all costs, interest, and fees associated therewith.

(b) The Debt shall be paid first from the proceeds of the Sales and Use Tax. In the event that there are insufficient Sales and Use Tax collections to pay the Debt from the proceeds of the Sales and Use Tax, the County shall pay any shortfall attributable to the Debt from its general fund (the "Debt Service Payments"). The County covenants that, in order to make the Debt Service Payments when due from its general funds to the extent required, it will exercise its power of taxation to the extent necessary to timely pay any amounts required to be paid hereunder and it will make available and use for such payments all taxes levied and collected for that purpose together with funds received from any other source. The County further covenants and agrees that in order to make funds available for such purpose, it will, in its general revenue, appropriation, and budgetary measures whereby its tax funds or revenues and the allocation thereof are controlled or provided for, include sums sufficient to timely satisfy such Debt Service Payments that may be required to be made from the general funds, whether or not any other sums are included in such measure, until all payments so required to be made shall have been made in full. The obligation of the County to make any payments that may be required to be made from its general funds shall constitute a general obligation of the County and a pledge of the full faith and credit of the County to provide the funds required to timely fulfill any such obligation.

In the event for any reason any such provision or appropriation is not made as provided in the preceding paragraph, then the fiscal officer of the County is hereby authorized and directed to set up as an appropriation on its accounts in the appropriate fiscal year the amounts required to timely pay the obligations which may be due from the general funds. The amount of such appropriation shall be due and payable and shall be expended for the purpose of paying any such obligations, and such appropriation shall have the same legal status as if the County had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal officer of the County shall immediately make such Debt Service Payments to the paying agent for the Debt if for any reason the payment of such obligations shall not otherwise have been timely made.

(c) The obligation of the County to make the Debt Service Payments and to perform and observe the other agreements on its part contained in this Article 4 shall be absolute and unconditional. Until such time as the principal of and interest on the Debt shall have been paid in full or provision for the payment thereof shall have been made, the County (i) will not suspend or discontinue any payments provided for herein, (ii) will perform and observe all of its other agreements contained in this Agreement, and (iii) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure to complete any County

Project, a defect in any County Project or any failure of the other party to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

- (d) The County will be responsible for all facets of the Debt issuance process.

ARTICLE 5.

DIVISION OF SALES AND USE TAX

(a) By virtue of the parties' entry into this Agreement and based upon the Sales and Use Tax Act, the Sales and Use Tax shall be collected for a period of six years.

(b) Based upon past collection history and other data available to the County, the County currently projects that the total collections of the Sales and Use Tax over the six year collection period will be approximately \$200,000,000.

(c) The Sales and Use Tax proceeds shall be applied first to the payment of the Debt and/or otherwise the funding of current costs for the courthouse and jail which in no event will cumulatively exceed \$100,000,000 and to the funding of the County's emergency raw water generator which in no event will cumulatively exceed \$1,000,000. The remaining Sales and Use Tax proceeds regardless of whether the amount is less than or exceeds \$200,000,000 shall be divided between the County and the City as follows:

- (i) the County shall receive 87.5%; and
- (ii) the City shall receive 12.5%.

ARTICLE 6.

DISTRIBUTION OF SALES AND USE TAX PROCEEDS

(a) The Sales and Use Tax shall be collected by the County and shall be deposited into a special trust fund held separate and apart from all other funds of the County (the "Sales Tax Account"). Within the Sales Tax Account, the County shall create or cause to be created two subaccounts: the "County Account" and the "City Account." The County shall also create or cause to be created a "Debt Service" subaccount within the Sales Tax Account if Debt is issued. Moneys on deposit in the Debt Service Account shall be used to pay Debt Service Payments. Moneys on deposit in the County Account shall be used to pay Debt Service Payments in the event moneys on deposit in the Debt Service Account are insufficient to pay the same and to pay the costs of the County Projects. The moneys on deposit on the City Account shall be used to pay the costs of the City Projects. If the Debt is issued, the County shall establish a twelve-month period as the "Sinking Fund Year" for the Debt.

(b) In the event that no Debt is issued, all of the Sales and Use Tax proceeds shall be deposited into the County Account until such time as the County has received \$101,000,000 or the courthouse, jail and emergency raw water generator projects have been completed. Thereafter, 87.5% of the Sales and Use Tax proceeds shall be deposited into the County Account and 12.5% of the Sales and Use Tax proceeds shall be deposited into the City Account. In the event the courthouse, jail and emergency raw water generator projects cost less than the \$101,000,000 budgeted to complete, the cost savings shall be divided with 87.5% of the Sales and Use Tax proceeds being deposited into the County Account and 12.5% of the Sales and Use Tax proceeds being deposited into the City Account.

(c) In the event that some, but not all, of the Debt is issued or the Debt is issued in one or more series, all of the Sales and Use Tax proceeds received within each Sinking Fund Year shall be deposited first into the Debt Service Account until there is on deposit therein an amount sufficient to pay all Debt Service Payments for such Sinking Fund Year and second into the County Account until such time as the County has received \$101,000,000 or the courthouse, jail and emergency raw water generator projects have been completed. Thereafter, 87.5% of the Sales and Use Tax proceeds shall be deposited into the County Account and 12.5% of the Sales and Use Tax proceeds shall be deposited into the City Account. In the event the courthouse, jail and emergency raw water generator projects cost less than the \$101,000,000 budgeted to complete, the cost savings shall be divided with 87.5% of the Sales and Use Tax proceeds being deposited into the County Account and 12.5% of the Sales and Use Tax proceeds being deposited into the City Account.

(d) In the event that all of the Debt is issued at one time, all of the Sales and Use Tax proceeds received within each Sinking Fund Year shall be deposited first into the Debt Service Account until there is on deposit therein an amount sufficient to pay all Debt Service Payments for such Sinking Fund Year and to reimburse the County for any Debt Service Payments made from its general fund and second into the County Account until such time as there is on deposit therein a total of \$1,000,000. Thereafter, 87.5% of the Sales and Use Tax proceeds shall be deposited into the County Account and 12.5% of the Sales and Use Tax

proceeds shall be deposited into the City Account. In the event the \$1,000,000 deposit is not needed for Debt Service, the deposit shall be distributed upon final payment of the Debt Service with 87.5% going to the County Account and 12.5% going to the City Account.

Once a month, the moneys in the City Account (if any) shall be transferred to the City. The transfer shall be by check unless the City shall provide the County with appropriate wire transfer instructions. The County and the City agree to use the proceeds of the Sales and Use Tax exclusively for the purposes stated herein and in the resolution calling for the imposition of the Sales and Use Tax. The County and the City agree that the proceeds of the Sales and Use Tax shall be kept in a separate account and shall not be commingled with any other funds of the County or the City.

ARTICLE 7.

RECORD KEEPING AND AUDIT PROCEDURES; RECONCILING

(a) The County shall keep detailed records of the Sales Tax Account, including all of its sub-accounts. The City shall have the right to review and be provided copies of all such records upon request to the County.

(b) The County and the City shall keep a record of each and every of its Projects for which the proceeds of the Sales and Use Tax are used. A schedule shall be included in each annual audit by both the County and the City which shows for each such Project 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. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or the disclaimer of an opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole. In the event that the City does not comply with the requirements of this paragraph, the County shall not be held liable in any manner for such noncompliance. In the event that the County does not comply with the requirements of this paragraph, the City shall not be held liable in any manner for such noncompliance.

ARTICLE 8.

MISCELLANEOUS

(a) Should any phrase, clause, sentence or paragraph herein contained be held invalid or unconstitutional, it shall in nowise affect the remaining provisions of this Agreement, which said provisions shall remain in full force and effect.

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

(c) This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto, acting by and through their duly authorized officers, have caused this Agreement to be executed in multiple counterparts under seals as of the day and year first above written.

FORSYTH COUNTY, GEORGIA

(SEAL)

By: 
Chairman

Attest:


Clerk

(Intergovernmental Agreement)

CITY OF CUMMING, GEORGIA

(SEAL)

By: _____
Mayor

Attest:

Clerk

CLERK'S CERTIFICATE

The undersigned Clerk of Forsyth County, Georgia (the "County"), DOES HEREBY CERTIFY that the foregoing pages of typewritten matter pertaining to an Intergovernmental Agreement, constitute a true and correct copy of the Resolution adopted on July 21, 2011, by the County in a meeting duly called and assembled, which was open to the public and at which a quorum was present and acting throughout, and that the original of such Resolution appears of record in the Minute Book of the County which is in the undersigned's custody and control.

WITNESS my hand and the official seal of Forsyth County, Georgia, this 21st day of July, 2011.

(SEAL)


Clerk