

STATE OF GEORGIA  
COUNTY OF GILMER

Resolution No: 020620

**INTERGOVERNMENTAL AGREEMENT FOR THE USE AND DISTRIBUTION**  
**OF PROCEEDS FROM A TRANSPORTATION SPECIAL PURPOSE**  
**LOCAL OPTION SALES AND USE TAX**

THIS AGREEMENT is entered into on the 6th day of <sup>February</sup>~~January~~, 2020, by and between **GILMER COUNTY**, a political subdivision of the State of Georgia, acting by and through its governing authority, the **GILMER COUNTY BOARD OF COMMISSIONERS** (hereinafter the "County"), the **MAYOR AND COUNCIL OF THE CITY OF ELLIJAY, GEORGIA**, a municipal corporation chartered and existing under the laws of the State of Georgia (hereinafter "Ellijay"), and the **MAYOR AND COUNCIL OF THE CITY OF EAST ELLIJAY, GEORGIA**, a municipal corporation chartered and existing under the laws of the State of Georgia (hereinafter "East Ellijay"), hereinafter being also collectively referred to as "Municipalities" and individually as "Municipality" where the context requires or permits).

WITNESSETH:

WHEREAS, Article IX, Section III, Paragraph I 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, Part 1 of Article 5A of Chapter 8 of title 48 of the Official Code of Georgia Annotated (the "Act") authorizes the levy of a transportation special purpose local option sales

and use tax (the “TSPLOST”) at a rate of up to 1% within the special district of the County for the purpose of financing certain transportation purposes; and

WHEREAS, the Act authorizes the County and the Municipalities to enter into an “intergovernmental agreement” (as defined in the Act) pursuant to the Intergovernmental Contracts Clause in order to, among other things, govern the use and distribution of the TSPLOST proceeds for various transportation purposes; and

WHEREAS, the County and Municipalities met on the 7th day of January, 2020 to discuss possible projects for inclusion in a TSPLOST referendum to be held on the 19th day of May, 2020 (the “Election”) in conformance with the requirements of O.C.G.A. § 48-8-262(a)(2); and

WHEREAS, prior to the meeting of the County and Municipalities on the 7th day of January, 2020, the County determined that a majority of the governing authorities of counties within the Northwest Georgia Regional Commission of Georgia have not passed resolutions calling for the levy of a tax under Article 5 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated; and

WHEREAS, the County and the Municipalities desire to enter into this Agreement in order to, *inter alia*, govern the use and distribution of the TSPLOST proceeds for various transportation purposes;

NOW THEREFORE, in consideration of the mutual promises and understandings made in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, 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 which may be specifically relied upon by all parties as a basis for entering this Agreement:

(1) The County is a political subdivision duly created and organized under the Constitution and laws of the State of Georgia (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.

(2) 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.

(3) 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.

(4) 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) (a) contesting or questioning the existence of the County or the titles of the present officers of the County to their offices or (b) wherein an unfavorable decision, ruling or finding would (i) adversely affect the enforceability of this Agreement or (ii) materially adversely affect the transactions contemplated by this Agreement.

(5) 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.

(6) The County will take all actions necessary to call the Election to be held in all voting precincts in the County on the 19th day of May, 2020, for the purpose of submitting to the voters of the County for their approval, the question of whether or not a TSPLOST at a rate of 1% shall be imposed on all sales and uses allowed by law within the special district of Gilmer County for a period of time not to exceed 5 years and for the raising of an estimated amount of \$25,000,000.00 to be used for funding the transportation purposes specified in Exhibit A attached hereto (the "2020 TSPLOST").

B. Each of the Municipalities makes the following representations and warranties which may be specifically relied upon by all parties as a basis for entering this Agreement:

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

(2) 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 Municipality, except as shall have been obtained as of the date hereof.

(3) The authorization, execution, delivery, and performance by the Municipality of this Agreement do not violate any ordinances of the Municipality 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.

(4) 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 Municipality, threatened against or affecting the Municipality (or, to the knowledge of the Municipality, any meritorious basis therefore) (a) contesting or questioning the existence of the Municipality or the titles of the present officers of the Municipality to their offices or (b) wherein an unfavorable decision, ruling or finding would (i) adversely affect the enforceability of this Agreement or (ii) materially adversely affect the transactions contemplated by this Agreement.

(5) The Municipality 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.

(6) The Municipality is a qualified municipality as defined in O.C.G.A. § 48-8-110(4) and 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 the Municipalities to comply in all respects with O.C.G.A. § 48-8-260 *et seq.* and all provisions of this Agreement shall be construed in light of O.C.G.A. § 48-8-260 *et seq.*

D. The County and Municipalities agree to promptly proceed with the acquisition, construction, equipping, installation, and/or funding of the transportation purposes specified in Exhibit A of this Agreement.

E. The County and Municipalities agree to maintain thorough and accurate records concerning receipt of 2020 TSPLOST proceeds and expenditures for each transportation purpose undertaken by the County or Municipalities respectively as required for 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 2020 TSPLOST in accordance with the provisions of O.C.G.A. § 48-8-262(d).

B. This Agreement is further conditioned upon the approval of the proposed imposition of the 2020 TSPLOST by the voters of the County in a referendum to be held in accordance with the provisions of O.C.G.A. § 48-8-263.

C. This Agreement is further conditioned upon the collecting of the 2020 TSPLOST revenues by the State Department of Revenue and transferring same to the County.

## **Section 3. Effective Date and Term of the Tax and Agreement**

A. The 2020 TSPLOST, subject to approval in the Election, shall begin collections on October 1, 2020 and continue for a period of five (5) years or until the end of the calendar quarter during which the Commissioner of the State Department of Revenue determines that the

tax will have raised revenues sufficient to provide net proceeds equal to or greater than the amount specified as the maximum amount of net proceeds to be raised by the tax.

B. This Agreement shall commence upon the date of its execution and shall terminate upon the later of:

(1) the official declaration of the failure of the election described in this Agreement; or

(2) the expenditure by the County and all of the Municipalities of the last dollar of money collected from the 2020 TSPLOST after the expiration of the 2020 TSPLOST.

#### **Section 4. County and Municipal TSPLOST Funds; Separate Accounts; No Commingling**

A. A special fund or account shall be created by the County and designated as the 2020 Gilmer County Transportation Special Purpose Local Option Sales Tax Fund ("County 2020 TSPLOST Fund"). The County shall select a financial institution which shall act as a depository and custodian of the County 2020 TSPLOST Fund upon such terms and conditions as may be acceptable to the County.

B. Each Municipality shall create a special fund for their respective city. The special fund for Ellijay is to be designated as the 2020 City of Ellijay Transportation Special Purpose Local Option Sales Tax Fund ("Ellijay 2020 TSPLOST Fund"). The special fund for East Ellijay is to be designated as 2020 City of East Ellijay Transportation Special Purpose Local Option Sales Tax Fund ("East Ellijay 2020 TSPLOST Fund"). Each Municipality shall select a financial institution which shall act as a depository and custodian of the 2020 TSPLOST proceeds received by each Municipality upon such terms and conditions as may be acceptable to the Municipality.

C. All 2020 TSPLOST proceeds shall be maintained by the County and each Municipality in the separate accounts or funds established pursuant to this Section. Except as provided in Section 5 of this Agreement, 2020 TSPLOST proceeds shall not be commingled with other funds of the County or Municipalities and shall be used exclusively for the transportation

purposes detailed in this Agreement. No funds other than 2020 TSPLOST proceeds shall be placed in such funds or accounts.

D. All interest earned on the 2020 TSPLOST Funds maintained by the County and the Municipalities shall remain in the 2020 TSPLOST Funds and shall be used exclusively for the transportation purposes detailed in this Agreement.

#### **Section 5. Procedure for Disbursement of 2020 TSPLOST Proceeds**

A. The County and the Municipalities agree that the 2020 TSPLOST proceeds shall be apportioned between the parties as follows:

(1) 2020 TSPLOST proceeds collected shall be apportioned between the County and the Municipalities as follows:

(a) County – 92.35% to be used for the County’s transportation purposes as specified in Exhibit A;

(b) Ellijay – 5.72% to be used for Ellijay’s transportation purposes as specified in Exhibit A;

(c) East Ellijay – 1.93% to be used for East Ellijay’s transportation purposes as specified in Exhibit A;

B. The County and the Municipalities agree that the State Department of Revenue shall distribute all proceeds of the 2020 TSPLOST directly to the County, less the one percent paid into the general fund of the state treasury pursuant to O.C.G.A. § 48-8-267(a)(1). Within ten (10) business days of receipt by the County of 2020 TSPLOST proceeds collected by the State Department of Revenue, the County shall disburse 2020 TSPLOST proceeds due to each Municipality based on the apportionment schedule in Paragraph A of this Section. After disbursement of 2020 TSPLOST proceeds to the Municipalities, the monies in the County’s 2020 TSPLOST Fund shall be used exclusively for the County’s transportation purposes as specified in Exhibit A. The monies in each Municipality’s 2020 TSPLOST Fund shall be used exclusively for each Municipality’s transportation purposes as specified in Exhibit A.

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 share shall be paid to the successor Municipality in addition to all other funds to which the successor Municipality would otherwise be entitled.

#### **Section 6. Transportation Purposes**

A. All transportation purposes to be funded in whole or in part from 2020 TSPLOST proceeds are listed in Exhibit A which is attached hereto and made part of this Agreement. The parties acknowledge that the estimated costs for the specified transportation purposes are subject to adjustment to accommodate variations in actual costs, available funding, feasibility, and priority of specified transportation purposes. The County and each Municipality shall expend at least 30 percent of their allocation of TSPLOST proceeds on transportation purposes consistent with the state-wide strategic transportation plan as defined in O.C.G.A. § 32-2-22(a)(6).

#### **Section 7. Excess Proceeds**

A. In the event that any 2020 TSPLOST proceeds being held in either the County's 2020 TSPLOST Fund or any Municipality's 2020 TSPLOST Fund become "excess proceeds" as that term is defined in O.C.G.A. § 48-8-269.5(f)(1), then the County or Municipality in whose 2020 TSPLOST Fund such excess proceeds are being held may use such excess proceeds for any purpose for which the County or Municipality could otherwise legally use ad valorem tax revenues.

#### **Section 8. Audits**

A. During the term of this Agreement, the distribution and use of all 2020 TSPLOST proceeds deposited in the 2020 TSPLOST Fund and each Municipal 2020 TSPLOST Fund shall be audited annually by an independent certified public accounting firm in accordance with O.C.G.A. § 48-8-269.5(a)(2). The County and each Municipality receiving 2020 TSPLOST proceeds shall be responsible for the cost of their respective audits. The County and the



Municipalities agree to cooperate with the independent certified public accounting firm 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 2020 TSPLOST proceeds by the Municipality. Provided, however, that the Municipality's provision of a copy of the audit to the County shall not imply any obligation on the part of the County to exercise any oversight of the Municipality's management or expenditure of 2020 TSPLOST proceeds. In the event that a Municipality fails to comply with the terms of this Agreement or with the requirements of O.C.G.A. § 48-8-260 *et seq.*, the County shall not be held liable for such noncompliance.

#### **Section 9. Annual Reports**

A. Pursuant to O.C.G.A. § 48-8-269.6, the County and each Municipality shall publish annually, in a newspaper of general circulation in the boundaries of the County or Municipality, a simple, nontechnical report which shows for each transportation purpose in the resolution calling for imposition of the 2020 TSPLOST 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. Such annual reports shall be published no later than December 31<sup>st</sup> of each year.

#### **Section 10. Notices**

A. 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:

If to the County:	Gilmer County Board of Commissioners
	1 Broad Street, Suite 106
	Ellijay, GA 30540

If to Ellijay:	City of Ellijay
----------------	-----------------

197 North Main Street  
Ellijay, GA 30540

If to East Ellijay:                      City of East Ellijay  
107 East Oak Street  
East Ellijay, GA 30539

**Section 11.    Entire Agreement**

A.    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 2020 TSPLOST. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter hereof.

**Section 12.    Amendments**

A.    This Agreement shall not be amended or modified except by a written amendment executed in accordance with this Section.

B.    This Agreement may be amended by a written amendment executed by all of the governing authorities of the County, Ellijay and East Ellijay.

**Section 13.    Governing Law**

A.    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 14.    Severability**

A.    Should any phrase, clause, sentence, or paragraph of this Agreement be held invalid or unconstitutional by a court of competent jurisdiction, the remainder of this 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 15. Compliance with Law**

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

**Section 16. No Consent to Breach**

A. 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 or waiver of any future breach of the same or of any other provision of this Agreement.

**Section 17. Counterparts**

A. This Agreement shall be executed in six (6) counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 18. Mediation**

A. The County and the Municipalities agree to submit any controversy arising under this Agreement to non-binding 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 on the date indicated herein.

BOARD OF COMMISSIONERS OF  
GILMER COUNTY, GEORGIA

MAYOR AND COUNCIL OF THE  
CITY OF ELLIJAY, GEORGIA

**Section 16. No Consent to Breach**

A. 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 or waiver of any future breach of the same or of any other provision of this Agreement.

**Section 17. Counterparts**

A. This Agreement shall be executed in six (6) counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 18. Mediation**

A. The County and the Municipalities agree to submit any controversy arising under this Agreement to non-binding 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 on the date indicated herein.

BOARD OF COMMISSIONERS OF  
GILMER COUNTY, GEORGIA

By: Charlie M. Paris

Charlie M. Paris, Chairman

Attest: Edwina Daman

Edwina Daman, County Clerk

MAYOR AND COUNCIL OF THE  
CITY OF ELLIJAY, GEORGIA

By: Al Hoyle

Al Hoyle, Mayor

Attest: Amy Crump

Amy Crump, City Clerk

MAYOR AND COUNCIL OF THE  
CITY OF EAST ELLIJAY, GEORGIA

By: Mack H. West

Mack West, Mayor

Attest: Linda Wood

Linda Wood, City Clerk

## EXHIBIT A

### TRANSPORTATION PURPOSES AND ESTIMATED COSTS

Gilmer County Transportation Purposes	
Transportation Purpose	Estimated Cost
Road, street, and bridge purposes, including but not limited to: (i) acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths; (ii) construction of roads, streets, bridges, sidewalks, and bicycle paths; (iii) renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing; (iv) relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths; (v) improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; (vi) patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths; (vii) roadside mowing; (viii) intersection improvements; (ix) road striping; (x) road signage; (xi) borrow pit materials used for constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; (xii) a capital outlay project or projects consisting of any of the foregoing to be owned, operated, or administered by the state and located, in whole or in part, in Gilmer County; (xiii) equipment used for constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; and (xiv) all accompanying infrastructure and services necessary to provide access to roads, streets, bridges, sidewalks, and bicycle paths. At least 30 percent of the amount spent for road, street, and bridge purposes shall be consistent with the state-wide strategic transportation plan as defined in O.C.G.A. § 32-2-22(a)(6).	\$23,087,500.00
Ellijay Transportation Purposes	
Transportation Purpose	Estimated Cost
Road, street, and bridge purposes, including but not limited to: (i) acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths; (ii) construction of roads, streets, bridges, sidewalks, and bicycle paths; (iii) renovation and improvement of roads, streets, bridges,	\$1,430,000.00

<p>sidewalks, and bicycle paths, including resurfacing; (iv) relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths; (v) improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; (vi) patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths; (vii) roadside mowing; (viii) intersection improvements; (ix) road striping; (x) road signage; (xi) borrow pit materials used for constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; (xii) a capital outlay project or projects consisting of any of the foregoing to be owned, operated, or administered by the state and located, in whole or in part, in the city of Ellijay; (xiii) equipment used for constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; and (xiv) all accompanying infrastructure and services necessary to provide access to roads, streets, bridges, sidewalks, and bicycle paths. At least 30 percent of the amount spent for road, street, and bridge purposes shall be consistent with the state-wide strategic transportation plan as defined in O.C.G.A. § 32-2-22(a)(6).</p>	
<p align="center"><b>East Ellijay Transportation Purposes</b></p>	
<p align="center"><b>Transportation Purpose</b></p>	<p align="center"><b>Estimated Cost</b></p>
<p>Road and street purposes, including but not limited to: (i) acquisition of rights of way for roads, streets, bridges, sidewalks, and bicycle paths; (ii) construction of roads, streets, bridges, sidewalks, and bicycle paths; (iii) renovation and improvement of roads, streets, bridges, sidewalks, and bicycle paths, including resurfacing; (iv) relocation of utilities for roads, streets, bridges, sidewalks, and bicycle paths; (v) improvement of surface-water drainage from roads, streets, bridges, sidewalks, and bicycle paths; (vi) patching, leveling, milling, widening, shoulder preparation, culvert repair, and other repairs necessary for the preservation of roads, streets, bridges, sidewalks, and bicycle paths; (vii) roadside mowing; (viii) intersection improvements; (ix) road striping; (x) road signage; (xi) borrow pit materials used for constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; (xii) a capital outlay project or projects consisting of any of the foregoing to be owned, operated, or administered by the state and located, in whole or in part, in the city of East Ellijay; (xiii) equipment used for</p>	<p align="center">\$482,500.00</p>

constructing and maintaining roads, streets, bridges, sidewalks, and bicycle paths; and (xiv) all accompanying infrastructure and services necessary to provide access to roads, streets, bridges, sidewalks, and bicycle paths. At least 30 percent of the amount spent for road, street, and bridge purposes shall be consistent with the state-wide strategic transportation plan as defined in O.C.G.A. § 32-2-22(a)(6).