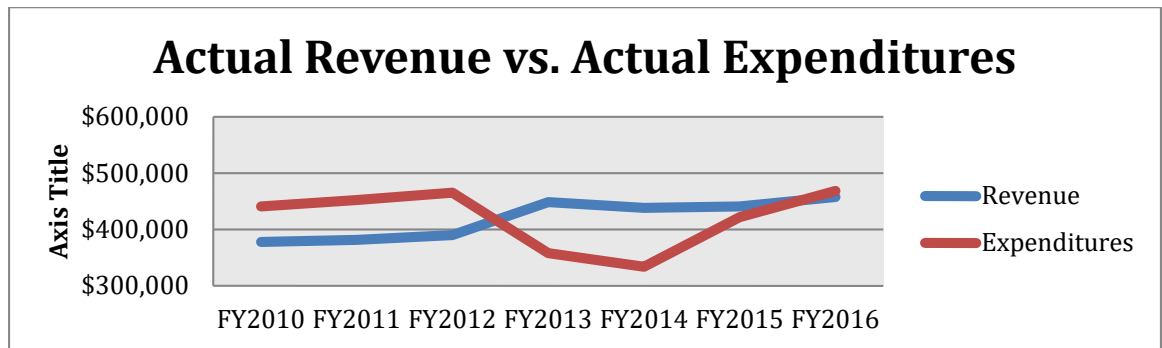


## Questions And Concerns Addressed to the Nelson City Council and City Auditor on Jan. 21<sup>st</sup>, 2016 Related to FY 2015 Audit Report

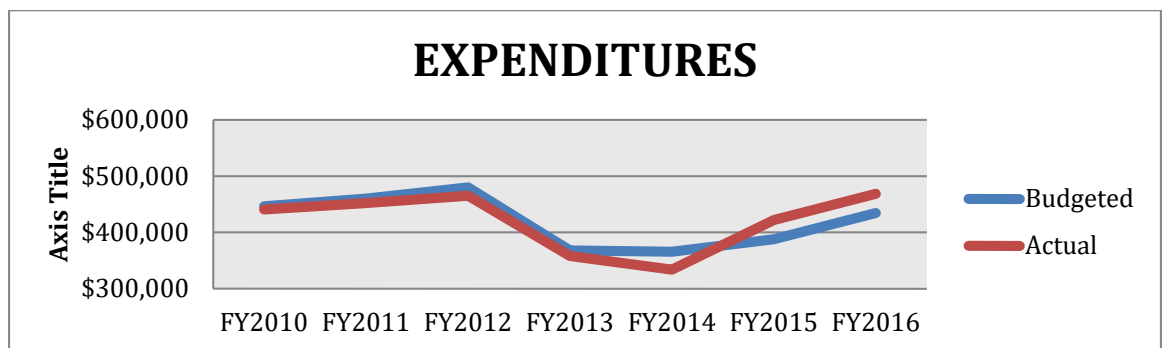
### 1) Budget Concerns:

The first concern is that over the past two years, the council has been spending too much. Expenditures are trending higher than revenue now. If this continues, expenditures are projected to surpass revenue this year. This is the same problem the City had during 2010 and 2011 when the city was spending more than it was taking in. *(this data was taken from prior years Audit reports and the current FY2016 Budget.)*



The Council and Mayor are treating the budget process as an exercise and not using it as a management tool. (See Appendix II for a recitation of use and the law) Each year, in advance, the Council should think through what it wants to accomplish in the budget year and translate that into actual Budget numbers. Provisions need to be made in the Budget for unexpected items, but not for someone's whimsical project.

The Chart below shows the amount of the budgeted expenditures the Council has approved, and the actual expenditures made. Over the past two years, the actual spending has trended above the budgeted. This is inappropriate. Taxpayer/voters rely on the Council and Mayor to live within the budget or justify their reasons through the budget amendment process. The Mayor and Council majority have been the same for these years. When will those four people begin to act responsibly and stop the over spending?



## 2) Audit Findings/Questions for Auditor

### *\* Finding 2015-002 Violation of Financial Policy Regarding Expenditures*

This finding states, "During the fiscal year, purchases were made by management for projects and operations in violation of the financial policy." I believe this means the Mayor acted irresponsibly and the Council did not approve these transactions: \$15,000 from the general fund and \$107,500 from SPLOST funds. I understand that the clerk and two council-members are check signers.

#### **QUESTIONS:**

**How is it that these people signed checks for these unauthorized transactions?**

**Since the audit what processes have been put in place to prevent this from happening in the future?**

**Which council member(s) signed the checks for these unauthorized items? The voters need to know which council members signed these checks in violation of the City ordinances and their oath of office. (See Appendix III for a recitation of the Oath of Office)**

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### *\* Finding 2015-003 Discrepancies in Cash Deposits*

Cash receipts were received, not deposited in the bank account and reported to the Council as potentially embezzled.

#### **QUESTIONS:**

**What are the plans by the Council to determine who embezzled this money?**

**What measures have been taken by the City to get these funds back?**

**Does the City insurance policy have this type of coverage so that an insurance claim can be filed to get these funds back?**

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### *\* Finding 2015-005 Authorization for Bank Account Activity*

Unapproved redeeming of \$100,000 CD and the opening of a new checking account without Council approval.

It is my understanding that the opening of a checking account requires two signatures as well as Council approval.

**QUESTION:**

**Who opened the unauthorized checking account?**

**Is this act related to the potential embezzlement?**

**How much money was in this account?**

**Has this unauthorized account been closed and the funds returned to the appropriate account?**

**Who authorized the redemption of this CD?**

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*\* Finding 2015-006 Material Violation of Finance-Related Legal Provisions*

\$15,681 of mis-appropriated SPLOST funds.

**QUESTION:**

**How did this happen?**

**How will this be prevented in the future?**

**Does the Clerk record periodic receipt of SPLOST funds from the County and apportion them in the appropriate ratios ( See Appendix IV for a copy of the SPLOST agreement ) by the approved functions into separate respective General Ledger accounts?**

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*\* Finding 2015-007 Material Violation of Finance-Related Legal Provisions*

Law requires a simple, nontechnical report, which shows for each capital project the amount expended each year and the percentage of completion.

There has been an on-going discussion over the past few years as to whether or not the Capital Improvement Budget has been passed legally. There is also an on-going discussion as to the disposition about items approved by prior Councils that should be in the Capital Improvement Budget.

**QUESTION:**

**Why was this report not filed for the past two years?**

**Who's responsibility is it to file this report?**

**What is being done to remediate the cumulative Capital Improvement Budget, including prior Council's approved items?**

**Last year the Council approved what it calls a five year Capital Improvement Budget. Is the Council aware that it cannot legally encumber future Councils in this manner?**

*\* Finding 2015-007 Material Violation of Finance-Related Legal Provisions*

LMIG Grant matching funds have not been expended for the past two years. Reports have not been filed with the state.

**QUESTION:**

**Why were these reports not filed for the past two years?**

**Who's responsibility is it to file these reports?**

**Have these projects been completed within the 12 month period mandated in the grant agreement?**

**From what fund (General or SPLOST) will the matching funds be drawn?**

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*Finding 2015*

At the findings meeting held on January 7<sup>th</sup>, 2016, Mayor Larry Ray discussed the various findings with the auditor. I believe the purpose of the meeting was to resolve questions that arose during the audit field work. After each finding, there is a "response" required from the City. In every case, it stated: *"the city agrees with this finding..."*

- a. What does that mean?
  - b. Was anybody else at the Jan 7<sup>th</sup> meeting? If so who?
  - c. What penalties can be imposed if the City does not comply?
  - d. Who would impose these penalties?
  - e. What if the entire City Council does not agree with these findings?
  - f. Does the City Council have to memorialize the approval of these findings and subsequent actions in the form of a resolution/ordinance?
-

### **3) Questions for the Council**

- a) Monthly SPLOST funds are remitted from the County and allocated to certain areas on a formula basis of \$250,000 (Parks and Rec), \$220,000 (Public Safety), and \$250,000 (Roads and Streets) and should be recorded in the general ledger accordingly. Thus it is easy to produce monthly reports showing progress towards accomplishments of goals and funds available. Is a report going to be disseminated monthly to the Council?
  - b) The audit finding 2015-004 has sketchy details as it pertains to the Nelson Reserve Association. It is my understanding that Council members have much more information than is disclosed in the audit report, which is understandable because it is hearsay and not evidence and therefor cannot be part of the audit. What is that additional information? Was \$20,000 given to Pickens County law enforcement?
  - c) Who submits the audit to the state department of audits? The auditors or the City? According to the Georgia Department of Audit and Accounts website, the last audit that was submitted was FY2013. (See appendix I for a recitation of the law)
  - d) According to the Georgia Department of Audit and Accounts website, the last budget that was submitted was FY2014.
    - a. Why has this not been done for FY2015 and FY2016?
    - b. Who is responsible for submitting the report to the State?
  - e) At the findings meeting held on January 7<sup>th</sup>, 2016, Councilman Haviland, and Jarrett along with Mayor Larry Ray discussed the auditor's findings with her. After each finding, there is a "Response" required from the City. In every case, it stated: "*The City agrees with this finding...*"
    - a. Is this statement, "The City agrees with this finding", an admission of culpability?
    - b. Who is culpable in each case? I am sure the voters will want to know this information.
    - c. What penalties can be imposed if the City does not comply?
    - d. Who would impose these penalties?
    - e. What if the entire City Council does not agree with these findings?
    - f. Does the City Council have to memorialize the approval of these findings and subsequent actions in the form of a resolution or ordinance?
-

## APPENDIX

*I.* At a minimum, all audit reports of local governments shall contain financial statements setting forth the financial condition and results of the operation of each fund and activity and the opinion of the auditor of the financial statement. In addition to an explanation of any qualifications or disclaimers, the opinion of the auditor shall disclose, in accordance with generally accepted government auditing standards, any apparent material violations of state or local law discovered during the audit. [§36-81-7(c)]

Local governments that are required to have annual audits prepared shall have copies of the audit reports for each fiscal year. In addition to the audit report, the local government is required to forward to the state auditor, within 30 days of the due date of the audit report, a copy of the report on the findings and recommendations in the report, including a plan for corrective action, taken or planned, and comments on the status of the corrective action. If corrective action is not taken or planned, the local government shall submit a statement describing the reason it is not. In the case of local governments that are only required to have audits prepared once every two years, the audit reports for both fiscal years should be submitted to the state auditor within 30 days after the due date of the audit report. If the state auditor finds that the requirements for audits of local governments have not been complied with, the state auditor shall, within 60 days of receipt of the audit, notify the local government and the auditor who performed the audit and provide them with a list of deficiencies to be corrected. A copy of such notification shall be sent to each member of the General Assembly whose senatorial or representative district includes any part of the local government. If the required audit or written comments are not received, the state auditor shall, within ten days of the appropriate date, notify the local government that an audit has not been received as required by law. Such notification shall also be sent to each member of the General Assembly whose senatorial or representative district includes any part of the local government.

*II.* The purpose of this state law is to establish minimum budget, accounting, and auditing requirements for local governments so as to provide local taxpayers with an opportunity to gain information concerning the purposes for which local revenues are proposed to be spent and are actually spent and to assist local governments in generally improving local financial management practices. This law is also intended to provide for the collection and reporting of information to assist local taxpayers and local policymakers in understanding and evaluating local government service-delivery options. [§36-81-1]

Every local governing authority shall establish by ordinance, local law, or appropriate resolution a fiscal year for the operations of the local government. All local governments shall operate under an annual balanced budget for the general fund, each special revenue fund, and each debt-service fund in use by the local government. Each unit of local government shall adopt and operate under a project-length balanced budget for each capital projects fund in use by the government. A budget ordinance or resolution is deemed balanced when the sum of estimated revenues and appropriated fund balances is equal to appropriations. Nothing in this law shall preclude a local government from

amending its budget so as to adapt to changing governmental needs during the fiscal year. Amendments shall be made by an increase in appropriation at the legal level of control of the local government, whether accomplished through a change in anticipated revenues in any fund or a transfer of appropriations among departments, both of which shall require approval of the governing authority, or by a transfer of appropriations within any fund below the local government's legal level of control, which shall require only the approval of the budget officer. The governing authority of a local government may amend the legal level of control to establish a more detailed level of budgetary control at any time during the budget period. The legal level of control for a Municipality is the budget Department.

### ***III.*** City of Nelson Oath of Office

I do so solemnly swear and affirm that I will faithfully perform the duties of Council Member of this City and that I will support and defend the charter thereof as well as the Constitution and laws of the state of Georgia and of the United States of America.

### ***IV.*** SPLOST Agreement (5 pages below. Signature page omitted)

## INTERGOVERNMENTAL SALES TAX AGREEMENT

This **INTERGOVERNMENTAL SALES TAX AGREEMENT** (this "Contract"), made and entered into as of August 17, 2010, by and among Cherokee County, Georgia (the "County"), a political subdivision of the State of Georgia, and the City of Ball Ground ("Ball Ground"), the City of Canton ("Canton"), Holly Springs, Georgia ("Holly Springs"), the City of Mountain Park ("Mountain Park"), the City of Nelson ("Nelson"), the City of Waleska ("Waleska"), and the City of Woodstock, Georgia ("Woodstock"), each a municipal corporation duly created and existing under the laws of the State of Georgia;

### WITNESSETH:

**WHEREAS**, the County and Ball Ground, Canton, Holly Springs, Mountain Park, Nelson, Waleska, and Woodstock (each a "City" and collectively the "Cities") deem it to be in the best interest of the special district of Cherokee County created by Section 48-8-110.1(a) of the Official Code of Georgia Annotated (the "Special District") to improve public services in the Special District by carrying out the hereinafter described capital outlay projects, and the most feasible plan for providing funds to pay the costs of such capital outlay projects is to reimpose a special one percent sales and use tax (the "Sales Tax"), upon the termination of the special one percent sales and use tax presently in effect, pursuant to Part 1 of Article 3 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated (the "Sales Tax Law"); and

**WHEREAS**, the Sales Tax Law allows the proceeds of the Sales Tax to be distributed pursuant to the terms of a contract entered into pursuant to Article IX, Section III, Paragraph I of the Constitution of the State of Georgia between the County and one or more "qualified municipalities" (as defined in the Sales Tax Law) located within the Special District containing a combined total of no less than 50 percent of the aggregate municipal population located within the Special District; and

**WHEREAS**, the County and the Cities desire to enter into this Contract to meet the provisions of Section 48-8-115(b) (1) of the Official Code of Georgia Annotated;

**NOW, THEREFORE**, for and in consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the County and the Cities do hereby agree as follows:

**Section 1. Representations of the County.** The County makes the following representations as the basis for the undertakings on its part herein contained:

(a) The County delivered or mailed on July 13, 2010 a written notice to the mayors of the Cities, of a meeting that was held at the County's offices on August 3, 2010, at which the governing authorities of the County and of such municipalities met to discuss the possible projects for inclusion in the Sales Tax, including municipally owned or operated projects.

(b) The County is permitted by Article IX, Section III, Paragraph I of the Constitution of the State of Georgia to contract for any period not exceeding fifty years with the Cities for joint services, for the provision of services, or for the joint or separate use of facilities or equipment.

(c) The County has the power to enter into this Contract and to perform all obligations contained herein, and has, by proper action, duly authorized the execution and delivery of this Contract.

**Section 2. Representations of each City.** Each City makes the following representations as the basis for the undertakings on its part herein contained:

(a) It is a "qualified municipality" within the meaning of the Sales Tax Law.



(b) The Cities contain a combined total of no less than 50 percent of the aggregate municipal population located within the Special District.

(c) It is permitted by Article IX, Section III, Paragraph I of the Constitution of the State of Georgia to contract for any period not exceeding fifty years with the County for joint services, for the provision of services, or for the joint or separate use of facilities or equipment.

(d) It has the power to enter into this Contract and to perform all obligations contained herein, and has, by proper action, been duly authorized to execute and deliver this Contract.

**Section 3. Term.** The term of this Contract shall commence with the execution and delivery hereof and shall extend until the termination of the Sales Tax or the failure of the Sales Tax to achieve voter approval.

**Section 4. Capital Outlay Projects.** The County shall call a referendum on whether to reimpose the Sales Tax to fund the following capital outlay projects in the following estimated amounts:

(a) Projects to be owned or operated or both by the County:

- (1) Jail Expansion, Law Enforcement and Fire/EMS Training Facilities & Equipment, Advanced Life Support (ALS) Vehicles and Equipment, and Animal Shelter Facilities and Equipment- \$25,000,000,
- (2) Transportation Facilities, Equipment, Improvements, and Airport Facilities & Expansion- \$93,450,000,
- (3) Library Facilities- \$2,500,000,
- (4) Senior Center Facilities- \$1,500,000,
- (5) Business & Economic Development land acquisition, infrastructure, facilities, debit service, sewer system improvements: - 3,750,000,
- (6) Fire & Emergency Services Facilities, Vehicles and Equipment- \$7,250,000,
- (7) Courthouse Expansion - \$1,450,000
- (8) Law Enforcement, E911 and County Marshals Facilities, Vehicles and Equipment - \$4,400,000;

**Total Estimated: \$139,300,000**

(b) Projects to be owned or operated or both by Ball Ground:

- (1) Law Enforcement Facilities, Vehicles and Equipment - \$200,000,
- (2) Community Center - \$100,000,
- (3) Park and Recreation Facilities - \$100,000,
- (4) Transportation Facilities and improvements - \$749,500,
- (5) Fire Facilities, Vehicles and Equipment - \$250,000
- (6) City Hall Debt Service - \$500,000; and
- (7) Water/Sewer System Improvements - \$164,500

**Total Estimated: \$2,064,000**

(c) Projects to be owned or operated or both by Canton:

- (1) Transportation Facilities and Improvements - \$6,000,000,
- (2) Park and Recreation Facilities - \$4,800,000,
- (3) General Government Buildings - \$2,300,000,
- (4) Fire Facilities and Equipment - \$504,000, and
- (5) Water, Wastewater Facilities, Equipment and Debit Service - \$3,700,000;

**Total Estimated: \$17,304,000**

(d) Projects to be owned or operated or both by Holly Springs:

- (1) Transportation Facilities and Improvements - \$3,100,000,
- (2) Law Enforcement Facilities, Vehicles and Equipment - \$1,700,000,
- (3) Sewer System Infrastructure, Facilities and Equipment - \$750,000,
- (4) City Hall Administrative Offices Facilities and Equipment - \$755,000
- (5) Public Works, Fire, and Fleet Vehicles and Equipment - \$410,200;

**Total Estimated: \$6,715,200**

(e) Projects to be owned or operated or both by Mountain Park:

- (1) Law Enforcement, Streets, and Drainage - \$6,264;

**Total Estimated: \$6,264**

(f) Projects to be owned or operated or both by Nelson:

- (1) Law Enforcement and Fire Vehicles and Equipment - \$220,000,
- (2) Transportation Facilities and Improvements - \$250,000, and
- (3) Park and Recreation Facilities and Improvements - \$250,000;

**Total estimated: \$720,000**

(g) Projects to be owned or operated or both by Waleska:

- (1) Water System Facilities & Improvements - \$1,000,000;
- (2) General Government Buildings, Public Buildings & Improvements - \$700,000, and
- (3) Fleet Vehicles & Equipment - \$60,000.

**Total estimated: \$1,760,000**

(h) Projects to be owned or operated or both by Woodstock:

- (1) Public Works Facilities, Transportation Facilities (Streets, Drainage and Sidewalks, etc.), Equipment - \$8,920,264,
- (2) Parks and Recreation Facilities and Equipment - \$4,000,000,
- (3) Public Safety (Police and Fire) Facilities and Equipment - \$2,700,000,
- (4) Water, Wastewater, Stormwater Facilities, Equipment - \$2,000,000, and
- (5) Debit service for such projects.

**Total Estimated: \$17,620,264**

**Section 5. Distribution of Sales Tax Proceeds.** The County shall apply the proceeds of the Sales Tax to fund the following capital outlay projects in the following order of priority:

(a) First, a sufficient amount shall be set aside in equal monthly deposits to accumulate funds to pay the semiannual interest requirements and annual principal requirements next coming due on not to exceed \$25,000,000 in aggregate principal amount of obligations issued to finance the capital outlay project set forth in Section 4(a)(1) hereof;

(b) Second, the following percentages of Sales Tax collections received by the County up to \$185,500,000 shall be ratably applied as soon as practicable to the following purposes:

- (1) 1.29% shall be paid to Ball Ground to fund the capital outlay projects specified in Section 4(b) hereof ratably,
- (2) 10.815% shall be paid to Canton to fund the capital outlay projects specified in Section 4(c) hereof ratably,
- (3) 4.197% shall be paid to Holly Springs to fund the capital outlay projects specified in Section 4(d) hereof ratably,
- (4) 0.004% shall be paid to Mountain Park to fund the capital outlay projects specified in Section 4(e) hereof ratably,
- (5) 0.45% shall be paid to Nelson to fund the capital outlay projects specified in Section 4(f) hereof ratably,
- (6) 1.10% shall be paid to Waleska to fund the capital outlay projects specified in Section 4(g) hereof ratably,
- (7) 11.013% shall be paid to Woodstock to fund the capital outlay projects specified in Section 4(h) hereof ratably, and
- (8) 71.131% shall be applied by the County to fund the capital outlay projects specified in Section 4(a) hereof ratably; and

All capital outlay projects included in this Contract shall be funded from proceeds from the Sales Tax, except as otherwise agreed in this Contract.

**Section 6. Use of Sales Tax Proceeds.** The proceeds received from the Sales Tax shall be used by the County and each City receiving proceeds of the Sales Tax exclusively for the related capital outlay projects specified in Section 4 hereof or to repay obligations that finance such capital outlay projects. Such proceeds shall be kept in separate accounts from other funds of the County and each City receiving proceeds of the Sales Tax and shall not in any manner be commingled with other funds of the County and each City receiving proceeds of the Sales Tax prior to expenditure.

**Section 7. Record-Keeping and Audit Requirements.** The County and each City receiving any proceeds from the Sales Tax shall maintain a record of each and every project for which the proceeds of the Sales Tax are used. A schedule shall be included in each annual audit of each party hereto that shows for each 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. Each party's auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to each party's financial statements. The auditor's report on each party's financial statements shall include an opinion, or disclaimer of opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole.

**Section 8. Entire Agreement.** This Contract expresses the entire understanding and all agreements among the parties hereto with respect to the subject matter hereof.

**Section 9. Severability.** If any provision of this Contract shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Contract shall not affect the remaining portions of this Contract or any part hereof.

**Section 10. Counterparts.** This Contract 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 11. Amendments in Writing.** No waiver, amendment, release, or modification of this Contract shall be established by conduct, custom, or course of dealing, but solely by an instrument in writing only executed by the parties hereto.

**Section 12. Limitation of Rights.** Nothing in this Contract, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy, or claim under this Contract.