

INTERGOVERNMENTAL CONTRACT

by and between

CITY OF DALTON, GEORGIA

and

CITY OF DALTON BOARD OF EDUCATION

Dated as of September 1, 2022

THIS INTERGOVERNMENTAL CONTRACT (the “Contract”), is entered into as of September 1, 2022, between the CITY OF DALTON, GEORGIA, a municipal corporation of the State of Georgia (the “City”), and the CITY OF DALTON BOARD OF EDUCATION, an agency of the City established under the charter of the City and independently elected by the voters (the “Board of Education”);

W I T N E S S E T H:

WHEREAS, the City of Dalton Building Authority (the “Authority”) is a public body corporate and politic duly created and existing pursuant to an amendment to the Constitution of the State of Georgia (Ga. Laws 1968, pages 1466-1482), duly ratified and proclaimed (the “Amendment”) for the purpose of acquiring, constructing, equipping, maintaining and operating projects embracing buildings and facilities for use by the City, including the Dalton Public School System (the “Dalton School System”) for its governmental, proprietary and administrative functions; and the Authority is now existing and operating and its members have been duly appointed and entered into their duties; and

WHEREAS, the Dalton School System exists pursuant to the charter of the City and is governed by the Board of Education pursuant to the City’s charter; and

WHEREAS, under the Amendment and the Revenue Bond Law (O.C.G.A. § 36-82-60 *et seq.*, as amended), the Authority has the power (a) to issue revenue bonds and use the proceeds thereof for the purpose of paying all or part of the cost of any “project” or “undertaking” (as authorized by the Amendment or the Revenue Bond Law), including the acquisition, construction and improvement of buildings and facilities for use by the Dalton School System; and (b) to make and execute contracts and other instruments necessary to exercise the powers of the Authority; and

WHEREAS, under its charter, the City has the power to acquire, construct and improve buildings and facilities for use by the Dalton School System; and

WHEREAS, pursuant to the Amendment, the Authority and the City are authorized to enter into contracts pertaining to public facilities for use by the City, including the Dalton School System, for terms not exceeding fifty (50) years for its governmental, proprietary or administrative functions; and

WHEREAS, the Authority proposes to issue its Revenue Bond (Dalton Public School System Project), Series 2022, in the principal amount of \$15,930,000 (the “Series 2022 Bond”) for the purposes of (i) providing funds to finance certain capital outlay projects for the Dalton School System consisting of the following: adding to, renovating, repairing, improving, equipping, acquiring, and furnishing existing school buildings or other buildings or facilities useful or desirable in connection therewith, including, but not limited to, Roan School, Westwood School, Park Creek School and Fort Hill; acquiring land; acquiring new technology, safety and security equipment and other school equipment, including band instruments; acquiring, constructing and equipping new school buildings and facilities, including but not

limited to educational/athletic facilities; acquiring any property necessary or desirable therefor, both real and personal; and purchasing school buses and service vehicles (collectively, the “Projects”) and (ii) paying the costs of issuing the Series 2022 Bond; and

WHEREAS, the Series 2022 Bond will be issued pursuant to the Amendment, the Revenue Bond Law, and a resolution of the Authority adopted on August 15, 2022 (the “Bond Resolution”); and

WHEREAS, the Authority and the City propose to enter into an Intergovernmental Contract (the “Bond Contract”), pursuant to which the Authority will agree to issue the Series 2022 Bond to provide funds to finance the Projects, and the City, in consideration of the Authority’s doing so, will agree to make the payments to the Authority for its services as called for pursuant to the Bond Contract in amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022 Bond; and

WHEREAS, the City and the Board of Education propose to enter into this Contract, pursuant to which, among other items, the City will request that the Authority issue the Series 2022 Bond to provide funds to finance the Projects, and the Board of Education, in consideration of the City’s and the Authority’s doing so, will agree to make the payments to the Sinking Fund (as defined in the Bond Resolution) in amounts sufficient to pay the principal of, redemption premium, if any, and interest on the Series 2022 Bond.

NOW, THEREFORE, 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 parties hereto agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.1 Definitions. In addition to the words and terms elsewhere defined in this Contract, the following words and terms as used herein shall have the following meanings unless the context or use indicates another or different meaning or intent:

“Amendment” means the constitutional amendment creating the Authority (Ga. Laws 1968, pages 1466-1482).

“Authority” means The City of Dalton Building Authority, created and existing under an amendment to the Constitution of the State of Georgia (Ga. Laws 1968, pages 1466-1482).

“Authorized Authority Representative” means the official of the Dalton School System at the time designated by a certificate of the Chairman or Vice Chairman of the City of Dalton Board of Education to act on behalf of the Authority.

“Board of Education” means the City of Dalton Board of Education, an agency of the City established under the Charter of the City and independently elected by the voters.

“Bond Contract” means the Intergovernmental Contract between the City and the Authority, dated as of September 1, 2022, pursuant to which the City agrees to pay (limited to fourteen mills) principal and interest on the Series 2022 Bond as the same becomes due and payable.

“Bond Resolution” means the resolution of the Authority adopted on August ____, 2022, pursuant to which the Series 2022 Bond are issued and secured, and any supplements or amendments thereto.

“City” means the City of Dalton, Georgia, a municipal corporation created and existing under the Constitution and laws of the State of Georgia.

“Code” means the Internal Revenue Code of 1986, as amended.

“Contract” means this Contract, dated as of September 1, 2022, by and between the City and the Board of Education.

“Projects” means those capital outlay projects for the City of Dalton Public School System, consisting of consisting of the following: adding to, renovating, repairing, improving, equipping, acquiring, and furnishing existing school buildings or other buildings or facilities useful or desirable in connection therewith, including, but not limited to, Roan School, Westwood School, Park Creek School and Fort Hill; acquiring land; acquiring new technology, safety and security equipment and other school equipment, including band instruments; acquiring, constructing and equipping new school buildings and facilities, including but not limited to educational/athletic facilities; acquiring any property necessary or desirable therefor, both real and personal; and purchasing school buses and service vehicles, all as approved in the referendum held in Whitfield County on May 24, 2022, with respect to the educational special one (1) per cent sales and use tax.

“Project Fund” means the City of Dalton Building Authority Project Fund created in Article IV, Section 2 of the Bond Resolution, into which proceeds of the Series 2022 Bond will be deposited.

“Sales and Use Tax Proceeds” means the proceeds of the special 1 percent sales and use tax received by the City pursuant to the referendum held in Whitfield County on May 24, 2022, with respect to the educational special one (1) per cent sales and use tax.

“Series 2022 Bond” means the \$15,930,000 The City of Dalton Building Authority Revenue Bond (Dalton Public Schools Project), Series 2022 to be issued pursuant to the Amendment, the Revenue Bond Law (O.C.G.A. Section 36-62-80 et seq., as amended) and the Bond Resolution.

“Sinking Fund” means the City of Dalton Building Authority Sinking Fund created in Article V, Section 1 of the Bond Resolution.

Section 1.2 Terms defined in Bond Resolution All words and terms defined in the Bond Resolution and not otherwise defined herein shall have the meaning set forth in the Bond Resolution unless the use or context clearly indicates another or different meaning or intent.

ARTICLE II.

REPRESENTATIONS

Section 2.1 Representations by the City.

The City makes the following representations as the basis for the undertaking 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, including the Amendment, the City is authorized to execute, deliver and perform its obligations under the Bond Contract and this Contract. The City has duly authorized the execution, delivery and performance of the Bond Contract and this Contract. The Bond Contract and this Contract are valid, binding and enforceable obligations of the City.

(b) There exists a need in the City to promote and expand for the public good and general welfare certain facilities for the Dalton School System, so as to serve the public purposes for which the Dalton School System was created.

(c) The City has determined that the Projects are in the public interest.

(d) Pursuant to the Amendment, the Authority and the City are authorized to enter into contracts pertaining to public facilities owned and operated by the City on behalf of the Dalton School System for terms not exceeding fifty (50) years.

(e) The City has determined that it is willing to enter into the Bond Contract and this Contract and, to the extent necessary, make payments from the proceeds of an ad valorem tax, up to fourteen mills, levied as a part of the taxes requested by the Board of Education for the Dalton School System against all taxable property within the City to achieve the public purposes provided therein and herein.

(f) No approval or other action by any governmental authority or agency or other person is required in connection with the (i) acquisition, construction and equipping of the Projects or (ii) execution, delivery and performance of the Bond Contract or this Contract by the City, except as shall have been obtained as of the date hereof.

(g) The authorization, execution, delivery and performance by the City of the Bond Contract and this Contract do not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing resolution or ordinance, 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.

(h) 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 therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the City from (A) collecting ad valorem taxes and using them to make the Contract Payments (as defined in the Bond Resolution) or (B) acquiring, constructing and equipping the Projects, (ii) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of the Bond Contract or this Contract or (B) materially adversely affect (1) the financial condition or results of operations of the City or (2) the transactions contemplated by the Bond Contract or this Contract.

(i) The City is not in violation of the laws or the Constitution of the State and is not in default under any existing resolution or ordinance, 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.

Section 2.2 Representations by the Board of Education.

The Board of Education makes the following representations as the basis for the undertakings on its part herein contained:

(a) The Board of Education is an agency of the City established under the charter of the City and independently elected by the voters.

(b) There exists a need for the Board of Education to acquire, construct and equip the Projects on a basis faster than would be possible if the Board of Education paid for the Projects from the Sales and Use Tax Proceeds as they become available.

(c) The Board of Education has determined that the issuance of the Series 2022 Bond by the Authority to finance the acquisition, construction and equipping of the Projects will achieve lawful and valid public purposes in that it will sooner fulfill the purposes of the May 24, 2022 referendum, all for the benefit of the educational purposes of the Dalton School System.

(d) Pursuant to the Article IX, Section III, Paragraph I of the Georgia Constitution, the City and the Board of Education are authorized to enter into a contract for a term not exceeding fifty (50) years for its governmental functions.

(e) The Board of Education has determined that it is willing to enter into the this Contract and, to the extent Sales and Use Tax Proceeds are insufficient, make payments from its general funds or from the proceeds of an ad valorem tax, up to fourteen mills, levied as a part of the taxes requested by the Board of Education for the

Dalton School System against all taxable property within the City to achieve the public purposes provided therein and herein to make the payments into the Sinking Fund for the principal of, premium, if any and interest on the Series 2022 Bond.

(f) No approval or other action by any governmental authority or agency or other person is required in connection with the (i) acquisition, construction and equipping of the Projects or (ii) execution, delivery and performance of this Contract by the Board of Education, except as shall have been obtained as of the date hereof.

(g) The authorization, execution, delivery and performance by the Board of Education of this Contract does not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing resolution or ordinance, 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.

(h) 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 Board of Education, threatened against or affecting the Board of Education (or, to the knowledge of the Board of Education, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Board of Education from (A) collecting ad valorem taxes and using it to make the Contract Payments or (B) acquiring, constructing and equipping the Projects, (ii) contesting or questioning the existence of the Board of Education or the titles of the present officers of the Board of Education to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of this Contract or (B) materially adversely affect (1) the financial condition or results of operations of the Board of Education or (2) the transactions contemplated by this Contract.

ARTICLE III.

TERM OF AGREEMENT; CONSTRUCTION OF PROJECTS

Section 3.1 Term Hereof. The term of this Contract shall extend until February 1, 2028, or until such time as the principal and interest on the Series 2022 Bond have been paid or provision duly made therefor, but in no event shall the term of the Contract exceed fifty years from the date hereof.

Section 3.2 Issuance of Series 2022 Bond; Contract Payments. The City hereby covenants and agrees that it will promptly request the Authority to authorize, sell, issue, validate and deliver the Series 2022 Bond, and will cause the Authority to deposit the proceeds of the Series 2022 Bond in the Project Fund existing pursuant to Article IV of the Bond Resolution. In consideration of the deposit of proceeds of the Series 2022 Bond in the Project Fund, the Board of Education agrees to pay to the Custodian of the Sinking Fund created in Article V of the Bond Resolution, the amounts required to pay principal of, redemption premium, if any, and interest on the Series 2022 Bond as the same become due and payable.

Section 3.3 City Obligations under Bond Contract. The City and the Board of Education hereby agree that the Board of Education shall act on behalf of and shall discharge all obligations of and shall exercise all rights, powers and benefits of the City under the Bond Contract and the Bond Resolution unless otherwise provided by an ordinance of the City.

Section 3.4 Title to Projects. Title to the Projects shall be in the Board of Education.

Section 3.5 Disbursement of Project Fund Moneys. Under the Bond Resolution, moneys in the Project Fund shall be disbursed by the Custodian of the Project Fund upon receipt of a Requisition in the form set forth as Exhibit “A” to the Bond Resolution, appropriately, signed by the Authorized Authority Representative. The Authorized Authority Representative is defined in the Bond Resolution to mean the official of the Dalton School System at the time designated by the Chairman or Vice Chairman of the Authority to act on behalf of the Authority.

ARTICLE IV.

THE CITY'S AND THE BOARD OF EDUCATION'S OBLIGATIONS HEREUNDER; OTHER PROVISIONS

Section 4.1 Board of Education's Payment Obligations. The Board of Education covenants and agrees that it will, to the extent Sales and Use Tax Proceeds are insufficient, levy an annual tax on all taxable property located within the City, at such rate or rates, limited to fourteen mills, as may be necessary to make the principal, redemption premium and interest payments on the Series 2022 Bond into the Sinking Fund as called for by this Contract. Nothing herein shall be construed as limiting the right of the Board of Education to make the payments called for by this Contract out of its general funds or from other sources, including Sales and Use Tax Proceeds. In order to assure that payments of principal, redemption premium, if any, and interest on the Series 2022 Bond are made in a timely manner, the Board of Education shall deposit at least twenty-five (25) days prior to the 1st day of August, 2023, and the 1st day of each February and August thereafter, for the account of the Authority directly with the Custodian of the Sinking Fund for deposit into the Sinking Fund the amounts required to pay principal and interest on the Series 2022 Bond when due.

In addition to and over and above the sums set forth in the preceding paragraph, the Board of Education agrees to pay the amounts required to be paid by the City pursuant to Section 4.2(b) of the Bond Contract.

Section 4.2 Indemnification. The Board of Education agrees that the City (including any person at any time serving as a commissioner, an agent or an employee of the City) shall not be liable for, and agrees to indemnify and hold the City (including any person at any time serving as an officer or member of the City) harmless (including attorneys' fees) from: (i) any liability for any loss or damage to property or any injury to, or death of, any person that may be occasioned by any cause whatsoever pertaining to the Projects, (ii) any liabilities, losses or damages, or claims therefor, arising out of the failure, or claimed failure, of the Board of

Education to comply with its covenants contained in this Contract, (iii) the work done on the Projects or the operation of the Projects during the term of this Contract or at any other time, (iv) any willful act or act of negligence of the Board of Education or any of its agents, contractors, servants or employees in connection with the use, operation or occupancy of the Projects, (v) any violation of law, ordinance or regulation affecting the Projects or any part thereof or the ownership, occupancy or use thereof (including, without limitation, CERCLA, the Hazardous Materials Transportation Amendment, The Resource Conservation and Recovery Amendment, the Toxic Substances Control Amendment, the Clean Water Amendment or any so called “Super Fund” or “Super Lien” legislation), (vi) any condition of the Projects, or (vii) any accident, injury or damage whatsoever caused to any person, firm or corporation, in or about the Projects. In addition, the Board of Education agrees to indemnify and hold the City (including any person at any time serving as a member, an agent or an employee of the City) harmless to the fullest extent permitted by law from any losses, costs, charges, expenses, judgments and liabilities incurred by it in connection with any action, suit or proceeding instituted or threatened in connection with the transactions contemplated by this Contract or the Series 2022 Bond. If any such claim is asserted, the City or any individual indemnified herein, as the case may be, will give prompt written notice to the Board of Education, and the Board of Education will promptly assume the defense thereof, including the employment of counsel and payment of all expenses of such defense, with full power to litigate, compromise or settle the same in its sole discretion; provided that the City shall have the right to approve in writing all counsel engaged by the Board of Education to conduct such defense, which approval shall not be unreasonably withheld.

The City shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the Board of Education shall not be required to pay the fees and expenses of such separate counsel unless the separate counsel is employed with the approval of the Board of Education. The Board of Education shall not unreasonably withhold its approval of such separate counsel.

Section 4.3 Use of Bond Proceeds. The Board of Education agrees with the City that the Series 2022 Bond proceeds deposited in the Project Fund will be used for governmental purposes and in such manner so that the interest on the Series 2022 Bond shall be and remain exempt from federal income taxation. The Board of Education and the City each covenant and agree that the Series 2022 Bond proceeds deposited in the Project Fund will be applied solely to the payment of the costs to be incurred in completing Projects.

Section 4.4 Use of Sales and Use Tax Proceeds. The Board of Education covenants and agrees that the Sales and Use Tax Proceeds will be applied to the payment of the costs to be incurred in connection with the purposes approved in the referendum held in Whitfield County on May 24, 2022, through the payment of principal of and interest on the Series 2022 Bond issued in connection with such purposes.

Section 4.5 Severability. In the event any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 4.6 Execution in 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 4.7 Captions. The captions or headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provision hereof.

IN WITNESS WHEREOF, the City and the Board of Education have caused this Contract to be executed in their respective names and their respective seals to be hereunto affixed and attested by their duly authorized officials, all as of the date first above written.

CITY OF DALTON, GEORGIA

By: _____
Mayor

(SEAL)

Attest:

Clerk

CITY OF DALTON BOARD OF
EDUCATION

By: _____
Chairman, Board of Education

(SEAL)

Attest:

Secretary, City of Dalton Board of Education