

**INTERGOVERNMENTAL CONTRACT**

**by and between**

**THE CITY OF DALTON BUILDING AUTHORITY**

**and**

**CITY OF DALTON, GEORGIA**

**Dated as of September 1, 2022**

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Relating to the  
\$15,930,000 The City of Dalton Building Authority  
Revenue Bond (Dalton Public School System Project),  
Series 2022

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The rights and interest of The City of Dalton Building Authority (the “Authority”) in the revenues and receipts derived from this Intergovernmental Contract have been assigned and pledged under a Bond Resolution, adopted by the Authority on August 15, 2022.

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## INTERGOVERNMENTAL CONTRACT

**THIS INTERGOVERNMENTAL CONTRACT** (this “Contract”) is entered into as of September 1, 2022, by and between **THE CITY OF DALTON BUILDING AUTHORITY** (the “Authority”), a public body corporate and politic, and the **CITY OF DALTON, GEORGIA** (the “City”), a municipal corporation of the State of Georgia.

### WITNESSETH:

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. L. 1968, pages 1466 *et seq.*, as continued by Ga. L. 1986, p. 5547 *et seq.*), 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 of Dalton, Georgia (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 City of Dalton Board of Education (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, pursuant to the Amendment, the Authority and the City are authorized to enter into contracts pertaining to public facilities and related equipment for use by the City, for terms not exceeding fifty (50) years for their governmental, proprietary or administrative functions; and

WHEREAS, the Authority proposes to issue its Revenue Bonds (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, it is proposed that the Authority and the City should enter into this 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 payments to the Authority in amounts sufficient to pay the principal of and interest on the Series 2022 Bond (the “Contract Payments”); and

WHEREAS, the Authority, the City and the Dalton School System have made a finding of fact that the Projects are in the public interest and are projects in furtherance of the Authority’s purpose and mission under the Amendment and the Revenue Bond Law; and

WHEREAS, the Series 2022 Bond shall contain such terms and provisions as provided in the Bond Resolution.

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 1.**

**DEFINITIONS AND RULES OF CONSTRUCTION**

**Section 1.1. Definitions**

In addition to the words and terms elsewhere defined in this Contract and the Bond Resolution, the following words and terms as used in this Contract shall have the following meanings unless the context or use indicates another or different meaning or intent and such definitions shall be equally applicable to both the singular and plural forms of the words and terms herein defined:

“State” shall mean the State of Georgia.

“Term” shall have the meaning specified in Section 4.1 hereof.

**Section 1.2. Rules of Construction.**

The definitions referred to in Section 1.1 shall be equally applicable to both the singular and the plural forms of the terms therein defined and shall cover all genders. “Herein,” “hereby,” “hereunder,” “hereof,” “hereinbefore,” “hereinafter,” “this Contract” and other equivalent words refer to this Contract and not solely to the particular portion thereof in which any such word is used. All references herein to particular Articles or Sections are references to Articles or Sections of this Contract unless otherwise specified.

[END OF ARTICLE I]

## ARTICLE 2.

### REPRESENTATIONS, WARRANTIES AND AGREEMENTS

#### Section 2.1. Representations, Warranties and Agreements of the Authority.

The Authority makes the following representations, warranties and agreements as the basis for the undertakings on its part herein contained:

(a) The Authority is a public body corporate and politic duly created, organized and existing under the Constitution and laws of the State, including the Amendment, and, unless otherwise required by law, shall maintain its corporate existence so long as the Series 2022 Bond is outstanding. Under the provisions of the Amendment, the Authority is authorized to (i) adopt the Bond Resolution, (ii) issue, execute, deliver and perform its obligations under the Series 2022 Bond, and (iii) execute, deliver and perform its obligations under this Contract. The Bond Resolution has been duly adopted and has not been modified or repealed. The Authority has duly authorized (i) the issuance, execution, delivery and performance of the Series 2022 Bond and (ii) the execution, delivery and performance of this Contract. The Bond Resolution, the Series 2022 Bond and this Contract are valid, binding and enforceable obligations of the Authority.

(b) The Authority has determined that the Projects are projects in furtherance of the Authority's purpose and mission under the Amendment.

(c) No approval or other action by any governmental authority or agency or other person is required in connection with the (i) issuance of the Series 2022 Bond, (ii) financing of the Projects, or (iii) execution, delivery and performance of this Contract by the Authority, except as shall have been obtained as of the date hereof; provided, however, no representation is given with respect to any "blue sky" laws.

(d) The adoption of the Bond Resolution, the issuance of the Series 2022 Bond and the authorization, execution, delivery and performance by the Authority of this Contract do not violate the Amendment, the Authority's bylaws, any resolutions or 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.

(e) 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 Authority, threatened against or affecting the Authority (or, to the knowledge of the Authority, any meritorious basis therefor) (i) attempting to limit, enjoin or otherwise restrict or prevent the Authority from issuing the Series 2022 Bond, pledging the Contract Payments and this Contract to the payment of the Series 2022 Bond, or financing the Projects, (ii) contesting or questioning the existence of the Authority or the titles of the present officers of the Authority to their offices or (iii) wherein an unfavorable decision, ruling or finding would (A) adversely affect the enforceability of the Series 2022 Bond, the

Bond Resolution or this Contract or (B) materially adversely affect the transactions contemplated by this Contract.

(f) The Authority is not in violation of the Amendment, its bylaws, any resolutions or ordinances of the City or 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.

(g) The Authority has not made, done, executed or suffered, and warrants that it will not make, do, execute or suffer any act or thing whereby the City's interest in the Projects will or may be, impaired or encumbered in any manner except as permitted herein and the Bond Resolution and except for acts or things done or permitted by the City.

(h) Except as herein and in the Bond Resolution provided, the Authority will not encumber any part of its interest in the Contract Payments or its rights under this Contract. The pledge made of the Contract Payments constitutes a first and prior pledge of and lien on said Contract Payments and said pledge shall at no time be impaired by the Authority and the Contract Payments shall not otherwise be pledged.

## **Section 2.2. Representations, Warranties and Agreements of the City.**

The City makes the following representations, warranties and agreements 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 this Contract. The City has duly authorized the execution, delivery and performance of this Contract. This Contract is a valid, binding and enforceable obligation 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 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 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 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 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 it to make the Contract Payments 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 this Contract or (B) materially adversely affect (1) the financial condition or results of operations of the City or (2) the transactions contemplated by 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.

[END OF ARTICLE II]

## **ARTICLE 3.**

### **ISSUANCE OF SERIES 2022 BOND; APPLICATION OF BOND PROCEEDS; CONSTRUCTION**

#### **Section 3.1. Agreement to Issue the Series 2022 Bond.**

In order to provide funds, as provided in the Bond Resolution to finance the Projects and pay the costs incident thereto, the Authority, in accordance with the Amendment, will issue the Series 2022 Bond, and all of the covenants, agreements and provisions hereof shall, to the extent provided herein and in the Bond Resolution, be for the benefit and security of the Bondholder. The Authority has delivered a certified copy of the Bond Resolution to the City.

#### **Section 3.2. Date, Denomination, and Maturities.**

The Series 2022 Bond will be issued in fully registered form and will mature and be paid pursuant to the provisions of Article II of the Bond Resolution. Interest on the Series 2022 Bond will be paid to the person or persons and in the manner stated in the Series 2022 Bond and in the Bond Resolution, until the obligation of the Authority with respect to the payment of the principal of and interest on the Series 2022 Bond shall be discharged in accordance therewith.

#### **Section 3.3. Obligations Relating to the Series 2022 Bond.**

The City agrees to perform all such obligations as are contemplated by the Bond Resolution to be performed by the City.

#### **Section 3.4. Application of Bond Proceeds.**

At and upon the delivery of and payment for the Series 2022 Bond, the proceeds received therefrom shall be applied in the manner set forth in Section 3.2 of the Bond Resolution.

#### **Section 3.5. Agreement to Acquire, Construct and Equip the Projects.**

Subject to Section 3.7 hereof, the Authority hereby appoints the City as its sole and exclusive agent to proceed forthwith with acquiring, constructing and equipping the Projects. The City shall obtain or cause to be obtained all necessary approvals from any and all governmental agencies requisite to undertaking the acquisition, construction and equipping of the Projects. The Projects shall be acquired, constructed and equipped in compliance with all federal, state and local laws, ordinances and regulations applicable thereto. The City will take or cause to be taken such action and institute or cause to be instituted such proceedings as it shall deem appropriate to cause and require all contractors and suppliers of materials to complete their contracts, including the correcting of any defective work. Any amounts recovered by way of damages, refunds, adjustments or otherwise in connection with the foregoing shall (i) if the City has corrected at its own expense the matter which gave rise to such default or breach, be paid to the City or (ii) if the City has not corrected at its own expense the matter which gave rise to such default or breach, be paid into the Project Fund.

**Section 3.6. Disbursements from the Project Fund.**

The moneys credited to the Project Fund from the sale of the Series 2022 Bond shall be used and applied only for the purpose of paying the cost of the Projects. All payments from the Project Fund shall be made upon the terms and conditions set forth in the Bond Resolution. The Dalton School System shall prepare the requisitions and certificates required by the Bond Resolution, a form of such requisition being attached as Exhibit B to the Bond Resolution.

**Section 3.7. Establishment of Completion Date.**

At such time the Projects are completed (the “Completion Date”), a duly authorized representative of the Dalton School System shall provide a signed certificate to the Project Fund Depository stating that, except for amounts retained by the Project Fund Depository at the City’s direction to pay any cost of the Projects not then due and payable, (a) the Projects have been completed and all costs of labor, services, materials and supplies have been paid, and (b) all other facilities necessary in connection with the Projects have been acquired, constructed and equipped and all costs and expenses incurred in connection therewith have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being. Upon receipt of such certificate, the Project Fund Depository shall retain in the Project Fund a sum equal to the amounts necessary for payment of the costs of the Projects not then due and payable according to such certificate. If any such amounts so retained are not subsequently used, prior to any transfer of such amounts to the Sinking Fund, the Project Fund Depository shall give notice to the Authority and the City of the failure to apply such funds for payment of the costs of the Projects. Any amount not to be retained in the Project Fund for payment of the costs of the Projects, and all amounts so retained but not subsequently used, shall be transferred by the Project Fund Depository into the Sinking Fund and shall be used to pay principal of and interest on the Series 2022 Bond.

**Section 3.8. Completion of Projects if Project Fund Insufficient.**

In the event moneys in the Project Fund available for payment of the costs of the Projects are not sufficient to pay the costs of the Projects in full, the City shall use its best efforts to cause the Projects to be completed and the City shall pay that portion of the cost of the Projects in excess of the moneys available therefor in the Project Fund.

**Section 3.9. Investment of Moneys.**

Any moneys held as a part of the Project Fund shall be invested or reinvested as directed by the City in accordance with Article III of the Bond Resolution. Any moneys held as a part of the Sinking Fund shall be invested or reinvested as directed by the City in accordance with Article V of the Bond Resolution.

**Section 3.10. Board of Education.**

The Dalton School System exists pursuant to the charter of the City. The City hereby covenants 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 this Contract and the Bond Resolution unless otherwise provided by an ordinance of the City.

[END OF ARTICLE III]

## **ARTICLE 4.**

### **EFFECTIVE DATE OF THIS CONTRACT; DURATION OF TERM; CONTRACT PAYMENT PROVISIONS**

#### **Section 4.1. Effective Date of this Contract; Duration of Term.**

This Contract shall become effective as of September 1, 2022 and the interests created by this Contract shall then begin, and, subject to the other provisions of this Contract, shall expire on the later of (a) February 1, 2028, or if at said time and on said date the Series 2022 Bond have not been paid in full as to principal and interest, then on such date as such payment shall have been made or (b) the date the Series 2022 Bond have been paid in full, but in no event in excess of fifty (50) years from the date hereof. Notwithstanding the foregoing, the provisions of Sections 8.1 and 8.2 hereof shall expire fifty (50) years from the date hereof.

#### **Section 4.2. Contract Payments.**

At least twenty-five (25) days prior to each February 1 and August 1 of each year (each a “Contract Payment Date”), commencing August 1, 2023, the City shall make the Contract Payments with respect to the Series 2022 Bond to the Authority as set forth on Schedule 1 attached hereto. Notwithstanding anything in the Bond Resolution or herein to the contrary, if such date is on or prior to February 1, the City shall pay an amount sufficient to enable the Authority to pay in full the principal and interest on the Series 2022 Bond coming due on February 1, and if such date is on or prior to August 1, the City shall pay an amount sufficient to enable the Authority to pay in full the interest on the Bond coming due on August 1, and such Contract Payments shall continue and recontinue until provision has been made for the payment in full of the Series 2022 Bond as to principal and interest. The Contract Payments provided for herein shall be made by payment directly to the Sinking Fund Custodian for deposit into the Sinking Fund.

#### **Section 4.3. Optional Prepayment of Series 2022 Bond and Optional Prepayment of Contract Payments.**

(a) The Series 2022 Bond shall be subject to optional redemption, in whole or in part, as provided in the Bond Resolution, and the Contract Payments due under Section 4.2 shall be subject to prepayment, both at the option of the City.

(b) No prepayment of any Contract Payment in accordance with the provisions of the preceding sentence shall relieve the City to any extent from its obligations thereafter to make Contract Payments required by the provisions hereof until the Series 2022 Bond and interest thereon have been paid in full. Upon the prepayment of the Contract Payments in whole, the amount of such prepayment shall be used to retire the Series 2022 Bond, in the manner provided in, and subject to, the Bond Resolution.

#### **Section 4.4. Budget and Tax Levy to Pay Contract Payments.**

(a) The obligations of the City to make the Contract Payments when due under Section 4.2 hereof, and to perform its other obligations hereunder, are absolute and unconditional general obligations of the City as herein provided, and the City hereby pledges its full faith and credit and taxing power to such payment and performance, subject to the millage limitation

discussed below. In the event the amount of funds lawfully available to the City is not sufficient to pay the Contract Payments when due in any year, the City shall levy as part of the taxes levied at the request of the Board of Education for the Dalton School System an annual tax on all taxable property located within the boundaries of the City, at such rates or rates, limited to fourteen mills, as may be necessary to produce in each calendar year revenues which shall be sufficient to fulfill the City's obligations hereunder, from which revenues there shall be appropriated, prior to any other appropriations with respect to the Projects, sums sufficient to pay in full when due the obligations herein contracted to be paid by the City including specifically the obligation to make the Contract Payments as provided herein. The City hereby creates a lien on any and all revenues realized by it pursuant to the provisions of this subparagraph to enable it to make the Contract Payments required pursuant to Section 4.2 hereof and such lien is superior to any that can hereafter be made.

(b) The City 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 satisfy any such Contract Payments that may be required to be made, 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 City to make the Contract Payments shall constitute a general obligation of the City, and nothing herein contained, shall be construed as limiting the right of the City to make the payments called for by this Contract out of any funds lawfully available to it for such purposes, from whatever source derived (including general funds).

(c) In the event for any reason any such provision or appropriation is not made as provided in the preceding subsection (b), then the fiscal officers of the City are hereby authorized and directed to set up as an appropriation on their accounts in the appropriate fiscal year the amounts required to pay the obligations which may be due from the general funds of the City. 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 City had included the amount of the appropriation in its general revenue, appropriation and budgetary measures, and the fiscal officers of the City shall make such Contract Payments to the Sinking Fund Custodian for deposit to the Sinking Fund if for any reason the payment of such obligations shall not otherwise have been made.

#### **Section 4.5. Obligations of City Hereunder Absolute and Unconditional.**

The obligations of the City to make the payments required in Section 4.2 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be absolute and unconditional irrespective of any defense or any rights of set off, recoupment, or counterclaim it may otherwise have against the Authority. Until such time as all amounts owing hereunder have been paid or provision for the payment thereof shall have been made in accordance with the Bond Resolution and hereof, the City (a) will not suspend, abate, reduce, abrogate, diminish, postpone, modify or discontinue the Contract Payments provided for herein, (b) will perform and observe all of its other agreements contained in this Contract, and (c) will not terminate the Term of this Contract or its obligations hereunder for any contingency, act of God, event, or cause whatsoever, including, without limiting the generality of the foregoing, failure of title in and to the Projects, or any part thereof, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to

the Projects, the taking by eminent domain of title to or the use of all or any part of the Projects, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, any declaration or finding that the Series 2022 Bond is unenforceable or invalid, the invalidity of any provision of this Contract, or any failure of the Authority to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Contract, or the Bond Resolution. Nothing contained in this Section shall be construed to release the Authority from the performance of any of the agreements on its part contained herein or in the Bond Resolution; and if the Authority should fail to perform any such agreement, the City may institute such action against the Authority as the City may deem necessary to compel performance or recover its damages for nonperformance as long as such action shall not do violence to or adversely affect the agreements on the part of the City contained in this Contract and to make the Contract Payments specified herein. The City may, however, at its own cost and expense and in its own name, prosecute or defend any action or proceeding or take any other action involving third persons which the City deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Authority hereby agrees to cooperate to the extent required.

**Section 4.6. Enforcement of Obligations.**

The obligation of the City to make Contract Payments under this Article may be enforced by (a) the Authority, (b) the owner of the Series 2022 Bond, in accordance with the applicable provisions of the Bond Resolution and independently of the Authority or (c) such receiver or receivers as may be appointed pursuant to the Bond Resolution or applicable law. The covenants and agreements hereunder, including specifically the obligation to make the Contract Payments, shall be enforceable by specific performance; it being acknowledged and agreed by the Authority and the City that no other remedy at law is adequate to protect the interests of the parties hereto.

[END OF ARTICLE IV]

## **ARTICLE 5.**

### **OWNERSHIP; AND COVENANTS OF THE CITY AND AUTHORITY**

#### **Section 5.1. Operation of the Projects and Operating Expenses.**

Subject to Section 3.10 hereof, the Authority hereby appoints the City as its sole and exclusive agent during the Term hereof to operate the Projects. The City shall operate and maintain such Project or cause such Project to be operated and maintained economically, efficiently and in accordance with good business practices and in compliance with the terms of the laws, regulations and ordinances of any federal, state, county or municipal government having jurisdiction over the operation of such facilities. All compensation, salaries, fees and wages paid or caused to be paid by the City shall be reasonable, and no more persons will be employed to operate such Project than are necessary. The City shall at all times maintain such Project or cause such Project to be maintained in good condition and repair and shall promptly repair, replace or restore any damage to such Project or cause the proceeds from insurance from such damage or destruction to be applied in accordance with the terms hereof.

Neither the Authority nor the City shall receive any revenues from the operation of the Projects.

#### **Section 5.2. Liens; Easements; Leases; Sale of Assets.**

The City and the Authority shall not create or suffer to be created, any lien, security interest or charge on the Projects, or any part thereof, and they shall pay, or cause to be discharged, or they shall make adequate provisions to satisfy and discharge, within 60 days after the same shall accrue, all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the Projects, or any part thereof; provided, however, that nothing contained in this Section shall require the City or the Authority to pay, or cause to be discharged, or make provision for, any such lien, security interest or charge, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

At the direction of the Board of Education, the City and the Authority may grant or cause to be granted, whether to themselves or otherwise, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Projects, or the City may cause to be released existing easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Projects with or without consideration. In connection with any such grant, the City agrees that its shall execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or other right or privilege or assent.

The Authority or the City may sell, lease or give away all or a portion of the Projects at the direction of the Board of Education. Prior to such conveyance, the Authority shall obtain an opinion of nationally recognized bond counsel to the effect that such sale, lease or gift will not adversely affect the tax-exempt status of the Series 2022 Bond. If such sale, lease (or any amendment to any such lease) or gift adversely affects the tax-exempt status of the Series 2022 Bond, prior to such sale, lease or gift, the Series 2022 Bond shall be subject to mandatory



redemption pursuant to the terms of the Bond Resolution, and the proceeds from any such sale shall be used by the Authority and the City to redeem the Series 2022 Bond pursuant to Section 3.2 of the Bond Resolution.

### **Section 5.3. Use of Proceeds and Specific Tax Covenants.**

The Series 2022 Bond is being issued by the Authority in compliance with the conditions necessary for interest income on the Series 2022 Bond to be excluded from gross income for federal income tax purposes pursuant to the provisions of Section 103(a) of the Code relating to obligations of the State or political subdivisions thereof. It is the intention of the Authority and the City that the interest on the Series 2022 Bond be and remain excludable from gross income for federal income tax purposes, and, to that end, the City hereby covenants with the holders of the Series 2022 Bond as follows:

(a) That it will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the tax exempt status of interest on the Series 2022 Bond under Section 103 of the Code.

(b) That it will not directly or indirectly use or permit the use of any of the proceeds of the Series 2022 Bond or take or omit to take any action in a way that would cause the Series 2022 Bond to be (i) “private activity bonds” within the meaning of Section 141 of the Code or (ii) obligations which are “federally guaranteed” within the meaning of Section 149(b) of the Code.

(c) That it will not directly or indirectly use or permit the use of any proceeds of the Series 2022 Bond or any other funds of the City or take or omit to take any action that would cause the Series 2022 Bond to be “arbitrage bonds” within the meaning of Section 148 of the Code. To that end, the City will comply with all requirements of Section 148 of the Code and any regulations promulgated thereunder to the extent applicable to the City. In the event that at any time the City or the Authority is of the opinion that for purposes of this Section it is necessary to restrict or limit the yield on the investment of any moneys held under the Resolution, the Authority and the City shall take such action as may be necessary to effect the same.

### **Section 5.4. Arbitrage Covenants.**

The City shall not, subsequent to the date of the issuance and delivery of the Series 2022 Bond, intentionally use any portions of the proceeds of the Series 2022 Bond to acquire higher yielding investments, or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as may otherwise be permitted by the Code, including, but not limited to, complying with the requirements of Section 148(f) of the Code and the payment of rebate, if any, required to be made by the Authority, and that it will expend the proceeds of the Series 2022 Bond in compliance with the applicable provisions of Section 141 to 149, inclusive, of the Code.

### **Section 5.5. Records and Accounts.**

The Authority and the City shall keep the funds and accounts of the Projects separate from all other funds and accounts of the Authority and the City. The City shall keep accurate records

and accounts of all items of cost and all expenditures relating to the Projects, and of the revenues collected and the application thereof. Such records and accounts shall be open to the inspection of the Authority and the Bondholders.

**Section 5.6. Indemnification.**

The City agrees that the Authority (including any person at any time serving as a commissioner, an agent or an employee of the Authority) shall not be liable for, and agrees to indemnify and hold the Authority (including any person at any time serving as an officer or member of the Authority) 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 City 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 City 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 City agrees to indemnify and hold the Authority (including any person at any time serving as a member, an agent or an employee of the Authority) 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 Authority or any individual indemnified herein, as the case may be, will give prompt written notice to the City, and the City 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 Authority shall have the right to approve in writing all counsel engaged by the City to conduct such defense, which approval shall not be unreasonably withheld.

The Authority shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the City 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 City. The City shall not unreasonably withhold its approval of such separate counsel.

[END OF ARTICLE V]

**ARTICLE 6.**

**SPECIAL COVENANTS AND AGREEMENTS**

**Section 6.1. No Warranty of Condition or Suitability by the Authority**

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECTS OR THEIR SUITABILITY.

**Section 6.2. Inspection of the Projects.**

The City and the Dalton School System agree that the Authority, the Bondholder and their duly authorized agents who are acceptable to the Authority shall have the right at reasonable times during business hours, subject to the City's or the Dalton School System's usual safety and security requirements to examine and inspect the Projects without interference or prejudice to the City's or the Dalton School System's operations.

**Section 6.3. Further Assurances and Corrective Instruments, Recordings and Filings.**

The Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required to facilitate the performance of this Contract.

**Section 6.4. Limitations on Future Debt.**

The Authority and the City covenant and agree that, other than the Series 2022 Bond, no other bonds or obligations of any kind or nature will be issued which are payable or enjoy a lien on the payments received under the Contract.

[END OF ARTICLE VI]

## **ARTICLE 7.**

### **EVENTS OF DEFAULT AND REMEDIES**

#### **Section 7.1. Events of Default Defined.**

The following shall be “events of default” under this Contract and the term “event of default” shall mean, whenever used in this Contract, any one of the following events:

(a) Failure by the City to pay when due any amount required to be paid under Section 4.2 hereof;

(b) The City shall fail to perform any of the other agreements, conditions, covenants or terms herein required to be performed by the City and such default shall continue for a period of 30 days after written notice has been given to the City by the Authority, the Paying Agent or the Bondholder specifying such default and requesting that it be remedied, or within a greater number of days if such remedy has been undertaken and is being diligently pursued and more than 30 days is required for its completion; provided, however, that if, by reason of force majeure, the City is unable, in whole or in part, to perform the obligations on its part herein undertaken (other than the obligations relating to the payments to be made under Section 4.2 hereof), the City shall not be deemed in default during the continuance of such inability to perform. The term force majeure shall mean, without limitation, acts of God; strikes; work stoppages or similar disturbances; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes, fire; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions; breakage or accident to machinery or equipment; partial or entire failure of utilities, or any other cause or event not reasonably within the control of the City. The City will use its best efforts, however, to remedy, with all reasonable dispatch, the cause or causes preventing the City from carrying out such obligation; provided, that the settlement of strikes, work stoppages and similar disturbances shall be entirely within the discretion of the City and the City shall not be required to make settlement of such disturbances by acceding to the demands of the opposing party or parties when such course is, in the judgment of the City, unfavorable to the City; and

(c) An Event of Default shall have occurred under the Bond Resolution.

#### **Section 7.2. Remedies on Default.**

(a) If an event of default referred to in Section 7.1(a) hereof occurs and is continuing, then the Bondholder (i) by written notice to the City, may declare the payments to be made under Section 4.2 hereof to be immediately due and payable, and (ii) may take whatever action at law or in equity may appear necessary or desirable to collect said amounts payable by the City under Section 4.2 hereof. No remedy conferred upon or reserved to the Bondholder in this subsection (a) is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract or now or hereafter existing at law or in equity or by statute, subject to the provisions

of the Bond Resolution.

(b) If an event of default referred to in Section 7.1(b) hereof occurs and is continuing, then the Paying Agent or the Bondholder, by written notice to the City, may take whatever action at law or in equity may appear necessary or desirable to enforce the performance and observance of the obligation, agreement or covenant of the City then in default under this Contract, whether for specific performance of any covenant or agreement contained herein or therein or in aid of the execution of any power herein granted. No remedy conferred upon or reserved to the Bondholder in this subsection (b) is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Contract and now or hereafter existing at law or in equity or by statute, subject to the provisions of the Bond Resolution.

No delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Bondholder to exercise any respective remedy reserved to them in this Article VII, it shall not be necessary to give any notice, other than any notice required herein.

Any amounts collected pursuant to action taken under subsection (a) of this Section 7.2 shall be applied in accordance with the Bond Resolution to the extent the provisions of the Bond Resolution relate to such amounts.

**Section 7.3. No Waiver of Breach.**

In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.4. City Authorized to Cure Default of Authority.**

With regard to any default on the part of the Authority under this Contract or under the Bond Resolution, the Authority hereby vests the City, with full power, for the account of the Authority, to perform any obligation in remedy of such default in the name and stead of the Authority with full power to do any and all things and acts to the same extent that the Authority could do and perform any such acts.

**Section 7.5. Failure to Enforce Agreement Not a Waiver.**

The failure of the Authority or the Bondholder to enforce any agreement, condition, covenant or term by reason of any default or breach by the City shall not be deemed to void or affect the right to enforce the same agreement, condition, covenant or term on the occasion of any subsequent default or breach.

[END OF ARTICLE VII]

**ARTICLE 8.**

**MISCELLANEOUS**

**Section 8.1. Agreement to Pay Attorneys' Fees and Expenses.**

If a party should default under any of the provisions of this Contract and either or both the nondefaulting party or the Bondholder should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the City or the Authority herein contained, the defaulting party agrees that it shall on demand therefor pay to the nondefaulting party and the Bondholder the reasonable fee of such attorneys and such other reasonable expenses so incurred by the nondefaulting party and the Bondholder.

**Section 8.2. Reporting Requirements.**

The City shall furnish to the Bondholder its audited financial statements within 210 days of the end of each fiscal year.

**Section 8.3. Notices.**

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to the Authority:

The City of Dalton Building Authority  
300 W. Waugh Street  
Dalton, Georgia 30722  
Attention: Chairman  
Facsimile: (706) 529-2491

cc:

Mitchell & Mitchell, PC  
108 S. Thornton Ave.  
Dalton, Georgia 30720  
Attention: Terry L. Miller, Esq.

If to the City:

City of Dalton, Georgia  
300 W. Waugh Street  
Dalton, Georgia 30722  
Attention: Mayor  
Facsimile: (706) 529-2491

cc:

Mitchell & Mitchell, PC  
108 S. Thornton Ave.  
Dalton, Georgia 30720  
Attention: Terry L. Miller, Esq.

Any party, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

**Section 8.4. Binding Effect; Third-Party Beneficiaries.**

This Contract shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained in this Contract. The Bondholder is a third-party beneficiary of this Contract, and may enforce the terms and provisions hereof. There are no other third-party beneficiaries.

**Section 8.5. Severability**

If 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 8.6. Amounts Remaining in Sinking Fund.**

It is agreed by the parties hereto that, subject to and in accordance with the terms and conditions of the Bond Resolution certain surplus moneys remaining in the Sinking Fund after payment of the Series 2022 Bond shall belong to and be paid to the City.

**Section 8.7. Amendments, Changes and Modifications.**

This Contract may be amended without the consent of the Bondholder in order to grant any additional rights, remedies, powers, authority or security that may be lawfully granted to or conferred upon the Bondholder or to make any other change that does not materially adversely affect the Bondholder. All other amendments shall require the consent of the Bondholder in accordance with Section 9.4 of the Bond Resolution. Notwithstanding the foregoing, this Contract shall not be amended if such amendment reduces the Contract Payments.

**Section 8.8. Execution Counterparts.**

This Contract may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 8.9. Captions.**

The captions and headings in this Contract are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Contract.

**Section 8.10. Law Governing Contract.**

This Contract shall be governed by, and construed in accordance with, the laws of the State of Georgia.

**Section 8.11. City a Party to Validation.**

The City hereby agrees to be a party defendant in the validation proceedings related to the Series 2022 Bond and covenants and agrees that it shall cooperate with the Authority in validating the Series 2022 Bond and in connection therewith, shall execute such certificates, consent to service of process and make sworn answers as may be necessary for the validation proceedings.

[END OF ARTICLE VIII]



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

**THE CITY OF DALTON BUILDING  
AUTHORITY**

(SEAL)

By: \_\_\_\_\_  
Chairman

Attest:

\_\_\_\_\_  
Secretary

**CITY OF DALTON, GEORGIA**

**(SEAL)**

By: \_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Clerk

SCHEDULE 1

SERIES 2022 BOND  
CONTRACT PAYMENTS

Bond Debt Service

The City of Dalton Building Authority (Georgia)

Revenue Bond (Dalton Public School System Project), Series 2022

Final Numbers

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
8/1/2023			\$389,780.55	\$389,780.55	
2/1/2024	\$2,880,000	2.770%	220,630.50	3,100,630.50	\$3,490,411.05
8/1/2024			180,742.50	180,742.50	
2/1/2025	3,130,000	2.770%	180,742.50	3,310,742.50	3,491,485.00
8/1/2025			137,392.00	137,392.00	
2/1/2026	3,215,000	2.770%	137,392.00	3,352,392.00	3,489,784.00
8/1/2026			92,864.25	92,864.25	
2/1/2027	3,305,000	2.770%	92,864.25	3,397,864.25	3,490,728.50
8/1/2027			47,090.00	47,090.00	
2/1/2028	3,400,000	2.770%	47,090.00	3,447,090.00	3,494,180.00
	\$15,930,000		\$1,526,588.55	\$17,456,588.55	\$17,456,588.55