

**THIRD AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT**

BETWEEN

EFFINGHAM COUNTY

AND

EFFINGHAM COUNTY HOSPITAL AUTHORITY

THIS CONTRACT, made and entered into as of _____ __, 2022, by and between **EFFINGHAM COUNTY** (the "County"), acting by and through its Board of Commissioners, and the **EFFINGHAM COUNTY HOSPITAL AUTHORITY D/B/A EFFINGHAM HOSPITAL** (the "Authority");

WITNESSETH:

WHEREAS, pursuant to the provisions of the Hospital Authorities Law of Georgia (O.C.G.A., Section 31-7-70 et seq, as amended) (the "Hospital Authorities Law"), the County established the Authority pursuant to a resolution adopted by the Board of Commissioners of Roads and Revenue for Effingham County on February 6, 1968, and the Authority is now legally created, existing and operating; and

WHEREAS, the Hospital Authorities Law grants to the Authority the power to acquire, construct, equip, alter, repair and modernize health care facilities to promote the public health needs of the County and the State of Georgia; and

WHEREAS, the Authority has heretofore acquired and constructed and is now operating Effingham Hospital located in Springfield, Georgia (the "Hospital") and certain off campus outpatient facilities located in Effingham and Chatham Counties, Georgia (the off campus facilities and the Hospital are collectively referred to herein as the "Medical Facilities"); and

WHEREAS, after careful study, in 2010, the Authority determined that in order to meet the healthcare needs of the citizens of Effingham County, it was necessary to modernize and expand the Hospital through renovations and improvements with an approximate cost of \$30 Million dollars (the "Project"); and

WHEREAS, the Authority financed the amounts necessary for the Project in the amount of \$30,989,800, through the issuance of revenue anticipation certificates (the "2010 Loan"), which funds, combined with existing resources of the Authority, redeemed the Series 1998 Certificates and provide funds for the modernization and expansion of the Hospital; and

WHEREAS, the Authority financed the 2010 Loan through a lender (the "Lender") approved by the Federal Housing Administration (the "FHA"), in order to secure mortgage insurance from FHA thereby enhancing the credit of the Authority and reducing the borrowing cost on the 2010 Loan; and

WHEREAS, the recent community assessment for Effingham County found that the key illnesses that lead to higher mortality rates include oncology diagnosis, poverty and other social determinates that impact the health of the community; and

WHEREAS, the Authority through Effingham Hospital continues to maintain quality facilities and equipment available for clinical services and desires to expand its facilities to support access to healthcare services in the community; and

WHEREAS, the Authority initially intended to redeem its revenue anticipation certificates, refinance the 2010 Loan and add supplemental funding for expanded projects (previously referred to as the "2021 Loan") and as an alternative in order to support the financial

feasibility of Effingham Hospital, Authority intends to issue revenue anticipation certificates to redeem and refinance the 2010 Loans and extend the term of the loan through 2037 with a Lender approved by the FHA and secured by the FHA federal mortgage insurance program (“2022 Loan”); and

WHEREAS, in order to secure FHA federal mortgage insurance, the Authority intends to provide to the Lender an irrevocable pledge of its revenues, including the revenues to be derived under this Contract; and

WHEREAS, this Contract is authorized by the provisions of Article IX, Section III, Paragraph I of the Constitution of the State of Georgia and under the provisions of the Hospital Authorities Law; and

WHEREAS, the County, acting through its Board of Commissioners, desires to enter into this Contract with the Authority for the provision of medical or other care and hospitalization of the indigent sick and poor within the County by the Authority, all for the best interests of the residents of the County; and

WHEREAS, on the effective date of this Contract, the terms and conditions of this Contract shall supersede and replace the prior terms and conditions of the Contract effective on October 19, 2010, as amended on December 15, 2020 and September , 2021; and

NOW, THEREFORE, in consideration of the mutual promises and the undertakings as hereinafter set forth, it is agreed between the County and the Authority, each acting by and through its authorized officers, pursuant to resolutions duly adopted and properly passed, as follows;

1.

EFFECTIVE DATE; TERM

This Contract shall become effective as of the date of issuance and delivery of the 2022 Loan and shall continue in effect from said date until such time as the 2022 Loan as to principal, redemption premium, if any, and interest shall have been paid in full or provision duly made therefore, but in no event shall the time hereof exceed 40 years, provided that the obligations of the County under this Contract shall not be extended beyond 2037 without the written consent of the County, which shall not be unreasonably withheld.

2.

COUNTY COVENANTS

The County covenants and agrees:

- (a) For and during the term of this Contract, it will send all of the residents of the County who are indigent or otherwise unable to pay for and in need of medical care and hospitalization, to the extent practicable and consistent with patient choice, to the Medical Facilities for such medical attention and hospitalization, and to pay for such services so rendered as hereinafter set forth.
- (b) For and during the term of this Contract, the County shall make monthly payments to the Authority in amounts as may be necessary to assure the continuous operation of the Authority and its Medical Facilities during the term of this Contract and to provide reasonable reserves for the Authority, such amount due and payable under this Contract shall be determined from year to year during the term of this Contract and no sums shall be paid for the services in excess of the amounts necessary to provide for the maintenance and operation of the Medical Facilities of the

Authority, including reasonable reserves, thereby providing adequate and necessary facilities for medical care and hospitalization of the residents of the County who are indigent or otherwise unable to pay for their medical care, provided that the County and the Authority have agreed that the minimum monthly payments necessary to support the operations of the Authority and provide reasonable reserves shall be Three Hundred Thousand and no/100 Dollars (\$300,000.00), totaling to Three Million Six Hundred Thousand and no/100 Dollars (\$3,600,000.00) per year (the "Minimum Amount"), which Minimum Amount is based upon the anticipated cost of such services including the cost and expense of making the Medical Facilities available for the furnishing and performance of such services. The County shall levy an annual tax on all taxable property located within the boundaries of the County, as now existent and as same may hereafter be extended, at such rate or rates, not to exceed two (2) mills (but not less than the millage necessary (up to the applicable maximum mil limit proscribed by the Georgia Hospital Authorities law) to provide the Minimum Amount set forth above), as may be necessary to produce in each calendar year revenues which in the aggregate will be sufficient to fulfill the County's obligations hereunder, from which revenues there shall be appropriated sums sufficient to pay in full when due all of the obligations herein contracted to be paid by the County hereunder. Nothing herein contained, however, shall be construed as limiting the right of the County to pay the obligations hereunder out of general funds or from other sources lawfully available for such purposes.

- (c) In order for the Authority to assure the payment of the County's obligations herein in a timely manner and without diminution, there is hereby created a first priority lien on any and all revenues realized by the County under and pursuant to the annual tax levied or payments otherwise made pursuant to the provisions of subparagraph 2 (b) above, which lien is superior to any that can hereafter be made or granted by the County.

3.

AUTHORITY COVENANTS

The Authority covenants and agrees, during the term of this Contract:

- (a) to maintain and have available for the use on the part of the County, upon direction and authorization from the proper County authorities, the Medical Facilities to care for the residents of the County who are indigent or otherwise unable to pay for their medical care.
- (b) receive for admittance any residents of the County who are indigent or otherwise unable to pay for their medical care. The Authority shall make no charge for its services to any such residents, except as herein provided. This Contract, however, is not to be construed as preventing the Authority from accepting any voluntary payments which any such patients receiving treatment or who use the Hospital of the Authority may wish to make on their own behalf or as prohibiting it from collecting any hospitalization, accident, health or other type insurance or governmental program of which such person may be a beneficiary, or from asserting its statutory hospital lien against any recovery to which such person may be entitled; and provided, further, that nothing herein shall prevent the Authority

from making charges for its services where the services are rendered to persons who are able to pay for some or all of their care. The Authority may also charge for services rendered to certain residents of the County who are indigent or otherwise unable to pay for their medical care on a pro rata basis where such person or persons have some ability to pay.

- (c) Nothing herein shall be construed or operate to prohibit the Authority from withholding service to any person until suitable arrangements have been made by the person requesting treatment, or the person or agency acting for such person to pay for said treatment, subject to all state and federal laws, rules and regulations.
- (d) The Authority shall cooperate with the County in order to make the Medical Facilities available to the County and to persons for whom the County shall assume responsibility in furnishing medical attention and hospitalization.
- (e) The Authority shall provide to the County (i) an annual operating budget for each fiscal year of the Authority during the term hereof, together with information and data describing the operations of the Medical Facilities with comparative analysis to other similar healthcare institutions, on or before May 31 of each year and (ii) audited annual financial statements on or before 180 days after the end of the Authority's fiscal year. Failure of the Authority to provide its budget and audit in a timely manner shall not release the County from its obligations hereunder, but the County shall have such remedies as may be available at law or equity to require the Authority to produce such budget and audit in a prompt and timely manner. The Authority shall provide to the County quarterly reviews at a regularly scheduled

meeting to demonstrate the cost of the uncompensated care provided by the Authority, beginning on a date determined by the County.

- (f) So long as this Contract remains in full force and effect, the Authority will operate the Medical Facilities on as economical a basis as is consistent with good practice and any sums received over and above maintenance and operation costs, debt service, required reserves for contingencies and expansion, whether by payments from contracting parties hereto or from other sources, shall be used to pay amounts to the County to reduce its cost of uncompensated care, subject to approval by FHA and/or the Lender and provided such payments are permitted under the 2022 Loan covenants. The Authority, however, shall be the final arbiter and judge in accordance with the budget requirements of the Hospital Authorities Law pursuant to which the Authority was created, as to such excess earnings over and above debt service, maintenance, operation costs and reserves, provided that the Authority's determination as to the reserves necessary for future capital expansions in excess of \$500,000 shall be made with the advice and consent of the Board of Commissioners of the County, which consent shall not be unreasonably withheld.
- (g) For and during the term of this Contract, the Authority grants to the County a first right of refusal and option to purchase ("Right of First Refusal") all or substantially all of the assets of the Medical Facilities (the "Assets") in the event the Authority determines to sell all or substantially all of the Assets and has received a bona fide offer (the "Offer") to purchase the Assets containing terms and conditions acceptable to the Authority and approved by FHA. Upon such determination by the Authority, the Authority shall provide written notice of its intent to sell and the

details of the Offer to the County. The County shall have forty-five (45) days to notify the Authority in writing if it intends to exercise its Right of First Refusal and purchase the Assets on the terms and conditions set forth in the Offer. In the event the County exercises its Right of First Refusal in a timely manner, it shall complete the purchase of the Assets within ninety (90) days after notice by the County of such acceptance on the terms set forth in the Offer. In the event the County does not exercise its Right of First Refusal within said forty-five (45) days, the Authority shall be free to consummate the sale on the terms and conditions (excepting any non-material modifications thereto) set forth in the Offer. In the event the Authority does not consummate the sale in accordance with the Offer (excepting any non-material modifications thereto), the Right of First Refusal shall apply to any subsequent sale of the Assets occurring during the term of this Contract.

- (h) The County shall have the right during the term hereof to perform or have performed, at its expense, financial and/or performance audits of the operations and books and records of the Authority.

4.

MUTUAL COVENANTS

It is mutually agreed:

- (a) The Authority has undertaken to and will operate the Medical Facilities so as to produce sufficient revenues to continuously operate the same. The revenues to be derived from the services and facilities herein contracted for, as well as any other

revenues so received by the Authority, are hereby irrevocably pledged to FHA and/or the Lender.

- (b) The provisions of the Hospital Authorities Law are incorporated herein as a part hereof as though fully set forth verbatim herein.
- (c) After the initial closing of the 2022 Loan, the Authority may from time to time, issue additional indebtedness, bonds, revenue' certificate or obligations ranking as to the lien on the Assets of the Authority on a parity with, or junior to, the 2022 Loan provided that:
 - (1) The payments covenanted to be made on the 2022 Loan have been made as required and the 2022 Loan is not otherwise in default;
 - (2) The governing body of the County approves the issuance of said additional indebtedness and reaffirms the provisions of this Contract; and
 - (3) FHA and/or the Lender approve the issuance of the additional indebtedness.
- (d) While this Contract is between the parties hereto, it is acknowledged that FHA and/or the Lender has an interest herein, and the parties hereto covenant that this Contract cannot be modified or amended in any particular manner which would in any respect adversely affect the rights of FHA and/or the Lender, without their prior written consent.
- (e) This Contract and the obligations of the County and the Authority hereunder shall terminate in the event the Authority or any subsequent operator of the Hospital discontinues operations of the Hospital and is no longer capable of providing medical care and hospitalization to the residents of the County.

- (f) If any disagreement shall arise with reference to any of the terms or conditions of this Contract, or with reference to any matter connected with same, except as to the payments required to be made pursuant to the provisions of paragraph 2(b) hereof, the obligation for which shall be absolute and unconditional, such disagreement or dispute shall be immediately submitted to, and decided by, arbitration in accordance with the rules of the American Arbitration Association, except as modified hereby. The County shall select one arbitrator and the Authority shall select one arbitrator and the two so selected shall select a third arbitrator. The decision of two of the three arbitrators so chosen shall control and shall be binding on the parties hereto, as a condition precedent to any action before a court of law or equity; provided that if the two arbitrators first chosen cannot agree on a third, such third arbitrator shall be appointed by the Judge of the Superior Court of Effingham County upon application by any of the parties hereto.
- (g) Should any phrase, clause, sentence, or paragraph of this Contract be held invalid or unconstitutional, it shall in nowise affect the remaining provisions, which said provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized officers, have caused this Contract to be executed as of the day and year first above written.

EFFINGHAM COUNTY

By: _____
Board of Commissioners

(SEAL)

Attest: _____
Clerk

**EFFINGHAM COUNTY HOSPITAL
AUTHORITY**

By: _____
Its: _____

(SEAL)

Attest: _____
Its: _____