

**INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental agreement (this "Agreement") is dated as of December 1, 2021 and is entered into by and between Rockdale County, Georgia, a political subdivision of the State of Georgia (the "County"), and the City of Conyers, Georgia, a municipal corporation of the State of Georgia (the "City").

**WITNESSETH**

WHEREAS, Article IX, Section III, Paragraph I (a) of the Georgia Constitution (the "Intergovernmental Contracts Clause") authorizes, among other things, any county, municipality or other political subdivision of the State to contract, for a period not exceeding fifty years, with another county, municipality or political subdivision or with any other public agency, public corporation or public authority for joint services, for the provision of services, or for the provision or separate use of facilities or equipment, provided that such contract deals with activities, services or facilities which the contracting parties are authorized by law to undertake or to provide; and

WHEREAS, the County is authorized pursuant to O.C.G.A. §48-8-110 *et seq.*, as amended, (the "Sales and Use Tax Act") to levy and collect a one percent sales and use tax (the "Sales and Use Tax") for the purpose of funding capital outlay projects (the "Projects"); and

WHEREAS, the Sales and Use Tax Act authorizes the County and the City to enter into an "intergovernmental agreement" (as defined in the Sales and Use Tax Act) pursuant to the Intergovernmental Contracts Clause in order to, among other things, identify the Projects that will be funded with the Sales and Use Tax; and

WHEREAS, the City and the County propose to enter into this Agreement relating to the Projects and the Sales and Use Tax; and

WHEREAS, the notice and meeting requirements contained in the Sales and Use Tax Act have been satisfied; and

NOW, THEREFORE, for and 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 County and the City do hereby agree, as follows:

**ARTICLE 1.****EFFECTIVE DATE**

This Agreement shall become effective upon its execution and shall continue in effect until the Sales and Use Tax terminates in accordance with the Sales and Use Tax Act and until all funds collected there from have been distributed in accordance with this Agreement.

Notwithstanding the foregoing, this Agreement shall terminate immediately if the referendum is not passed by the voters.

## **ARTICLE 2.**

### **REPRESENTATIONS**

The City makes the following representations as the basis for the undertakings 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, the City is authorized to execute, deliver and perform its obligations under this Agreement. The City has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid, binding and enforceable obligation of the City.

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery and performance of this Agreement by the City, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery and performance by the City of this Agreement do not violate its charter, any ordinance of the City or the laws or Constitution of the State and do not constitute a breach of a 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 a party or by which it is bound.

(d) 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 therefore): (i) contesting or questioning the existence of the City or the titles of the present officers of the City to their offices, or (ii) wherein an unfavorable decision, ruling, or finding would: (A) adversely affect the enforceability of this Agreement, or (B) materially adversely affect the transactions contemplated by this Agreement.

(e) The City is not in violation of 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.

(f) The City is a "qualified municipality" within the meaning of the Sales and Use Tax Act, and the City is the only municipality located within Rockdale County.

The County makes the following representations as the basis for the undertakings on its part herein contained:

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

(b) No approval or other action by any governmental authority or agency or other person is required in connection with the execution, delivery, and performance of this Agreement by the County, except as shall have been obtained as of the date hereof.

(c) The authorization, execution, delivery, and performance by the County of this Agreement do not violate the laws or Constitution of the State and do not constitute a breach of or a default under any existing court order, administrative regulation, or other legal decree, or any agreement, indenture, mortgage, lease, note, or other instrument to which it is a party or by which it is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, public board or body, pending or, to the knowledge of the County, threatened against or affecting the County (or, to the knowledge of the County, any meritorious basis therefore): (i) contesting or questioning the existence of the County or the titles of the present officer of the County to their offices, or (ii) wherein an unfavorable decision, ruling or finding would: (A) adversely affect the enforceability of this Agreement, or (B) materially adversely affect the transactions contemplated by the Agreement.

(e) The County is not in violation of the laws or the Constitution of the state and is not in default under any existing court order, administrative regulation, or other legal decree, or other instrument to which it is a party or by which it is bound.

### **ARTICLE 3.**

#### **PROJECT PROVISIONS**

The City and the County agree, as follows:

(a) The Projects shall consist of "County Projects" and "City Projects." The County Projects, the City Projects, and their estimated costs (including interest on any general obligation debt issued to fund such Projects) are set forth below:

<u>County Projects</u>	<u>Estimated Cost</u>
Roads, Bridges, Sidewalks and Transportation	\$35,199,846
Sheriff	5,346,000
Fire & E911	8,019,000
Parks & Recreation/Senior	4,455,000
Courthouse	<u>19,602,000</u>
Total	<u>\$72,621,846</u>
 <u>City Projects</u>	 <u>Estimated Cost</u>
Public Safety	\$ 5,108,228
Road, Bridges, Sidewalks and Transportation	7,909,514
Parks & Greenspace	1,812,597
Equipment and Vehicles	<u>1,647,815</u>
Total	<u>\$16,478,154</u>
 Grand Total	 <u>\$89,100,000</u>

Each Project may include land, facilities, equipment, vehicles and other capital costs related to such Project.

(b) The County shall own and operate the County Projects. The City shall own and operate the City Projects.

(c) The County shall be responsible for paying or providing for all the costs of operating, maintaining and insuring the County Projects. The City shall be responsible for paying or providing for all the costs of operating, maintaining and insuring the City Projects.

(d) The County shall supervise or cause the supervision, acquisition, construction and equipping of the County Projects. The City shall supervise or cause the supervision of the acquisition, construction and equipping of the City Projects.

(e) The costs of the Projects set forth above are estimates based upon the estimated Sales and Use Tax collections and the needs of the County and the City at the time this Agreement is executed. The parties acknowledge that the actual Sales and Use Tax collections may vary from the estimated amounts and that the needs of the County and/or the City may change. Therefore, the County has the sole right to determine how much it will spend on the County Projects, and the City has the sole right to determine how much it will spend on the City Projects. The County and the City are not required to spend the amounts set forth above for the Projects; provided, however, a Project may not be abandoned in its entirety unless the parties agree and the provisions of the Sales and Use Tax Act are satisfied. Furthermore, the County and the City may spend more than the amounts set forth above for the Projects.

(f) The County may fund the County Projects in any order or priority it may deem necessary or convenient, and the City may fund the City Projects in any order or priority it may deem necessary or convenient.

#### **ARTICLE 4.**

##### **CALLING REFERENDUM**

The County agrees that it will take all actions necessary to call a referendum, to be held in all the voting precincts in the County, on May 24, 2022, or on such other date as the County and the City shall mutually agree, for the purpose of submitting to the qualified voters of the County for their approval, the question of whether or not the Sales and Use Tax shall be imposed for 24 calendar quarters (six years) for the purpose of funding the Projects . The County shall pay all costs relating to the referendum.

#### **ARTICLE 5.**

##### **THE DEBT**

(a) At the election of the County, the ballot may contain the language required by the Sales and Use Tax Act for the authorization of up to \$20,000,000 of general obligation debt (the "Debt"). The Debt shall be issued by the County for purposes of funding all or a portion of any of the County Projects, the costs of issuing the debt, and capitalized interest. The County acknowledges that it is solely responsible for the payment of the Debt, including any and all costs, interest, and fees associated therewith.

(b) The Debt shall be paid first from the proceeds of the County's portion of the Sales and Use Tax. In the event that there are insufficient Sales and Use Tax collections to pay the Debt from the County's portion of the proceeds, the County shall pay any shortfall attributable to the Debt from its general fund (the "Debt Service Payments"). The County covenants that, in order to make the Debt Service Payments when due from its general funds to the extent required, it will exercise its power of taxation to the extent necessary to timely pay any amounts required to be paid hereunder and it will make available and use for such payments all taxes levied and collected for that purpose together with funds from any other source. The County 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 timely satisfy such Debt Service Payments that may be required to be made from the general funds, 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 County to make any payments that may be required to be made from its general funds shall constitute a general obligation of the County and a pledge of full faith and credit of the County to provide the funds required to timely fulfill any such obligation.

In the event for any reason such provision or appropriation is not made as provided in the preceding paragraph, then the fiscal officer of the County is hereby authorized and directed to set up as an appropriation on its accounts in the appropriate fiscal year the amounts required to timely pay the obligations which may be due from the general funds. 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 County had included the amount of the appropriation in its general revenue, appropriation, and budgetary measures, and the fiscal office of the County shall immediately make such Debt Service Payments to the paying agent for the Debt if for any reason the payment of such obligations shall not otherwise have been timely made.

(c) The obligation of the County to make the Debt Service Payments and to perform and observe the other agreements on it part contained in this Article 5 shall be absolute and unconditional. Until such time as the principal of and interest on the Debt shall have been paid in full or provision for the payment thereof shall have been made, the County (a) will not suspend or discontinue any payments provided for herein, (b) will perform and observe all of its other agreements contained in this Agreement, and (c) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, failure to complete any County Project, a defect in any County Project or implied, or any duty, liability or obligation arising out of or connected with this Agreement.

(d) The County will be responsible for all facets of the Debt issuance process. The County will select the underwriter, bond counsel, local counsel, etc. The County will endeavor in good faith to be fiscally responsible in minimizing to the extent possible the costs and fees with the Debt issuance process.

## **ARTICLE 6.**

### **COLLECTION TERM; DIVISION AND DISTRIBUTION OF SALES AND USE TAX**

(a) By virtue of the parties' entry into this Agreement and based upon the Sales and Use Tax Act, the Sales and Use Tax shall be collected for a period of six years.

(b) The County shall receive 81.506% of Sales and Use Tax collections (the "County Portion"), and the City shall receive 18.494% of the Sales and Use Tax collections (the "City's Portion"). Should the City cease to exist as a legal entity before all funds are distributed under this Agreement, the City's Portion shall be paid to the County as part of the County's Portion unless an act of the Georgia General Assembly makes the City part of another municipality. If such an act is passed, the City's Portion shall be paid to such municipality.

(c) The Sales and Use Tax shall be collected by the County and shall be deposited into a special trust fund held separate and apart from all other funds of the County (the "Sales Tax Account"). Within the Sales Tax Account, the County shall create three sub-accounts: the "Debt Service Sub-Account", the "County Sub-Account" and the "City Sub-Account". Sales and Use Tax proceeds that will be used to pay the Debt Service Payments shall be deposited into the

Debt Service Account; Sales and Use Tax proceeds that will be used to fund County Projects not funded with Debt shall be deposited into the County Account; and Sales and Use Tax proceeds that will be used to fund City Projects shall be deposited into the City Account. All funds deposited monthly into the City Account shall be transferred from the County to the City within ten business days of County's receipt of the same and shall be used by the City for their intended purposes as set forth herein. Each disbursement to the City shall be made by check unless the City provides written wire transfer instructions to the County and pays all costs associated with such wire transfer. The Sales and Use Tax proceeds received by the City shall be deposited into a special account separate and apart from all other funds of the City.

(d) The County shall establish a twelve-month period as the "Sinking Fund Year" for the Debt. Within each Sinking Fund Year, the County's Portion shall be deposited into the Debt Service Account until there is an amount therein sufficient to pay all principal and interest due and payable on the Debt for such Sinking Fund Year.

(e) The County and the City shall use the Sales and Use Tax proceeds exclusively for the purpose set forth in this Agreement.

## **ARTICLE 7.**

### **RECORD KEEPING AND AUDIT PROCEDURES; RECONCILING**

(a) The County shall keep detailed records of the Sales Tax Account, including all of its sub-accounts, in accordance with the Sales and Use Tax Act and generally accepted accounting procedures. The City shall have the right to review and be provided copies of all such records upon request to the County, provided that the County must be given reasonable notice for such an inspection and any such inspection shall only be made during regular business hours at the location where records are maintained. The County shall provide the City with an annual non-audited reconciliation of the Sales Tax Account, including all of its sub-accounts, within 60 days of the end of each fiscal year.

(b) The County and the City shall keep a record of each and every of its Projects for which the proceeds of the Sales and Use Tax are used. A schedule shall be included in each annual audit which shows for each such Project the original estimated cost, the current estimated cost if it is not the original estimated cost, amounts expended in prior years and amounts expended in the current year. The auditor shall verify and test expenditures sufficient to provide assurances that the schedule is fairly presented in relation to the financial statements. The auditor's report on the financial statements shall include an opinion, or the disclaimer of an opinion, as to whether the schedule is presented fairly in all material respects in relation to the financial statements taken as a whole. In the event that either party does not comply with the requirements of this paragraph, the other party shall not be held liable in any manner for such noncompliance.

## **ARTICLE 8.**

### **EXCESS PROCEEDS**

The County and the City do not anticipate that there will be any excess proceeds. They anticipate having Projects that need to be funded throughout the term of the Sales and Use Tax. However, in the event that the County funds all of the County Projects or the City funds all of the City Projects, the County or the City, as appropriate, may use its excess proceeds to pay its general obligation debt or to reduce its ad valorem taxes.

## **ARTICLE 9.**

### **MISCELLANEOUS**

(a) Any controversy arising under this Agreement shall be submitted to arbitration pursuant to the provision of O.C.G.A. §9-9-1 *et seq.*, as amended (the "Arbitration Code"). Such arbitration shall in all respects be governed by the provision of the Arbitration Code, and the parties hereto shall comply with and be governed by the provisions of the Arbitration Code.

(b) Should any phrase, clause, sentence or paragraph herein contained be held invalid or unconstitutional, it shall in nowise affect the remaining provisions of this Agreement, which said provisions shall remain in full force and effect.

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

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of Georgia.

(e) This Agreement, including any attachments or exhibits, constitutes all of the understandings and agreements existing between the County and the City with respect to distribution and use of the Sales and Use Tax proceeds. Furthermore, this Agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the County and the City with respect to distribution and use of the Sales and Use Tax proceeds.

(f) It is the intention of the County and the Cities that this Agreement comply in all respects with the Sales and Use Tax Act, and all provisions of this Agreement shall be construed in light of the Sales and Use Tax Act. In the event that any provision of this Agreement shall conflict with the Sales and Use Tax Act, such provision shall be stricken herefrom, but the remaining terms of this Agreement shall remain in full force and effect.



**IN WITNESS** whereof, the parties hereto, acting by and through their duly authorized officers, have caused this Agreement to be executed in multiple counterparts under seals as of the day and year first above written.


**(See Signature Pages Attached Hereto)**

C-2021-209

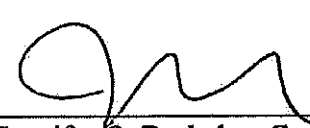
SIGNATURE PAGE  
TO  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN ROCKDALE COUNTY, GEORGIA  
AND THE CITY OF CONYERS, GEORGIA  
DATED AS OF DECEMBER 1, 2021



ROCKDALE COUNTY, GEORGIA

By:   
Oz Nesbitt, Sr., Chairman

ATTEST:


  
Jennifer O. Rutledge, County Clerk

(Intergovernmental Agreement)

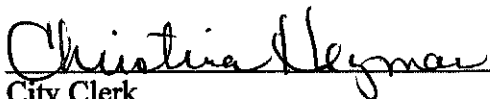
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CITY OF CONYERS, GEORGIA

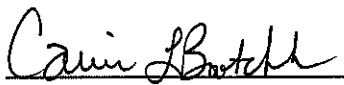
(SEAL)

By:   
G. Vincent Evans, Jr., Mayor

ATTEST:

  
Christina Heyman  
City Clerk

APPROVED AS TO FORM BY:

  
Carrie L. Bootcheck, City Attorney