

**FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT
AMONG
THE CITY OF ATLANTA, GEORGIA,
THE ATLANTA DEVELOPMENT AUTHORITY, AND
THE ATLANTA INDEPENDENT SCHOOL SYSTEM**

This First Amendment to Intergovernmental Agreement (this "Amendment") is made and entered into effective as of the 17th day of August, 2009 by and among the City of Atlanta, a municipal corporation of the State of Georgia (hereinafter referred as the "City"), The Atlanta Development Authority, a public body corporate and politic of the State of Georgia (hereinafter referred to as the "Authority" or "ADA"), and the Atlanta Independent School System (hereinafter referred to as the "Atlanta Public Schools" or "APS").

WHEREAS, the City Council of the City, by ordinance 05-0-1733 (the "BeltLine Ordinance"), adopted on November 7, 2005, as approved by the Mayor of the City on November 9, 2005, created Tax Allocation District Number Six - BeltLine (the "BeltLine TAD"); and

WHEREAS, on or about December 12, 2005, the Atlanta Board of Education, which operates APS (the "Board"), approved Report No. 05/06-0107, a Resolution providing its consent for the inclusion of the positive tax increment derived from the educational ad valorem property tax millage rate established by the Board and levied by Fulton County in the computation of the positive tax increment for the BeltLine TAD (the "Consent Resolution"); and

WHEREAS, the City, the Authority and the Atlanta Public Schools pursuant to the Consent Resolution entered into an Intergovernmental Agreement effective as of December 31, 2005 embodying the conditions contained in the Consent Resolution; and

WHEREAS, the City, the Authority and the Atlanta Public Schools entered into that certain Intergovernmental Agreement dated December 31, 2005 (the "Intergovernmental Agreement") governing matters related to the Beltline TAD; and

WHEREAS, on or about February 11, 2008, the Georgia Supreme Court declared that the use of educational ad valorem tax revenue for non-educational purposes violated the Constitution of the State of Georgia; and

WHEREAS, the voters of the State of Georgia amended the Constitution in a Statewide Referendum in November of 2008, and the Georgia General Assembly passed House Bill 63 (the "Reenactment") on or about April 3, 2009, which promulgated a new Redevelopment Powers Law and ratified every previous school district tax allocation district consent resolution with respect to which the school district failed to opt out of participation in that TAD prior to the effective date of the Reenactment; and

WHEREAS, until the Governor signed House Bill 63, the use of the educational valorem tax revenues for tax allocation district purposes (except for those revenues which had previously been pledged to pay debt service on tax allocation bonds) was unconstitutional, and the December 12, 2005 APS Consent Resolution was of no effect; and

WHEREAS, on April 13, 2009 Board approved Report No. 08/09-0108, a Resolution amending the December 12, 2005 Consent Resolution by changing its effective date to the date that the Reenactment was signed into law, unless the APS

staff negotiated a resolution to the retroactive use of the APS ad valorem tax revenues in the BeltLine TAD that is approved by the Board no later than the Board's legislative meeting of June, 2009; and

WHEREAS, the Governor signed the Reenactment into law, and it became effective, on April 22, 2009; and

WHEREAS, on June 8, 2009 Board approved Report No. 0809-0113, a Resolution amending the December 12, 2005 Consent Resolution by authorizing modification of the BeltLine TAD Intergovernmental Agreement to include the mutual agreements of the parties relating to the use of retroactive ad valorem taxes and changes to the schedule for payments in lieu of taxes, among other things; and

WHEREAS, from the inception of the BeltLine TAD through the effective date of the Reenactment, educational ad valorem taxes levied within the BeltLine TAD have generated incremental revenue (the "Retroactive Increment") in the approximate amount of \$12 million, of which the Tax Commissioner of Fulton County has remitted not less than \$5,826,459.33 to the City and/or ADA as of April 21, 2009, and has remitted approximately \$6,965,647.51 to APS; and

WHEREAS, it has been determined to be in the best interest of the City, the Authority, and the Atlanta Public Schools to revise certain terms of the Intergovernmental Agreement, and the City, the Authority, and the Atlanta Public Schools desire to amend the Intergovernmental Agreement to reflect the modification of certain of its terms and conditions; and

WHEREAS, the Board on July 6, 2009 adopted a Resolution (Report No. 0910-0100) amending the Consent Resolution and the Resolutions of April 13, 2009 and June 8, 2009, and approving the execution of this Amendment; and

WHEREAS, the execution of this Amendment is authorized by the City and the ADA by virtue of a Resolution adopted by the Board of Directors of ADA on June 18, 2009 and by virtue of Bond Resolution adopted by the Council of the City on August 17, 2009;

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree to amend the Intergovernmental Agreement as follows:

1. **Acknowledgement of Use of School District Increment.** Atlanta Public Schools hereby acknowledges that, subject to the terms of the Intergovernmental Agreement and this Amendment, educational ad valorem tax allocation increments levied after April 22, 2009 (the effective date of the Reenactment) and not otherwise released to the Atlanta Public Schools in accordance with the terms of this Amendment, may be used to fund redevelopment costs for the BeltLine TAD as defined in the Georgia Redevelopment Powers Law (O.C.G.A. § 36-44-1 et seq.) and as described in the Redevelopment Plan for the BeltLine TAD, and to secure new Beltline TAD bonds, including to refund City of Atlanta tax allocation bonds (BeltLine project), Series 2008.

2. **Release of Retroactive Increment.** It is hereby agreed that all of the Retroactive Increment shall be remitted to or retained by the Atlanta Public Schools to be used for its general purposes. That portion of the Retroactive Increment that the Tax

Commissioner of Fulton County has remitted to the Atlanta Public Schools may be transferred to the general fund of the Atlanta Public Schools, contingent upon constraints imposed by pending court order(s), if any, in Clark, et al. v. AISS, et al., No. 2008-CV-161720 in the Superior Court of Fulton County. Immediately upon the removal of any constraints imposed by such pending court orders, the City and/or ADA shall transfer to the Atlanta Public Schools that portion of the Retroactive Increment that the Tax Commissioner of Fulton County has previously remitted to the City or ADA, whether it is held in the special fund for the Beltline TAD or otherwise. Atlanta Public Schools will provide, in writing, the instructions for delivery of such funds.

3. **Amendment of Section 1 of Intergovernmental Agreement.** Section 1 of the Intergovernmental Agreement is hereby amended by deleting its current text in its entirety and inserting in lieu thereof the following:

Payments in Lieu of Taxes. The Atlanta Public Schools agrees to the inclusion of a portion of the positive tax increments derived from the educational ad valorem tax mileage rate established by the Board and levied by the City ("the available portion of APS increment") in the computation of tax allocation increments for the TAD in accordance with the redevelopment powers law; provided that the City or the ADA shall require that a sum of \$162,436,302.00 shall be paid to the Atlanta Public Schools from tax allocation increments collected within the BeltLine TAD, upon the schedule set forth in Exhibit 1 attached hereto (under which Year One shall be 2011 AND Year Twenty shall be 2030) as a Payment in Lieu of Taxes (the "PILOT"). These PILOTs are due to APS on January 1 of each year, such period to commence on January 1 of year

three (2013). These pilot payments shall be considered past due on January 2 of each year during years 3 (2013) to 20 (2030). These PILOT payments shall be made available to APS in support of its education reform efforts, its continued infrastructure improvements and/or for other general educational purposes.

4. **Accrual of PILOT Payments.** Section 2 of the Intergovernmental Agreement is hereby amended by deleting the entire text thereof and inserting the following in lieu thereof:

These PILOT payments shall be made to APS out of the tax allocation increments available after the payment of the TAD annual bond payments. The City or the ADA shall only issue bonds in an amount to ensure that sufficient tax allocation increments shall remain after the payment of TAD annual bond payments in order to make the PILOT payments to APS as scheduled. Attached hereto as Exhibit 2 is an updated Pro Forma indicating the availability of sufficient tax allocation increments to make PILOT payments to APS, and such Pro Forma shall be annually updated and provided to APS. APS's consent to the inclusion of its positive tax allocation increments to the BeltLine TAD is expressly conditioned on the acceptance of a viable updated proforma acceptable to APS. The City or the ADA hereby recognizes that information set forth or referenced in the updated Pro Forma serves as a material inducement for the Atlanta Public Schools to consent to its participation in the BeltLine TAD. The City or the ADA hereby represents that the information set forth or referenced in the Pro Forma is

its best estimate of the flow of funds from the Beltline TAD. In the event that in Years 3 (2013) through 20 (2030) the City or the ADA fails to make the scheduled PILOT payments to APS in a timely manner in whole or in part, any such unpaid balance shall accrue with interest from the first day the PILOT payment is past due, January 2, at the legal rate of interest set forth in O.C.G.A. § 7-4-12 (as amended or superseded from time to time). The prime rate referenced in O.C.G.A. § 7-4-12 shall be as published by the Board of Governors of the Federal Reserve System, as published in the statistical release H. 15 or any publication that may supersede it, on January 2 of each year. The annual interest rate shall be recalculated each year in which an unpaid balance exists and shall be applied to the entirety of the unpaid principal balance, pursuant to the aforementioned formula to be recalculated on the first day the PILOT payment is past due in each year. Neither the City nor the ADA shall issue any new tax allocation bonds, notes, or other obligations for which tax allocation increment is pledged with respect to the Beltline TAD, until it has paid the entire outstanding PILOT payment balance plus accrued interest to APS. In addition, in a year or years in which bond issuance has been suspended pursuant to the provisions contained herein, after the payment of debt service on outstanding bonds, any and all positive tax allocation increment accrued shall be used exclusively to satisfy the entire outstanding PILOT payment balance plus accrued interest owed to APS. Notwithstanding anything herein to the contrary, if at any time the PILOT payment principal and or interest deficit owed to APS reaches

\$15,000,000.00 in a two-year period, such accumulation of deficit shall constitute a material breach of the Intergovernmental Agreement by the City and the ADA.

5. **Provision of Recreational Facilities and Athletic Fields.** Section 11 of the Intergovernmental Agreement is hereby amended by deleting the text thereof in its entirety and inserting in lieu thereof the following:

APS and the City hereby recognize that the BeltLine project represents an unprecedented opportunity to develop high quality and convenient regional recreational facilities and athletic fields for use by the citizens of the City of Atlanta and the students of the Atlanta Public Schools. Accordingly, the City or the ADA shall convey to APS in fee simple, above and beyond the pilot payments of \$162,436,302.00, a suitable piece of land acceptable to APS for the erection of recreational facilities and/or athletic fields. In addition, the City or the ADA shall provide to APS, from the proceeds of the first bond issue which is secured in whole or in part by a pledge of educational ad valorem tax increment, and above and beyond the pilot payments of \$162,436,302.00, \$10,000,000.00 to be used by APS for the erection of recreational facilities and/or athletic fields. In the event that APS and the City or the ADA shall not have reached an agreement as to the conveyance to APS in fee simple of a piece of land suitable for the erection of recreational facilities and/or athletic fields, to the satisfaction of APS, by December 31, 2009, neither the City nor ADA shall issue any future bonds out of APS's portion of positive tax increments for the BeltLine TAD.

6. **Entire Agreement.** This Amendment, together with the Intergovernmental Agreement, constitutes the sole and entire agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior discussions, oral and written, about the subject matter hereof, and no modification of the Agreement or this Amendment shall be binding unless in writing and signed by all the parties to this agreement. No representation, promise or inducement not included in this Amendment shall be binding on any party hereto.

7. **Counterparts.** This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties have not signed the original or same counterpart.

8. **Governing Law.** This Amendment shall be construed and enforced in accordance with the laws of the State of Georgia.

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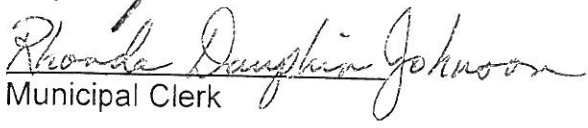
In witness whereof, the parties have executed this Amendment to be effective as of the day and year first above written.

CITY OF ATLANTA, GEORGIA

By:


Mayor

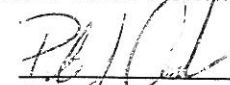
Attest:


Municipal Clerk

[SEAL]

Approved as to Form:

By:


City Attorney

ATLANTA DEVELOPMENT AUTHORITY

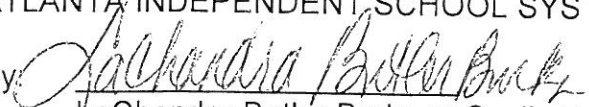
By:


Peggy McCormick
President

[SEAL]

ATLANTA BOARD OF EDUCATION
ATLANTA INDEPENDENT SCHOOL SYSTEM

By:


LaChandra Butler Burks or Cecily Harsch-Kinnane
Chair or Vice Chair

[SEAL]

Approved as to Form:

By:

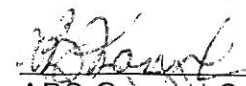

APS General Counsel

EXHIBIT 1 (PILOT PAYMENT SCHEDULE)

Revised PILOT Payment Schedule

Revised PILOT Payment Schedule*		
BeltLine TAD		
<u>Year</u>	<u>PILOT Payment</u>	<u>PILOT % of Orig</u>
1	\$0	0%
2	\$0	0%
3	\$1,950,000	26%
4	\$6,750,000	90%
5	\$6,750,000	90%
6	\$7,500,000	100%
7	\$7,500,000	100%
8	\$8,326,977	111%
9	\$8,326,977	111%
10	\$8,326,977	111%
11	\$8,326,977	111%
12	\$8,326,977	111%
13	\$8,326,977	111%
14	\$8,326,977	111%
15	\$8,326,977	111%
16	\$9,365,152	125%
17	\$9,428,377	126%
18	\$15,056,142	201%
19	\$15,516,311	207%
20	\$16,004,504	213%
Total	\$162,436,302	108%

*PILOT Payment Schedule adjusted to future value using 3% discount rate.

EXHIBIT 2 (PRO FORMA)