

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

This Second Amendment to Intergovernmental Agreement (this "Amendment") is made and entered into effective as of the 9th day of November 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 July 6, 2009, approved Report No. 09/10-0100, the Atlanta Board of Education adopted a resolution amending the Intergovernmental Agreement dated December 31, 2005, governing matters related to the BeltLine TAD; and

WHEREAS, the City, the Authority and the Atlanta Public Schools entered into a First Amendment to the Intergovernmental Agreement, which amendment was effective August 17, 2009; 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 additional terms of the Intergovernmental Agreement, and the City, the Authority, and the Atlanta Public Schools desire to enter into a Second Amendment to the Intergovernmental Agreement to reflect the modification of certain of its terms and conditions; and

WHEREAS, the Board adopted resolutions on October 12, 2009 and November 9, 2009 (Report Nos. 09/10-0105 and 09/10-0107) authorizing execution of this Amendment; and

WHEREAS, the execution of this Amendment is authorized by the City and the ADA by virtue of Resolutions adopted on November 2, 2009 and October 15, 2009, respectively.

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. **Payments in Lieu of Taxes.** Section 1 of the Intergovernmental Agreement, as previously amended, is hereby further amended by deleting its current text in its entirety and inserting in lieu thereof the following:

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 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.

In the event inadequate increment is available to make full PILOT payments due hereunder, PILOT shall be payable to APS, subject only to the prior payment of TAD annual bond payments, the parity payment of PILOT payments due to APS and Fulton County on a ratable basis, which pro ration is the APS or Fulton County's proportional share of annual PILOT Payments due, and in all events shall be senior to any other redevelopment costs incurred by the City or ADA for the BeltLine TAD.

2. **Accrual of PILOT Payments.** Section 2 of the Intergovernmental Agreement, as previously amended, is hereby further 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. TAD annual bond payments shall mean only those payments from or deposits into any bond account or fund for the payment of interest, principal, debt service reserves, supplemental reserves, credit enhancement or subordinated debt which are required as security for the tax allocation bonds, notes and other obligations issued for the BeltLine TAD, or for any rebate or termination payments due in respect of such obligations. 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 and 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 Tax Allocation District. The City and 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 "Default Rate"). 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 Default 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 educational tax allocation increment is pledged with respect to the Beltline TAD, unless all PILOT payments scheduled to have been paid on such date, together with the applicable interest accrued thereon shall have been fully paid 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 ("Material Breach") of this Intergovernmental Agreement. In the event of a Material Breach, the City and the ADA shall have four (4) years to cure such breach by paying 100% of the accumulated deficit beginning with one year from the date that that Material Breach occurs. Upon the occurrence of a Material Breach (i) the unpaid balance shall accrue with interest from the first day following such Material Breach at the Default Rate, plus an additional two percent (2%) and (ii) APS, upon written notice to the City and ADA,

may demand (not more frequently than annually) an immediate review and certification by a third party certified public accountant selected by APS and paid for by ADA of the application of tax allocation increment from the BeltLine TAD "special fund." In addition, if a Material Breach occurs on or before December 31, 2024, the suspension of the City's and ADA's issuance of new bonds, notes or other obligations secured by educational ad valorem tax increment shall expire on the date on which all PILOT Payments scheduled to have been paid on such date, together with the applicable interest accrued thereon, shall have been fully paid to APS, only if fully paid no later than the last day of the period to cure the Material Breach; and if the Material Breach occurs after December 31, 2024 neither the City nor ADA shall issue any new tax allocation bonds, notes or other obligations secured by educational ad valorem tax increment through the termination of this Intergovernmental Agreement as provided in Section 21. The parties to this Intergovernmental Agreement acknowledge and agree that nothing herein shall be construed as terminating the consent of APS to the inclusion of educational ad valorem tax allocation increment with respect to bonds, notes or other obligations which have been issued and that are outstanding as of the date of a breach by either party to this Intergovernmental Agreement.

3. **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.

4. **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.

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

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

THE ATLANTA DEVELOPMENT AUTHORITY

By: Peggy McCormick
Peggy McCormick
President

[SEAL]

**ATLANTA BOARD OF EDUCATION
ATLANTA INDEPENDENT SCHOOL SYSTEM**

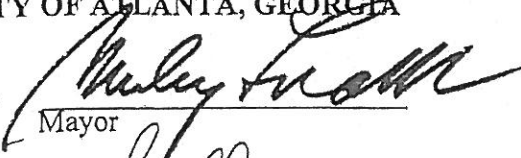
By: LaChandra Butler Burks
LaChandra Butler Burks or Cecily Harsch-Kinnane
Chair or Vice Chair

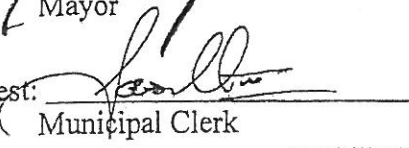
[SEAL]

APPROVED AS TO FORM
by: Whitney Johnson

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] **FORIS WEBB III**
DEPUTY MUNICIPAL CLERK

Approved as to Form:

By: 
Acting City Attorney

THE 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]

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.