

STATE OF GEORGIA

COLUMBUS, GEORGIA

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT (“Agreement”), is made and entered into as of this ____ day of _____, 2016 (the “Effective Date”) by and between the COLUMBUS, GEORGIA, a consolidated government of the State of Georgia (the “Consolidated Government”) and the MUSCOGEE COUNTY SCHOOL DISTRICT, a political subdivision of the State of Georgia (the “School District”).

W I T N E S S E T H:

In consideration of the respective representations and agreements hereinafter contained and in furtherance of the mutual public purposes hereby sought to be achieved, the Consolidated Government and the School District do hereby agree, as follows:

ARTICLE 1

DEFINITIONS

In addition to the words and terms defined elsewhere herein, the following words and terms shall have the meanings specified below, unless the context or use indicates another or different meaning or intent:

1.1 **“Agreement” or “Intergovernmental Agreement”** means this Intergovernmental Agreement, dated as of _____, 2016, between the Consolidated Government and the School District.

1.2 **“Approved Projects”** means, collectively, the specific capital improvements to be undertaken within the Columbus, Georgia Consolidated Government Tax Allocation District #3: Uptown by the Consolidated Government or by a private

developer to achieve the goals and objectives of the Redevelopment Plan, pursuant to the Redevelopment Plan and approved by the Columbus Council.

1.3 **"Board of Education or (BOE)"** means the Muscogee County School District, Board of Education.

1.4 **"Bond Indenture"** means, collectively and each respectively, each Trust Indenture, Bond Resolution, Bond Ordinance, Loan Agreement, Financing Agreement or other document or form of financing, including "pay-as-you-go" agreements, pursuant to which one or more series of TAD Bonds is issued.

1.5 **"Consolidated Government"** means Columbus, Georgia, a consolidated government.

1.6 **"Council Resolution"** means that certain Resolution No. 71-16, adopted by the Columbus Council on March 15, 2016, approving and adopting a Redevelopment Plan; creating Columbus, Georgia Consolidated Government Tax Allocation District # 3: Uptown, establishing the River District Columbus Redevelopment Area, and other related matters.

1.7 **"County"** means Muscogee County, Georgia.

1.8 **"Georgia Constitution"** means the Constitution of the State of Georgia of 1983, as amended.

1.9 **"Tax Allocation District" or "TAD"** means that certain tax allocation district (as defined in O.C.G.A. §36-44-3(13)) created by the Consolidated Government and designated as the Columbus, Georgia Consolidated Government Tax Allocation District #3: Uptown, hereinafter also referred to as **"Uptown TAD"**.

1.10 **"Redevelopment Agency"** means the Council of Columbus, Georgia which will act as the redevelopment agency, in accordance with the Redevelopment Powers Law and pursuant to Ordinance No.15-51 which council adopted on October 27, 2015.

1.11 **“Redevelopment Area”** means that certain area located within the geographic limits of the Consolidated Government and within the School District created and established as a redevelopment area (as defined in O.C.G.A. §36-44-3(7)) by the City in the City Resolution and designated as the “River District Redevelopment Area”, as more fully described in the Council Resolution and the Redevelopment Plan.

1.12 **“Redevelopment Costs”** shall have the meaning set forth in O.C.G.A. §36-44-3(8).

1.13 **“Redevelopment Plan”** means the written plan of redevelopment for the Redevelopment Area approved by the Consolidated Government in the Council Resolution and designated as the “Redevelopment Plan: Columbus, Georgia Consolidated Government River District Tax Allocation Districts: #2: 6th Avenue/Liberty District, #3: Uptown and #4: 2nd Avenue/City Village.”

1.14 **“School District Tax Allocation Increment”** means the tax allocation increment within the meaning of O.C.G.A. Section 36-44-3(14) of the Redevelopment Powers Law with respect to the TAD, including, without limitation, Real Property Tax Allocation Increment. The proportional share of accumulated Real Property Tax Allocation Increments attributable to the contributions of Consolidated Government and School District millage may also be referred to in this Agreement as Consolidated Government and School District Tax Allocation Increments, respectively. School District Tax Allocation Increment shall be limited to Real Property Taxes only, unless or until such time as the Board of Education agrees to include other ad valorem taxes.

1.15 **“State”** means the State of Georgia.

1.16 **“Redevelopment Powers Law”** means Chapter 44 of Title 36 of the Official Code of Georgia Annotated, as amended from time to time.

1.17 **“Scheduled Debt Service Payments”** means the aggregate scheduled principal and interest payments on the TAD Bonds or other forms of financing in each calendar year in accordance with the Bond Indenture, which shall include any scheduled

sinking fund redemption payments on the TAD bonds or other forms of TAD financing in such year.

1.18 **“School District Resolution”** means that certain resolution adopted by the Board of Education of Muscogee County School District on _____, 2016, *inter alia*, consenting to the inclusion of certain School District ad valorem taxes in computation of the Tax Allocation Increments with respect to the TAD subject to the terms and conditions set forth therein and herein, authorizing the execution, delivery and performance of this Agreement, and other related matters.

1.19 **“Special Fund”** means the special fund with respect to the Uptown TAD created pursuant to O.C.G.A. §36-44-11(c).

1.20 **“TAD Financing”** means those certain tax allocation bonds, notes or other obligations issued by the Consolidated Government in accordance with O.C.G.A. §36-44-3(12), or funds borrowed from financial institutions in accordance with O.C.G.A. §36-44-16 with respect to the TAD, that the Consolidated Government may issue or borrow as necessary to implement the provisions of the Redevelopment Plan, as may be approved by future Council Resolutions, which may include one or more series of bonds, notes or other obligations and which may be issued at one or more times.

1.21 **“Tax Allocation Increment”** means the amount of the tax allocation increment with respect to real property accrued in each calendar year within the Benning Technology Park TAD, as provided in O.C.G.A. §36-44-3(14).

1.22 **“Term”** means the term of this Agreement as prescribed in Section 3.1 hereof.

ARTICLE 2

2.1 **Representations of the Consolidated Government.** The Consolidated Government makes the following representations as the basis for the undertakings on its part herein contained:

2.1.1 The Consolidated Government created the Columbus, Georgia Consolidated Government Tax Allocation District #3: Uptown effective as of December 31, 2016 pursuant to its redevelopment powers as authorized by the Redevelopment Powers Law and the Council Resolution. The Consolidated Government duly adopted the Redevelopment Plan pursuant to the Redevelopment Powers Law and the Council Resolution.

2.1.2 The Council has made certain findings with respect to the Redevelopment Plan in accordance with the Redevelopment Powers Law, including, without limitation, that: (i) the Redevelopment Area has not been subject to growth and development through private enterprise and would not reasonably be anticipated to be developed without the approval of the Redevelopment Plan, and (ii) the improvement of the Redevelopment Area is likely to enhance the value of a substantial portion of the real property in the Uptown TAD. The Council intends to authorize the issuance of TAD financing, consisting of bonds, notes or other means of TAD financing as may be necessary to implement provisions of the Redevelopment Plan.

2.1.3 The Consolidated Government is permitted by ARTICLE IX, SECTION III, PARAGRAPH I of the Georgia Constitution to contract for any period not exceeding fifty (50) years with the School District for joint services, for the provision of services, or for the joint or separate use of facilities or equipment, provided such contracts deal with activities, services or facilities the contracting parties are authorized by law to undertake or provide, and accordingly as a corollary, the Redevelopment Powers Law provides that the Consolidated Government may exercise its redevelopment powers and create redevelopment plans and tax allocation districts, and issue one or more series of bonds, notes or other obligations to finance, in whole or in part, the development costs within a tax

allocation district and which are issued on the basis of pledging for the payment or security for payment of such bonds positive tax allocation increments derived from the tax allocation district, all or part of the general funds derived from the tax allocation district, and any other property from which the bonds may be paid as provided in the Redevelopment Powers Law.

2.1.4 The Consolidated Government has the power to enter into this Agreement and perform all obligations contained herein, and by proper action has duly authorized the execution, delivery and performance of this Agreement. This Agreement is a valid and binding legal obligation of the Consolidated Government, enforceable against the Consolidated Government in accordance with its terms.

2.2 Representations of the School District. The School District makes the following representations as the basis for the undertakings on its part herein contained:

2.2.1 The School District is permitted by Article IX, Section III, Paragraph I of the Georgia Constitution to contract for any period not exceeding fifty (50) years with the Consolidated Government for joint services, for the provision of services, or for the joint or separate use of facilities Equipment, provided such contracts deal with activities, services, of facilities the Contracting parties are authorized by law to undertake or provide.

2.2.2 The School District has the power to enter into this Agreement and perform all obligations contained in this agreement, and by proper action has duty authorized the execution, delivery, and performance of this agreement, including, without limitation, the inclusion of ad valorem property taxes levied by the School District on taxable real property within the Columbus, Georgia Consolidated Government Tax Allocation District #3: Uptown in the computation of the Tax Allocation Increments for the purposes set forth in the Redevelopment Plan, pursuant OCGG 36-44-9 (d).

2.2.3 This Agreement is a valid and binding legal obligation of the School District, enforceable against the School District in accordance with its terms.

ARTICLE 3

3.1 **Term of the Agreement.** The term of this Agreement (the “Term”) shall commence on the Effective Date hereof and this Agreement shall remain in full force and effect for the Uptown TAD until (i) all TAD Financing and eligible Redevelopment Costs have been paid in full; (ii) the TAD has been terminated by Resolution for other reasons, or (iii) thirty years have elapsed from the Effective Date, whichever first occurs. Provided, however, in the event that TAD Financing or eligible Redevelopment Costs are to be incurred which are not anticipated to be paid in full at the end of thirty years, the Consolidated Government and the School District will negotiate an extension of this agreement sufficient to cover those obligations, or the School District will specifically notify the Consolidated Government that this Agreement will not apply to such TAD Financing or eligible Redevelopment Costs becoming due more than thirty years after the Effective Date of this Agreement .

3.2 **Certification of Tax Allocation Increment Base.** The Consolidated Government and the School District hereby agree that the Tax Allocation Increment Base for Tax Allocation District #3: Uptown, which will certified by the State Revenue Commissioner as of December 31, 2016, is the taxable value of all real property subject to ad valorem property taxation located within the TAD, net of all exemptions and exclusions applicable as of such date.

3.3 **Inclusion of Ad Valorem Property Taxes in Computation of Tax Allocation Increment for Consolidated Government TAD.**

3.3.1 Pursuant to the School District Resolution, the School District hereby consents and Agrees to the inclusion of School District ad valorem taxes on real property within the Uptown TAD in computation of the Tax Allocation Increments for the Uptown TAD in accordance with the Redevelopment Powers Law, effective as of December 31, 2016, subject to and in accordance with this Agreement.

3.3.2 Commencing in 2017, the School District agrees to remit to the Consolidated Government each year, in Accordance with the Redevelopment Powers Law, the School District Tax Allocation Increment for the Uptown TAD for such year within forty-five (45) days after the due date for all ad valorem taxes paid by the due date and within forty-five (45) days after the end of the calendar month of collection as to all such taxes paid after the due date thereof.

3.3 **Reporting.** The Consolidated Government will provide to the School District commencing with calendar year 2017 and each calendar year thereafter (i) within thirty (30) days after the end of each such calendar year, a comprehensive annual report regarding the current status of redevelopment occurring within the Uptown TAD, forecasts of future development, the amount of positive Tax Allocation Increments generated by that development and the intended uses of Tax Allocation Increments generated within the TAD. The Consolidated Government will also provide to the School District, within fifteen (15) days after issuance of the Consolidated Government's Comprehensive Annual Financial Report, a copy of the annual audit of, as applicable, the Redevelopment Agency for the TAD or the Consolidated Government, to include the amount of positive Tax Allocation Increment deposited into any TAD Special Fund, the Year-end Fund balances, the uses of such funds and all debt service obligations outstanding.

3.4 **Use of School District Tax Allocation Increment.** The School District's Tax Allocation Increment may be used for purposes consistent with the anticipated uses of

estimated future TAD proceeds as specified in the Redevelopment Plan, including but not necessarily limited to the following:

- 3.4.1 To pay TAD financing costs as defined in O.C.G.A. §36-44-3(8)(B).
- 3.4.2 To pay organizational costs, imputed administrative costs, and professional services costs associated with the implementation of the Redevelopment Plan and TAD as provided in O.C.G.A. §36-44-3(8).
- 3.4.3 To pay capital costs, professional services costs and real property assembly costs associated with private development on private property.
- 3.4.4 Excess Funds attributable to the School District Tax Allocation Increment from any calendar year may be applied by the Consolidated Government to prepay the amount of TAD Financing then outstanding.
- 3.4.5 Nothing in this section shall be intended or should be construed to limit the use of proceeds from TAD Bonds or other TAD Financing, and the same may be used for all purposes allowed under the Redevelopment Powers Law.

3.5 **Periodic Review.**

3.5.1 The Consolidated Government or such agency as it may designate will present a comprehensive and cumulative report on the status of all expenditures from the TAD Special Fund, the issuance of TAD Financing and the development undertaken within the Uptown TAD to the Board of Education commencing in January 2027 and then in January every five (5) years thereafter, until such TAD has been dissolved.

3.5.2 The Consolidated Government and the School District agree to cooperatively review the report to determine whether the goals and incremental milestones of the Uptown TAD as stated in the Redevelopment Plan have been achieved during the previous reporting period, and whether there has been sufficient Tax Allocation Increment generated and deposited into the Special

Fund to pay all Scheduled Debt Service Payments when due on TAD Financing, to satisfy all other terms of any financing issued, and meet any other obligations related to TAD Financing.

3.5.3 Notwithstanding any decision by the School District as expressed by Resolution pursuant to Section 3.7, nothing in this Agreement shall obviate or diminish the pledge of the School District's Tax Allocation Increment by the BOE toward the repayment of any TAD Financing or obligations then outstanding.

3.6 **TAD Advisory Committee**

3.6.1 The Consolidated Government agrees to create a TAD Advisory Committee as described in Section 7 of its Policies and Guidelines which were adopted by Ordinance No. 15-5. Said Committee will include two voting members from the Muscogee County School District.

3.6.2 Prior to the financing of any Project for construction or rehabilitation in whole or in part from Tax Allocation Increment or with TAD Financing, such Projects will be reviewed by the TAD Advisory Committee in accordance with the application procedures described in Section 7 of the Policies and Procedures. Any application for a TAD project must be accepted by the Advisory Committee before it can move forward for submission to Council and ultimate approval.

3.7 **Special Conditions, Stipulations or Requirements.** The Consolidated Government shall promptly notify the School District in writing of any special conditions, stipulations or requirements imposed at any time or from time to time hereafter by any other taxing authority with respect to the Tax Allocation Increment and the TAD. If so elected by the BOE, the School District shall be entitled to the benefit of any special financial conditions, stipulations or requirements imposed with respect to the Tax Allocation Increment and the TAD. The parties hereto hereby agree that this Agreement shall be amended or supplemented to provide for such special financial conditions, stipulations or requirements imposed hereafter, and both parties hereby agree to enter into any such amendment or supplement to this Agreement required as aforesaid.

3.8 **Limitation of Obligations.** The School District shall have no financial obligation as a result of the redevelopment and improvement of the TAD or the Redevelopment Area other than the inclusion of School District ad valorem taxes in the computation of the Tax Allocation Increment of the TAD as provided herein. TAD Bonds shall not constitute an indebtedness of or a charge against the general taxing power of the School District.

ARTICLE 4

4.1 **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed, construed, and interpreted according to the laws of the State of Georgia.

4.2 **Entire Agreement.** This agreement expresses the entire understanding and all agreements between the parties hereto with respect to the matters set forth herein.

4.3 **Survival of Warranties.** All agreements, covenants, certifications, representations, and warranties of the parties hereunder, or made in writing by or on behalf of them in connection with the transaction contemplated hereby shall survive the execution and delivery hereof, regardless of any investigation or other action taken by any person relying thereon.

4.4 **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be original, and all of which shall constitute but one and the same instrument.

4.5 **Amendments in Writing.** This Agreement may be amended, supplemented or otherwise modified solely by a document in writing duly executed and delivered by the

Consolidated Government and the School District. No waiver, release, or similar modification of this agreement in writing duly executed and delivered by a duly authorized official of the School District.

4.6 **Notices.** Except as otherwise specifically provided herein, any notices, demands, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed given when the writing is delivered in person, or one business day after being sent by reputable overnight registered delivery service, charges prepaid, or three business days after being mailed, if mailed, by certified mail, return receipt requested, postage prepaid, to the Consolidated Government and the School District at the addresses shown below or at such other addresses as may be furnished by the Consolidated Government and the School District in writing from time to time.

CONSOLIDATED GOVERNMENT:

Director of Planning
Columbus Consolidated Government

With A Copy to:

City Attorney

SCHOOL DISTRICT:

Superintendent of Schools

With a copy to:

4.7 **Severability.** If any provision of this Agreement shall be held or deemed to be or shall, in fact, be inoperative or unenforceable under any particular circumstances, because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of

rendering the provision in question inoperative or unenforceable in any other circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this agreement shall not affect the remaining portions of this agreement or any part thereof.

4.8 **Limitation of Rights.** Nothing in this agreement, express or implied, shall give to any person, other than the parties hereto and their successors and assigns hereunder, any benefit or any legal or equitable right, remedy, or claim under this agreement.

IN WITNESS WHEREOF, the Consolidated Government and the School District have caused this Intergovernmental Agreement to be executed in their respective official names and have caused their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the effective date set forth hereinabove.

**COLUMBUS, GEORGIA
CONSOLIDATED GOVERNMENT**

By: _____

Teresa Pike Tomlinson, Mayor

Attest: _____

Tiny B. Washington, City Clerk

[SEAL]

This ____ day of _____, 2016.

MUSCOGEE COUNTY SCHOOL DISTRICT,
BOARD OF EDUCATION

By: _____

Chairman

Attest: _____

School District Clerk

This ____ day of _____, 2016.

