

STATE OF GEORGIA
COUNTY OF HALL

INTERGOVERNMENTAL AGREEMENT

This INTERGOVERNMENTAL AGREEMENT ("Agreement"), is made and entered into as of this 1st day of May, 2007 (the "Effective Date") by and between the CITY OF GAINESVILLE, GEORGIA, a municipal corporation of the State of Georgia (the "City") and the HALL COUNTY BOARD OF COMMISSIONERS, the duly elected governing authority of a political subdivision of the State of Georgia (the "County").

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 City and the County 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 May 1st, 2007, between the City and the County.

1.2 "Approved Projects" means, collectively, the specific capital improvements to be undertaken within the Midtown TAD by the City or by a private developer to achieve the goals and objectives of the Redevelopment Plan, as approved by the TAD Advisory Committee and recommended to the Redevelopment Agency for TAD Financing, in accordance with Section 3.8.2 of this agreement.

1.3 "Board of Education" means the Board of Education of the City of Gainesville, Georgia.

1.4 "Board of Education Resolution" means that certain resolution adopted by the Board of Education on December 6, 2006, inter alia, consenting to the inclusion of certain Board of Education ad valorem taxes in the computation of the Tax Allocation Increments for the TAD.

1.5 **"Bond Indenture"** means, collectively and each respectively, each Trust Indenture, Bond Resolution, Bond Ordinance, Loan Agreement, Financing Agreement or other document pursuant to which one or more series of TAD Bonds is issued.

1.6 **"City"** means the City of Gainesville, Georgia.

1.7 **"City Ordinance"** means that certain ordinance adopted by the Gainesville City Council on October 17, 2006, approving and adopting the Midtown Gainesville Redevelopment Area and Tax Allocation District Number One – Midtown, establishing the Midtown Gainesville Redevelopment Area, creating the TAD and other related matters.

1.8 **"Commencement of Construction of Significant Projects"** means, for the purposes of this Agreement, that one or more building permits shall have been issued for, and construction or renovation shall have commenced on, one or more significant structural components of one or more of the Approved Projects contemplated by the Redevelopment Plan (excluding streetscapes and similar publicly owned infrastructure), which construction is anticipated to result in Tax Allocation Increment.

1.9 **"County"** means Hall County, Georgia.

1.10 **"County Resolution"** means that certain resolution adopted by the Board of Commissioners of the County on April 12, 2007, *inter alia*, consenting to the inclusion of certain County 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.

1.11 **"County Tax Allocation Increment"** means that portion of the Tax Allocation Increment for the TAD in each calendar year consisting of the County's portion of the Real Property Tax Allocation Increment in each case attributable to County ad valorem taxes for such calendar year.

1.12 **"Excess Funds"** means, during the term of this Agreement, in each calendar year, the amount by which the Tax Allocation Increment collected during such calendar year exceeds the amount required to make the Scheduled Debt Service Payments on the TAD Financing in each Bond Year (as defined in the Bond Indenture), to replenish any deficiency in any debt service reserve fund established for the TAD Financing under the Bond Indenture, to satisfy any other payment obligations of the City directly related to the TAD Financing and required to be paid from Tax Allocation Increment pursuant to the Bond Indenture (such as, without limitation, to the extent required to be paid from Tax Allocation Increment by the Bond Indenture, rebate payments to the U.S. Treasury Department, bond trustee's fees and other administrative costs of the TAD Financing).

1.13 **"Midtown TAD" or "TAD"** means that certain tax allocation district (as defined in O.C.G.A. §36-44-3(13)) created by the City and designated as the "Midtown Gainesville Tax Allocation District," as more fully identified in the applicable redevelopment plan with respect thereto approved by the City.

1.14 **"Projects"** means those capital improvements undertaken to achieve the goals and objectives of the Redevelopment Plan, as may be presented to the TAD Advisory Committee for consideration for TAD Financing, as required by Section 3.8.2.

1.15 **"Redevelopment Agency"** means the City Council of the City of Gainesville, Georgia, which will act as the redevelopment agency, in accordance with the Redevelopment Powers Law.

1.16 **"Redevelopment Area"** means that certain area located within the geographic limits of the City and within the County created and established as a redevelopment area (as defined in O.C.G.A. §36-44-3(7)) by the City in the City Ordinance and designated as the "Midtown Gainesville Redevelopment Area", as more fully described in the City Ordinance and the Redevelopment Plan.

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

1.18 **"Redevelopment Plan"** means the written plan of redevelopment for the Redevelopment Area approved by the City in the City Ordinance and designated as the "Redevelopment Plan for the Midtown Gainesville Tax Allocation District."

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

1.20 **"Scheduled Debt Service Payments"** means the aggregate scheduled principal and interest payments on the TAD Bonds 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 TAD Financing in such year.

1.21 **"Special Fund"** means the special fund with respect to the Midtown TAD created pursuant to O.C.G.A. §36-44-11(c).

1.22 **"TAD Financing"** means those certain tax allocation bonds, notes or other obligations issued by the City 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 Midtown TAD, that the City may issue or borrow as necessary to implement the provisions of the Redevelopment Plan, as provided in the City Ordinance, which may include one or more series of bonds, notes or other obligations and which may be issued at one or more times.

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

1.24 **"Term"** means the term of this Agreement as prescribed in Section 3.1 hereof.

ARTICLE 2

RECITALS

2.1 The creation of the Midtown TAD, the redevelopment and improvement of the Midtown TAD, and the development of the Approved Projects are expected to result (in addition to increased Tax Allocation Increments) in certain other increased revenues to the City, which may include, without limitation, (i) certain one-time revenues such as increased building permit fees and inspections fees and (ii) certain on-going annual revenues such as increased business licenses, beer, liquor and wine licenses, Sunday sales permits, beer, liquor and wine excise taxes, liquor by the drink taxes and cable TV franchise fees. The creation of the Midtown TAD, the redevelopment and improvement of the Midtown TAD, and the development of the Approved Projects may result (in addition to increased Tax Allocation Increments) in certain other increased revenues to the Board of Education, including additional sales tax revenues from the operation of the Projects. The creation of the Midtown TAD, the redevelopment and improvement of the Midtown TAD, and the development of the Approved Projects may result (in addition to increased Tax Allocation Increments) in certain other increased revenues to the County. The parties to this Agreement, however, acknowledge that the aforesaid recitals concerning certain other increased revenues are included in this Agreement solely as recitals and shall have no impact or effect on the other terms of this Agreement.

2.2 Representations of the City.

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

2.2.1 The City created the Midtown TAD effective as of December 31, 2006 pursuant to its redevelopment powers as authorized by the Redevelopment Powers Law and the City Ordinance. The City duly adopted the Redevelopment Plan pursuant to the Redevelopment Powers Law and the City Ordinance.

2.2.2 The City 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 Midtown TAD.

2.2.3 The City intends to authorize the issuance of TAD bonds or other means of TAD Financing as may be necessary to implement provisions of the Redevelopment Plan.

2.2.4 The City 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 County 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.

2.2.5 The City 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 City, enforceable against the City in accordance with its terms.

2.3 Representations of the County.

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

2.3.1 The County 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 City 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.

2.3.2 The County has the power to enter into this Agreement and perform all obligations contained in this Agreement, and by proper action has duly authorized the execution, delivery and performance of this Agreement, including, without limitation, the inclusion of ad valorem property taxes levied by the County on taxable real property within the Midtown TAD in the computation of the Tax Allocation Increments for the purposes set forth in the Redevelopment Plan, pursuant O.C.G.A. §36-44-9(c).

2.3.3 This Agreement is a valid and binding legal obligation of the County, enforceable against the County 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 until all TAD Bonds and other redevelopment costs have been paid in full and the Midtown TAD has been dissolved, except as otherwise provided herein.

3.2 Certification of Tax Allocation Increment Base. The City and the County hereby agree that the Tax Allocation Increment Base for the Midtown TAD, which has or will be certified by the State Revenue Commissioner as of December 31, 2006, 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 City TAD.

3.3.1 Pursuant to the County Resolution, the County hereby consents and agrees to the inclusion of County ad valorem taxes on real property within the TAD in the computation of the Tax Allocation Increments for the TAD in accordance with the Redevelopment Powers Law, effective as of December 31, 2006, subject to and in accordance with this Agreement.

3.3.2 Commencing in 2007, the County agrees to remit to the City each year, in accordance with the Redevelopment Powers Law, the County Tax Allocation Increment for the 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 therefor.

3.4 Issuance of TAD Bonds or other TAD Financing.

3.4.1 By no later than December 31, 2011: (i) the City shall issue or cause TAD bonds or other TAD Financing to be issued, or (ii) the Commencement of Construction of Significant Projects shall have occurred.

3.4.2 The aggregate principal amount of any and all TAD Financing issued with respect to the TAD shall be determined on the basis of the judgment of qualified professionals as to the projected estimate of the Tax Allocation Increment.

3.4.3 In the event the deadline set forth in subsection 3.4.1 is not met, the consent of the County to the inclusion of its ad valorem taxes on real property within the TAD in the computation of the Tax Allocation Increment for the TAD shall automatically terminate as of December 31, 2011. In such event, the County Tax Allocation Increment accumulated and remaining in the Special Fund through such termination date shall be paid to the County by the City within forty-five (45) days after the termination date.

on or before 3/14
3.5 Reporting. Commencing with calendar year 2007 and each calendar year thereafter, the City as the Redevelopment Agency for the TAD, will provide to the County, within sixty (60) days after the end of each such calendar year, a comprehensive annual report regarding the amount of positive Tax Allocation Increment deposited in the TAD Special Fund, the use of such funds and the status of all development undertaken within the TAD.

3.6 Use of County Tax Allocation Increment. The County's Tax Allocation Increment may be used for the following purposes:

3.6.1 To pay TAD financing costs as defined in O.C.G.A. §36-44-3(8)(B).

3.6.2 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).

- 3.6.3 To pay capital costs, professional services costs and real property assembly costs associated with private development on private property.
- 3.6.4 Excess Funds attributable to the County Tax Allocation Increment from any calendar year may be applied by the City to prepay the amount of TAD Financing then outstanding.
- 3.6.5 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.

3.7 **Three-Year Review.**

3.7.1 The Redevelopment Agency will present a comprehensive and cumulative report on the status of all expenditures from the Special Fund, the issuance of TAD Financing and the development undertaken within the Midtown TAD to the Board of Commissioners commencing in January 2011 and then in January every three (3) years thereafter, until the TAD has been dissolved.

3.7.2 The City and the County agree to cooperatively review the report to determine whether the goals and incremental milestones of the Midtown TAD as stated in the Redevelopment Plan have been achieved during the previous 3-year 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 the Bond Indenture, and meet any other obligations related to TAD Financing.

3.7.3 At the end of each 3-year period, the County shall have the option not to pledge the County Tax Allocation Increment to future TAD Financing or future Redevelopment Costs by enacting a Resolution expressing its intent, which shall be delivered to the City as provided in Section 4.6, within ninety (90) days after the end of the applicable 3-year period.

3.7.4 Pursuant to the provisions of O.C.G.A. §36-44-3(8)(G) and to the extent Excess Funds are available in each year, at the end of each 3-year period the County may elect whether to seek return of the County's pro rata share of Excess Funds (the "Excess County Tax Allocation Increment") for the next 3-year period. If the County enacts a Resolution expressing its intent to receive the Excess County Tax Allocation Increment, which shall be delivered to the City as provided in Section 4.6, within ninety (90) days after the end of the applicable 3-year period, the City will expeditiously pay (within sixty (60) days after the end of each calendar year) an amount determined to be the County's pro rata share (based upon the percentage of the County's millage rates as compared to the total millage rates, in each case, of taxes used in computing the Tax Allocation Increment for the TAD in each such year in accordance with the Redevelopment Powers Law, computed to the second decimal point) of Excess Funds.

3.7.5 Notwithstanding any decision by the County as expressed by Resolution pursuant to Sections 3.7.3 or 3.7.4, nothing in this Agreement shall obviate or diminish the pledge of the County Tax Allocation Increment by the County toward the repayment of any TAD Financing then outstanding.

3.8 **TAD Advisory Committee.**

3.8.1 The City agrees to create a TAD Advisory Committee, which body will consider and review all TAD Projects prior to their consideration for adoption by the City Council. Members of the TAD Advisory Committee shall include the Chair of the Hall County Board of Commissioners, or that official's designee, and the Hall County Administrator, or that official's designee, each as voting members of such Committee, with the same powers and voting rights as all other members of said Committee.

3.8.2 Prior to the financing of any Project in whole or in part from Tax Allocation Increment or with TAD Financing, such Project will be reviewed by the TAD Advisory Committee for feasibility and consistency with the objectives of the Redevelopment Plan. Information to be reviewed by the TAD Advisory Committee for each proposed Project may include, but not be limited to, experience of the Development Team, proposed capital improvements to the site, analysis of non-TAD financing commitments or equity in the Project, and projected Tax Allocation Increment expected to be generated by such Project. Any Project recommended for funding to the City first must receive a favorable vote by a simple majority of the TAD Advisory Committee, at which time it will become an Approved Project.

3.9 **TAD Project Financing Limit.** No Approved Project that consists wholly of capital improvements to private property shall be eligible for or receive funding from either the TAD Special Fund or from the proceeds of TAD Financing, which funding exceeds 15% of the total project cost. The refunding of any TAD Financing to achieve debt service savings shall be excluded from the calculation of compliance with this limit; however, the outstanding principal balance of the related refunding bonds shall be included in the calculation.

3.10 **Return of County's Pro Rata Share of Tax Allocation Increment After Redevelopment Costs Are Paid.** Any funds remaining in the TAD Special Fund after all redevelopment costs and all TAD Financing have been paid or otherwise satisfied, which funds were derived from the County Tax Allocation Increment, shall be paid to the County within 90 days after the end of the calendar year, in the same manner and in the same proportion as the most recent distribution by the County, in accordance with the Redevelopment Powers Law.

3.11 **Special Conditions, Stipulations or Requirements.** The City shall promptly notify the County 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 County, the County 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 the City hereby agrees to enter into any such amendment or supplement to this Agreement required as aforesaid.

3.12 **City's Indemnification of County.** The City hereby agrees to defend and hold harmless the County and its Commissioners, officials, employees, agents and representatives from and against any and all claims, losses, damages, costs or expenses arising from or in connection with any actions, claims, suits or challenges of any kind related to the exercise, use, implementation or performance by the City or its Redevelopment Agency of the City's rights, powers or authority under the Redevelopment Powers Law or the actions of the City or its Redevelopment Agency under this Agreement.

3.13 **Limitation of Obligations.** The County 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 County 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 County.

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 transactions 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 an 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 County and the City. No waiver, release, or similar modification of this Agreement shall be established by conduct, custom, or course of dealing, but solely by a document in writing duly executed and delivered by a duly authorized official of the County.

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 City and the County at the addresses shown below or at such other addresses as may be furnished by the City and the County in writing from time to time:

CITY:

City of Gainesville, Georgia
300 Henry Ward Way
P.O. Box 2496
Gainesville, Georgia 30503
Attention: City Manager

With A Copy to:

City Attorney James E. Palmour III
1294 W. Ridge Rd. Ste. B
Gainesville, Georgia 30501
Phone: 770-535-0222
Fax: 770-535-0444

And A Copy to:

Sharon A. Gay, Esq.
MCKENNA LONG & ALDRIDGE LLP
303 Peachtree St. NE, Suite 5300
Atlanta, Georgia 30308
Phone: 404-527-4676
Fax: 404-527-4198

COUNTY:

Hall County Board of Commissioners
P.O. Drawer 1435
Gainesville, Georgia 30503
Attention: County Administrator

With A Copy to:

County Attorney William H. Blalock Jr.
STEWART, MELVIN & FROST
200 Main Street, Suite 600
P.O. Box 3280
Gainesville, Georgia 30503-3280
Phone: 770-536-0101
Fax: 770-532-2171

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.

SIGNATURES APPEAR ON SUBSEQUENT PAGES

IN WITNESS WHEREOF, the City and the County 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.

CITY OF GAINESVILLE, GEORGIA

By: *Robert L. Hamrick*
Robert L. Hamrick, Mayor

Attest: *Denise O. Jordan*
Denise Jordan, City Clerk


[SEAL]



This 12th day of April, 2007.

**HALL COUNTY BOARD OF
COMMISSIONERS**

By: 
Tom Oliver, Chairman

Attest: 
Michelle Smallwood, County Clerk

[SEAL]

