

(Do Not Write Above This Line)

A RESOLUTION
 A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO EXECUTE A SETTLEMENT AGREEMENT WITH CLAYTON COUNTY, GEORGIA REGARDING THE REFUND AD VALOREM PROPERTY TAXES DUE TO THE CITY OF ATLANTA IN THE AMOUNT OF NINE MILLION FIVE HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS AND SEVENTY-SEVEN CENTS (\$9,599,467.77); ANTICIPATING PAYMENT INTO ACCOUNT NUMBERS 5501 (AVIATION GENERAL REVENUE FUND); 180108 (AVIATION FINANCE AND ACCOUNTING); 3890007 (RECOVERIES); 7563209 (AVIATION OTHER COMMERCIAL); AND FOR OTHER PURPOSES.

Approved By: _____
 Laura Burton
 Interim Deputy City Attorney

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred _____
 Referred To: _____
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First Reading
 Committee _____
 Date _____
 Chair _____
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Committee _____
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 Action Fav, Adv, Hold (see rev. side)
 Other _____
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 Action Fav, Adv, Hold (see rev. side)
 Other _____
 Members _____

ADOPTED BY
 OCT 20 2014
COUNCIL

Refer To _____

FINAL COUNCIL ACTION
 2nd 1st & 2nd 3rd
 Readings
 Consent V Vote RC Vote

CERTIFIED
 OCT 20 2014
 ATLANTA CITY MUNICIPAL PRESIDENT

CERTIFIED
 OCT 20 2014
 Paul Hankins Johnson
 MUNICIPAL CLERK

MAYOR'S ACTION

A RESOLUTION

BY

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE CITY OF ATLANTA, TO EXECUTE A SETTLEMENT AGREEMENT WITH CLAYTON COUNTY, GEORGIA REGARDING THE REFUND AD VALOREM PROPERTY TAXES DUE TO THE CITY OF ATLANTA IN THE AMOUNT OF NINE MILLION FIVE HUNDRED NINETY-NINE THOUSAND FOUR HUNDRED SIXTY-SEVEN DOLLARS AND SEVENTY-SEVEN CENTS (\$9,599,467.77); ANTICIPATING PAYMENT INTO ACCOUNT NUMBERS 5501 (AVIATION GENERAL REVENUE FUND); 180108 (AVIATION FINANCE AND ACCOUNTING); 3890007 (RECOVERIES); 7563209 (AVIATION, OTHER COMMERCIAL); AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta (“City”) owns and operates Hartsfield-Jackson Atlanta International Airport (“Airport”); and

WHEREAS, the Airport is primarily located in Clayton County, Georgia; and

WHEREAS, the City submitted requests to Clayton County for refunds of ad valorem property taxes for certain parcels of land as the City acquired land to build the fifth runway at the Airport; and

WHEREAS, in 2007, the Georgia Court of Appeals ruled that land parcels to be used for the fifth runway were exempt from ad valorem taxes for tax year 2003, representing a \$943,911.61 refund due to the City; and

WHEREAS, in 2008, the Clayton County Superior Court entered an Order and Final Judgment in the City’s favor in the amount of \$450,769.33 for the refund of ad valorem taxes paid on said fifth runway land parcels for tax years 2000 and 2002, which sum has accrued \$130,805.55 in interest payable to the City; and

WHEREAS, following the precedents set by the Court of Appeals and the Clayton County Superior Court, the City and Clayton County agreed to treat the fifth runway land parcels as tax exempt, representing a total refund to the City of \$3,760,868.42 for tax years 2003 through 2006; and

WHEREAS, Clayton County ceased taxing the fifth runway land parcels completely in 2007 when the fifth runway opened; and

WHEREAS, in 2005, Clayton County began taxing the City on five land parcels owned by the City and leased to Delta Air Lines, Inc. (“Delta”) for the operation of the Delta Technical

Operations Center, housing of Delta's ground support equipment, housing of a cargo handling building and two flight kitchens; and

WHEREAS, in 2010, the Georgia Court of Appeals ruled that this property leased to a common carrier airline was for the "public purpose" and was exempt from ad valorem taxation, representing a refund to the City of \$1,965,214.01 for tax years 2005 through 2009; and

WHEREAS, following the precedent set regarding the Delta parcels, the City and Clayton County agreed that other parcels leased to common carrier airlines and directly supporting services such as Northwest, Gate Gourmet, AirTran and the South Cargo complex would be tax exempt beginning as of 2005, representing a refund to the City of \$3,291,810.36 for tax years 2005 through 2009; and

WHEREAS, the City's Department of Law and Department of Aviation have engaged Clayton County in negotiations over the years regarding the total tax refund amount due to the City and the method of payment by Clayton County of the refund amounts; and

WHEREAS, while such negotiations were pending, the City did not pay Clayton County ad valorem taxes on any parcels located in Clayton County for tax years 2010 through 2013; and

WHEREAS, Clayton County has agreed to refund the City a total of \$9,599,467.77 for previously paid ad valorem taxes in the following manner:

- A) \$6,764,891.68 as a direct and complete offset of the City's ad valorem tax bills for 2010, 2011, 2012 and 2013; and
- B) \$1,976,747.04 upon execution of the Settlement Agreement; and
- C) \$857,828.95 payable in three (3) equal annual installments beginning on December 1, 2014 plus interest at an annual rate of 1.5%.

WHEREAS, the Clayton County Board of Commissioners approved payments pursuant to the Settlement Agreement on June 17, 2014; and

WHEREAS, the City Attorney and the Aviation General Manager consider it to be in the best interest of the City to accept Clayton County's proposed Settlement Agreement attached as **Exhibit A**.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor is authorized to execute the Settlement Agreement with Clayton County for the refund of ad valorem tax paid by the City of Atlanta to Clayton County in the amount of \$9,599,467.77 payable as follows:

- A) \$6,764,891.68 as a direct and complete offset of the City's ad valorem tax bills for 2010, 2011, 2012 and 2013; and
- B) \$1,976,747.04 upon execution of the Settlement Agreement; and

C) \$857,828.95 payable in three (3) equal annual installments beginning on December 1, 2014 plus interest at an annual rate of 1.5%.

BE IT FINALLY RESOLVED, that that any funds received from Clayton County related to this agreement will be anticipated in the following FDOA; 5501 (Airport General Revenue Fund), 180108 (Aviation Finance and Accounting); 3890007 (Recoveries); 7563209 (Aviation, Other Commercial).



EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this ____ day of _____, 2014, by and between Clayton County (hereinafter “Clayton County” or “County”), a political subdivision of the State of Georgia, and the City of Atlanta (hereinafter “City of Atlanta” or “City”), a municipal corporation of the State of Georgia (County and City are collectively referred to herein as the “Parties”).

WHEREAS, disputes have arisen between the Parties relating to the taxability of certain parcels of real property owned by the City inside the County, including without limitation tax appeals filed pursuant to O.C.G.A. § 48-5-311 and related tax litigation;

WHEREAS, tax litigation between the Parties has resulted in court decisions holding that certain parcels owned by the City within the County, and upon which the City paid real property taxes, are exempt from real property taxation;

WHEREAS, the City has obtained a judgment against the County in a lawsuit for a refund of certain real property taxes in Case No. 2006-CV-2188-5 in the Superior Court of Clayton County (the “Refund Lawsuit”);

WHEREAS, the City has withheld payment of real property taxes to the County for the tax years 2010, 2011, 2012 and 2013 because the City has contended that the County owes refunds of taxes to the City and the County concurred in that action to reduce the City’s potential refund claim against the County; and

WHEREAS, the Parties desire to achieve a resolution of their disputes over the taxability of the parcels of real property owned by the City within the County and the City’s refund claims for the tax years 2013 and earlier;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties stipulate and agree as follows:

1. The parcels of real property identified on Exhibit A shall be exempt from taxation by the County for the tax years 2005 through 2013 and shall remain exempt from taxation for so long as their current use shall continue.

2. The County agrees to refund to the City the total amount of \$9,599,467.67 (hereinafter "the Refund Amount") in the manner prescribed in paragraphs 3 and 4 of this Settlement Agreement.

3. The City's obligation to pay property taxes to the County for the tax years 2010, 2011, 2012 and 2013 shall be satisfied in full as follows:

a. For the tax year 2010, the City shall pay to the County real property taxes in the amount of \$1,442,159.03. The City shall pay those taxes by applying the Refund Amount to that obligation.

b. For the tax year 2011, the City shall pay to the County real property taxes in the amount of \$1,759,908.27. The City shall pay those taxes by applying the Refund Amount to that obligation.

c. For the tax year 2012, the City shall pay to the County real property taxes in the amount of \$1,774,612.17. The City shall pay those taxes by applying the Refund Amount to that obligation.

d. For the tax year 2013, the City shall pay to the County real property taxes in the amount of \$1,788,212.21. The City shall pay those taxes by applying the Refund Amount to that obligation.

The County waives all interest, penalties and costs that may be due from the City for taxes assessed by the County on real property owned by the City for all tax years through and including the tax year 2013. Upon making the payments set forth in paragraph 3 of this Settlement Agreement, the City shall have fully satisfy its obligation to pay real property taxes to the County for all prior tax years through and including the tax year 2013. Paying taxes in the manner provided in paragraph 3 of this Settlement Agreement shall reduce the Refund Amount to \$2,834,575.99 (the "Adjusted Refund Amount"). Within thirty (30) days after approval of this Agreement by the County and the City, the Tax Commissioner of Clayton County shall pay to the City of Atlanta the sum of One Million Two Hundred Sixteen Thousand Thirty and 81/100 (\$1,216,030.81) Dollars and the County shall pay to the City the sum of Seven Hundred Sixty Thousand Seven Hundred Sixteen and 23/100 (\$760,716.23) Dollars. The balance of the Adjusted Refund Amount in the amount of Eight Hundred Fifty Seven Thousand Eight Hundred Fifty Eight and 95/100 (\$857,828.95) Dollars shall be paid to the City by the Tax Commissioner of Clayton County in three equal annual payments of Two Hundred Eight Five Thousand Nine Hundred Forty Two and 98/100 (\$285,942.98) Dollars plus interest at the rate of One and one-half (1.5%) percent per annum on the unpaid balance to be deducted from tax proceeds due to the Clayton County School System from tax revenues due them in the years 2014, 2015 and 2016. The first payment shall be due and payable on December 1, 2014 with subsequent payments being due on December 1, 2015 and December 1, 2016.

4. If the County fails to pay to the City the Adjusted Refund Amount within the time periods prescribed in Paragraph 3, that Adjusted Refund Amount shall accrue interest at the rate of seven percent (7%) per annum compounded annually. Such interest shall begin to accrue on the date upon which the payment should have been made through the date of payment or offset.

Further, if the County fails to pay to the City the Adjusted Refund Amount, the City, when paying its real property taxes to the County for the tax year 2014 and thereafter, may directly offset the entire amount of the remaining Adjusted Refund Amount against the taxes due and owing for that year and shall be obligated to pay only the net amount due. The City shall give written notice to the County if it elects to exercise this right of offset. If the City directly offsets the Adjusted Refund Amount against outstanding tax bills pursuant to the paragraph, the County shall be prohibited from taking any steps to collect the offset taxes from the City, the County shall not charge the City any penalties or interest on the offset taxes and shall not impose any liens or issue any *fi fas* for such offset taxes.

5. Within thirty (30) days of date upon which the Adjusted Refund Amount has been fully offset against unpaid taxes or paid pursuant to paragraphs 3 and 4 of this Settlement Agreement, the City shall file a satisfaction of judgment in the Refund Lawsuit.

6. Within thirty (30) days of the effective date of this Settlement Agreement, the County shall remove any liens for unpaid taxes against any real property owned by the City within the County and shall cause to be canceled any *fi fas* that may have issued for the collection of unpaid taxes from the City. The County shall provide to the City such documentation as the City may reasonably require to effectuate the removal of such liens and the cancellation of any *fi fas*.

7. The City shall withdraw all of the currently unresolved appeals of real property tax assessments for property within the County filed pursuant to O.C.G.A. § 48-5-311 for all tax years through and including tax year 2013.

8. The effective date of this Settlement Agreement shall be the date upon which it is approved by the appropriate governing bodies of both the City and the County.

9. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding the subjects hereof. Any prior or contemporaneous, written or oral communications between or among the Parties are superseded by this Settlement Agreement, and no amendment, modification or waiver of this Settlement Agreement shall be valid unless in writing and signed by all Parties. Each Party specifically represents and warrants that this agreement is executed without reliance on any statement or representation of fact or opinion by any Party hereto, except as otherwise set forth herein.

10. If any term or condition of this Settlement Agreement or the application thereof to any entity or circumstance shall, to any extent, be declared invalid or unenforceable, neither the remainder of this Settlement Agreement nor the application of such term or condition to any other entity or circumstance shall be affected thereby, and each remaining term and condition of this Settlement Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. In the interpretation and construction of this Settlement Agreement, no account shall be taken of which, among the Parties, is the originator or drafter of this Settlement Agreement, or any of its specific provisions.

12. Each Party to this Settlement Agreement shall be responsible for and bear its own attorneys' fees, expenses, and costs with respect to the Refund Lawsuit and this Settlement Agreement.

13. This Settlement Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute together shall constitute one and the same Settlement Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties, acting by and through their duly authorized officers, have executed this Settlement Agreement as of the effective date provided above.

CLAYTON COUNTY, GEORGIA

By: _____

Its: _____

**C
CITY OF ATLANTA**

B
By: _____
Mayor

I

Municipal Clerk (Seal)

Approved:

Department of Aviation

Approved as to form:

City Attorney

EXHIBIT A

13-007-007-002A - Delta GSE Building

13-009-023-002A - Delta Flight K

13-009-023-003A - Delta Cargo

13-011-022-007A - Delta Flight K (2)

13-009-010-001A-Delta Jet Base

13-041-041-001A - Northwest Property

13-041-041-001 - Northwest Hangar

13-039-039-001BA - Gate Gourmet

13-039-040-001 - South Cargo Bldg A

13-039-040-001A - South Cargo Bldg A (Land)

13-039-040-002 - South Cargo Bldg B

13-039-040-002A - South Cargo Bldg B (Land)

13-041-041-002 - South Cargo Bldg D

13-041-041-002A - South Cargo Bldg D (Land)

13-042D-A009 - AirTran Employee Parking Lot