

12-*R*-0931

(Do Not Write Above This Line)

A RESOLUTION AUTHORIZING THE MAYOR HIS DESIGNEE TO ENTER INTO A LEASE AGREEMENT WITH THE ATLANTA INDEPENDENT SCHOOL SYSTEM AND THE CITY OF ATLANTA FOR THE LEASE OF PROPERTY AT 407 ASHWOOD AVENUE, ATLANTA, GEORGIA FOR THE PURPOSE OF HOUSING THE ATLANTA FIRE DEPARTMENT TRAINING SECTION; FOR A MONTHLY RATE OF TEN THOUSAND, SIX HUNDRED AND NINETY-SIX DOLLARS AND FORTY-SIX CENTS (\$10,696.46) PER MONTH FOR THE FIRST YEAR WITH AN INCREASE OF FIVE PERCENT (5%), EACH YEAR THEREAFTER UNTIL THE END OF THE FIVE YEAR LEASE TERM OR TERMINATED IN WRITING BY EITHER PARTY WITHIN A 90 DAY PERIOD AND FOR OTHER PURPOSES.

First Reading
PUBLIC SAFETY & LEGAL ADMIN. COMMITTEE

Committee Date 7/10/12
Chair Michael J. Bond
Referred To

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

Committee Date 7/18/12
Chair [Signature]
Action Fav, Adv, Hold (see rev. side)
Other
Members [Signature]

Committee Date
Chair
Action Fav, Adv, Hold (see rev. side)
Other
Members

CERTIFIED
ATLANTA CITY COUNCIL PRESIDENT
JUL 16 2012
MAYOR'S ACTION
JUL 16 2012
[Signature]

ADOPTED BY

CONSENT REFER
REGULAR REPORT REFER
ADVERTISE & REFER
1ST ADOPT 2ND READ & REFER
PERSONAL PAPER REFER

Committee Date
Chair
Action Fav, Adv, Hold (see rev. side)
Other
Members

Committee Date
Chair
Action Fav, Adv, Hold (see rev. side)
Other
Members

MAYOR'S ACTION

COUNCIL

Date Referred
Referred To:

Date Referred
Referred To:

Date Referred
Referred To:

Date Referred
Referred To:

APPROVED

JUL 25 2012

WITHOUT SIGNATURE
BY OPERATION OF LAW



A RESOLUTION

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE TO ENTER INTO A LEASE AGREEMENT WITH THE ATLANTA INDEPENDENT SCHOOL SYSTEM AND THE CITY OF ATLANTA FOR THE LEASE OF PROPERTY AT 407 ASHWOOD AVENUE, ATLANTA, GEORGIA FOR THE PURPOSE OF HOUSING THE ATLANTA FIRE DEPARTMENT TRAINING SECTION; FOR A MONTHLY RATE OF TEN-THOUSAND, SIX-HUNDRED AND NINETY-SIX DOLLARS AND FORTY-SIX CENTS (\$10,696.46) PER MONTH FOR THE FIRST YEAR WITH AN INCREASE OF FIVE PERCENT (5%), EACH YEAR THEREAFTER UNTIL THE END OF THE FIVE YEAR LEASE TERM OR TERMINATED IN WRITING BY EITHER PARTY WITHIN A 90 DAY PERIOD AND FOR OTHER PURPOSES.

WHEREAS, the Atlanta Fire Rescue Department has maintained and utilized the facility at 407 Ashwood Avenue, Southwest, for a training academy for the purpose of training fire recruits and fire fighting personnel; and

WHEREAS, currently funding is not available to construct a new facility that would adequately accommodate the needs of the fire academy; and

WHEREAS, it has been determined that this site can continue to serve in a training capacity until such funding is appropriate; and

WHEREAS, the authorization for payments to be retroactive to March 1, 2012; and

NOW, THEREFORE E IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA GEORGIA AS FOLLOWS:

Section 1: The Mayor or his designee is hereby authorized to enter into a five year lease agreement with the Atlanta Independent School System for the property located at 407 Ashwood Avenue, Southwest, Atlanta, Georgia for a rate of ten-thousand, six-hundred and ninety-six dollars and forty-six cents (\$10,696.46) per month with an increase of five percent (5%) per year after the first year until the end of the lease period or when terminated in writing by either party within a 90 day period.

Section 2: The City attorney is directed to review said appropriate lease agreement which shall not binding on the City and the City shall incur no liability upon same until such said lease has been executed by the Mayor and delivered to lessor.

Section 3: That payments be retroactive to March 1, 2012

Section 4: That all payments shall be charged to and paid from Fund (1001) Dept/Org (230202) Exp Acct (5223103) Function Act (3540000)

Section 5: Be it finally resolved that all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed.

A true copy,

ADOPTED by the Atlanta City Council
APPROVED as per City Charter Section 2-403

July 16, 2012
July 25, 2012



STATE OF GEORGIA

COUNTY OF FULTON

LEASE AGREEMENT

This Lease Agreement (this "Lease") is made effective as of the first (1st) day of March, 2012, by and between the **ATLANTA INDEPENDENT SCHOOL SYSTEM**, an independent school system chartered by an Act of the General Assembly of the State of Georgia, hereinafter referred to as "Lessor", and **CITY OF ATLANTA**, a political subdivision of the State of Georgia, hereinafter referred to as "Lessee":

WITNESSETH

1. **Premises.** For and in consideration of the rents, covenants and agreements herein reserved and provided to be performed by Lessee, Lessor hereby leases to Lessee, and Lessee hereby rents from Lessor, the following described property (the "Premises") from Lessor:

Gilbert Elementary School
407 Ashwood Avenue, SW
Atlanta, Georgia 30315

Lessee accepts the Premises in their "as is, where is" condition, without any representation, warranty or inducement from Lessor, except as may be specifically set forth in this Lease.

2. **Lease Term.** The term of this Lease (the "Lease Term") shall be for a period of time commencing on March 1, 2012 (the "Commencement Date") and expiring February 28, 2017, unless earlier terminated or extended as may be provided in this Lease.

3. **Rent.** Lessee agrees to pay to Lessor, without demand, setoff or deduction, rent ("Rent") in the amount of Ten Thousand Six Hundred and Ninety Six and 46/100 Dollars (\$10,696.46) per month for the first year of the Lease Term. On the first anniversary of the Commencement Date and annually thereafter, monthly Rent shall increase by five percent (5%), consistent with the following schedule.

<u>Period</u>	<u>Monthly Rent</u>
3/1/2012 – 2/28/2013	\$10,696.46
3/1/2013 – 2/28/2014	\$11,231.28
3/1/2014 – 2/28/2015	\$11,792.84
3/1/2015 – 2/29/2016	\$12,382.48
3/1/2016 – 2/28/2017	\$13,001.60

Rent shall be paid on the first (1st) day of every month during the Lease Term. Payments received after the tenth (10th) day of each month shall be assessed a late fee of ten percent (10%) of the monthly Rent amount. Lessee shall pay to Lessor all rent in legal tender and at Lessor's address or as otherwise directed by Lessor's notice.



4. Termination Option. Either party to this Lease may cancel said Lease upon the giving of ninety (90) days written notice of its intention to cancel. On or before the termination date, unless directed by Lessor to the contrary, Lessee shall remove all of Lessee's personal property and improvements from the Premises and repair any damage occasioned by such removal. At the end of the Lease Term (whether or not terminated early) the Premises shall be returned to Lessor in substantially the same condition as on the Commencement Date (except to the extent that Lessor shall agree to allow any of Lessee's personal property or improvements to remain on the Premises), normal wear and tear excepted.

5. Utilities, Maintenance and Repairs. Lessee shall be responsible for all utilities, maintenance, repairs, cleaning and operating expenses of the Premises during the Lease Term. Lessee agrees that Lessor shall have no obligation to maintain, repair, restore, replace, clean or operate the Premises or any portion thereof. Lessee shall be responsible for complying with all applicable laws, rules, ordinances, orders and regulations applicable to the Premises, at Lessee's sole cost and expense.

6. Insurance. Lessee shall carry and maintain a policy of "all risk" property insurance (naming Lessor as loss payee, confirmation of this shall appear on all certificates of insurance and on all applicable policies) covering the Premises against loss or damage by fire, collapse, and other risks now or hereafter customarily embraced by an "all risk" policy in an amount not less than one hundred percent (100%) of the full replacement value of the Premises as determined and accepted by Lessor accordingly. The said policy should be endorsed to include any and all contents belonging to the Atlanta Public Schools. The Atlanta Independent School System shall be named as "Loss Payee".

At least ten (10) days before the expiration of any policy required to be maintained by Lessee hereunder, Lessee shall provide Lessor, with a substitute therefor with evidence of payment of premiums thereof. Lessor shall not be liable to Lessee, or to Lessee's agents, servants, employees or invitees for any injury to person or damage to property caused by any act, omission, or neglect of Lessee, its agents, servants or employees, invitees, licensees or any other person entering the Premises or arising out of the use of the Premises by Lessee.

Lessee hereby waives any and all rights or recovery, claim, action, or cause of action, against Lessor, its agents or employees, for any loss or damage that may occur to the Premises, or any improvements thereto, or any personal property of Lessee therein, or for any loss of life or injury to persons by reason of fire, the elements, or any other cause(s) which are insured against under the terms of the insurance policies referred to herein, regardless of cause or origin, including negligence of Lessor, its agents or employees, and Lessee covenants that shall include appropriate clauses waiving all rights of subrogation against Lessor with respect to losses payable under such policies.

7. Indemnification. Lessee agrees to use and occupy the Premises at its own risk; and that except to the extent caused by or resulting from the willful act or gross negligence of Lessor, its agents or employees, Lessor shall have no responsibility or liability for any loss of or damage to Lessee's leasehold improvements or to fixtures or other personal property of Lessee



or those claiming by, through or under Lessee. Lessee will hold Lessor harmless from any and all direct liability, expense, judgment, suit, cause of action or demand for personal injury, death or direct damage to property which may accrue against Lessor, to the extent caused by the negligence of Lessee.

Lessee will hold Lessor harmless from any and all direct liability, expense, judgment, suit, cause of action or demand for personal injury, death or direct damage to property which may accrue against Lessor, to the extent it is caused by the negligence of Lessee as a result of performing duties related to Lessee's operations conducted from the Premises, to the extent permitted by law if Lessor gives Lessee prompt, written notice of any claim or suit. Lessor will cooperate with Lessee in its defense or settlement of the claim or suit. This section sets forth the full extent of Lessee's general liability that is in any way related to Lessee's performance under this Lease.

This provision shall survive the termination or expiration of this Lease.

8. Permitted Use. The Premises shall be used for the operation of a training facility for the City of Atlanta Fire and Rescue Department and for no other use or purpose without the prior written consent of Lessor, to be given or withheld in its sole discretion. The Premises shall not be used (i) for any illegal purposes; (ii) in a manner to create any nuisance or trespass; (iii) in any manner to vitiate the public character of the Premises; or (iv) for private school purposes.

The occupancy and use by Lessee of the Premises and the rights herein conferred upon Lessee shall be subject to valid rules and regulations as are now or may hereafter be prescribed by Lessor through the lawful exercise of its powers; provided, however, that no such rule or regulation shall be of such nature as to interfere with or constitute any derogation of, or infringement with or upon the rights and privileges granted to Lessee herein.

9. No Abandonment. Lessee agrees not to abandon or vacate the Premises during the Lease Term, and agrees to use the Premises for the purpose herein leased until the expiration hereof.

10. Casualty. If the Premises are totally destroyed by storm, fire, lightning, earthquake or other casualty, this Lease shall terminate as of the date of such destruction, and Rent shall be accounted for as between Lessor and Lessee as of said date. If the Premises are damaged but not wholly destroyed by any of such casualties, then, at the option of Lessor or Lessee this Lease may be terminated, and Rent shall be accounted for as between Lessor and Lessee as of the date of termination.

If the Premises are damaged but not wholly destroyed by casualty and the parties do not elect to terminate this Lease pursuant to the preceding paragraph, this Lease shall not terminate, but Lessee shall proceed with all reasonable diligence to rebuild and repair the Premises to substantially the condition in which it existed prior to such damage. Lessor shall be under no obligation to restore the Premises to the same condition as before the damage.



All insurance proceeds payable under insurance policies maintained by Lessee by reason of the occurrence of such fire or other casualty shall be paid to Lessor to be applied to the cost of repair, unless this Lease is terminated pursuant hereto, in which case all such insurance proceeds shall be paid to Lessor, except for any portion received by reason of the loss of Lessee's equipment, trade and business fixtures that do not become property of Lessor pursuant to Section 4 above, signs, and other personal property, which portion shall be paid to Lessee.

Lessee's personal property is not insured by Lessor and Lessor shall not be responsible or liable for any damage to Lessee's property of any type for any reason or cause whatsoever. Lessee is required to maintain, at its sole cost and expense, insurance on all of its fixtures, furnishing, equipment, supplies and other personal property which may be from time to time located on the Property.

11. Assignment/Subletting. Lessee may not transfer, assign, sublease or otherwise convey or hypothecate the Premises or any portion (each being an "Assignment") thereof without the prior written approval of Lessor, such approval not to be unreasonably withheld, conditioned or delayed. Any Assignment of this Lease, the Premises or any part hereof or thereof which is not in compliance with the provisions of this Section shall be void and shall, at the option of Lessor, terminate the Lease. The consent by Lessor to an Assignment shall not be construed as the consent of Lessor to any further Assignment or releasing Lessee from any liability or obligation hereunder, whether or not then accrued.

12. Alterations. Lessee shall not make any modifications, improvements, alterations or additions to the Premises without the prior written consent of Lessor in each instance. Any additions caused by Lessee shall become the property of Lessor upon the termination of this Lease, unless Lessor shall require the removal of such additions prior to the expiration or earlier termination of this Lease.

13. Events of Default. The following events shall be deemed to be events of default by Lessee under this Lease (each an "Event of Default"): (a) Lessee shall fail to promptly pay any Rent or other sum of money due to Lessor hereunder, if such non-payment continues for ten (10) or more days after the same shall become due and payable; (b) Lessee shall fail to comply with any provision of this Lease and such failure shall continue for thirty (30) days after Lessor's delivery of written notice to Lessee; (c) Lessee shall abandon or vacate the Premises during the Lease Term; (d) the commencement of any of the following proceedings, with such proceeding not being dismissed within sixty (60) days after it was begun: (i) the interest hereby created being taken on execution or by other process of law; (ii) Lessee being judicially declared bankrupt or insolvent according to law; (iii) an assignment being made of the property of Lessee for the benefit of creditors; (iv) a receiver, guardian, conservator, trustee in involuntary bankruptcy or other similar officer being appointed to take charge of all or any substantial part of Lessee's property by a court of competent jurisdiction; or (v) a petition being filed for the reorganization of Lessee under any provisions of the federal bankruptcy code or any federal or state law now or hereafter enacted; or (e) Lessee's filing a petition for reorganization or for rearrangement under, or otherwise availing itself of any provisions of, the bankruptcy code or any federal or state law now or hereafter enacted providing a plan or other means for a debtor to settle, satisfy or extend the time for the payment of debts.



14. Remedies. Should any Event of Default occur then, notwithstanding any license of any former breach of covenant or waiver of the benefit hereof or consent in a former instance, Lessor lawfully may, in addition to any remedies available to Lessor under applicable statutes, case law, in equity or otherwise, (a) immediately or at any time thereafter, and without demand or notice to the maximum extent permitted by law (and to such extent Lessee hereby expressly waives any notice to quit possession of the Premises), enter into and upon the Premises or any part thereof in the name of the whole and repossess the same, and expel Lessee and those claiming through or under it and remove its or their effects without being deemed guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of Rent or preceding breach of covenant; (b) Lessor shall have the option to send written notice to Lessee terminating the Lease Term and upon the fifth (5th) day following the sending of such notice of termination, the Lease Term shall terminate; and/or (c) Lessor shall have the right to perform any obligation of Lessee on Lessee's behalf and at Lessee's sole cost and expense.

15. Access to Premises. Lessor or its duly authorized representatives may enter upon the Premises at any and all reasonable times during the Lease Term for the purpose of determining whether or not Lessee is complying with the terms and conditions hereof, performing any acts on behalf of Lessee or for any other purpose incidental to the rights of Lessor.

16. Notices. Any notice required or permitted by this Lease must be in writing and shall be given or served by depositing the same (i) with a nationally recognized overnight courier, charges prepaid, (ii) in United States mail, postpaid and certified and addressed to the party to be notified with return receipt requested, or (ii) by hand delivering the same addressed to the party to be notified at the address stated below or at such other address as may from time to time be designated by the addressee by notice given in accordance herewith.

If to Lessor:

Atlanta Independent School System
1631 La France Street
Atlanta, Georgia 30307
Attn: Exec. Director of Facilities Services

With a copy to:

Atlanta Independent School System
130 Trinity Avenue
Atlanta, Georgia 30303
Attention: Superintendent

And to:

Atlanta Independent School System
130 Trinity Avenue
Atlanta, Georgia 30303
Attention: General Counsel

If to Lessee:

City of Atlanta

With a copy to:



17. Environmental Provisions.

a. As used herein:

i. "Hazardous Substances" shall include, but not be limited to, flammable substances, explosives, radioactive materials, asbestos, polychlorinated biphenyls, chemicals known to cause cancer, reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous or toxic by Environmental Law.

ii. "Environmental Law" shall mean any law, ordinance, rule, order, decree, judgment, regulation and guideline (present and future), of any governmental, quasi-public authority and applicable board of insurance underwriters related to environmental conditions on, under, or about the Premises, or arising from Lessee's use or occupancy of the Premises, including, but not limited to, soil, air and ground water conditions, or governing the use, generation, storage, transportation, or disposal of Hazardous Substances in, on, at, to or from the Premises.

iii. "Hazardous Substances Discharge" shall mean any deposit, spill, discharge, or other release of Hazardous Substance that occurs during the Lease Term, at or from the Premises (unless caused solely by Lessor or its representatives, agents and employees), or that arises at any time from Lessee's use or occupancy of the Premises.

b. Lessee shall not cause or permit to occur: (a) any violation of any Environmental Law in the Premises or (b) the use, generation, release, manufacture, refining, production, processing, storage or disposal of any Hazardous Substance on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substance, except to the extent that such use (i) is reasonably necessary for the conduct of Lessee's business in accordance with industry standards for the industry in which Lessee operates and Lessee has so notified Lessor in writing before commencement of such use and (ii) complies with all applicable Environmental Laws and such further requirements as Lessor shall reasonably impose.

c. Lessee shall, at Lessee's expense, comply with all applicable Environmental Laws with respect to the Premises. Lessee shall, at Lessee's own expense, make all submissions to, provide all information required by and otherwise fully comply with all requirements of any governmental authority arising under Environmental Laws with respect to the Premises. If any governmental authority requires any clean-up or clean-up measures because of any Hazardous Substances Discharge with respect to the Premises, then Lessee shall, at Lessee's own expense, prepare and submit the required plans and all related bonds and other financial assurances and shall carry out all such clean-up plans. Lessee shall promptly provide Lessor with all information reasonably



requested by Lessor regarding Lessee's use, generation, storage, transportation or disposal of Hazardous Substances in, at, or about the Premises.

d. No goods, merchandise or material shall be kept, stored in or on the Premises, which are explosive. No alcoholic beverages shall be sold or used upon the Premises. Nothing shall be done on the Premises, other than as is provided for in this Lease, which will increase the rate of or suspend the insurance upon the Premises or other property of Lessor.

18. Sovereign Immunity. Notwithstanding anything in this Lease to the contrary, it is expressly understood, acknowledged and agreed by the parties that nothing contained in this Lease shall be intended to be a waiver in any respect whatsoever of Lessor's rights to assert (under any circumstances whatsoever), its claim of sovereign immunity from any liability or damages asserted against it by any natural person or entity created by law.

19. Additional Provisions.

a. This Lease shall create the relationship of landlord and tenant between the parties hereto; no estate shall pass out of Lessor. Lessee has only a usufruct, not subject to levy and sale, and not assignable by Lessee except by the written consent of Lessor.

b. Lessee agrees that all publicity emanating from Lessee in reference to the Premises contain information that the Premises is owned by the Atlanta Board of Education.

c. Time is of the essence with respect to the performance of every provision of this Lease.

d. Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and such other provisions shall remain in full force and effect.

e. No waiver by Lessor or Lessee of any provision of this Lease shall be deemed to be a waiver of any other provision hereof or of any subsequent breach by Lessee or Lessor of the same or any other provision. Lessor's consent to or approval of any act by Lessee shall not eliminate the necessity of obtaining of Lessor's consent to or approval of any subsequent act. No agreement to accept Lessee's surrender of the Premises shall be valid unless in writing and signed by Lessor.

f. This Lease contains the entire and integrated agreement of the parties with respect to the subject matter hereof and may be amended only by written instrument which is approved by both parties to this Lease. No representations or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

g. This Lease shall be governed by and construed in accordance with the laws of the State of Georgia.



h. It is understood and agreed by Lessor that this Lease shall not become binding upon Lessee and Lessee shall incur no liability upon the same until this Lease has been executed by the Mayor of Atlanta, sealed by the Municipal Clerk, approved as to form by the City Attorney or his/her designee and delivered to Lessor.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, the parties hereto have set their hands and seals the year and day first above written.

ATTEST

LESSEE:

CITY OF ATLANTA, a political subdivision of the State of Georgia

Municipal Clerk

(Seal)

APPROVED:

By:_____
Chief, Atlanta Fire Department

By:_____
Mayor, City of Atlanta

APPROVED AS TO FORM:

Assistant City Attorney

LESSOR:

THE ATLANTA INDEPENDENT SCHOOL SYSTEM

By:_____
Erroll B. Davis, Jr.
Superintendent

APPROVED AS TO FORM:

Attorney

RCS# 2190
7/16/12
6:20 PM

Atlanta City Council

12-R-0931

LEASE AGRMNT W/ATLANTA INDEPNDNT SCHOOL
LEASE OF 407 ASHWOOD AVE/AFD TRAINING
ADOPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 1
ABSENT 0

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	E Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

12-R-0931