

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CHICAGO, BY AND THROUGH
ITS DEPARTMENT OF PLANNING AND DEVELOPMENT,
AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO
REGARDING WILLIAM PENN ELEMENTARY SCHOOL

This Intergovernmental Agreement (this "Agreement") is effective as of the 6th day of February, 2015 (the "Effective Date") by and between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development (the "Department"), and the Board of Education of the City of Chicago (the "Board"), a body corporate and politic, organized under and existing pursuant to Article 34 of the School Code of the State of Illinois.

RECITALS

WHEREAS, pursuant to the provisions of an act to authorize the creation of public building commissions and to define their rights, powers and duties under the Public Building Commission Act (50 ILCS 20/1 et seq.), the City Council of the City (the "City Council") created the Public Building Commission of Chicago (the "Commission") to facilitate the acquisition and construction of public buildings and facilities; and

WHEREAS, the Commission owns in trust for the Board certain real property located at 1616 South Avers Avenue in Chicago, Illinois (the "Penn Property"); and

WHEREAS, the Board is rehabilitating or has rehabilitated an elementary school (the "Penn Facility") known as William Penn Elementary School on the Penn Property (the Penn Facility has those general features described in Exhibit 1 attached hereto and incorporated herein, and the rehabilitation of the Penn Facility shall be known as the "Penn Project"); and

WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, to induce certain redevelopment pursuant to the Act, the City Council adopted the following ordinances on May 17, 2000, published at pages 30775 through 30954 of the Journal of Proceedings of the City Council (the "Journal") for said date: "Approval of Tax Increment Redevelopment Plan for Midwest Redevelopment Project Area"; "Designation of Midwest Redevelopment Area as Tax Increment Financing District"; and "Adoption of Tax Increment Allocation Financing for Midwest Redevelopment Project Area" (the aforesaid Ordinances, as the same may have heretofore been or hereinafter may be amended, are collectively referred to herein as the "Midwest TIF Ordinances", the Redevelopment Plan approved by the Midwest TIF Ordinances is referred to herein as the "Midwest Redevelopment Plan" and the redevelopment project area created by the Midwest TIF Ordinances is referred to herein as the "Midwest Redevelopment Area"); and

WHEREAS, all of the Penn Property lies wholly within the boundaries of the Midwest Redevelopment Area; and

WHEREAS, under 65 ILCS 5/11-74.4-3(q)(7), such incremental ad valorem taxes, which pursuant to the Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment"), may be used to pay all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Midwest Redevelopment Area shall be known as the "Midwest Increment"); and

WHEREAS, the Board is a taxing district under the Act; and

WHEREAS, the Midwest Redevelopment Plan contemplates that tax increment financing assistance would be provided for public improvements, such as the Penn Project, within the boundaries of the Penn Redevelopment Area; and

WHEREAS, the City desires to use a portion of the Midwest Increment (the "Penn City Funds") for the Penn Project; and

WHEREAS, the City agrees to use the Penn City Funds in an amount not to exceed \$1,150,000 to reimburse the Board for a portion of the costs of the Penn TIF-Funded Improvements (as defined in Article Three, Section 3 below) for the Penn Project, pursuant to the terms and conditions of this Agreement; and

WHEREAS, in accordance with the Act, the Penn TIF-Funded Improvements shall include such of the Board's capital costs necessarily incurred or to be incurred in furtherance of the objectives of the Penn Redevelopment Plan, and the City has found that the Penn TIF-Funded Improvements consist of the cost of the Board's capital improvements for the Penn Facility that are necessary and directly result from the redevelopment project constituting the Penn Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-03(u) of the Act; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Article One: Incorporation of Recitals

The recitals set forth above are incorporated herein by reference and made a part hereof.

Article Two: The Penn Project

The Board covenants, represents and warrants that the plans and specifications for the Penn Project at a minimum meet the general requirements for the Penn Facility as set forth in Exhibit 1 hereof. The Board covenants, represents and warrants that it has complied and shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Board, all as may be in effect or as amended from time to time, pertaining to or affecting the Penn Project or the Board as related thereto. The Board shall include a certification of such compliance with each request for City Funds hereunder. The City shall be entitled to rely on this certification without further inquiry. Upon the City's request, the Board shall provide evidence satisfactory to the City of such compliance.

Article Three: Funding

1. Upon the execution hereof, the Board shall provide the Department with a Requisition Form, in the form of Exhibit 2 hereto, along with: (i) a cost itemization of the applicable portions of the budget attached as Exhibit 3 hereto; (ii) evidence of the expenditures upon Penn TIF-Funded Improvements for which the Board seeks reimbursement; and (iii) all other documentation described in Exhibit 2. Requisition for reimbursement of Penn TIF-Funded Improvements out of the Penn City Funds shall be made not more than four (4) times per year (or as otherwise permitted by the Department). The City shall disburse the Penn City Funds to the Board within fifteen (15) days after the City's approval of a Requisition Form. The Board will only request disbursement of City Funds and the City will only disburse City Funds for the costs of the Penn Project, to the extent that such costs are TIF-Funded Improvements.

2. The cost of the Penn Project is \$1,220,000. The Board has delivered to the Commissioner, and the Commissioner hereby approves, a detailed project budget for the Penn Project, attached hereto and incorporated herein as Exhibit 3. The Board agrees that the City will only contribute the Penn City Funds to the Penn Project and that all costs of completing the Penn Project over the Penn City Funds shall be the sole responsibility of the Board.

3. Attached as Exhibit 4 and incorporated herein is a list of capital improvements, land assembly costs, relocation costs and other costs, if any, recognized by the City as being eligible redevelopment project costs under the Act with respect to the Penn Project, to be paid for out of Penn City Funds ("Penn TIF-Funded Improvements"); and to the extent the Penn TIF-Funded Improvements are included as taxing district capital costs under the Act, the Board acknowledges that the Penn TIF-Funded Improvements are costs for capital improvements and the City acknowledges it has determined that these Penn TIF-Funded Improvements are necessary and directly result from the Midwest Redevelopment Plan. All Penn TIF-Funded Improvements shall (a) qualify as redevelopment project costs under the Act, (b) qualify as eligible costs under the Midwest Redevelopment Plan; and (c) be improvements that the Commissioner has agreed to pay for out of Midwest Increment, subject to the terms of this Agreement.

4. [intentionally omitted]

5. If requested by the City, the Board shall provide to the City reasonable access to its books and records relating to the Penn Project.

For purposes of this Article Three, Section 6, the following terms shall have the meanings ascribed hereto:

"Award Amount" means: the amount of the actual, final award that the Board receives from the Illinois Capital Development Board pursuant to the Illinois School Construction Law (5 ILCS 230/5-1).

"Base Amount" means: the amount calculated as 130% of \$114,914,131, as such amount is annually adjusted every January 31, beginning January 31, 2005, by the Consumer Price Index for All Urban Consumers for all items published by the United States Department of Labor for the preceding calendar year period.

"Excess Amount" means: the difference, if any, between the Award Amount and the Base Amount.

Commencing with the first State fiscal year (July 1-June 30) beginning after the execution of this Agreement and for each State fiscal year thereafter until and including State fiscal year 2024, the Board shall annually notify the City of (i) the Award Amount; (ii) the Base Amount; and (iii) the Excess Amount, if any.

To the extent the Excess Amount is a positive number, the Board shall provide the City with equivalent value (as determined in accordance with the next succeeding paragraph) to an amount that is equal to 50% of the Excess Amount.

After receipt by the City of the notice required under this Section 6 and if an Excess Amount exists in any particular fiscal year, the Board and the City shall determine, by mutual agreement, what the equivalent value should be, if any, and the City shall inform the Board whether it wishes to receive such value by (i) having the Board pay the City, for its application, as determined by the City, an amount equal to the Excess Amount, or (ii) applying a reduction or credit (equal to the Excess Amount), in whole or in part, to some future assistance that the City is providing to the Board through one or more tax increment financing agreements. The City and the Board shall cooperate to establish a mutually agreeable process under which the Board will provide the requisite equivalent value to the City. It is acknowledged between the Board and City that a similar undertaking of the Board may be contained in other agreements between the City and the Board

pursuant to which the City provides tax increment financing assistance for capital projects of the Board. Accordingly, the City shall have the sole and exclusive right to determine how to deal with the Excess Amount within the context of the several agreements that may be outstanding or contemplated from time to time that address the City's rights regarding any such Excess Amount.

7. During the Term hereof the Board shall not sell, transfer, convey, lease or otherwise dispose (or cause or permit the sale, transfer, conveyance, lease or other disposal) of all or any portion of (a) the Penn Property or any interest therein, or (b) the Penn Facility or any interest therein (each a "Transfer"), or otherwise effect or consent to a Transfer, without the prior written consent of the City. The City's consent to any Transfer may, in the City's sole discretion, be conditioned upon (among other things) whether such a Transfer would conflict with the statutory basis for the provision of the Penn City Funds hereunder pursuant to the Act. Subject to applicable law, the Board shall pay any proceeds of any Transfer to the City. Nothing contained in this Article Three, Section 7 shall be construed as prohibiting the Commission from holding title to the Penn Property or the Penn Facility for the benefit of the Board as may be permitted or required by law or the City from holding title to the Penn Property or the Penn Facility in trust for the use of schools as may be permitted or required by law.

Article Four: Term

The Term of the Agreement shall commence effective as of the Effective Date and shall expire on the date on which the Midwest Redevelopment Area is no longer in effect (through and including December 31, 2024).

Article Five: Indemnity; Default

1. The Board agrees to indemnify, defend and hold the City, its officers, officials, members, employees and agents harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, reasonable attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with (i) the Board's failure to comply with any of the terms, covenants and conditions contained within this Agreement, or (ii) the Board's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Penn Project.

2. The failure of the Board to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Board under this Agreement or any other agreement directly related to this Agreement shall constitute an "Event of Default" by the Board hereunder. Upon the occurrence of an Event of Default, the City may terminate this Agreement and any other agreement directly related to this Agreement, and may suspend disbursement of the City Increment Funds. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to injunctive relief or the specific performance of the agreements contained herein.

In the event the Board shall fail to perform a covenant which the Board is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Board has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those defaults which are not capable of being cured within such thirty (30) day period, the Board shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

3. The failure of the City to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the City under this Agreement or any other agreement directly related to this Agreement shall constitute an "Event of Default" by the City hereunder. Upon the occurrence of an Event of Default, the Board may terminate this Agreement and any other

agreement directly related to this Agreement. The Board may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure injunctive relief or the specific performance of the agreements contained herein.

In the event the City shall fail to perform a covenant which the City is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the City has failed to cure such default within thirty (30) days of its receipt of a written notice from the Board specifying the nature of the default; provided, however, with respect to those defaults which are not capable of being cured within such thirty (30) day period, the City shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

Article Six: Consent

Whenever the consent or approval of one or both parties to this Agreement is required hereunder, such consent or approval shall not be unreasonably withheld.

Notice to Board shall be addressed to:

Chief Financial Officer
Board of Education of the City of Chicago
42 West Madison Street, 2nd Floor
Chicago, Illinois 60602

and

General Counsel
Board of Education of the City of Chicago
One North Dearborn Street, 9th Floor
Chicago, Illinois 60602

Notice to the City shall be addressed to:

Commissioner
City of Chicago
Department of Planning and Development
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602

and

Corporation Counsel
City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance and Economic Development Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electric communications, whether by telex, telegram, or telecopy; (c) overnight courier; or (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b)

hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

Article Eight: Assignment; Binding Effect

This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

This Agreement shall inure to the benefit of and shall be binding upon the City, the Board and their respective successors and permitted assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the parties hereto and such successors and permitted assigns.

Article Nine: Modification

This Agreement may not be altered, modified or amended except by written instrument signed by all of the parties hereto.

Article Ten: Compliance With Laws

The parties hereto shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

Article Eleven: Governing Law And Severability

This Agreement shall be governed by the laws of the State of Illinois. If any provision of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. 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 hereof.

Article Twelve: Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

Article Thirteen: Entire Agreement

This Agreement constitutes the entire agreement between the parties.

Article Fourteen: Authority

Execution of this Agreement by the City is authorized by an ordinance passed by the City Council of the City on April 30, 2014. Execution of this Agreement by the Board is authorized by Board Resolution 01-0725-R52. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

Article Fifteen: Headings

The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

Article Sixteen: Disclaimer of Relationship

Nothing contained in this Agreement, nor any act of the City or the Board, shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City and the Board.

Article Seventeen: Construction of Words

The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

Article Eighteen: No Personal Liability

No officer, member, official, employee or agent of the City or the Board shall be individually or personally liable in connection with this Agreement.

Article Nineteen: Representatives

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement.

For the Board: Patricia L. Taylor, Chief Facility Officer
Board of Education of the City of Chicago
42 West Madison Street, 9th Floor
Chicago, Illinois 60602
Phone: 773-553-2900
Fax: 773-553-2912

For the City: Michelle Nolan, Coordinator of Economic Development
City of Chicago, Department of Planning and Development
121 North LaSalle Street, Room 1003
Chicago, Illinois 60602
Phone: 312-744-4477
Fax: 312-744-5892


Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, ILLINOIS, by and through the
Department of Planning and Development

By:



Commissioner
Department of Planning and Development


THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO

By:



President

Attest: By:



Secretary

Board Resolution No.: 01-0725-R52 - 33

Approved as to legal form:



James L. Bebley, General Counsel

EXHIBIT 1
FEATURES OF THE PENN FACILITY
(see attached)

FEATURES OF THE FACILITY

WILLIAM PENN ELEMENTARY SCHOOL INTERIOR IMPROVEMENTS

This project includes the costs associated with the planning, design, and constructions of a new science lab and dehumidification project to the existing William Penn Elementary School. The scope to provide dehumidification includes new concrete pads for the new chiller and new pumps, masonry enclosure for chiller, new air cooled chiller, and all required electrical connections for new chiller and auxiliaries.

The scope to convert an existing classroom to an elementary level 3 science lab includes upgrading all room finishes, new accessible door and hardware, new countertop and base cabinets, new sinks, demonstration table, emergency eye wash, new window shades, all required plumbing, and ADA compliance.

Penn Elementary School is a neighborhood school, located at 1616 S. Avers Avenue. The school enrollment is about 400 students with about 90% African American and 9% Hispanic. Approximately 99% of the student population is considered low income.

Penn offers a rigorous and relevant curriculum, before- and after-school programs, math and reading academic enrichment, mentoring with alumni partners from Cornell University, and a variety of social programs before and after school. The school enjoys partnerships with many organizations including Family Focus (21st Century), After School All Stars, and Cornell University.

The project is expected to be completed by September 2014.

EXHIBIT 2
REQUISITION FORM

State of Illinois)
) SS
County of Cook)

The affiant, _____, _____ of the Board of Education of the City of Chicago, a body corporate and politic (the "Board"), hereby certifies that with respect to that certain Intergovernmental Agreement between the Board and the City of Chicago dated _____, 2015 regarding Penn High School (the "Agreement"):

A. The following is a true and complete statement of all expenditures for the Penn Project to date:

TOTAL: \$ _____

B. This paragraph B sets forth and is a true and complete statement of all costs of Penn TIF-Funded Improvements for the Penn Project reimbursed by the City to date:

\$ _____

C. The Board requests reimbursement for the following cost of Penn TIF-Funded Improvements:

\$ _____

D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.

E. The Board hereby certifies to the City that, as of the date hereof:

1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and the Board is in compliance with all applicable covenants contained therein.

2. No Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default, exists or has occurred.

3. The Board is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, as well as all policies, programs and procedures of the Board, all as may be in effect or as amended from time to time, pertaining to or affecting the Penn Project or the Board as related thereto.

F. Attached hereto are: (1) a cost itemization of the applicable portions of the budget attached as Exhibit 3 to the Agreement; and (2) evidence of the expenditures upon TIF-Funded Improvements for which the Board hereby seeks reimbursement

All capitalized terms which are not defined herein have the meanings given such terms in the Agreement.

THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO, a body corporate and politic

By: _____
Name: _____
Title: _____

Subscribed and sworn before me this ____ day of _____, _____.

My commission expires: _____

Agreed and accepted:
CITY OF CHICAGO
DEPARTMENT OF PLANNING AND DEVELOPMENT

By: _____
Name: _____
Title: _____

EXHIBIT 3
PROJECT BUDGET
(see attached)

EXHIBIT G

**Project Budget
Penn Elementary School Improvements
2014-24911-SIP**

Task	Project Estimate
Design	\$80,000.00
Construction	\$1,000,000.00
Environ Remediation	\$30,000.00
Administration	\$65,000.00
FF&E	\$5,000.00
Contingencies	\$40,000.00
Total	\$1,220,000.00

EXHIBIT 4

PENN PROJECT TIF-FUNDED IMPROVEMENTS

(see attached)

EXHIBIT H

PROJECT TIF- FUNDED IMPROVEMENTS

Penn Elementary School Improvements

2014-24911-SIP

Task	Project Estimate
Design	\$80,000.00
Construction	\$1,000,000.00
Environ Remediation	\$30,000.00
Administration	\$0.00
FF&E	\$0.00
Contingencies	\$40,000.00
Total	\$1,150,000.00