

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CHICAGO, BY AND THROUGH
ITS DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT,
AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO
REGARDING DONOGHUE ELEMENTARY SCHOOL

3rd This Intergovernmental Agreement (this "Agreement") is made and entered into as of the day of APRIL, 2012 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 Housing and Economic 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 707 East 37th Street in Chicago, Illinois (the "Donoghue Property"); and

WHEREAS, the Board is rehabilitating an elementary school (the "Donoghue Facility") currently known as University of Chicago-Charter Donoghue Elementary School on the Donoghue Property (the Donoghue Facility has those general features described in Exhibit 1 attached hereto and incorporated herein, and the rehabilitation of the Donoghue Facility shall be known as the "Donoghue 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 November 6, 2002: "An Ordinance of the City of Chicago, Illinois Approving and Adopting a Tax Increment Redevelopment Project and Plan for the Madden/Wells Redevelopment Project Area" (published at pages 95464 through 95569 of the Journal of Proceedings of the City Council (the "Journal") for said date); "An Ordinance of the City of Chicago, Illinois Designating the Madden/Wells Redevelopment Project Area as a Tax Increment Financing District"; and "An Ordinance of the City of Chicago, Illinois Adopting Tax Increment Financing for the Madden/Wells 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 "Madden/Wells TIF Ordinances", the Redevelopment Plan approved by the Madden/Wells TIF Ordinances is referred to herein as the "Madden/Wells Redevelopment Plan" and the redevelopment project area created by the Madden/Wells TIF Ordinances is referred to herein as the "Madden/Wells Redevelopment Area"); and

WHEREAS, all of the Donoghue Property lies wholly within the boundaries of the Madden/Wells 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 Madden/Wells Redevelopment Area shall be known as the "Madden/Wells Increment"); and

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

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

WHEREAS, the City desires to use a portion of the Madden/Wells Increment (the "Donoghue City Funds") for the Donoghue Project; and

WHEREAS, the City agrees to use the Donoghue City Funds in an amount not to exceed \$200,000 for a portion of the costs of the Donoghue TIF-Funded Improvements (as defined in Article Three, Section 3 below) for the Donoghue Project, pursuant to the terms and conditions of this Agreement; and

WHEREAS, in accordance with the Act, the Donoghue 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 Madden/Wells Redevelopment Plan, and the City has found that the Donoghue TIF-Funded Improvements consist of the cost of the Board's capital improvements for the Donoghue Facility that are necessary and directly result from the redevelopment project constituting the Donoghue Project and, therefore, constitute "taxing districts' capital costs" as defined in Section 5/11-74.4-03(u) of the Act;

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 Donoghue Project

The Board covenants, represents and warrants that the plans and specifications for the Donoghue Project at a minimum meet the general requirements for the Donoghue 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 Donoghue 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 (a) the Board entering into a shared parking lot agreement with Oakwood Shores Terrace Associates Limited Partnership and Arches Retail Development, LLC regarding property depicted on Exhibit 5 hereto, and (b) the Commission on behalf of the Board conveying property depicted on Exhibit 5 hereto to the City, the Board shall be entitled to 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 Donoghue TIF-Funded Improvements for which the Board seeks disbursement; and (iii) all other documentation described in Exhibit 2. Requisition for disbursement of Donoghue TIF-Funded Improvements out of the Donoghue 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 Donoghue City Funds to the Board within 60 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 Donoghue Project, to the extent that such costs are TIF-Funded Improvements.

2. The cost of the Donoghue Project is \$350,000. The Board has delivered to the Commissioner, and the Commissioner hereby approves, a detailed project budget for the Donoghue Project, attached hereto and incorporated herein as Exhibit 3. The Board agrees that the City will only contribute the not to exceed \$200,000 Donoghue City Funds to the Donoghue Project and that all costs of completing the Donoghue Project over the not to exceed \$200,000 Donoghue 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 Donoghue Project, to be paid for out of Donoghue City Funds ("Donoghue TIF-Funded Improvements"); and to the extent the Donoghue TIF-Funded Improvements are included as taxing district capital costs under the Act, the Board acknowledges that the Donoghue TIF-Funded Improvements are costs for capital improvements and the City acknowledges it has determined that these Donoghue TIF-Funded Improvements are necessary and directly result from the Madden/Wells Redevelopment Plan. All Donoghue TIF-Funded Improvements shall (a) qualify as redevelopment project costs under the Act, (b) qualify as eligible costs under the Madden/Wells Redevelopment Plan ; and (c) be improvements that the Commissioner has agreed to pay for out of Madden/Wells 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 Donoghue Project.

6. [intentionally omitted]

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 Donoghue Property or any interest therein, or (b) the Donoghue 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 Donoghue City Funds hereunder pursuant to the Act. Nothing contained in this Article Three, Section 7 shall be construed as prohibiting the Commission from holding title to the Donoghue Property or the Donoghue Facility for the benefit of the Board as may be permitted or required by law or the City from holding title to the Donoghue Property or the Donoghue Facility in trust for the use of schools as may be permitted or required by law.

8. The Board's right to receive payments hereunder shall be subordinate to the now existing obligations of the City to be paid from Madden/Wells Increment.

9. The City, subject to the terms of this Section 9, may, until the earlier to occur of (1) the expiration of the Term of this Agreement or (2) the date that the City has paid directly or the Board has been reimbursed in the full amount of the City Funds under this Agreement, exclude up

to 95% of the Increment generated from the construction value of a new assisted development project and pledge that Increment to a developer on a basis superior to that of the Board. For purposes of this subsection, "a new assisted development project" shall not include any development project that is or will be exempt from the payment of ad valorem property taxes. Further, for purposes of this subsection, "Increment generated from the construction value of a new assisted development project" shall be the amount of Increment generated by the equalized assessed value ("EAV") of such affected parcels over and above the EAV of such affected parcels for the year immediately preceding the year in which the new assisted development project commences (the "Base Year"). Except for the foregoing, the Board shall retain its initial status relative to Madden/Wells Increment.

In the event that the City elects to avail itself of the provisions of this Section 9, it shall, at least seven (7) days prior to executing a binding commitment pledging the Increment described above, certify, in a letter to the Board, the affected parcels and the EAV thereof for the Base Year.

Article Four: Term

The Term of the Agreement shall commence on the date of its execution and shall expire on the date on which the Madden/Wells Redevelopment Area is no longer in effect (through and including December 31, 2026).

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 Donoghue 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.

Article Seven: Notice

Notice to Board shall be addressed to:

Chief Financial Officer
Board of Education of the City of Chicago
125 South Clark Street, 14th Floor
Chicago, Illinois 60603
FAX: (773) 553-2701

and

General Counsel
Board of Education of the City of Chicago
125 South Clark Street, 7th Floor
Chicago, Illinois 60603
FAX: (773) 553-1702

Notice to the City shall be addressed to:

Commissioner
City of Chicago
Department of Housing and Economic Development
121 North LaSalle Street, Room 1000
Chicago, Illinois 60602
FAX: (312) 744-2271

and

Corporation Counsel
City of Chicago
Department of Law
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attention: Finance and Economic Development Division
FAX: (312) 744-8538

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, telecopy or facsimile (FAX) machine; (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 counterparts, each of which shall be deemed an original.

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 November 2, 2011. Execution of this Agreement by the Board is authorized by Board Resolution 01-0725-RS2. 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.

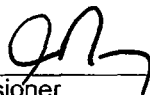
For the Board: Patricia L. Taylor, Chief Operating Officer
Board of Education of the City of Chicago
125 South Clark Street, 17th Floor
Chicago, Illinois 60603
Phone: 773-553-2900
Fax: 773-553-2912

For the City: Robert McKenna, Assistant Commissioner
City of Chicago
Department of Housing and Economic Development
121 North LaSalle Street, Room 1003
Chicago, Illinois 60602
Phone: 312-744-9463
Fax: 312-744-5892

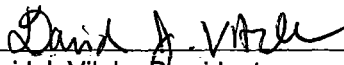

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

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 Housing and Economic Development

By: 
Commissioner
Department of Housing and Economic Development

THE BOARD OF EDUCATION
OF THE CITY OF CHICAGO

By: 
David J. Vitale, President 

Attest: By:  3/22/12
Estela G. Beltran, Secretary

Board Resolution 01-0725-RS2-23

Approved as to legal form:



General Counsel



EXHIBIT 1

FEATURES OF THE DONOGHUE FACILITY

Address: 707 East 37th St.

Project Description:

Donoghue School is a charter school for pre-k through 5th grade students in a CPS-owned facility. This project will provide exterior improvements including landscaping at the main entrance and around the school, wrought iron fencing, new marquee sign, new exterior doors, concrete repairs, play lot surface repairs, exterior lighting, exterior painting and a mural.

Capacity: The current enrollment is 342 students.

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 _____, 2012 regarding Donoghue Elementary School (the "Agreement"):

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

TOTAL: \$ _____

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

\$ _____

C. The Board requests disbursement for the following cost of Donoghue TIF-Funded Improvements:

\$ _____

D. None of the costs referenced in paragraph C above have been previously paid 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 Donoghue 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 disbursement

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 HOUSING AND ECONOMIC DEVELOPMENT

Name: _____
Title: _____

EXHIBIT 3
PROJECT BUDGET

<u>Task Description</u>	<u>Budget</u>
Landscaping	\$50,000
Fencing Replacement	\$75,000
New Marquee Signage	\$25,000
New Exterior Doors	\$30,000
Concrete Repairs to Steps and Sidewalks	\$20,000
Exterior Painting	\$30,000
Interior Finishes	\$50,000
Exterior Lighting	\$10,000
Façade artwork	\$10,000
Play area resurfacing	\$50,000
Total	<u>\$350,000</u>

EXHIBIT 4

DONOGHUE PROJECT TIF-FUNDED IMPROVEMENTS

<u>Task Description</u>	<u>Budget</u>
Landscaping	\$50,000
Fencing Replacement	\$75,000
New Marquee Signage	\$25,000
New Exterior Doors	\$30,000
Concrete Repairs to Steps and Sidewalks	\$20,000
Exterior Painting	\$30,000
Interior Finishes	\$50,000
Exterior Lighting	\$10,000
Façade artwork	\$10,000
Play area resurfacing	\$50,000
Total	<u>\$350,000</u>

EXHIBIT 5

SHARED PARKING LOT AGREEMENT PROPERTY
AND PROPERTY TO BE CONVEYED TO CITY

(see attached)

