City of Chicago

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Office of the City Clerk

Document Tracking Sheet

Meeting Date:	5/18/2016
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Expenditure of Open Space Impact Fee funds for Nettelhorst School active spaces project
Committee(s) Assignment:	Committee on Special Events, Cultural Affairs and Recreation

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OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL
MAYOR

May 18, 2016

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing an expenditure of Open Space Impact Fee Funds for the Chicago Public Schools.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City is authorized under its home rule powers to regulate the use and development of land; and

WHEREAS, it is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City; and

WHEREAS, on April 1,1998, the City Council adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"); and

WHEREAS, pursuant to the Open Space Ordinance, the Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds, each fund corresponding to the Community Area (as defined in the Open Space Ordinance), in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees: (i) be used for open space acquisition or capital improvements, or both, which provide a direct and material benefit to the new development from which the fees are collected, and (ii) be expended within the same or a contiguous Community Area from which they were collected after a legislative finding by the City Council that the expenditure of the Open Space Fees will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, the Department of Planning and Development (the "Department") has determined that the Fee-Paying Developments built in the Lake View Community Area have deepened the already significant deficit of open space in the Lake View Community Area, which deficit was documented in the comprehensive plan entitled "The City Space Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998; and

WHEREAS, the Board of Education of the City of Chicago, a body politic and corporate (the "Board"), has proposed the development of two active areas totaling .26 acres (the "Project") at the Nettelhorst School located at 3252 North Broadway in Chicago; and

WHEREAS, the Department wishes to make available to the Board proceeds from the Open Space Fees collected by DOF in an amount not to exceed $400,000 for the purpose of funding the Project which will provide open space and recreational facilities for the benefit of the residents of the Lake View Community Area; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be used for open space acquisition or capital improvements, or both, which provide a direct and material benefit to the new development from which the fees are collected; and

WHEREAS, the Department and the Board have agreed to enter into an intergovernmental agreement in substantially the form attached hereto as Exhibit A (the "Agreement") whereby the Department shall pay for or reimburse the Board for a portion of the Project costs; and

WHEREAS, the Board has agreed to use the proceeds from the Open Space Fees for capital improvements relating to the Project subject to the terms and conditions specified in the Agreement attached hereto as Exhibit A; and

WHEREAS, the Department has determined that the use of the Open Space Fees to assist with the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected in that the Open Space Fees used for the Project will come from the specific fund set up by DOF for the Lake View Community Area in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

WHEREAS, the Department has recommended that the City Council (i) approve the use of the Open Space Fees for the purposes set forth in this ordinance; (ii) make a finding that the expenditure of the Open Space Fees as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected; and (iii) authorize the Department to enter into the Agreement; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

SECTION 2. The City Council hereby finds that the expenditure of the Open Space Fees for the purpose of funding the Project will directly and materially benefit the residents of those Fee-Paying Developments from which the Open Space Fees were collected and approves the use of the Open Space Fees for the Project.

SECTION 3. The Commissioner of the Department (the "Commissioner") is hereby authorized to provide Open Space Fee proceeds to the Board in an amount not to exceed $400,000 from the corresponding fund to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Subject to the approval of the Corporation Counsel as to the form and legality, the Commissioner of the Department is authorized to execute and deliver the Agreement in substantially the form attached hereto as Exhibit A, and such other documents as are necessary, between the Department and the Board, which may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the Department.

SECTION 5. To the extent that any ordinance, resolution, rule, order or provision of the Code, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

SECTION 6. This ordinance shall take effect immediately upon its passage.

EXHIBIT A

See attached.

INTERGOVERNMENTAL COOPERATION AGREEMENT

(Nettelhorst School Active Spaces)

This Agreement (the "Agreement") is entered into as of ___day of _____, 2016, 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 politic and corporate.

RECITALS

WHEREAS, the Board wishes to develop, at the Nettelhorst School located at 3252 N. Broadway in Chicago (the "School"), which is commonly known and legally identified and described on Exhibit A hereto, two active areas totaling .26 acres (the "Project") as is more fully set forth herein; and

WHEREAS, on April 1, 1998, the City Council of the City (the "City Council") adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes collection of fees as a condition of issuance of a building permit for proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City (the "Open Space Fees"); and

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the Lake View Community Area (the "Community") and contiguous communities (the "Proceeds") and has deposited such Proceeds in the fund set up for the Community identified by CAPS Code PS06 131 54 5006 2604; and

WHEREAS, on _____, the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages _____, (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds to the Board in an amount not to exceed $400,000, which will provide open space and recreational facilities for the benefit of the residents of the Community Area; and

WHEREAS, under authority granted in Board Rule No. Sec. 7-15.d., the Board is authorized to enter into an agreement with the City for the development of the Project and implementation of the Project in accordance with the Project Description set forth on Exhibit B and to accept the Open Space Fees in an amount not to exceed $400,000 (the "Board Rule"); and

WHEREAS, it is anticipated that following completion of the Project, the Board will operate and maintain the Project as open space in accordance with this Agreement; and

WHEREAS, the City and Board have determined that it is in their best interest to enter into this Agreement pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth their objectives and respective duties and responsibilities and to describe the procedure and guidelines to be followed with respect to the Project; 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 agree as follows:

SECTION 1. INCORPORATION OF RECITALS.

The recitals set forth above, and the Exhibits attached hereto, constitute an integral part of this Agreement and are incorporated herein by this reference as agreements of the parties.

SECTION 2. DEFINITIONS

For all purposes of the Agreement, the following terms shall be defined as follows:

Authorized City Representative: The person designated by the City as its representative in participating in the planning, development and inspections related to the construction of the Project and to receive notices to the City given pursuant to this Agreement and otherwise as the City's representative implementing this Agreement. The City hereby designates Meg Gustafson as the Authorized City Representative.

Authorized Board Representative: The person or entity employed or retained by the Board to provide design, construction management, administration and coordination of services with respect to the Project. The Board hereby designates Mary DeRuntz as the Board Representative.

Budget: The amount determined by the parties as the estimated cost of completing the Project. For the purposes of this Agreement, the term "Budget" includes, as the case may be, the preliminary "Budget" and the final "Budget" for the Project as determined by the Department and the Board pursuant to the review procedures described in Section 3.2 and 3.3 hereof. A copy of the Preliminary Project Budget is attached hereto as Exhibit C.

Building Scope: The requirements of the Board and the City with respect to the nature, scope and extent of the Project including without limitation the size, type, function, dimensions, spatial relationships and materials to be used in the design and construction of the Project.

Contract: The contract which shall be entered into between the Board and the Contractor, including all of the contract documents as described therein, providing all labor, materials and other Work and services for the development, construction and improvement of the Project.

Contract Documents: The drawings, specifications and program requirements

(including civil, engineering, architectural, structural, mechanical, plumbing, fire protection and electrical drawings and technical specifications) to be prepared by the Board or its designee and approved by the Authorized Board Representative and the Authorized City Representative for compliance with the Building Scope and matters related to the Project.

Contractor: Any contractor that contracts with the Board or its duly authorized representative to perform services and/or provide Work in connection with the construction of the Project. For purposes of this Agreement, the term "Contractor" may include a general contractor, or other consultants or contractors engaged by the Board to complete the Project.

Final Acceptance: The date on which the Authorized Board Representative and the Authorized City Representative determine that all of the requirements of the Contract Documents have been completed and the Board is entitled to reimbursement for the Project pursuant to this Agreement.

Project: The design, development, construction and improvement of the School in accordance with the time schedule and plans set forth in this Agreement.

Punch List Work: Minor adjustments or deficiencies in the construction of the Project, as determined by the authorized City and Board representatives, which must be completed before Final Acceptance.

Schedule: The anticipated date on which the Project or portions thereof will be initiated and completed as set forth on Exhibit D.

Work: All labor, materials, equipment or other incidentals necessary or convenient to the successful completion of the Project and which are required by, incidental to or collateral to this Agreement.

SECTION 3. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT.

3.1 Project. The Board will administer, coordinate, implement and manage the Project on behalf of the City pursuant to the terms of this Agreement and the applicable provisions of the Municipal Code of the City.

3.2 Review of Project. The City and the Board by their designated representatives will review the scope of work required for the Project as well as the preliminary design documents and specifications for the Project. Such review shall include the cost estimates, assessments and/or remediation of environmental conditions, site preparation, demolition of existing buildings, footings and foundations, scheduling and any other factors that may affect the coordination or cost of the Project.

3.3. Implementation of Project. Upon completion of the review procedures described in Section 3.2 above, the Board shall determine the final Budget and the Schedule for the Project and the Board will commence implementation of the Project. Notwithstanding anything to the contrary contained in this Agreement, the City acknowledges that the Board is not contributing and shall have no obligation to contribute any funds to the Project.

3.4. Selection of General Contractor. The Board will retain contractors (the "Contractors") for the development and construction of the Project. Prior to the commencement of the Work relating to the development of the Project, the Contractors shall comply with the licensing, letter of credit, insurance and bonding and other requirements applicable under the Municipal Code of Chicago and applicable state law, including those applicable to the performance of work on public property and the construction of public improvements.

3.5. Contracts. The Board shall let the contracts for the construction of the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Board as related thereto. Upon the City's request, the Board shall provide evidence reasonably satisfactory to the City of such compliance.

3.6. Permits. At such time as the Board lets a contract or contracts for the Project, the Board, at the Board's expense, shall also provide the City with copies of all governmental licenses and permits required to develop and construct the Project and to use, occupy, operate and maintain the Project as a school from all appropriate governmental authorities, including, but not limited to, building permits, street and sidewalk closure permits, driveway permits and infrastructure permits and evidence that the School is appropriately zoned to be used, occupied and operated as a public facility.

3.7. Construction. The Board agrees to complete the demolition of existing structures, if any, on the School in accordance with applicable requirements of the City and any other compliance requirements and to construct the Project on the School in accordance with the construction documents and a landscape plan for the Project listed on Exhibit E (the "Drawings"), which have been approved by the Department and the Open Space Development Committee and which are incorporated herein by reference. The Drawings shall conform with the terms of this Agreement, and applicable federal, state and local laws, ordinances and regulations, including, without limitation, Illinois Prevailing Wage Act, the Chicago Human Rights Ordinance, EEO and affirmative action requirements, MBE/WBE participation, Chicago residency requirement, community hiring requirements, the Zoning Ordinance and the Landscape Ordinance of the Municipal Code of Chicago. In addition, the Drawings shall comply with any and all federal, state and local laws, rules and regulations with regard to accessibility standards for the physically disabled, including, without limitation, the Fair Housing Act, 42 U.S.C. 3601 et seq. (1990), the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq. (1990) and 47 U.S.C. 152, 221, 225 and 611 (1990), the Illinois Environmental Barriers Act, 410 ILCS 25/1 et seq. (1992), and the Illinois Accessibility Code, 71 Ill.Admin.Code ch. 1, such. B, sec. 400.100 et seq. (1988). No material deviation from the Drawings may be made without the prior written approval of the City which will not be unreasonably withheld.

3.8. Contractor's Insurance. In all contracts relating to the Project, the Board agrees to require its contractors to name the City as an additional insured on all insurance policies and to require its contractors to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses, including but not limited to attorney's fees, arising out of or resulting from the construction of the Project by its contractors or contractors' suppliers, employees or agents.

3.9. Inspection and Oversight. The Board agrees to carefully inspect the School prior to commencement of any activity on the School with regard to construction of the Project to

ensure that such activity with regard to the construction of the Project shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Board shall be solely responsible for the safety and protection of the public with regard to the construction of the Project. The City reserves the right, but shall have no obligation, to inspect the work being done on the School.

3.10. Title Commitment and Insurance. The Board shall be responsible for obtaining, at the Board's expense, any title commitment or title policy with respect to the School that it deems necessary.

3.11. Survey. The Board shall be responsible for obtaining at the Board's expense any survey of the School that it deems necessary.

3.12. Development Budget for the Project. The Board has prepared the budget describing the various hard and soft construction costs relating to the development of the Project set forth on Exhibit C (the "Preliminary Project Budget") which has been approved by the Department. Any cost decreases or increases in excess of five percent (5%) of the aggregate budget amount must be approved by the Department. The Board has prepared the preliminary schedule for the development and construction of the Project set forth in Exhibit D ("Schedule"), which has been approved by the Department. No material deviation from the Schedule shall be made without the prior approval of the Department, subject to the permitted delay provisions of Section 13.2 of this Agreement.

3.13. Reports. The Board shall provide the City with monthly reports on the progress of the Project and reasonable access to its books and records relating to the Project.

3.14. No Liens. The Board agrees to keep the School free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Board.

SECTION 4. FUNDING

Disbursement of City Funds. Upon the substantial completion of the Project (as evidenced by the issuance of the Certificate as described in Section 7), the Board and General Contractor shall provide the City with appropriate owner and general contractor sworn statements, a general waiver of lien from the general contractor and Board and partial waivers or releases of lien from subcontractors, if available. Upon the final completion of the Project, the Board shall deliver to the City a sworn statement from the Board and the general contractor, a general waiver of lien from the Board and the general contractor, and final waivers or releases of lien from each and every subcontractor undertaking work relating to the Project. In addition, the Board shall deliver to the City copies of any manufacturer's or other warranties provided by material suppliers or from subcontractors, with the originals of such materials being delivered to the Board. The City shall disburse the City Funds within 90 days of Final Acceptance.

SECTION 5. LIMITED APPLICABILITY.

Approvals. The approval of the Drawings by the Department are for the purposes of this Agreement only and do not constitute the approval required by the City's Department of

Buildings, or any other City department; nor does the approval by the Department pursuant to this Agreement constitute an approval of the quality, structural soundness or the safety of the Project. The approval given by the Department shall be only for the benefit of the Board.

SECTION 6. COMMENCEMENT AND COMPLETION OF THE PROJECT.

Reserved.

SECTION 7. CERTIFICATE OF COMPLETION.

Certificate of Completion; Inspection. Upon completion of construction of the Project in accordance with the Drawings, the City, upon written request by the Board, shall furnish the Board with a certificate of completion ("Certificate") evidencing that Board has satisfactorily completed the Project. The Certificate shall not constitute evidence that the Board has complied with any applicable provisions of federal, state and local laws, ordinances and regulations with regard to the completion of the Project, nor shall it serve as any "guaranty" of the structural soundness or quality of the construction of any improvements in the Project.

Upon written request by the Board for the Certificate, the Department shall promptly undertake an inspection of the Project and thereafter provide Board either with the Certificate or a written statement indicating what measures or acts will be necessary, in the reasonable opinion of the City, for the Board to perform in order to obtain the Certificate. The Board shall promptly, but in all events within sixty (60) days, correct any such nonconformity or default, subject to permitted delays or such additional cure period as the Department may consent to, in its sole discretion. Upon compliance with the City's requirements, the Board shall resubmit a written request for a Certificate from the City.

SECTION 8. CONTINUING OBLIGATIONS OF THE BOARD AND THE SCHOOL.

Maintenance and Use. After the issuance of the Certificate by the City, the Board shall comply, and cause the School to comply, as applicable, with the covenants set forth in this Section 8, and the other provisions of this Agreement applicable to the continuing maintenance and use of the Project.

8.1. Maintenance of the Project.

On-Going Maintenance of the Project. The Board shall cause the School to: (a) maintain, repair and, if required, replace the resilient acrylic surfacing; (b) provide light bulb replacement for all light fixtures located at the Project; (c) provide trash pickup and disposal services at the Project; and (d) remove snow and arrange for the removal of leaves, litter, debris and other waste materials at the Project.

8.2. Use of the Project

(a) Generally. The Project shall be utilized as open space for use by the public for and on behalf of the City. The School shall not restrict access to the Project by the public during the hours of operation of the Project, as set forth below, and furthermore, shall not discriminate based upon race, color, religion, sex, national origin or ancestry, military status, sexual orientation, source of income, age, or handicap, in the use of the Project by the public. The hours of operation of the Project shall be during regular School hours and additional hours if the school is open late. The School shall post a sign at the School informing the public of the hours the Project is open. In addition, the Project may also be used by appointment by community groups and others on the weekends and when the School is not open with prior written approval from the School principal. All expenses associated with the use of the Project when the School is not open shall be at the cost of the School. The School shall not store any toxic or hazardous materials at the Project in a manner in violation of any applicable law. Other than set forth in the Drawings, no structures or improvements are to be constructed on the Project by the Board without the prior written approval of the Department, which shall not be unreasonably withheld.

(b) No Rights of Use for Private Purposes Conferred. This Agreement does not confer any special rights upon the Board or any other person or entity to use the Project for private parties or events. The use of alcohol in the Project by any person or entity is strictly prohibited.

(c) Notice to the City. The Board agrees to notify the City in writing of any injury to persons or property relating to the construction of the Project within seven (7) days of the date that the Board becomes aware of such injury, and in the instance of an emergency, to notify the City immediately by telephone and facsimile notice by contacting the Authorized Representative, Department of Planning and Development, City of Chicago, Room 1000, 121 N. LaSalle Street, Chicago, Illinois 60602, or such other person as the City shall designate to the Board in writing. Furthermore, the Board agrees to notify the City immediately in the method described in this paragraph in the event that it learns that the Project is being utilized by any of the public in violation of the open space requirement for the Project, including, without limitation, (a) any unauthorized events occurring at the Project, including, without limitation, private parties; or (b) the occurrence of any illegal activity at the Project. Notwithstanding anything to the contrary contained in this paragraph, the Board shall not be responsible for policing or providing any private security for the use of the Project. Failure to notify the City (as provided for herein) shall not give rise to a claim for damages by the City against the Board.

(d) Injury to Persons and Property; Insurance and Indemnity. The City acknowledges that the Board is self-insured up to $3,000,000 for general liability insurance; furthermore, the Board agrees to indemnify, defend and hold the City, its officers and employees, 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 (excepting that caused by the negligence or misconduct of the City) arising from or in connection with the Board's negligence in: (a) developing the Project, including, without limitation, the failure of the Board or any contractor to pay contractors, subcontractors or material suppliers in connection with the construction of the Project; or (b) the failure of the Board to perform its obligations under this Agreement to maintain the Project for so long as the Board is the beneficial owner and controls the School and the School continues to operate as a Chicago Public School. This indemnification shall survive any termination of this Agreement.

(e) Permits. The Board shall apply for and maintain any and all governmental permits and approvals relating to the ongoing operation and maintenance of the Project.

SECTION 9. CITY'S POST-CERTIFICATE OBLIGATIONS.

After the issuance of the Certificate by the City, the City shall be obligated with regard to the following:

9.1. Insurance and Indemnity. The City acknowledges to the Board that it is self-insured and furthermore agrees to indemnify, defend and hold the Board harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, attorneys' fees and court costs suffered or incurred by the Board (excepting the contractor's liability or caused by the negligence or misconduct of Board) arising from or in connection with the use and operation of the Project. This indemnification shall survive any termination of this Agreement. Notwithstanding anything to the contrary, in the event that the City assigns its rights under this Agreement as provided for herein, the assignee shall be required to obtain and keep in force and effect a Comprehensive Commercial General Liability Insurance policy insuring against claims for personal injury, death or property damage occurring in, on or about the Project arising out of the ownership, maintenance, operation or use of the Project by the City or any of its employees in an amount not less than $3,000,000 per occurrence and $3,000,000 general aggregate. The Board shall be named as an additional insured on such policy as its interest may appear.

9.2. Utilities. The City shall be liable to provide utility service (e.g. electrical, water and sewer) to the Project.

9.3. Discretionary Maintenance By City. The City may elect, at the City's cost and expense, to install and remove holiday lighting and seasonal decor, to make the Project available for neighborhood festivals and street fairs, and to otherwise schedule events at and license the use of the Project for limited, short term purposes. In the event such short term uses are planned, the City shall give the School and the Board courtesy notice of such events.

SECTION 10. ENVIRONMENTAL MATTERS.

Environmental Responsibilities. It shall be the responsibility of the Board to investigate and determine the soil and environmental condition of the School. The City makes

no covenant, representation or warranty as to the environmental condition of the School or the suitability of the School as a Project or for any use whatsoever.

SECTION 11. RESERVED.

SECTION 12. TERM OF THE AGREEMENT.

Term: The term of the Agreement shall commence as of the date hereof and, unless otherwise terminated by the City in writing, shall continue for so long as the Board is the beneficial owner and controls the School and the School continues to operate as a Chicago Public School.

SECTION 13. PERFORMANCE, EVALUATION AND BREACH; REMEDIES.

13.1 Time of the Essence. Time is of the essence in the parties' performance of their obligations under this Agreement. Should any date fall on a weekend or holiday, the deadline for compliance shall not occur until the next regular business day.

13.2 Permitted Delays. The Board shall not be in breach of its obligation to construct the Project in the event of a delay in the performance of such obligations due to unforeseeable causes beyond the Board's control and without the Board's fault or negligence, including but not limited to, delays or halts in construction of the Project which are compelled by court order, acts of God, acts of the public enemy, acts of the United States government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, embargoes, inability to obtain certain necessary materials and unusually severe weather or delays of subcontractors due to such cause. The time for the performance of the obligations shall be extended only for the period of the delay if the Board requests it in writing of the City within twenty (20) days after the beginning of any such delay.

13.3 Breach. Except as otherwise provided in this Agreement, in the event of a default by either party in the performance of its obligations under this Agreement, the defaulting party, upon written notice from the other, shall cure or remedy the default not later than sixty (60) days after receipt of such notice. If the default is not capable of being cured within the sixty (60) day period but the defaulting party has commenced action to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in the time period provided for herein, the aggrieved party may institute such proceedings at law or in equity as may be necessary or desirable in its sole discretion to cure and remedy the default, including but not limited to, proceedings to compel specific performance.

For purposes of this Agreement, the occurrence of any one or more of the following shall constitute an "event of default":

1. If either party fails to perform, keep or observe any of the material covenants, conditions, promises, agreements or obligations required

under this Agreement; or

2. If either party makes or furnishes a warranty, representation, statement or certification to the other party which is not true and correct in any material respect; or

3. Subject to the permitted delays referenced above, the Board abandons or substantially suspends the construction of the Project, and such abandonment or suspension is not cured, ended, or remedied within sixty (60) days of the date the Board receives written demand by the City to cure such default; or

4. The Board suffers or permits any levy or attachment, material suppliers' or mechanics' lien, or any other lien or encumbrance unauthorized by this Agreement to attach to the Project; or

5. The Board fails to comply, or cause the School to comply, with the maintenance and other obligations regarding the Project described in Section 8; or

6. Either party fails to comply with the terms of any other written agreement entered into with the other party relating to the Project.

13.4 Waiver and Estoppel. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive the delaying party of or limit such rights in any way. No waiver made by either party with respect to any specific default by the other party shall be construed, considered or treated as a waiver of the rights of the waiving party with respect to any other defaults of the other party.

13.5. Access to the School. So long as the City holds title to the School and throughout the Term of this Agreement, any duly authorized representative of the City shall have access to the Project at all reasonable times for the purpose of confirming the Board's compliance with its obligations under this Agreement.

13.6. City's Right to Inspect Records. The Board agrees that the City shall have the right and authority to review and audit, from time to time, the Board books and records solely relating to the Project, including, without limitation, general contractor's sworn statements, the contract with the General Contractor and subcontracts, purchase orders, waivers of lien, paid receipts and invoices. All such books, records and other documents shall be available at the offices of the Board for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Department upon prior reasonable notice to the Board and at the Department's sole cost and expense.

13.7. Evaluation. Upon written request by the City, but not more frequently than once on an annual basis, the Board shall submit to the City a written report describing the maintenance of the Project and all costs attendant thereto. Thereafter, at the City's request, representatives of the City and of the Board shall meet and address any issues and concerns. Should the City reasonably determine, as a result of the review of the report and the site visit,

that the Board is not complying with the terms and provisions of this Agreement, the parties agree that: (i) the City shall deliver a notice of default as provided for in this Section and the Board shall thereafter have an opportunity to cure (as provided for in this Section 13); or (ii) in the alternative, the City, by written notice to the Board, may terminate this Agreement.

13.8. Enforcement and Remedies. The parties hereto shall have such remedies as may be available at law or in equity for a breach of this Agreement. Such equitable remedies shall include, without limitation, the right to bring a mandamus action and specific performance.

SECTION 14. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

Conflict of Interest: The Board warrants that no agent, official, or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is directly or indirectly interested. No agent, official, or employee of either party shall be personally liable to the other party or any successor in interest in the event of any default or breach by the defaulting party or for any amount which may become due to the other party or successor or on any obligation under the terms of this Agreement.

SECTION 15. BARRICADES, SIGNS AND PUBLIC RELATIONS.

Barricades, Signs, and Public Relations; City Approval. Prior to the commencement of any demolition or construction activity requiring barricades, the Board shall install a barricade of a type and appearance reasonably satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. The City shall retain the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

At the request of the City, the Board shall erect a sign of size and style approved by the Department in a conspicuous location at the Project during the construction of the Project, indicating that the undertaking of the Project is in accordance with City objectives. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Board and the Project in the City's promotional literature and communications. Until the expiration of the Term of the Agreement, the Department shall have the right to approve any changes in signage that are inconsistent with the original signage approved for the Project.

SECTION 16. RESERVED.

SECTION 17. GENERAL PROVISIONS.

17.1 Headings. The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending, or affecting in any way the express terms and provisions thereof.

17.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

17.3. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces completely any prior agreements between the parties with respect to the subject matter hereof. This Agreement may not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

17.4. Severability.

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

17.5. Intentionally Deleted.

17.6. Authority. Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the Board is authorized by the Board Rule. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

17.7. Compliance with Laws. The parties agree to comply with all federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

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

17.9. Construction of Words. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

17.10. Counterparts. This Agreement may be executed in counterparts and by different parties in separate counterparts, with the same effect as if all parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

17.11. Exhibits. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

17.12. Further Assurances. The parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

17.13. Intentionally Deleted.

17.14. Integration. This Agreement contains the entire agreement between the parties.

17.15. Modification. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

17.16. Notice Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, or by fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City:	City of Chicago Department of Planning and Development Attention: Commissioner City Hall, Room 1000 121 N. La Salle Street Chicago, Illinois 60602 [(312) 744-2271 (Fax)]
With copies to:	City of Chicago Department of Law Attention: Finance and Economic Development Division City Hall, Room 600 121 N. La Salle Street Chicago, Illinois 60602 (312) 744-0200 (312) 744-8538 (Fax)
To the Board:	Board of Education of the City of Chicago Department of Facilities 42 West Madison Street, 2nd Floor Chicago, Illinois 60602 Attn: Chief Facilities Officer (or if none, Chief Administrative Officer) (773) 553-2900 (773) 553-2951 (Fax)
With copies to:	Board of Education of the City of Chicago Attn: General Counsel 1 North Dearborn Street, Suite 900 Chicago, Illinois 60602 (773) 553-1700 (773) 553-1701 (Fax)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any

notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

17.17. **Parties' Interest / No Third Party Beneficiaries**. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor shall any act of the City or the Board 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 or the Board. This Agreement may not be assigned by either party without the prior written consent of the other party, which shall not be unreasonably withheld.

17.18. **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 City:

Meg Gustafson
City of Chicago
Department of Planning and Development
City Hall, Room 1001
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-0524
(312) 742-8548 (Fax)

For the Board:

Mary DeRuntz
Chief of Capital Improvement Program
Department of Facilities
Board of Education of the City of Chicago
42 W. Madison Street, 2nd Floor
Chicago, Illinois 60602
(773) 553-3119
(773) 553-2951

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.

17.19. **Inspector General.** Under the provisions of 105 ILCS 5/34-13.1, the Inspector General of the Board has the authority to conduct certain investigations. The contractors used by the Board in connection with the Project shall give the Inspector General access to all information and personnel necessary to conduct its investigations.

17.20. **Conflicts of Interest**. This Agreement is not legally binding on the Board if

entered into in violation of the provisions of 105 ILCS 5/34-21.3, which restricts the employment of, or the letting of contracts to, former Board members during the one (1) year period following expiration or other termination of their terms of office.

17.21. Indebtedness. The parties agree to comply with the Board's Indebtedness Policy (96-0626-PO3) adopted June 26, 1996, as may be further amended from time to time, which is hereby incorporated by reference as if fully set forth herein.

17.22. Non-Appropriation. Expenditures not appropriated in the Board's current fiscal year budget are deemed to be contingent liabilities only and are subject to appropriation in later fiscal year budgets. If sufficient funds are not appropriated in any fiscal year for performance under this Agreement or any contract documents, the Board shall notify the Department and this Agreement and any contract documents shall terminate on the last day of the fiscal period for which funds were appropriated or when appropriated funds are exhausted, whichever occurs first.

17.23. Time. Time is of the essence in the performance of this Agreement.

17.24. Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

[The remainder of this page is intentionally blank.
Signatures appear on the following page.]

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, a municipal corporation

By:_____
David L. Reifman
Commissioner
Department of Planning and Development

THE BOARD OF EDUCATION OF THE CITY OF CHICAGO

By:_____
Ronald DeNard
Senior Vice-President of Finance

Board Rule No. Sec. 7-15.d.

Approved as to legal form:

_____
Ronald Marmer, General Counsel

Table of Exhibits:

Exhibit A: Legal Description of the School

Exhibit B: Project Description

Exhibit C: Preliminary Budget

Exhibit D: Schedule

Exhibit E: Drawings

EXHIBIT A

LEGAL DESCRIPTION OF THE SCHOOL

Address: 3252 N. Broadway
Chicago, Illinois 60657

PINs: 14-21-311-029, 14-21-311-030, 14-21-311-056

Parcel 1:

South 89.76 ft. of the North 122.76 ft. of the East 321.43 ft. of Lot 30, in Pine Grove, in Fractional Section 21, Township 40 North, Range 14 East of the Third Principal Meridian; Also

Parcel 2:

East 33 feet of Subdivision lot 1 in Gehrke & Bruckman's Subdivision of the West part of the North 122.76 ft. of Lot 30 in Pine Grove, aforesaid; Also

Parcel 3:

Lots 1 to 5 of Peter's Resubdivision of Sub Lots 1 to 5 of H.M. Peter's Subdivision of part of Lot 30 in Pine Grove, aforesaid; Also

Parcel 4:

Sub Lots 6 to 14 in H.M. Peter's Subdivision of part of Lot 30, in Pine Grove, being a Subdivision of Fractional Section 21, Township 40 North, Range 14 East of the Third Principal Meridian in Cook County, Illinois

EXHIBIT B

PROJECT DESCRIPTION

See architectural drawing attached.

This project at Nettelhorst Elementary School converts some of the school's paved area into new active spaces for the students. The overall project provides two active areas on the east and west sides of the school and an artificial turf field. The East and West Active areas will have the existing surfaces removed, the aggregate base material stabilized, and HMA surfacing installed. Court markings (i.e. soccer, tennis, volleyball, basketball) will be added as determined by the school.

The artificial turf field will include removal of the pavement, installation of drainage infrastructure and concrete containment curbs, aggregate base material for field and storm water management, synthetic turf with field markings, and protective fencing.

The proposed scope creates interesting active and passive spaces as well as useful and modern recreational opportunities for the entire community.

EXHIBIT C

PRELIMINARY BUDGET

Nettelhorst School Active Spaces

2016-31281-NCP

Task	Project Estimate
Design	$ 32,200
Construction	322,000
Environ Remediation	10,000
Administration	20,930
FF&E	0
Contingencies	9,870
Total	**$395,000**

EXHIBIT D

SCHEDULE

Task	Start Date	End Date
Design Completed	May 2, 2016	June 1, 2016
Out to Bid	*June 15, 2016*	*July 8, 2016*
Construction	August 1, 2016	October 1, 2016
Close Out	October 1, 2016	December 31, 2016

EXHIBIT E

DRAWINGS

[TO BE ATTACHED AT CLOSING]