



# City of Chicago



O2013-7627

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	10/16/2013
<b>Sponsor(s):</b>	Emanuel (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Intergovernmental agreement with Tax Increment Financing (TIF) assistance for Lindblom Math and Science Academy
<b>Committee(s) Assignment:</b>	Committee on Finance



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

October 16, 2013

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

Ladies and Gentlemen:

At the request of the Public Building Commission, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement for TIF assistance for Lindblom Math and Science Academy.

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 local government under the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into contractual agreements with units of local government for the purpose of achieving the aforesaid objectives; and

WHEREAS, on March 18, 1956, the City Council of the City (the "City Council") created the Public Building Commission of Chicago (the "Commission"), an Illinois municipal corporation, pursuant to the Public Building Commission Act of the State of Illinois (the "Act") for the purpose of facilitating the funding, acquiring and constructing of public buildings, improvements and facilities for use by local public agencies in the furnishing of essential governmental services; and

WHEREAS, the Commission is authorized and empowered by the Act to acquire fee simple title to real property, including easements and reversionary interests in streets, alleys and other public places, by purchase or the exercise of eminent domain, for public improvements in an area or areas that have been selected, located and approved by the governing bodies of the City and the Commission; and

WHEREAS, the Commission has heretofore undertaken the acquisition, construction, alteration, repair, renovation, rehabilitation and equipping of buildings and facilities for use by various public bodies including the City, the Board of Education of the City of Chicago (the "Board"), the Chicago Park District, and the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois; and

WHEREAS, at the request of the City, acting through the Department of Housing and Economic Development ("DHED"), the Commission by resolution number 7964 adopted on September 10, 2013 (the "Site Designation Resolution"), selected, located and designated

several properties from 6100 through 6158 South Winchester Avenue (the "Site") for acquisition and construction (including the development of the scope, schedule, budget and conceptual design drawings) of a parking facility and ancillary improvements to serve the Board's Lindblom Math and Science Academy (the "Project"); and

WHEREAS, pursuant to the Site Designation Resolution the Commission has agreed to initiate the formulation phase for planning and pre-development services for the Project; and

WHEREAS, it is contemplated by the City and the Commission that the Commission will provide development services, including the design and construction of the Project, pursuant to a written undertaking request, which will be signed on behalf of the City by the Commissioner of DHED and the Budget Director and approved by the Board of the Commission (the "PBC Board"); and

WHEREAS, pursuant to Section 14 of the Act, the Site Designation Resolution must be approved by the City Council as the site to be acquired for the construction of the Project; and

WHEREAS, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/1-74.4-1 *et seq.*, as amended from time to time (the "TIF 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 TIF Act, in accordance with the provisions of the TIF Act, pursuant to ordinances adopted on March 29, 2006, the City Council: (1) approved and adopted a redevelopment plan for the 63rd/Ashland Redevelopment Project Area ("Redevelopment Plan"); (2) designated the 63rd/Ashland Redevelopment Project Area (the "Redevelopment Area") as a "redevelopment project area" pursuant to the Tax Increment Allocation Redevelopment Act; and (3) adopted tax increment allocation financing for the 63rd/Ashland Redevelopment Project Area (the "TIF Adoption Ordinance") (items(1)-(3) collectively referred to herein as the "TIF Ordinances"); and

WHEREAS, the Site lies wholly within the boundaries of the Redevelopment Area; and

WHEREAS, under the TIF Act, such incremental ad valorem taxes which pursuant to the TIF Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used, among other purposes, to pay the cost of public works and improvements as well as to acquire and construct public facilities, as contemplated in a redevelopment plan, and obligations relating thereto; and

WHEREAS, the City wishes to make available to the Commission a portion of the Increment from the Redevelopment Area in an amount not to exceed \$500,000 for the purpose of providing a portion of the funds required for the acquisition of the Site and the construction of the Project in the Redevelopment Area; and

WHEREAS, the Redevelopment Plan contemplates that tax increment financing assistance would be provided for the acquisition of real property for, and the construction thereon of public improvements, such as the Project, within the boundaries of the Redevelopment Area; and

WHEREAS, the City, acting primarily through DHED but also through the Office of Budget and Management, intends to participate actively with the Commission in the planning and implementation of the Project including, without limitation, review and approval of design elements and materials and review of the Project budget and schedule; and

WHEREAS, the City has determined that it is necessary, desirable and in the public interest to enter into an agreement with the Commission in substantially the form attached hereto as an exhibit (the "Agreement") pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth the City's and the Commission's respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project; now, therefore,

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

Section 1. The recitals of this ordinance are hereby incorporated into this text as if set out herein in full.

Section 2. The Commissioner of DHED (the "DHED Commissioner") and the Budget Director are each hereby authorized to execute, subject to the review of the Corporation Counsel as to form and legality, the Agreement and such other documents as are necessary, between the City and the Commission, which may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

Section 3. The DHED Commissioner and the Budget Director, and their respective designees, are each authorized to execute such additional documents, information, assurances and certifications and to take such additional actions in connection with the Project as may be necessary or required pursuant to the Agreement as contemplated therein.

Section 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall be controlling. 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 of the other provisions of this ordinance.

Section 5. This ordinance shall take effect upon its passage and approval.

EXHIBIT

INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF CHICAGO AND THE PUBLIC BUILDING COMMISSION OF CHICAGO  
(LINDBLOM MATH AND SCIENCE ACADEMY  
PARKING LOT PROJECT)

This Intergovernmental Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2013 is made by and between the City of Chicago, an Illinois municipal corporation, having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602 (the "City"), and the Public Building Commission of Chicago, an Illinois municipal corporation, having its offices at the Richard J. Daley Center, Room 200, Chicago, Illinois 60602 (the "Commission").

RECITALS

A. The City is a home rule unit of local government under the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into contractual agreements with units of local government for the purpose of achieving the aforesaid objectives.

B. On March 18, 1956, the City Council of the City (the "City Council") created the Commission pursuant to the Public Building Commission Act of the State of Illinois (the "Act") for the purpose of facilitating the funding, acquiring and constructing of public buildings, improvements and facilities for use by local public agencies in the furnishing of essential governmental services.

C. The Commission is authorized and empowered by the Act to acquire fee simple title to real property, including easements and reversionary interests in streets, alleys and other public places, by purchase or the exercise of eminent domain, for public improvements in an area or areas that have been selected, located and approved by the governing bodies of the City and the Commission.

D. The Commission has heretofore undertaken the acquisition, construction, alteration, repair, renovation, rehabilitation and equipping of buildings and facilities for use by various public bodies including the City, the Board of Education of the City of Chicago (the "Board"), the Chicago Park District, and the Board of Trustees of Community College District No. 508, County of Cook and State of Illinois.

E. At the request of the City, acting through the Department of Housing and Economic Development ("DHED"), the Commission by resolution number 7964 adopted on September 10, 2013 (the "Site Designation Resolution"), selected, located and designated several properties from 6100 through 6158 South Winchester Avenue (the "Site") for acquisition and construction (including the development of the scope, schedule, budget and conceptual design drawings) of a parking facility and ancillary improvements to serve the Board's Lindblom Math and Science Academy (the "Project")

F. Pursuant to the Site Designation Resolution the Commission has agreed to initiate the formulation phase for planning and pre-development services for the Project.

G. It is contemplated by the City and the Commission that the Commission will provide development services, including the design and construction of the Project, pursuant to a written undertaking request, which will be signed on behalf of the City by the Commissioner of DHED and the Budget Director and approved by the Board of the Commission (the "PBC Board").

H. Pursuant to Section 14 of the Act, the site designation resolution was approved by the City Council on \_\_\_\_\_, 2013 at pages [tbd] through [tbd] of the Journal of Proceedings as the site to be acquired for the construction of the Project.

I. The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/1-74.4-1 *et seq.*, as amended from time to time (the "TIF 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.



J. To induce certain redevelopment pursuant to the TIF Act, in accordance with the provisions of the TIF Act, pursuant to ordinances adopted on March 29, 2006, the City Council: (1) approved and adopted a redevelopment plan for the 63rd/Ashland Redevelopment Project Area ("Redevelopment Plan"); (2) designated the 63rd/Ashland Redevelopment Project Area as a "redevelopment project area" pursuant to the Tax Increment Allocation Redevelopment Act; and (3) adopted tax increment allocation financing for the 63rd/Ashland Redevelopment Project Area (the "TIF Adoption Ordinance") (items(1)-(3) collectively referred to herein as the "TIF Ordinances").

K. The Site lies wholly within the boundaries of the Redevelopment Area.

L. Under the TIF Act, such incremental ad valorem taxes which pursuant to the TIF Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used, among other purposes, to pay the cost of public works and improvements as well as to acquire and construct public facilities, as contemplated in a redevelopment plan, and obligations relating thereto.

M. The City wishes to make available to the Commission a portion of the Increment from the Redevelopment Area in an amount not to exceed \$500,000 for the purpose of providing a portion of the funds required for the acquisition of the Site and the construction of the Project in the Redevelopment Area to the extent and in the manner provided in this Agreement.

N. The Redevelopment Plan contemplates that tax increment financing assistance would be provided for the acquisition of real property for, and the construction thereon of public improvements, such as the Project, within the boundaries of the Redevelopment Area.

O. [intentionally omitted]

P. The City, acting primarily through DHED but also through the Office of Budget and Management, intends to participate actively with the Commission in the planning and implementation of the Project including, without limitation, the development of the Building

Program (as hereinafter defined), review and approval of design elements, materials and building systems, assistance with the preparation of the Budget and the Schedule (as hereinafter defined), and acceptance of the Project at Substantial Completion and Final Completion (as hereinafter defined).

Q. The parties have determined that it is necessary, desirable and in the public interest to enter into this Agreement pursuant to the Intergovernmental Cooperation Act of the State of Illinois in order to set forth their respective objectives, duties and responsibilities and to describe the procedures and guidelines to be followed with respect to the implementation of the Project.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

#### DEFINITIONS

For purposes of this Agreement, each of the following terms shall have the respective meaning assigned to it as follows:

Act: The Public Building Commission Act of the State of Illinois, 50 ILCS 20/1 *et seq.* (1994), as amended from time to time.

Architect of Record: The firm or entity employed by the Commission or its designee for the purpose of designing and observing the Work for compliance with the Contract Documents.

Authorized Commission Representative: The person or entity employed or retained by the Commission to provide planning, land acquisition, development, construction management, administration and/or coordination services for the Project.

Authorized DHED Representative: The Commissioner of DHED, including the duly designated representative thereof, who is designated as DHED's representative in the planning and implementation of the Project.

Budget: The budget for the planning, design, acquisition and construction of the Project as set forth on Exhibit B attached hereto. For purposes of this Agreement, the term "Budget"

includes, as the case may be and as agreed to by the Budget Director, the Authorized DHED Representative and the Commission, as a result of the review process more fully described in Section 2.2 hereof:

(a) Formulation Budget(s) that permit the Commission to perform Formulation Services as defined in this Definitions Section;

(b) Undertaking Budget that will permit the Commission to begin design, bidding and construction of the Project; and

(c) Revised Budget(s) as necessary to reflect bid results or changes in scope.

**Budget Director:** The Budget Director of the City, including the duly designated representative thereof, who is designated by the City to receive notices pursuant to this Agreement and otherwise act as the City's representative in implementing the financial requirements of this Agreement.

**Building Program:** The requirements specified by DHED with respect to the Project including, but not limited to the nature, scope and extent of the Project and facilities and the size, type, function, spatial relationships, and materials and building systems to be used in the design and construction of the Project.

**Certificate of Final Acceptance:** The certificate, substantially in the form attached hereto as Exhibit C2, which shall be delivered by the Commission to DHED to certify that a Certificate of Final Completion has been issued by the Architect of Record for the Project, that the Commission has verified that all punch list work has been completed, and that all deliverables, including but not limited to the items as provided in Section 10.6, have been transmitted to DHED along with final occupancy certifications issued by the authority having jurisdiction.

**Certificate of Occupancy:** The certificate issued by the authority having jurisdiction to certify that the Project has been sufficiently completed to be occupied and used for its intended purpose.

**Certificate of Substantial Completion:** The certificate issued by the Architect of Record to certify that the Project has been essentially completed except for Punch List Work, the City is able to occupy and use the Project for the purpose intended, and the Contractor has obtained and delivered to the Commission a "Certificate of Occupancy" issued by the authority that has jurisdiction.

**City:** The City of Chicago, an Illinois municipal corporation.

**City Council:** The City Council of the City.

**Commission:** The Public Building Commission of Chicago, an Illinois municipal corporation.

**Contract:** A contract, including all of the Contract Documents as described therein, between the Commission and a Contractor to perform services and/or provide labor, materials, equipment and other Work and facilities required for the completion of the Project. For purposes of this Agreement, the term "Contract" may include a professional services agreement, general construction contract, construction management contract or other form of agreement for Project-related activities.

**Contract Documents:** The drawings, specifications and program requirements (including, without limitation, civil, architectural, structural, mechanical, plumbing, fire protection and electrical drawings and technical specifications) developed by the Architect of Record for the construction of the Project as approved by the Authorized Commission Representative and the Authorized DHED Representative for compliance with the approved Building Program and all other documents attached to the Contract and/or incorporated by reference into the Contract.

**Contractor:** An individual or firm that contracts with the Commission to perform services and/or provide Work in connection with the Project in accordance with the Standard of Performance as provided in this Agreement. For purposes of this Agreement, the term "Contractor" may include a general or specialty contractor, subcontractor, design entity,

construction manager, environmental consultant or other consultants engaged by the Commission to implement the Project.

Corporation Counsel: The Corporation Counsel, including the duly designated representative thereof, of the City.

DHED: The Department of Housing and Economic Development of the City.

Executive Director: The Executive Director, including the duly designated representative thereof, of the Commission.

Final Completion: The last date on which all of the following events have occurred: the Commission in consultation with the Authorized DHED Representative, has determined that all Punch List Work and any other remaining Work have been completed in accordance with the Contract Documents; final inspections have been completed ; final occupancy certifications have been issued; all deliverables as provided in Section 10.6 hereof including, but not limited to, all warranties, , and as-built drawings, have been provided to the Commission and forwarded to DHED; any LEED Commissioning responsibilities required by the Contract Documents have been completed; and all contractual requirements for final payment to the Contractor have been completed.

Formulation Services: Formulation services refer to a range of planning and pre-development activities, including, without limitation, site selection, land acquisition, environmental testing, and concept design

IEPA: The Illinois Environmental Protection Agency.

Municipal Code: The Municipal Code of Chicago.

Notice of Substantial Completion: The certificate, substantially in the form attached hereto as Exhibit C1, which shall be delivered by the Commission to the Authorized DHED Representative along with a Certificate of Substantial Completion issued by the Architect of Record, a copy of the Punch List and a Certificate of Occupancy issued by the authority having jurisdiction.

PBC Board: The Board of Commissioners of the Public Building Commission of Chicago.

Project: As defined in the Recitals and Section II.

Project Account: An existing interest-bearing account of the Commission that will be used for purposes of depositing funds advanced by the City to pay the costs incurred by the Commission in implementing the Project as more fully described in Section 9.3 hereof.

Punch List or Punch List Work: Minor adjustments or repairs in the Work as determined by the Architect of Record that must be completed prior to Final Completion and Acceptance of the Work and the issuance of the Certificate of Final Completion. The Authorized Commission Representative and the

Authorized DHED Representative shall have the right of consult with the Architect of Record concerning the preparation and completion of the Punch List.

Schedule: The anticipated date or dates on which the Project or portions thereof shall be completed.

Site: The real estate parcel or area upon which the Project will be constructed as described on Exhibit A hereof.

Site Work: Any remediation of adverse environmental site conditions, demolition or other site development work in connection with the Project that may be undertaken by the Commission.

Standard of Performance. In addition to performing the Work in full compliance with the Contract Documents, the Contractor must perform, or cause to be performed, all Work required of it under the terms and conditions of the Contract with the degree of skill, care and diligence normally exercised by qualified and experienced contractors in performing work in a project of a scope and magnitude comparable to the Work.

Substantial Completion: The date on which the Architect of Record has issued a Certificate of Substantial Completion certifying that the Project has been essentially completed

in accordance with the Contract Documents except for Punch List Work that will not preclude the beneficial use and occupancy of the Project for the purpose intended. The date of Substantial Completion shall be the later of: (1) the date indicated in the Certificate of Substantial Completion used by the Architect of Record; or (2) the effective date of Certificate of Occupancy issued by the authority that has jurisdiction, ; provided, however, if the City rejects the Project as not being substantially complete in accordance with Section 10.4, the date of Substantial Completion will be the date upon which the Commission remedies any outstanding issues to the satisfaction of the City.

Work: Work means the obligations of the Contractor under the Contract Documents. Work includes, unless specifically excluded by the Contract Documents, the furnishing of all materials, labor, equipment, supplies, plant, tools, scaffolding, transportation, superintendence, permits, inspections, occupancy approvals, insurance, taxes and all other services, facilities and expenses necessary for the full performance and completion of the requirements of the Contract Documents. Work also means that which is furnished, produced, constructed, or built pursuant to the Contract Documents.

## SECTION I INCORPORATION OF RECITALS AND DEFINITIONS

The recitations and definitions set forth above constitute an integral part of the Agreement and are hereby incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

## SECTION II SCOPE OF PROJECT

2.1. Project. The Commission hereby agrees to provide administrative, technical, professional and legal services as required in order to acquire title in and to the Site as necessary to construct the Project, free and clear of encumbrances that would preclude the use and development of the Site for its intended purpose or the future conveyance thereof. Following acquisition of the Site or such portions thereof as may be necessary to construct the

Project, the Commission will coordinate and manage the planning, design and construction of the Project on behalf of the City. The Project will be undertaken by the Commission pursuant to the terms of this Agreement, the Act, the Contract Documents, the Municipal Code and all other applicable rules, regulations, statutes and ordinances.

2.2 Review of Project. The parties by their designated representatives will review the proposed design, scope of the Work, the preliminary Budget, land acquisition requirements, remediation of environmental conditions, site preparation work, zoning and any other factors that may affect the coordination or cost of the Project or the Schedule. Upon completion of such review procedures, the parties shall approve in writing the Building Program, the Conceptual Design, the Undertaking Budget and the Project Schedule in the form of the Undertaking Authorization for such Project. Following such approval, the Commission shall proceed with the design, bidding and construction of the Project in accordance with the terms of this Agreement. Subsequent to bidding, a Revised Budget shall be provided to the parties which shall reflect the Project cost after the competitive bidding process or as necessary to reflect any changes in scope after the Undertaking Budget; provided, however, as the Project is intended to be designed to not exceed the Project Budget, if the Revised Budget exceeds \$[500,000], the parties will work diligently to change the scope of work in order to not exceed the Project Budget.

### SECTION III RESPONSIBILITIES OF THE PARTIES

3.1 The Commission. In discharging its obligations to acquire the Site and construct the Project on behalf of the City, the Commission will conduct land acquisition activities (the "Acquisition Activities") and perform project planning, design oversight, construction administration and other project management services as may be needed to complete the Project. Specific responsibilities of the Commission with respect to the implementation of the Building Program include, but are not limited to, the following (which are not necessarily presented in sequential order):



3.1.1 Conduct negotiations with the owners of or person interested in the Site regarding the purchase of the Site, and prepare purchase contracts in the event of the voluntary sale of the Site;

3.1.2 In the event that negotiations to acquire fee simple title to the Site are not successful, prepare, file and prosecute complaints for condemnation and other pleadings in order to acquire the Site by the exercise of the power of eminent domain;

3.1.3 Execute all transactions to acquire fee simple title to the Site, whether by deed or judgment order, with the prior consent of the Corporation Counsel;

3.1.4 Negotiate with any public or quasi-public agencies or authorities having ownership or other interests in and to the Site in order to acquire any easements or reversionary interests necessary in order to develop the Site for the intended purpose;

3.1.5 Participate in such interaction, consultation, meetings and other activities with community organizations, public agencies, elected officials and other interested parties as may be necessary for the efficient conduct of the Acquisition Activities and construction of the Project;

3.1.6 Engage or cause to be engaged the services of such environmental consultants as may be necessary in order to prepare bid and construction documents, monitor the Site Work and perform other services as directed by the Commission;

3.1.7 Determine the amount of relocation assistance to be paid to persons or businesses displaced as a result of the acquisition of the Site in a manner consistent with the relocation policies of the Commission or the City and process applications for payment of such assistance;

3.1.8 Prepare, or cause to be prepared, and file real estate exemption complaints and undertake such action as may be necessary and appropriate in order to obtain the tax-exempt status of the Site;

3.1.9 Prepare or cause to be prepared the terms and conditions of the Contract, which shall be forwarded by the Commission to the Authorized DHED Representative for review and comment prior to the solicitation of bids and/or proposals for the Work upon request;

3.1.10 Solicit or cause to be solicited bids and/or proposals for the Contract and any other Work as may be required for the design and construction of the Project;

3.1.11 Engage the services of such architectural, engineering and other design and/or construction consultants as may be necessary for the completion of the Project;

3.1.12 Examine all documents submitted by the City or a Contractor and render decisions pertaining thereto with reasonable promptness in order to avoid delay in the completion of the Project;

3.1.13 Obtain such surveys, title information, environmental tests and other reports and documents as may be necessary or advisable in order to determine the condition of the Site and factors that may affect the cost of completion of the Project or the Schedule, and obtain approval of the environmental remediation plan, if required, from IEPA.

3.1.14 Determine the types and amounts of insurance and payment and performance bonds to be provided by the Contractor and the sufficiency of evidence that such coverages are in force as more fully described in Section 7.3 and Section 8.2 hereof;

3.1.15 Require and procure from the Contractor waivers for all liens or rights of lien for labor and materials furnished by or through it in the construction of the Project prior to processing interim and final pay requests as more fully described in Section 7.4 hereof;

3.1.16 Require, by appropriate provision in the Contract, that the Contractor indemnify, save and hold harmless the City and the Commission as more fully described in Section 8.1 hereof;

3.1.17 In consultation with the Authorized DHED Representative and the Budget Director, approve any and all changes to the Contract including increases or decreases in the scope of the Work of the Contractor and adjustments in the contract price occasioned thereby which do not result in an increase in the overall Budget for the Project;

3.1.18 Apply the funds deposited in the Project Account or otherwise paid by the City solely to obtain the full and faithful completion of the Project in accordance with the Budget unless otherwise authorized by the Budget Director;

3.1.19 Enforce the terms and conditions of the Contract and all other agreements pertaining to the Project, consistent with the requirements thereof;

3.1.20 Avail itself of the rights and remedies in the Contract and all other agreements pertaining to the Project, it being understood and agreed that the Work is under charge and care of the Commission to protect the best interests of the City; and

3.1.21 Provide for such additional services as may be requested in writing by the Budget Director or the Authorized DHED Representative with respect to the Project provided that sufficient funds are available to pay the costs of such services.

3.1.22 Enforce the Standard of Performance in all Work.

3.1.23 Upon request for assistance from DHED, serve as the primary point of contact with the Contractor to resolve any design, construction, or other Project-related issues during the Warranty Period.

3.1.24 Incorporate into each Contract the following representation and warranty:

"Neither the Contractor nor any affiliate of the Contractor is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other

list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph only, the term 'affiliate,' when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise."

3.2 The City. The Authorized DHED Representative and the Budget Director, in consultation with the Authorized Commission Representative, shall determine the nature and scope of the Project. The City shall pay all costs of implementing the Project as set forth in the Budget for the Project. In no event shall the Commission be obligated to pay, nor shall the Commission disburse any funds from the Project Account that exceeds the overall Budget for the Project without the written approval of the Budget Director. In consultation with the Authorized DHED Representative, the Commission may re-allocate funds among line items within the Budget which do not increase the overall Budget for the Project as more fully described in Section 9.4 hereof. Specific responsibilities of the City include, but are not limited to, the following:

3.2.1 Provide information to the Commission regarding the requirements of DHED for the Building Program, including the design objectives, constraints and criteria, space requirements and relationships, performance and maintenance requirements, building systems, and Site requirements, with reasonable promptness in order to avoid delay in the progress of such Project;

3.2.2 Provide a preliminary Budget for the Project which shall include, without limitation, contingencies for bidding, changes during construction and other costs which

are the responsibility of the City and, in consultation with the Authorized Commission Representative, determine the final Budget for each Project;

3.2.3 Designate the Authorized DHED Representative and their respective duly designated representatives to act on the City's behalf with respect to the Project for the purpose of attending meetings, examining documents and rendering timely decisions pertaining to the design, construction and acceptance of the Project;

3.2.4 In consultation with the Authorized Commission Representative, the Budget Director and the Authorized DHED Representative shall review and approve in writing all change orders that cause the cost of the Project to exceed the overall Budget for this Project;

3.2.5 Pay all costs incurred by the Commission in connection with the implementation of the Project as provided in the Budget and approved by the Budget Director;

3.2.6 Cooperate with the Commission and its designated representatives in obtaining any and all approvals pertaining to the use of the Site, and execute any applications for permit or the like as may be required in order to develop and construct the Project that will be constructed on property owned by the City;

3.2.7 Cooperate with the Commission in facilitating the transfer of title to the Site to the City in trust for the Board following Substantial Completion of the Project as more fully described in Section 4.2 and Section 10.5 hereof; and

3.2.8 Provide such additional assistance as shall be agreed by the parties.

#### SECTION IV SITE AVAILABILITY AND ACCESS

4.1 Selection and Approval of Site. The Authorized DHED Representative and the Authorized Commission Representative have reviewed the proposed location of the Project and any constraints or other factors that may affect the availability, accessibility, cost or Schedule, including but not limited to the need for the reservation or dedication of a portion of the Site to the City for other public improvements as determined by the City. The Commission has adopted a site designation resolution approving such Site, which resolution was forwarded by the Commission to the City and approved by the City Council in accordance with Section 14 of the Act.

4.2 Acquisition and Disposition of Site. The Commission shall obtain such right, title and interest in and to the Site, free and clear of any encumbrances, zoning or other restrictions which preclude the use and development of the Site for the intended purpose and which preclude the ultimate conveyance of fee simple title to the City in trust for the Board free and clear of any such liens, claims or other encumbrances. Any such title as may be acquired by the Commission shall be for the use and benefit of the City in trust for the Board or its designees and conveyed as directed by the City within ninety (90) days following Substantial Completion of the Project without further approval by the City Council. Transfer of title to the Site shall be by customary documents of conveyance that have been approved by DHED and the Corporation Counsel and directed to the Commissioner of DHED.

4.3 Right of Entry. It is expressly acknowledged and agreed that the Commission and the City and their respective employees, consultants and the Contractor shall have the right to enter upon the Site or portion thereof owned by the Commission or the City for purposes associated with the development and implementation of the Project and other related facilities and the completion of the Project without further authorization by the Commission or the City. Any Contractor that may enter upon the Site for such purposes at the direction of the Commission or the City, as applicable, will be required to indemnify the Commission or the City, as applicable, and their respective commissioners, officials, employees, agents and

representatives from and against all claims arising out of such entry and to provide to the Commission and DHED, upon request, certificates of insurance evidencing the types and limits of insurance as specified on Exhibit E. The Commission and the City shall be named as additional insured on all such insurance policies. The City shall cooperate with the Commission and its designated representatives in obtaining any and all approvals pertaining to the use of the Site, and execute any applications for permit or the like as may be required in order to develop and construct the Project.

4.4 Unpermitted Encumbrances. Neither the Commission nor the Contractor nor any of their respective commissioners, officials, representatives, designees, agents, successors or assignees shall engage in any financing or other transaction the effect of which creates an encumbrance or lien upon the Site.

4.5 Relocation Assistance. In the event that any persons or businesses are displaced as a result of the acquisition of the Site or construction of the Project, such persons or businesses shall receive relocation assistance based upon the relocation procedures and practices of the Commission or the City as modified from time to time.

## SECTION V ENVIRONMENTAL CONDITIONS

5.1 Reports and Studies. It shall be the responsibility of the Commission, at the sole cost and expense of the City, to investigate and determine the soil and environmental condition of the Site, including obtaining a Phase I environmental audit and, if applicable, a Phase II environmental audit of the Site. A copy of any such reports that may have been obtained by the Commission regarding the environmental condition of the Site or the geology thereof shall be provided to the City after such report becomes available to the Commission. Neither the City nor the Commission makes any covenant, representation or warranty as to the environmental condition of the Site or the suitability of the Site for the Project.

5.2 Environmental Remediation. In the event that adverse environmental conditions of the Site are discovered as a result of the investigation of the soil and environmental

conditions that preclude the use of the Site for its intended purpose, the Commission will undertake or cause to be undertaken the remediation of such adverse environmental condition with funds allocated in the Budget for such purpose or, where applicable, will provide an engineered barrier to such condition during construction in accordance with 35 Illinois Administrative Code 742. All environmental costs and expenses that exceed the amount allocated in the Budget for such purpose shall be subject to the prior written approval of the Budget Director. The nature and extent of such remediation will be determined by the Commission in consultation with representatives of the DHED and IEPA, if applicable. If deemed necessary by DHED, DHED will direct the Commission to enter the Site into the Site Remediation Program and secure a No Further Remediation determination consistent with the future use of the Site. In no event shall the Commission incur any cost or expense as a result of the condition of the Site or the remediation of environmental conditions thereon in excess of the amount provided by the City. If the cost of the environmental remediation action exceeds the budgeted amount approved by the City, the Commission shall promptly notify the Budget Director and the parties shall mutually agree upon appropriate action to be taken. In the event the Commission shall have obtained title to the Site on behalf of the City, the City or the Commission shall have the right to pursue all legal means available to recover the cost of such remediation from the former owner of the Site.

5.3 Environmental Laws. The Commission agrees that at all times during its performance of this Agreement, it shall cause the Contractor to comply, with all "Environmental Laws." "Environmental Laws" mean any and all Federal, State or local statutes, laws, regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to public health and safety and the environment now or hereafter in force, as amended and hereafter amended, including but not limited: (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C.



Section 1802 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6902 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Clean Water Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); and (x) the Municipal Code of Chicago, including but not limited to the Municipal Code of Chicago, Sections 7-28-390, 7-28-440, 11-4-1410, 11-4-1420, 11-4-1450, 11-4-1500, 11-4-1530, 11-4-1550, or 11-4-1560. Upon the City's request, the Commission and/or the Contractor will provide evidence satisfactory to the City of such current compliance.

## SECTION VI CONSTRUCTION OF THE PROJECT

6.1 Preparation of Contract Documents. The Commission shall determine whether to appoint an Architect of Record as defined above or other design entity, to prepare design documents, issue a request for proposals that includes the preparation of the design documents, or proceed in some other manner to obtain design documents that are sufficiently complete to solicit bids or proposals for the construction of the Project. The Commission shall provide a copy of such design submittals to the Authorized DHED Representative for review and approval to determine compliance with the Building Program. DHED shall use its best efforts to provide written comments to the Commission within (10) business days from the receipt of each submittal. If DHED provides written comments to the Commission on the final design review submittal, such review submittal being denoted as final by the Commission, then the Commission will work diligently with DHED to address the comments in a manner satisfactory to all parties. The Commission shall include in the Contract Documents a space for DHED to confirm its acceptance of the final design.

6.2 Selection of Contractor. Upon completion of the Contract Documents, the Commission shall solicit bids or proposals for the construction of the Project or portion thereof by public advertisement, or from pre-qualified contractors in consultation with the Authorized

DHED Representative, as determined by the Commission in accordance with its usual and customary procurement procedures. The Commission shall review and evaluate the bids or proposals received for the construction of the Project and conduct such investigations as may be necessary and appropriate to determine the responsiveness of the bid or proposal and the proposed cost of constructing the Project in accordance with the Budget. During the bid review period, the Authorized DHED Representative and the Budget Director shall have the right to attend meetings and participate in the evaluation process. Following the bid review process, the PBC Board upon recommendation of the Executive Director shall award the Contract to the lowest responsible and responsive bidder, subject to Section 6.5 hereof.

6.3 Limited Applicability of Approval. Any approvals of the design of the Project, Site Work or the Contract Documents made by the Authorized DHED Representative are for purposes of this Agreement only and do not affect or constitute approvals required for building permits or approvals required pursuant to federal, state or local law, code or any ordinance or order of the City, nor shall any such approval constitute approval of the quality, structural soundness or the safety of the Project. It is understood and agreed that the Commission shall act on behalf of the City in ensuring the Contractor's compliance with all applicable laws and requirements.

6.4 Ownership of Documents. All documents, including but not limited to, all data, certificates, schematics, warranties, environmental remediation documents, prototype and other design documents, copyrights and Contract Documents with regard to the development and construction of the Project shall be the property of the City. The Commission shall assign and transfer ownership of all such documents and materials that it may have obtained from the Contractor or others to DHED on behalf of the City at Final Completion of the Project or conveyance of fee simple title to the Site to the City in trust for the Board.

6.5 Debarred Vendors. The Commission shall not retain for the Project any architect, consultant, contractor, materials provider or other vendor that has been debarred or otherwise disqualified from doing business with the City by its Chief Procurement Officer.

## SECTION VII ADMINISTRATION OF THE PROJECT

7.1 Enforcement of Contract. The Commission shall comply, and cause the Contractor to comply, with the terms and conditions of the Contract as appropriate and applicable, including all applicable federal, state and local laws, codes, ordinances and orders now or hereafter in force. Such requirements include, but are not limited to, accessibility standards for persons with disabilities or environmentally limited persons, Illinois Prevailing Wage Act, the Chicago Human Rights Ordinance, EEO and affirmative action requirements, the Commission's Special Conditions regarding MBE and WBE participation, Chicago residency requirements and community hiring requirements, which are incorporated herein by reference.

7.2 Coordination with the City. The Commission shall inform the Authorized DHED Representative, the Corporation Counsel and the Budget Director of the status of progress regarding acquisition of the Site and the implementation of the Project not less frequently than on a monthly basis and, upon request, provide the Authorized DHED Representative and the Budget Director with a copy of any reports or other documents that may have been obtained by the Commission. As soon as reasonably practicable, the Commission shall provide the Authorized DHED Representative and the Budget Director with any information which may result in an exceedance of the Budget or may cause the acquisition of the Site or the construction of the Project to be delayed beyond the dates specified in the Schedule. The Authorized DHED Representative shall have the right to inspect the Project at all reasonable times and to attend meetings with representatives of the Commission, the Contractor and others regarding the Project. In order to protect the City and the Commission from incurring additional costs as a result of unauthorized work, any requests or directions that the Authorized DHED Representative may have with respect to the construction of the Project shall be directed to the

Authorized Commission Representative and not to the Contractor. The Authorized DHED Representative will provide to the Commission prompt, accurate and complete information regarding the requirements of DHED so that the progress of the Project will not be impeded. All data provided by DHED shall be evaluated by the Authorized Commission Representative, who shall have the right to recommend alternative approaches and value engineering in order to reduce costs while maintaining the overall quality of the Project and the Schedule.

7.3 Payment and Performance Bond. The Commission, as set forth in Section 3.1.14, shall determine the type and amount of payment and performance bonds required for the Project and require the Contractor to provide a payment and performance bond to ensure that the terms and conditions of the Contract Documents will be faithfully performed. The payment and performance bond shall be in the amount specified in the Contract and issued by a surety company licensed to do business in the State of Illinois and approved by the Commission. If the surety fails or is deemed by the Commission to be insufficient security for the completion of the Project, the Commission will require the Contractor to furnish an additional bond in such amount as may be determined by the Commission. Any proceeds derived by the Commission as a result of the payment and performance bond shall be credited to the Project Account and applied as agreed by the Commission and the Budget Director.

7.4 Waiver and Release of Liens. The Commission, as set forth in Section 3.1.15 shall require and procure from the Contractor waivers of liens or rights of lien for all labor and materials furnished in the constructing or improving the Project. This provision shall be construed as being solely for the benefit of the Commission and the City and shall not confer any rights hereunder for the benefit of the Contractor or its subcontractors. To ensure payment of lien claims, the Commission shall retain the amounts of the liens claimed by subcontractors or suppliers from payments to the Contractor unless an appropriate waiver or mechanic's lien bond is provided or the liened funds are deposited with the Circuit Court of Cook County, Illinois in accordance with applicable Illinois legal requirements and the Contract Documents. Except

as provided above, the Commission shall not make final payment to Contractor nor shall any part of the amounts retained for lien claims be paid until the Contractor shall have delivered to the Commission a complete release of all liens, financial obligations or claims from the Contractor, subcontractor, and other agents acting on its behalf in connection with the Work or arising out of the Work and an affidavit that so far as the Contractor has knowledge or information, releases all the labor and material for which a claim could be made or a lien could be filed. If any lien remains unsatisfied after all payments have been made, then the Contractor shall be required to refund to the Commission all moneys that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorney's fees. Any amounts so refunded shall be for the benefit of the City and credited to the Project Account.

7.5 Default by Contractor. In the event that the Contractor defaults in its obligations under the Contract, the Commission shall pursue all rights and remedies afforded to it pursuant to the terms of the Contract, at law or in equity. Upon request by the Authorized DHED Representative, the Budget Director or the Corporation Counsel and approval by the PBC Board, the Commission shall assign any of its rights and remedies for default by the Contractor to the City.

## SECTION VIII INDEMNITY AND INSURANCE

8.1 Indemnity. Each Contract awarded by the Commission for the Project shall require the Contractor to indemnify, save and hold harmless the Commission and the City, and their respective commissioners, officers, agents, employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Work as a result of any act or omission of the Contractor or any of its subcontractors or any of their respective employees or agents.

8.2 Insurance. The Commission, as set forth in Section 3.1.14, shall require the Contractor to purchase and maintain during the implementation of the Site Work and/or the performance of the Work, the types and amounts of insurance as shall be specified by the

Commission substantially in the form attached hereto as Exhibit E or as otherwise agreed to by the City's Risk Management Office. Prior to the commencement of Work on the Project, the Commission shall obtain from the Contractor certificates of insurance evidencing the required insurance and certifying the name and address of the Contractor, the description of work or services covered by such policies, the inception and expiration dates of the policies and the specific coverages to be provided. The City and the Commission shall be included as named insureds as their respective interests may appear on the Contractor's insurance policies. A copy of any and all such insurance certificates shall be provided by the Commission to the Authorized DHED Representative upon request. All such insurance shall be placed in financially responsible companies, satisfactory to the Commission and authorized under the insurance laws of the State of Illinois to do business in the State of Illinois. Upon issuance of the Notice of Substantial Completion as described in Section 10.4 hereof, the Commission or the Board shall be responsible for insuring the Site.

#### SECTION IX PAYMENT OF PROJECT COSTS

9.1 Cost of the Project. It is the intent of the parties that the cost of completing the Project shall not exceed the sums specified in the final Budget for the Project. All plans, specifications and estimates of costs shall be reviewed by the duly designated representatives of the parties. The fee for the Commission's services for the management and administration of the Project will be fixed as a lump sum within the Budget. The Commission's fee shall not exceed three percent (3%) of the estimated construction cost of the Project (excluding acquisition) and, after being fixed in the Undertaking Budget, will neither increase nor decrease. In addition, the City agrees (after approving the Commission's choice of counsel) to pay or reimburse the Commission for all reasonable legal fees, costs and expenses incurred by the Commission in undertaking the Project as follows:

9.1.1 Land Acquisition. The Acquisition Budget will include the estimated costs of acquiring any land that may be necessary in order to construct the Project and will be paid by the City in accordance with the provisions of Section 9.3 of this Agreement.

9.1.2 Third-Party Negligence. Claims or proceedings against the Commission or the Contractor that arise out of a claim or proceeding that is instituted by third parties as a result of any negligent or willful act of the Contractor or any of its subcontractors or subconsultants shall be tendered to the Contractor for defense of the Commission and the City pursuant to Section VIII, Indemnity and Insurance, of this Agreement.

9.1.3 Construction Litigation. The Commission will use its best efforts to enforce the provisions of the Contract so that the Project is completed in a cost efficient, timely manner. The Commission will defend or prosecute, as applicable, rights and remedies afforded by the Contract in a reasonable, prudent manner. Unless the City consents otherwise, the Commission shall pursue and exhaust, and shall pursuant to the Contract require the Contractor to pursue and exhaust any alternative dispute resolution opportunities provided for under the Contract before litigating any dispute in connection with the Project. To the extent that payment of the Commission's legal costs and expenses are not recovered from the Contractor or any surety, the City agrees to pay or reimburse the Commission for costs incurred for legal costs and expenses subject to the following conditions:

9.1.3.1 The Commission will not initiate any legal proceeding related to the Project and no settlement shall be made without the prior written consent of the Budget Director and the Corporation Counsel;

9.1.3.2 The City shall have the right to approve (such approval not to be unreasonably withheld) counsel selected by the Commission;

9.1.3.3 The Commission will notify the Budget Director and the Corporation Counsel of any proceeding related to the Project within ten (10) days

following receipt of summons and complaint or as otherwise directed by the Budget Director or the Corporation Counsel;

9.1.3.4 The Commission will apprise the Budget Director and the Corporation Counsel on a quarterly basis or otherwise as agreed by the parties concerning the status of any legal proceeding related to the Project;

9.1.3.5 The Commission, the Budget Director and the Corporation Counsel shall establish a separate legal budget as soon as practicable after the commencement of any legal proceeding related to a Project;

9.1.3.6 The Commission will provide a monthly legal services report summary related to the Project to the Budget Director and the Corporation Counsel;

9.1.3.7 Any legal fees, costs or expenses incurred must comply with the City's Outside Counsel Guidelines ("Guidelines") and for payment purposes must be submitted after notification to Patrick Ryan, the Corporation Counsel's Director of Administration, online to the City's legal auditor, Examen, for review and recommendation to the Commission of the invoice amounts to be paid; the Commission shall review the charges not in compliance with the Guidelines, as determined by the Examen, and process the invoices for payment; and

9.1.3.8 Notwithstanding the foregoing, in the event that the Commission is judged by a court of competent jurisdiction to have been negligent or to have committed other acts of misconduct involving a claim or other legal proceeding the parties will equitably adjust the reimbursement of legal fees and costs as appropriate.

9.1.4 Application of Funds. Any funds that may be recovered by the Commission as a result of any such legal proceedings shall be deposited in the Project Account and disbursed as directed by the Executive Director and the Budget Director.



9.1.5 Disclaimer. It is expressly understood and agreed that the City will not reimburse the Commission for any legal fees on account of findings against the Commission for breach of contract and/or breach of this Agreement.

9.2 Conditions Precedent to Payment of Purchase Price. Prior to disbursing funds necessary to acquire the Site or portion thereof, the Commission shall provide to the Authorized DHED Representative, the Budget Director and the Corporation Counsel the following items:

9.2.1 A commitment for title insurance evidencing all easements and encumbrances of record;

9.2.2 Two copies of a plat or survey;

9.2.3 An appraisal prepared by an appraiser approved by the City or the Commission evidencing fair cash market value;

9.2.4 Evidence of the purchase price of the Site in the form of a real estate sales contract or judgment order entered by the Circuit Court of Cook County, Illinois;

9.2.5 A copy of the most recent real estate tax bill with respect to the Site; and

9.2.6 A copy of any environmental audit or report that may have been obtained by the Commission pursuant to Section V hereof.

9.3 Payment of Acquisition and Project Costs. The Commission shall provide the City with a cash flow for the Project upon request. The Commission shall prepare and provide to the Budget Director, on a quarterly basis in advance, the estimated amounts that will be required to pay the cost of the Project during the next succeeding ninety (90) days. Requests for payment shall include professional services, land acquisition, construction, administrative costs, contingency reserves and such other items as shall have been agreed by the parties ("Request for Payments"). Within thirty (30) days following receipt of a quarterly estimate and Request for Payment, the Budget Director shall process the Request for Payment and remit payment to the Commission, which payment shall consist of the estimated amounts required for payment of the costs of the Project during the next succeeding ninety (90) day period as such