




# Office of Chicago City Clerk



O2011-1420

Office of the City Clerk

## City Council Document Tracking Sheet

<b>Meeting Date:</b>	3/9/2011
<b>Sponsor(s):</b>	Mayor Daley 
<b>Type:</b>	Ordinance
<b>Title:</b>	Expenditure of Open Space Impact Funds for Nathan Davis School
<b>Committee(s) Assignment:</b>	Committee on Parks and Recreation



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RICHARD M. DALRY  
MAYOR

March 9, 2011

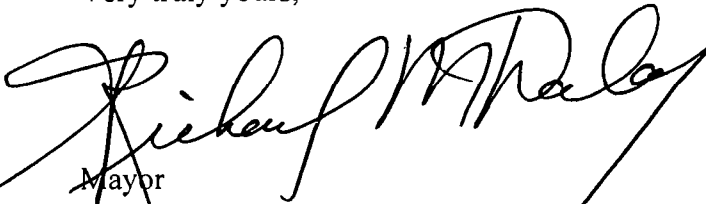
TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith ordinances authorizing the expenditure of open space impact fee funds.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

  
Mayor

## ORDINANCE

**WHEREAS**, the City of Chicago (the "City"), is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, 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 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, 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 Revenue ("DOR") 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 Department of Housing and Economic Development ("DHED") has determined that the Fee-Paying Developments built in the Community Area listed on Exhibit A attached hereto have deepened the already significant deficit of open space in that Community Area, which deficit was documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council (the "Journal") of the same date; and

**WHEREAS**, the Public Building Commission of Chicago (the "PBC") is the owner of a parcel of land on the campus of Nathan Davis School, legally identified and described on Exhibit A hereto ( the "Property");

**WHEREAS**, Openlands, a 501(C)(3) Illinois not-for-profit corporation, is dedicated to preserving and creating open space;

**WHEREAS**, the City, the PBC and Openlands desire to create a garden at the above mentioned school ( the "Project") for the benefit and use of the above mentioned school and the respective Community Area in which it is located; and

**WHEREAS**, the City desires to grant Openlands impact fee funds to pay for construction cost associated with building the garden at the Property; and

**WHEREAS**, DHED desires to provide to Openlands Open Space Fees in an amount not to exceed \$205,852 (the "Grant") for the Project; and to create open spaces and recreational facilities in the Community Area listed on Exhibit A; and

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

**WHEREAS**, the Open Space Ordinance requires that the Open Space Fees 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**, DHED has determined that the use of the Open Space Fees to fund the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected; and

**WHEREAS**, DHED has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific fund set up by DOR for the corresponding Community Area in which a Fee-Paying Development is located and from which the Open Space Fees were collected; and

**WHEREAS**, DHED has recommended that the City Council approve the use of the Open Space Fees for the purposes set forth herein and on Exhibit A through this ordinance; and

**WHEREAS**, DHED has recommended that the City Council 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; 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 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 purposes described herein.

**SECTION 3.** The Commissioner of DHED (the "Commissioner") or a designee of the

Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel to enter into an grant agreement with the Openlands in connection with the Project, in substantially the form attached hereto as Exhibit B and to provide Open Space Fees proceeds to the Openlands in an amount not to exceed \$205,852 from the corresponding fund to pay for expenses permitted under the Open Space Ordinance.

**SECTION 4.** Open Space Fees in the amounts on Exhibit A from the Community Area's Open Space Fees Funds are hereby appropriated for the purposes described herein.

**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 be in full force and effect from and after the date of its passage.

## **EXHIBIT A**

### **DESCRIPTION OF PROJECT**

#### **School Garden Project**

##### **Nathan Davis School Project**

<b>Address:</b>	<b>3059 West Pershing Road Chicago, Illinois (the "Property")</b>
<b>P.I.N.:</b>	<b>19-01-101-001-0000</b>
<b>Community Area:</b>	<b>Brighton Park</b>
<b>Description of Project:</b>	<b>Asphalt removal for a permeable exercise circle, installation of grass, native garden plantings, a student-created mosaic bench and an outdoor classroom seating area</b>
<b>Amount of Open Space Fees:</b>	<b>\$205,852</b>

**EXHIBIT B**  
**GRANT AGREEMENT**

## GRANT AGREEMENT

This Grant Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 2011 (the "Closing Date"), between the City of Chicago (the "City"), an Illinois municipal corporation, acting through its Department of Housing and Economic Development ("DHED"), and Openlands, an Illinois not-for-profit corporation ("Openlands"). Openlands and the City are sometimes referred to herein as the "Parties."

## RECITALS

**WHEREAS**, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes the collection of fees (the "Open Space 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; and

**WHEREAS**, the Department of Revenue has collected Open Space Fees (the "Brighton Park Open Space Fees Proceeds") for new dwelling units built in the Community of Brighton Park ("the Brighton Park Community") and has deposited such Open Space Fees Proceeds in a separate fund identified by CAPS Code PS58 131 54 5058 2604; and

**WHEREAS**, the Public Building Commission ("PBC") is the owner of parcels of land on the campus of Nathan Davis School, legally identified and described on Exhibit A hereto ( the "Property");

**WHEREAS**, the City and Openlands desire to create school gardens at each of the above mentioned schools (the "Project") for the benefit and use of the above mentioned schools and their respective community areas;

**WHEREAS**, the Openlands is a not-for-profit agency dedicated to preserving and creating open space;

**WHEREAS**, DHED desires to provide to Openlands Open Space Fees Proceeds, in an amount not to exceed \$205,852 (the "Grant"), for reimbursement costs associated with the Project; 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 \_\_\_\_\_ to \_\_\_\_\_, finding, among other things, that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees and authorizing the Grant subject to certain terms and conditions (the "Authorizing Ordinance"); and

**WHEREAS**, under the terms and conditions hereof, the City agrees to make the Grant available to Openlands; and

**WHEREAS**, the City and Openlands have among their powers the authority to contract with each other to perform the undertakings described herein;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the City and Openlands agree as follows:

## **SECTION 1. THE GRANT**

1.1. Subject to the provisions set forth in this Agreement, the City will disburse the Grant to reimburse Openlands for all or part of the cost of completing the Project in accordance with the budget attached to this Agreement as Exhibit B (the "Budget"), which budget is hereby approved by DHED, and only after Openlands has submitted Certificate(s) of Expenditure to DHED (as defined below) along with such supporting documentation as the City may reasonably require.

1.2 Openlands may request that certificate(s) of expenditure substantially in the form attached hereto ("Certificates of Expenditure") as Exhibit E be processed and executed periodically. The City will not execute Certificates of Expenditure in the aggregate in excess of the actual cost of the Project. Prior to each execution of a Certificate of Expenditure by the City, Openlands must submit documentation regarding the applicable expenditures to DHED. Delivery by Openlands to DHED of any request for execution by the City of a Certificate of Expenditure hereunder will, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that,

(a) the total amount of the request for the Certificates of Expenditure represents the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for a Certificate of Expenditure have been paid to parties entitled to such payment;

(c) Openlands has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Drawings (hereinafter defined); and

(d) Openlands is 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 Openlands as related thereto.

1.3. Openlands hereby acknowledges and agrees that the Grant must be used exclusively for the Project. If the Grant should exceed the costs of the Project, Openlands must repay to the City any such excess Grant funds received by Openlands.

1.4. Openlands is solely responsible for any fees, costs and expenses of the Project in excess of the amount of the Grant and will hold the City harmless from all such excess fees, costs and expenses. Notwithstanding anything to the contrary in this Agreement, in no event will the City or Openlands be responsible for any cost or expenses of the Project exceeding the Budget. In the event that either party believes that the Budget may not provide sufficient funds for the construction of the Project, such party must notify the other party and the parties must cooperate to modify the Project so that it can be completed in accordance with the Budget.

1.5. The source of funds for the City's obligations under this Agreement are the funds identified by CAPS Codes: PS58 131 54 5058 2604. Openlands hereby acknowledges and agrees that the City's obligations hereunder are subject in every respect to the availability of funds as described in and limited by this Section 1.5. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the Grant, then the City will notify Openlands in writing of that occurrence, and Openlands will have the right, but not the obligation to terminate this Agreement by written notice to the City.

## **SECTION 2. DEVELOPMENT AND CONSTRUCTION OF THE PROJECT**

A. Title Commitment and Insurance; Survey. Openlands must be responsible for obtaining, at its own expense, any title commitment or title policy and survey with respect to the Property that it deems necessary.

B. Construction Documents and Landscape Plan. Openlands has developed the construction documents and a plan for the Project (the "Drawings") as shown on Exhibit C. No material deviation from the Drawings will be made without the prior written approval of DHED, which approval will not be unreasonably withheld, conditioned or delayed. The approval of the Drawings by DHED are for the purposes of this Agreement only and other than as set forth in the Drawings, no structures or improvements are to be constructed on the Property by Openlands without the prior written approval of DHED, which approval will not be unreasonably withheld, conditioned or delayed and will not constitute the approval required by the City's Department of Buildings, or any other Department of the City.

C. Schedule. Openlands has prepared a preliminary schedule for the development and construction of the Project as set forth on Exhibit D (the "Schedule"). No material deviation from the Schedule will be made without the prior written approval of DHED, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in no event will the approval of DHED be required for any changes to the Schedule required because of the City's failure to approve and pay any Certificate of Expenditure, or required in connection with any force majeure event.

D. Use. The Project must be utilized as open space for use by the public for and on behalf of the City. This Agreement does not confer any special rights upon Openlands or any other person or entity to use the Project for private parties or events. The use of alcohol on the Property by any person or entity is strictly prohibited.

E. Certification. Openlands must submit a payment certification form as attached as Exhibit E prior to any Grant funds being released.

### SECTION 3. TERM OF AGREEMENT

Term of Agreement. The term of this Agreement will commence as of the Closing Date and, unless otherwise terminated as provided in this Agreement, will expire on the second anniversary of the Closing Date. Notwithstanding the foregoing, if Openlands modifies the Schedule pursuant to Section 2(c) of this Agreement and such modification extends beyond the term, the term will be adjusted accordingly.

### SECTION 4. COVENANTS AND REPRESENTATIONS

Openlands hereby warrants, represents and/or covenants to the City that:

4.1. Openlands will use the Grant solely for the Project and to pay for eligible costs as determined in the sole discretion of the City and outlined on Exhibit B.

4.2. Openlands will comply with all applicable federal, state, and local statutes, laws, ordinances, rules, regulations and executive orders that are in effect from time to time that pertain to or affect the Project, Openlands, or the Grant. Upon the City's request, Openlands will provide evidence of such compliance satisfactory to the City.

4.3. Openlands agrees that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.

4.4. Openlands has full power and authority to enter into and perform its obligations under this Agreement, and the signing and delivery of this Agreement and the performance of its obligations under this Agreement have been duly authorized by all requisite corporate action.

4.5. Signing, delivery and performance by Openlands of this Agreement does not violate its bylaws, articles of incorporation, resolutions or any applicable provision of law, or constitute a material breach of, default under or require any consent under, any agreement, instrument or document, including any related to borrowing monies, to which Openlands is party or by which it is bound.

4.6. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting Openlands that would materially impair its ability to perform under this Agreement.

4.7. Openlands is not in default on any loan or borrowing that may materially affect its ability to perform under this Agreement.

4.8. If the Grant, or a portion thereof, is used for construction, Openlands and all its contractors and subcontractors must meet labor standards and prevailing wage standards required by federal, state and City laws, regulations and ordinances.

4.9. Openlands must maintain and keep in force, at its sole cost and expense, at all times during the term of this Agreement, insurance in such amounts and of such type as set forth in Section 6 below.

4.10. Openlands must at all times perform its work in fulfilling its corporate mission with the utmost care, skill and diligence in accordance with the applicable standards currently recognized in the community.

4.11. Openlands is an Illinois not-for-profit corporation exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986; and has provided the City a copy of the Internal Revenue Service Determination Letter evidencing such exemption. Openlands must at all times during the term of this Agreement maintain such tax-exempt status.

4.12. Openlands must comply with all policies issued by the City relating to Illinois not-for-profit corporations and federal tax-exempt entities, as such policies may be modified, amended or supplemented from time to time.

4.13. The Parties agree that the PBC will maintain the Project improvements on the Property in a condition and manner acceptable to the City.

4.14. It is the duty of Openlands and any bidder, proposer, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of Openlands and any such bidder, proposer, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Openlands represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform all contractors and subcontractors hired by Openlands in connection with this Agreement of this provision in writing and require their compliance.

It is the duty of the Openlands and any bidder, proposer, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of Openlands and any such bidder, proposer, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code. Openlands represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that it will inform all contractors and subcontractors hired by Openlands in connection with this Agreement of this provision in writing and require their compliance.

4.15 Failure by Openlands or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code will be grounds for termination of this Agreement and the transactions contemplated hereby.

## **SECTION 5. ENVIRONMENTAL MATTERS**

5.1. It will be the responsibility of Openlands to investigate and determine the soil and environmental condition of the Property, if deemed necessary, including obtaining phase I and, if applicable, phase II environmental audits for the Property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property for any use whatsoever.

5.2. Openlands agrees to carefully inspect the Property and all easements or other agreements recorded against the Property prior to commencement of any activity on the Property to ensure that such activity will not damage surrounding property, structures, utility lines or any subsurface lines or cables. Openlands must be solely responsible for the safety and protection of the public on the portions of the Property affected by the Project, until the portion of the Project on each portion of the Property is completed.. The City reserves the right to inspect the work being done on the Property. Openlands agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for Openlands.

5.3. Prior to inspecting the Property, Openlands or its subcontractors, if any, must obtain insurance in accordance with Section 6 below, all necessary permits and, if applicable, a right of entry.

## **SECTION 6. INSURANCE**

6.1. Openlands must provide and maintain at Openlands's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, as applicable, insuring all operations related to this Agreement.

### **INSURANCE TO BE PROVIDED**

6.1.1. Workers Compensation and Employers Liability. Workers Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

6.1.2. Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work or services.

Subcontractors performing work or services for Openlands must maintain limits of not less than \$1,000,000 with the same terms in this subsection.

6.1.3. Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the services to be performed, Openlands must provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

6.1.4. Professional Liability. When any architects, engineers, project managers, administrators or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained or caused to be maintained, with limits of not less than \$1,000,000. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

6.1.5 Valuable Papers. When any designs, drawings, media, data, records, reports and other documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

6.1.6 Contractors Pollution Liability. When any remediation work is performed which may cause a pollution exposure, Contractors Pollution Liability must be provided or cause to be provided, covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of services with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting of two (2) years. The City is to be named as an additional insured on a primary, non-contributory basis.

6.2. **ADDITIONAL REQUIREMENTS.** Openlands must furnish the City of Chicago, Department of Housing and Economic Development, 121 N. LaSalle Street, Room 1101, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Openlands must submit evidence of insurance on the City's Insurance Certificate Form (copy attached as Exhibit F) or equivalent prior to execution of the Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Openlands is not a waiver by the City of any requirements for Openlands to obtain and maintain the specified coverages. Openlands must advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance does not relieve Openlands of the obligation to provide insurance as specified in this Agreement. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

The insurance must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Openlands.

Openlands agrees that insurers waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Openlands in no way limit Openlands's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Openlands under this Agreement.

The required insurance to be carried out is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Openlands is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Openlands must require all subcontractors to provide insurance required in this Agreement, or Openlands may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Openlands unless otherwise specified in this Agreement.

If Openlands or its subcontractors desire additional coverages, the party desiring additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## **SECTION 7. INDEMNIFICATION**

Openlands will indemnify and defend the City, its officials, agents and employees (the "City Indemnitees") against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' and expert witnesses' fees and court costs) the City Indemnitees suffer or incur arising from or in connection with the actions or omissions of Openlands and/or any contractors or subcontractors in implementing the Project, if any, or Openlands's breach of this Agreement. This defense and indemnification obligation survives any termination or expiration of this Agreement.

## **SECTION 8. NO LIABILITY OF OFFICIALS**

No elected or appointed official or member or employee or agent of the City will be charged personally by Openlands or by an assignee or subcontractor, with any liability or expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

## **SECTION 9. DEFAULT AND REMEDIES**

9.1. If Openlands, without the City's written consent (which consent will not be unreasonably withheld, conditioned or delayed) defaults by failing to perform any of its obligations under this Agreement then the City may terminate this Agreement if such default is not cured as provided in Section 9.2 below. If the City so terminates this Agreement, Openlands must repay the City promptly any amounts received pursuant to this Agreement and not yet applied to the Project.

9.2. Prior to termination, the City will give Openlands 30 days' advance written notice of the City's intent to terminate stating the nature of the default. If Openlands does not cure the default within the 30-day period, the termination will become effective at the end of the period. With respect to those defaults that are not capable of being cured within the 30-day period, Openlands will not be deemed to be in default if it has begun to cure the default within the 30-day period and thereafter diligently and continuously prosecutes the cure of the default until cured.

9.3. Either Party may, in any court of competent jurisdiction, by any proceeding at law or in equity, seek the specific performance of this Agreement, or damages for failure of performance, or both.

## **SECTION 10. NO BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS**

10.1. Pursuant to Section 2-156-030(b) of the Code, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term business relationship is defined in Section 2-156-080 of the Code.

10.2. Section 2-156-080 of the Code defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (i) any ownership through purchase at fair market value or inheritance of less than 1 percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the City; (iv) a time or demand

deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

## SECTION 11. GENERAL CONDITIONS

11.1. Assignment. This Agreement, or any portion thereof, will not be assigned by either Party without the express prior written consent of the other Party which consent will not be unreasonably withheld, conditioned or delayed.

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

11.3. 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 will be deemed an original, will be construed together and will constitute one and the same instrument.

11.4. Entire Agreement. This Agreement contains the entire agreement between the City and Openlands and supersedes all prior agreements, negotiation and discussion between them with respect to the Project.

11.5. 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 had been set forth verbatim herein.

11.6. Governing Law, Venue and Consent to Jurisdiction. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its principles of conflicts of law. If there is a lawsuit under this Agreement, each Party 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.

11.7. Inspection and Records. Openlands must provide the City with reasonable access to its books and records relating to the Project and the Grant as will be required by the City and necessary to reflect and disclose fully the amount and disposition of the Grant. Any duly authorized representative of the City will, at all reasonable times, have access to all such books and records which right of access will continue until the date that is five years after the expiration or termination of this Agreement.

11.8. Modification. This Agreement may not be modified or amended except by an agreement in writing signed by both Parties.

11.9. Notice. Any notice, demand or communication required or permitted to be given hereunder will be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by electronic mail or 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 Housing and Economic Development  
Attention: Commissioner  
121 N. LaSalle Street, Room 1000  
Chicago, Illinois 60602  
(312) 744-4190  
(312) 744-2271 (Fax)

With copies to: Department of Law  
City of Chicago  
Attention: Finance and Economic Development Division  
121 N. LaSalle Street, Room 600  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

To Openlands : Openlands  
25 E. Washington Street  
Suite 1650  
Chicago, Illinois 60602  
(312) 838-6250  
(312) 863-6251 (Fax)  
Attention: Gerald W. Adelmann

with copies to: Drinker Biddle & Reath LLP  
191 North Wacker Drive, Suite 3700  
Chicago, Illinois 60606  
(312) 569-1219  
(312) 569-3219 (fax)  
Attention: Katie Cunningham

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof will 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 will be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof will be deemed received three business days after mailing. The Parties, by notice given

hereunder, may designate any further or different addresses to which subsequent notices, demands or communications will be given.

11.10. Parties' Interest / No Third Party Beneficiaries. The terms and provisions of this Agreement will be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Parties. This Agreement will not run to the benefit of, or be enforceable by, any person or entity other than a Party to 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 any act of the City or Openlands will 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 Openlands .

11.11. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, will be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances will remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms will provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

11.12. Titles and Headings. Titles and headings in this Agreement are inserted for convenience and are not intended to be part of or affect the meaning or interpretation of this Agreement.

11.13. Waiver. Waiver by either party with respect to the breach of this Agreement will not be considered or treated as a waiver of the rights of such party with respect to any other default or with respect to any particular default except to the extent specifically waived by such party in writing.

11.14. Foreign Assets Control Lists. Neither Openlands , nor any affiliate thereof 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 the purposes of this paragraph "Affiliate," when used to indicate a relationship with a specified person or entity, will mean 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 will 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.

11.15. Further Actions. Openlands and the City agree to do, execute, acknowledge and deliver all agreements and other documents and to take all actions reasonably necessary or desirable to comply with the provisions of this Agreement and the intent thereof.

*[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 Closing Date.

**CITY OF CHICAGO**, an Illinois municipal corporation, acting by and through its Department of Housing and Economic Development

By: \_\_\_\_\_  
Andrew J. Mooney  
Commissioner

**OPENLANDS**, an Illinois not-for-profit corporation

By: \_\_\_\_\_  
President

## **EXHIBIT A**

### **Legal Description**

#### **Nathan Davis School**

**Property Address:** 3014 W. 39th Place  
Chicago, Illinois 60632

**P.I.N.:** 19-01-101-001

**Community Area:** Brighton Park

**Legal Description:** LOTS 1 TO 48 IN BLOCK 1 OSBORNE'S SUB LOT 5 IN  
SUPERIOR COURT PARTITION W 1/2 OF NW 1/4 OF  
SECTION 1, TOWNSHIP 38 NORTH, RANGE 13, EAST OF  
THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,  
ILLINOIS

## **EXHIBIT B**

### **Budget and Eligible Costs**

**Nathan Davis School: \$205,852**

<b>Cost</b>	<b>Item</b>
\$ 25,850.00	Asphalt removal to 9
\$ 42,800.00	permeable concrete exercise circle
\$ 15,000.00	Mosaic art work on cement wall
\$ 1,068.00	Topographic Survey
\$ 3,500.00	Removal and relocation of wrought iron fencing
\$ 78,522.12	Design, construction and plant material
\$ 39,111.88	Project management

**EXHIBIT C**

**Drawings**

[To be attached at Closing]

**EXHIBIT D**

**Project Schedule**

**[To be attached at Closing]**

## EXHIBIT E

### Certificate of Expenditure

STATE OF ILLINOIS   )  
                                      ) SS  
COUNTY OF COOK    )

The affiant, \_\_\_\_\_, an Illinois municipal corporation, hereby certifies that with respect to that certain Agreement between Openlands and the City of Chicago dated \_\_\_\_\_, \_\_\_\_\_ (the "Agreement"):

- A. Expenditures for the Project, in the total amount of \$\_\_\_\_\_, have been made:
- B. This paragraph B sets forth and is a true and complete statement of all costs of Open Space Impact Fee-Funded Improvements for the Project reimbursed by the City to date:  
\$\_\_\_\_\_
- C. Openlands requests reimbursement for the following cost of Open Space Impact Fee-Funded Improvements: \$\_\_\_\_\_
- D. None of the costs referenced in paragraph C above have been previously reimbursed by the City.
- E. Openlands hereby certifies to the City that, as of the date hereof:
  - 1. Except as described in the attached certificate, the representations and warranties contained in the Agreement are true and correct and Openlands is in compliance with all applicable covenants contained herein.
  - 2. No event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute a Default, exists or has occurred.
  - 3. Openlands has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications.
  - 4. Openlands is 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 Openlands as related thereto.

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

By: \_\_\_\_\_  
Name  
Title: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
Name  
Title: \_\_\_\_\_  
City of Chicago  
Department of Housing  
and Economic Development

Meg Gustafson  
Department of Housing and  
Economic Development  
City Hall, Room 1101  
312.744.0524

**EXHIBIT F**

**Insurance Form**

**[To be attached at Closing]**