



# Office of the City Clerk

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## Legislation Details (With Text)

**File #:** O2016-632

**Type:** Ordinance      **Status:** Passed

**File created:** 2/10/2016      **In control:** City Council

**Final action:** 3/16/2016

**Title:** Intergovernmental agreement with Chicago Board of Education for construction and maintenance of green stormwater infrastructure (Room to Grow Program) at various public schools

**Sponsors:** Emanuel, Rahm

**Indexes:** Intergovernmental

**Attachments:** 1. O2016-632.pdf

Date	Ver.	Action By	Action	Result
4/2/2016	1	City Council	Signed by Mayor	
3/16/2016	1	City Council	Passed	Pass
3/10/2016	1	Committee on Budget and Government Operations	Recommended to Pass	Pass
2/10/2016	1	City Council	Referred	

### ORDINANCE

WHEREAS, the City of Chicago (the "City") is a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; and

WHEREAS, the Board of Education of the City of Chicago (the "Board") is a body politic and corporate, organized under and existing pursuant to Article 34 of the School Code of the State of Illinois; and

WHEREAS, the City Council passed a Stormwater Management Ordinance on December 13, 2006, as found in Section 11-18 of the Municipal Code of the City of Chicago, which established a policy to promote programs that minimize the negative stormwater impacts of new developments and redevelopments; and

WHEREAS, in 2014 Mayor Emanuel released the Green Stormwater Infrastructure Strategy, a plan that committed \$50,000,000.00 to build green stormwater infrastructure to capture rainfall runoff before it enters the City's sewer system; and

WHEREAS, the City, the Board, and the Metropolitan Water Reclamation District of Greater Chicago, a unit of local government and body politic, organized and existing under the laws of the State of Illinois (the "District") have partnered with Openlands and the Healthy Schools Campaign to create Space to Grow, a program that transforms Chicago schoolyards into vibrant outdoor spaces that benefit students, community members and the environment (the "Program"); and

WHEREAS, for purposes of this Ordinance "Green Stormwater Infrastructure" shall mean the range of stormwater control measures that use plant/soil systems, permeable pavement, stormwater harvest and reuse, or native landscaping to store, infiltrate, and/or evapotranspire stormwater and reduce flows to the sewer systems or surface waters as more fully set forth at 415 ILCS 56/5; and

WHEREAS, the City, the Board, and District desire to cooperate and use their joint efforts and resources to promote the design, construction, and maintenance of Green Stormwater Infrastructure at various Chicago Public School ("CPS") sites to implement the Program (the "Project"); and

WHEREAS, the City, the Board, and the District agreed that the initial phase of the Project ("Phase I") would consist of a pilot program to design, construct, and maintain Green Stormwater Infrastructure at four CPS sites; and -

WHEREAS, on or about November 1, 2014, Phase I of the Project was completed at four CPS sites as follows: (i) Virgil Grissom Elementary School, 12810 S Escanaba Ave, Chicago, IL 60633, (ii) Theophilus Schmid Elementary School, 9755 S Greenwood Ave, Chicago, IL 60628, (iii) Donald Morrill Math & Science Elementary School, 6011 S Rockwell St, Chicago, IL 60629, and (iv) George Leland Elementary School, 512 S Lavergne Ave, Chicago, IL 60644. These four sites are collectively referred to herein as the "Phase I Sites"; and;

WHEREAS, due to the success of Phase I, the Board will collaborate with the district and the City for a second phase of the Project ("Phase II"). The Board anticipates identifying up to six additional sites (or more additional sites as may be agreed between the parties) each year for the next five years. It is anticipated that Phase II of the Project will consist of the design, construction, and maintenance of Green Stormwater Infrastructure at approximately thirty CPS sites (the "Phase II Sites") over the next five years commencing with the Board's 2016 fiscal year ("Phase II"); and

WHEREAS, the Board entered into an Intergovernmental Agreement between the Board and the District, effective September 16, 2014 (as amended, the "District Phase I IGA"), whereby the District agreed to reimburse the Board for up to \$2,000,000 for Phase I; and

WHEREAS, the City desires to use certain revenues from the City's Sewer System ("Pay-Go Funds") to reimburse the Board for up to \$500,000 for each of the Phase I Sites; and

WHEREAS, the Board anticipates entering into an Intergovernmental Agreement between the Board and the District (the "District Phase II IGA"), whereby the District will agree to reimburse the Board for Phase II in an amount of up to \$500,000 per Phase II Site (assuming six Phase II Sites per year or \$3,000,000 per year (or such other timing as may be agreed between the Board and the District) for five years, for a possible maximum reimbursement of \$15,000,000; and

WHEREAS, the City desires to use Pay-Go Funds to reimburse the Board for up to \$500,000 for each of the Phase II Sites, for a possible maximum reimbursement of \$15,000,000 over five years; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and Section 10 of Article VII of the Illinois Constitution, allow and encourage intergovernmental cooperation; now, therefore,

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

SECTION 1. The above recitals are incorporated here by this reference.

SECTION 2. Subject to the approval of the Corporation Counsel as to form and legality, the Commissioner of the Department of Water Management or his designee is authorized to execute an agreement and such other documents as are necessary, between the City and the Board in substantially the form attached as Exhibit A (the "Agreement"). The Agreement shall contain such other terms as are necessary or appropriate.

SECTION 3. 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 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 of the other provisions of this ordinance.

SECTION 4. This ordinance takes effect upon passage and approval.

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHICAGO, BY AND THROUGH ITS DEPARTMENT OF WATER MANAGEMENT, AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO FOR DESIGN, CONSTRUCTION AND MAINTENANCE OF GREEN STORMWATER INFRASTRUCTURE AT VARIOUS CHICAGO PUBLIC SCHOOLS

This Intergovernmental Agreement (this "Agreement") is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (the "Effective Date") by and between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Water Management (the "Department"), and the Board of Education of the City of Chicago (the "Board"), a body politic and corporate, organized under and existing pursuant to Article 34 of the School Code of the State of Illinois.

RECITALS

WHEREAS, the City Council passed a Stormwater Management Ordinance on December 13, 2006, as found in Section 11-18 of the Municipal Code of the City of Chicago, which established a policy to promote programs that minimize the negative stormwater impacts of new developments and redevelopments (the "Stormwater Management Ordinance"); and

WHEREAS, in 2014 Mayor Emanuel released the Green Stormwater Infrastructure Strategy, a plan that committed \$50,000,000.00 to build green stormwater infrastructure to capture rainfall runoff before it enters the City's sewer system; and

WHEREAS, the City, the Board, and the Metropolitan Water Reclamation District of Greater Chicago, a unit of local government and body politic, organized and existing under the laws of the State of Illinois (the "District") have partnered with Openlands and the Healthy Schools Campaign to create Space to Grow, a program that transforms Chicago schoolyards into vibrant outdoor spaces that benefit students, community members and the environment (the "Program"); and

WHEREAS, for purposes of this Agreement "Green Stormwater Infrastructure" shall mean the range of stormwater control measures that use plant/soil systems, permeable pavement, stormwater harvest and reuse, or native landscaping to store, infiltrate, and/or evapotranspire stormwater and reduce flows to the sewer systems or surface waters as more fully set forth at 415 ILCS 56/5; and

WHEREAS, the City, the Board, and District desire to cooperate and use their joint efforts and resources to promote the design, construction, and maintenance of Green Stormwater Infrastructure at various Chicago Public School ("CPS") sites to implement the Program (the "Project"); and

WHEREAS, the City, the Board, and the District agreed that the initial phase of the Project ("Phase I") would consist of a pilot program to design, construct, and maintain Green Stormwater Infrastructure at four CPS sites; and

WHEREAS, on or about November 1, 2014, Phase I of the Project was completed at four CPS sites as follows: (i) Virgil Grissom Elementary School, 12810 S Escanaba Ave, Chicago, IL 60633 ("Grissom"), (ii) Theophilus Schmid Elementary School, 9755 S Greenwood Ave, Chicago, IL 60628 ("Schmid"), (iii) Donald Morrill Math & Science Elementary School, 6011 S Rockwell St, Chicago, IL 60629 ("Morrill"), and (iv) George Leland Elementary School, 512 S Laverne Ave, Chicago, IL 60644 ("Leland"). These four sites are collectively referred to herein as the "Phase I Sites"; and

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WHEREAS, due to the success of Phase I, the Board will collaborate with the district and the City for a second phase of the Project ("Phase II"). The Board anticipates identifying up to six additional sites (or more additional sites as may be agreed between the parties) each year for the next five years. It is anticipated that Phase II of the Project will consist of the design, construction, and maintenance of Green Stormwater Infrastructure at approximately thirty CPS sites (the "Phase II Sites") over the next five years commencing with the Board's 2016 fiscal year ("Phase II"); and

WHEREAS, the Board entered into an Intergovernmental Agreement between the Board and the District, effective September 16, 2014, as amended by that certain "First Amendment To Intergovernmental Agreement Between The Board Of Education Of The City Of Chicago And The Metropolitan Water Reclamation District Of Greater Chicago For Design, Construction, And Maintenance Of Green Infrastructure At Leland Elementary School, Schmid Elementary School, Morrill Math And Science Elementary School, And Grissom Elementary School In Chicago" (the "District Phase I IGA"), whereby the District agreed to reimburse the Board for up to \$2,000,000 for Phase I; and

WHEREAS, the City desires to use certain revenues from the City's Sewer System (the "Pay-Go Funds") to reimburse the Board for up to \$500,000 for each of the Phase I Sites, pursuant to the terms and conditions of this Agreement; and

WHEREAS, the Board anticipates entering into an Intergovernmental Agreement between the Board and the District (the "District Phase II IGA"), whereby the District will agree to reimburse the Board for Phase II in an amount of up to \$500,000 per Phase II Site (assuming six Phase II Sites per year or \$3,000,000 per year (or such other timing as may be agreed between the Board and the District) for five years, for a possible maximum reimbursement of \$15,000,000; and

WHEREAS, the City desires to use Pay-Go Funds to reimburse the Board for up to \$500,000 for each of the Phase II Sites, for a possible maximum reimbursement of \$15,000,000 over five years; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 etseq., and Section 10 of Article VII of the Illinois Constitution, allow and encourage intergovernmental cooperation; and

WHEREAS, the Board executed the District Phase I IGA and anticipates executing this Agreement and the District Phase II IGA pursuant to applicable Board Rules, including Rule Sec. 7-15.d.; and

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, 201\_\_\_\_ City Council authorized the Department to enter into this Agreement with the Board; and

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

Article One: Incorporation of Recitals The recitals set forth above are incorporated herein by reference and made a part hereof.

Article Two: The Project - Scope of Work.

1. The Project will include design, construction, and maintenance of Green Stormwater Infrastructure and recreational improvements.

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A. For Phase I, at the Phase I Sites, as described in the Project Description for Phase i set forth on Exhibit 1.

B. For Phase II, at the Phase II Sites to be identified by the Board as is more fully set forth herein. It is contemplated that the Project Descriptions for the Phase II Sites will be substantially similar to those for Phase I.

2. The Green Stormwater Infrastructure improvements of the Project for Phase I and for Phase II shall be

designed to exceed the requirements of the City's Stormwater Management Ordinance and cost-effectively maximize retention of rainfall runoff from impervious areas on each school site.

3. The Board caused to be prepared construction drawings, specifications, and details (hereinafter "Construction Documents"), Cost Estimates, and an Operations and Maintenance Plan ("O & M Plans") for each of the Phase I Sites. The City acknowledges and agrees that it reviewed the Construction Documents, Cost Estimates, and O & M Plans for each of the Phase I Sites and that it accepted those Construction Documents, Cost Estimates, and O & M Plans. The City further acknowledges and agrees that it has inspected the completed improvements on each of the Phase I Sites and has found them to be constructed in accordance with the Construction Documents for the respective Phase I Sites and otherwise acceptable to the City.

4. The Board has caused to be prepared the Construction Documents, Cost Estimates, O & M Plans, and "out to bid" documents for each of the Phase II Sites identified in Section 2.10 herein, has provided copies thereof to the Department, and the Department has accepted and approved same and provided comments thereon. For the remainder of the Phase II Sites yet to be identified, the Board shall cause to be prepared the Construction Documents, Cost Estimates, O & M Plans, and "out to bid" documents for each such to-be-identified Phase II Site and shall provide the Department and the District with a copy of 30%, 60%, and 100% complete Construction Documents, including Cost estimates and "out to bid" documents, for the to-be-identified Phase II Sites for the Department's and the District's respective approvals.

5. The Department shall review and provide comments to the Board in writing within 14 calendar days of receipt of the 30%, 60% and 100% complete Construction Documents referenced in Section 2.4 of this Agreement for the to-be-identified Phase II Sites.

6. The Department's and the District's review and comment on the Construction Documents for the Phase II Sites shall be limited to those components applying to Green Stormwater Infrastructure. The Board shall incorporate the Department's and the District's review comments into the Construction Documents for the to-be-identified Phase II Sites and has done so for the Phase II Sites identified in Section 2.10 herein.

7. The Board shall construct Phase II of the Project in accordance with the final Construction Documents up to the budgeted amount agreed upon prior to bidding and provided funding is in place as set forth in Section 2.9 in this Agreement.

8. The Board shall provide construction oversight and administrative support for Phase II of the Project up to the budgeted amount agreed upon prior to bidding and provided funding is in place as set forth in Section 2.9 in this Agreement, and further provided that the Board may include design and project management expenses in the site budgets and submitted as part of the Board's request for reimbursement from the Department hereunder.

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9. Notwithstanding anything to the contrary elsewhere in this Agreement, the Board's obligations under this Agreement are contingent on the securing of available funding either through Board-approved capital plan(s) or third party sources other than the City under this Agreement and the District. The Board shall have no obligation to utilize Board funds to fund any obligations hereunder, and the Board's obligations hereunder are further contingent on the Board's entry into the District Phase II IGA upon terms acceptable to the Board and the District.

10. At least ten (10) months prior to the beginning of each fiscal year of the Board commencing for the fiscal year 2017, the Board, the Department, and the District shall meet to agree upon the proposed Phase II Sites for each respective fiscal year of the Board. It is anticipated that such site selection will be based upon prioritization of sites in accordance with the criteria for the Space To Grow program as agreed upon among the Board, the Department and the District.

While it is contemplated that Green Stormwater Infrastructure improvements will be designed and constructed for thirty Phase II Sites within the Board's fiscal years 2016 through 2020, the exact number of Phase II Sites per fiscal year may vary, such that more or less than six per year may be included within Phase II of the Project. For example, for the Board's fiscal year 2016, it is anticipated that the Board, the Department, and the District will agree to construct or cause to be constructed the Green Stormwater Infrastructure improvements solely on the following sites: (i) Cather Elementary, 2908 W.Washington Blvd., Chicago, IL 60612; (ii) Orozco Academy, 1940W. 18<sup>th</sup> St., Chicago, IL 60608; and (iii) Wadsworth Elementary, 6650 S. Ellis Ave., Chicago, IL, 60637? provided funding is in place as set forth in Section 2.9 in this,Agreement.

Notwithstanding anything to the contrary contained in this Agreement, if the Green Stormwater Infrastructure and recreational improvements are constructed at fewer than six Phase II Sites in any particular Board fiscal year, that shall not reduce the City's commitment for the total maximum possible reimbursement of \$15,000,000 to be allocated over the five-year period (Board's fiscal years 2016 through 2020); any City funds that would have been used to reimburse the Board for Phase II Sites that were not completed in any particular Board fiscal year shall be available for reimbursement in subsequent years.

### Article Three: Funding

1. Upon the execution hereof, the Board shall provide the Department with a Requisition Form for reimbursement for Phase I in the form of Exhibit 2 hereto, along with: (i) evidence of the expenditures for Phase I of the Project for which the Board seeks reimbursement attached as Exhibit 3 hereto; and (ii) all other documentation described in Exhibit 2, if any. The City shall reimburse the Board within fifteen (15) days after the City's approval of the Requisition Form for Phase I.

2. The cost of Phase I is approximately \$5,870,017.00. The Board has delivered to the Commissioner of the Department (the "Commissioner"), and the Commissioner hereby approves the approximate project expenditures for the Phase I Sites attached hereto and incorporated herein as Exhibit 3. The Board agrees that the City will only contribute up to \$500,000 for each of the Phase I Sites, as identified on Exhibit 1, attached hereto, from the Pay-Go Funds for the Phase I Sites.

3. Attached as Exhibit 4 and incorporated herein is a list of the estimated design and construction costs for each Phase II Sites, subject to reimbursement by the City from the Pay-Go Funds.

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4. <sup>1</sup> The estimated cost of Phase II is \$1,500,000 per Phase II Site. The Board has 'delivered to the Commissioner of the Department (the "Commissioner"), and the Commissioner hereby approves, an estimated project budget for each of the Phase II Sites, attached hereto and incorporated herein as Exhibit 4. The Board agrees that the City will only contribute up to \$500,000 for each of the Phase II Sites from the Pay-Go Funds.

Requisition for reimbursement of Phase II costs from the Pay-Go Funds shall be made not more than four (4) times per year (or as otherwise permitted by the Department). The City shall reimburse the Board within fifteen (15) days after the City's approval of a Requisition Form.

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

6. The Board shall be solely responsible for all costs associated with the recreational equipment component of the Project, provided funding is in place as set forth in Section 2.9 in this Agreement.

7. The Board shall return all funds provided by the City with regard to any particular Phase II Site if such particular Phase II Site is not completed within two years of award of the construction contract for that particular Phase II Site, unless the City approves extension(s); such approvals shall not be unreasonably withheld.

8. The Board shall use the completed Project to educate students and the community about green stormwater infrastructure.

Article Four: Permits and Fees

1. Federal, State, and County Requirements. Provided funding is in place as set forth in Section 2.9 in this Agreement, the Board shall: a) Obtain all federal, state, and county permits required by law for the construction of the Project, and shall assume any costs, in procuring said permits; and b) Additionally, obtain all consents and approvals required by federal, state, and/or county regulations for the construction of the Project, and shall assume any costs incurred in procuring all such consents and approvals.

2. Maintenance. The Board shall obtain any and all permits necessary for the performance of the maintenance work set forth in the O & M Plans attached hereto as Exhibit 5 and hereby incorporated into this agreement and in accordance with Section.6.1 of this Agreement

Article Five: Property Interests

The Project shall be constructed on property beneficially owned and controlled by the Board. The Board shall own all of the improvements, including Green Stormwater Infrastructure, constructed for this Project and pursuant to this Agreement.

Article Six: Maintenance

1. Provided funding is in place as set forth in Section 2.9 in this Agreement, the Board, at its sole cost and expense, shall maintain the Green Stormwater Infrastructure comprising part of the Project, including any other appurtenances associated with this Project in accordance with the O&M Plans, for A) The respective Actual Useful Lives of the Exterior Components and the Green Stormwater Infrastructure Components (all as defined below); or B) Such shorter period during which the Board is the beneficial owner and controls each respective school and each respective school is used for school purposes. However, if such period set forth in 1 .B herein is less than five (5) years from:

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- i) For each respective Phase I Site, September 16, 2014; or
- ii) For the Phase II Sites, the date of substantial completion for each respective Phase II Site;

then the Board shall reimburse the City for the amount of funds received from the City for Green Stormwater Infrastructure for that particular school or schools that did not remain so controlled and beneficially owned by the Board and used for school purposes for said five (5)-year period.

For purposes of this Section 6.1, "Exterior Components" shall mean: "permanent" artificial turf; "permanent" rubber surfacing under playground equipment/structures; and planters installed at each particular Site. "Green Stormwater Infrastructure Components" shall mean: plantings and subsurface sewer and drainage systems installed as part of each particular Site. "Actual Useful Life" shall mean the period in which a particular improvement continues to be functional in the manner required for safe and effective use for its particular purpose.

Provided funding is in place as set forth in Section 2.9 in this Agreement, at the expiration of the Actual Useful Live of the respective Exterior Components at any particular Site, if the Board in its sole discretion elects to replace such Exterior Components, it shall use reasonable efforts to replace such Exterior Components with materials that do (or in a manner that does) not negatively impact the permeability of the surfaces above the Green Stormwater Infrastructure Components at such respective Site.

- 2. The Board and the City shall conduct joint annual inspections to ensure adequate maintenance.

3. In the event of failure of the Board to maintain the Project as described above to the reasonable satisfaction of the City, the City may issue a sixty (60)-day written notice by certified or registered mail to the Board directing the Board to perform such maintenance. If maintenance required by the O&M Plan has not been accomplished on or before sixty (60) days after such notice, the City may cause such maintenance to be performed and the Board shall reimburse the City for any costs incurred to perform the required maintenance, with such reimbursement being paid by the Board to the City within 60 days after the City submits its invoices to the Board.

Article Seven: Notification.

1. Bid Advertisement. For Phase I Sites and the Phases II Sites identified in Section 2.10 hereof the Board has, and for the to-be-identified Phase II Sites the Board shall, provide the City with 30 days of notice prior to Bid Advertisement for the particular to-be-identified Phase II Sites in the Project.

2. Construction. For Phase I Sites and the Phase II Sites identified in Section 2.10 hereof the Board has, and for the to-be-identified Phase II Sites the Board shall, provide the City with a construction schedule and provide the City a minimum of 72 hours of notice before the following project milestones for the particular selected Phase II Sites:

Substantial completion; and Completion of work.

Article Eight: Termination

1. The Term of the Agreement shall commence as of the Effective Date Subject to the terms and conditions of Sections 8.2 and 8.3, this Agreement shall remain in full force and effect for the respective Actual Useful Lives of the Exterior Components and Green Stormwater Infrastructure Components (for those respective components) or for such shorter period as is set forth in Section 6.1.B with regard to each respective Site comprising part of the Project

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2. Termination by the Board. Prior to commencement of Construction of the Phase II Sites identified in Section 2.10 hereof, the Board may, at its option, and upon giving notice to the City in the manner provided in Article 25 below, terminate this Agreement as it pertains to the entire Project.

3. Termination by the City. Prior to Bid Advertisement of the construction of the Phase II Sites identified in Section 2.10 hereof, the City may, at its option, and upon giving notice to all parties in the manner provided in Article 25 below, terminate this Agreement as it pertains to Phase II of the Project.

Article Nine: Effective Date This Agreement becomes effective on the date that the last signature is affixed hereto.

Article Ten: Duration

Subject to the terms and conditions of Article 8 above, this Agreement shall remain in full force and effect for the respective Actual Useful Lives of the Exterior Components and Green Stormwater Infrastructure Components (for those respective components) or for such shorter period as is set forth in Section 6.1.B with regard to each respective Site comprising part of the Project.

Article Eleven: Additional Sites

Subject to the formal approval of the City Council, and in conformance with the requirements for amendments set forth in Article 27 of this Agreement, the parties may amend this Agreement to add additional sites (above the thirty currently contemplated for Phase II) for the Program.

Article Twelve: Signage

For every location of the Project, signs shall be prominently displayed setting forth the following information: "This Project is a joint effort between the City of Chicago, the Chicago Public Schools and the Metropolitan Water Reclamation District of Greater Chicago, designed to promote the use of green infrastructure as an effective means of stormwater management."

Article Thirteen: Non-Assignment

No party may assign its rights or obligations hereunder without the written consent of the other parties.

Article Fourteen: Indemnity; Default

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

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

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

3. The failure of the City to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the City under this Agreement or any other agreement directly related to this Agreement shall constitute an "Event of Default" by the City hereunder. Upon the occurrence of an Event of Default, the Board may terminate this Agreement and any other agreement directly related to this Agreement. The Board may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure injunctive relief or the specific performance of the agreements contained herein.

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

Article Fifteen: Representations of the Board The Board

covenants, represents, and warrants as follows:

1) The Board has full authority to execute, deliver, and perform or cause to be performed this Agreement;

2) The individuals signing this Agreement and all other documents executed on behalf of the Board are duly authorized to sign same on behalf of and to bind the Board;

3) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the terms or provisions of or constitute a default under any agreement of the Board or any instrument to which the Board is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.

4) The Board has secured a minimum of \$2,000,000.00 in funds for the Project in addition to funds to be provided by the City under this Agreement.

#### Article Sixteen: Representations of the City

The City covenants, represents, and warrants as follows:

1) The Commissioner has full authority to execute, deliver, and perform or cause to be performed this Agreement;

2) The execution and delivery of this Agreement, consummation of the transactions provided for herein, and the fulfillment of the terms hereof will not result in any breach of any of the

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terms or provisions of or constitute a default under any agreement of the City or any instrument to which the City is bound or any judgment, decree, or order of any court or governmental body or any applicable law, rule, or regulation.

#### Article Seventeen: Disclaimers

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

#### Article Eighteen: Waivers

Whenever a party to this Agreement by proper authority waives the other party's performance in any respect or waives a requirement or condition to performance, the waiver so granted, whether express or implied, shall only apply to the particular instance and shall not be deemed a waiver for subsequent instances of the performance, requirement, or condition. No such waiver shall be construed as a modification of this Agreement regardless of the number of times the performance, requirement, or condition may have been waived.

#### Article Nineteen: Governing Law And Severability

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

#### Article Twenty: Necessary Documents

Each party agrees to execute and deliver all further documents, and take all further action reasonably necessary to effectuate the purpose of this Agreement. Upon the completion of the Project, the Board shall provide the City with an electronic PDF version of the as-built drawings.

#### Article Twenty-One: Deemed Inclusion

Provisions required (as of the effective date) by law, ordinances, rules, regulations, or executive orders to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertions. However, in no event will the failure to insert such provisions before or after this Agreement is signed prevent its enforcement.

Article Twenty-Two: Entire Agreement

This Agreement, and any exhibits or riders attached hereto, shall constitute the entire agreement between the parties. No other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly set forth herein.

Article Twenty-Three: References to Documents

All references in this Agreement to any exhibit or document shall be deemed to include all supplements and/or authorized amendments to any such exhibits or documents to which all parties

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hereto are privy.

Article Twenty-Four: Judicial and Administrative Remedies

The parties agree that this Agreement and any subsequent Amendment shall be governed by, and construed and enforced in accordance with, the laws of the State of Illinois in all respects, including matters of construction, validity, and performance. The parties further agree that the proper venue to resolve any dispute which may arise out of this Agreement is the appropriate Court of competent jurisdiction located in Cook County, Illinois.

This Agreement shall not be construed against a party by reason of who prepared it. Each party agrees to provide a certified copy of the ordinance, bylaw, or other authority to evidence the reasonable satisfaction of all other parties that the person signing this Agreement for such party is authorized to do so and that this Agreement is a valid and binding obligation of such party. The rights and remedies of the Board, or the City shall be cumulative, and election by the Board or the City of any single remedy shall not constitute a waiver of any other remedy that such party may pursue under this Agreement.

Article Twenty-Five: Notice

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

Notice to Board shall be addressed to:

Chief Facilities Officer  
Board of Education of the City of Chicago  
**42 West Madison Street, 2nd Floor**  
**Chicago, Illinois 60602**  
**(773) 553-2900**

and

General Counsel  
**Board of Education of the City of Chicago One North Dearborn Street, 9<sup>th</sup> Floor Chicago, Illinois 60602**  
**(773) 553-1700**

Notice to the City shall be addressed to:

Commissioner  
**City of Chicago Department of Water Management 1000 East Ohio  
Chicago, Illinois 60611 (312) 744-7001**

and

Corporation Counsel  
City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
**Attention: Finance and Economic Development Division (312)744-  
1574**

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

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon transmission confirmed by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and, if sent pursuant to subsection (d) shall be deemed received two (2) days following deposit in the mail.

Article Twenty-Six: Assignment; Binding Effect

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

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

Article Twenty-Seven: Modification

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

Article Twenty-Eight: Compliance With Laws

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

Article Twenty-Nine: Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original.

Article Thirty: Authority

Execution of this Agreement by the City is authorized by an ordinance passed by the City Council of the City on \_\_\_\_\_, 201 . Execution of this Agreement by the Board is authorized by Board Resolution \_\_\_\_\_. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

Article Thirty-One: Headings

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

Article Thirty-Two: Construction of Words

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

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Article Thirty-Three: No Personal Liability

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

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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

CITY OF CHICAGO, ILLINOIS, by and through the Department of Water Management

By:  
Commissioner  
Department of Water Management

THE BOARD OF EDUCATION OF THE CITY  
OF CHICAGO

By:

Board Rule No.: 7-15.d. Approved as to legal  
form:

General Counsel

## EXHIBIT 1

### Project Site Descriptions

#### PHASE I:

##### Overall Description

Space to Grow: Greening Chicago Schoolyards, a partnership led by Openlands and Healthy Schools Campaign, and supported by Chicago Public Schools, is an innovative program to transform Chicago schoolyards into spaces that provide students, their families and the broader community with the opportunity for active play, space for physical education classes, opportunities for outdoor learning, gardening and environmental literacy, and engagement with art. While the main objective of Space to Grow is to build schoolyards that meet the needs of students, these green schoolyards will have the added benefit of reconnecting communities with their local public schools; providing much-needed green space in otherwise heavily urbanized neighborhoods; and, significantly contributing to a reduction in stormwater runoff across the city

Improvements for the four Space to Grow pilot schools, Morrill, Grissom, Schmid and Leland Elementary Schools, have been substantially completed. All projects are meeting more stringent stormwater standards than current Chicago Stormwater Management Ordinance based on an agreement between DWM and MWRD. Projects are meeting stormwater storage for Bulletin 70 rainfall events instead of the TP40 rainfall events as currently required by Chicago Stormwater Management Ordinance, and are specifically designed to retain additional stormwater volume to meet Consent Decree requirements.

##### Grissom

Grissom's scope of work includes removal of asphalt, playground, fencing, and utilities. Site improvements include a 2-5 and 5-12 year old playground on rubber play surfacing, basketball half courts and overlapping volleyball court on permeable asphalt, painted asphalt track, baseball backstop, artificial turf, an outdoor classroom, walkways and resurfaced asphalt; Landscape improvements including an edible Kitchen Community Garden, rain gardens, infiltration planters, and a butterfly garden; Site amenities including fencing, signage, and site furnishings; and Utility upgrades including stormwater storage and a lawn hydrant.

##### Schmid

Schmid's scope of work includes removal of asphalt, playground, fencing, parking lot, and utilities. Site improvements include a permeable paver parking lot, 2-5 and 5-12 year old playground on rubber play surfacing, renovated tennis court, renovated basketball court, an outdoor classroom, and walkway upgrades; Landscape improvements including an edible Kitchen Community Garden, rain gardens, infiltration planters, and a butterfly garden; Site amenities including fencing improvements, signage, and site furnishings; and Utility upgrades including stormwater storage, roof drain stormwater capture and outfall through an educational runnel, and lighting.

**Morrill**

Morrill's scope of work includes removal of asphalt, fencing, and utilities. Site improvements include a 2-5 year old playground and fitness station on rubber play surfacing, basketball half courts, artificial turf soccer field, painted asphalt track, an outdoor classroom, walkways, and asphalt with painted games; Landscape improvements including an edible Kitchen Community Garden, rain gardens, infiltration planters, and a butterfly garden; Site amenities including fencing, signage, and site furnishings; and Utility upgrades including stormwater storage, downspout disconnection on the

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fieldhouse, lawn hydrants, and electrical renovations. Leland

Leland's scope of work includes removal of asphalt, playground, fencing, and utilities. Site improvements include a 2-5 year old playground and 5-12 year old play mounds on rubber play surfacing, basketball half court, painted asphalt track, an outdoor classroom, walkways and new asphalt; Landscape improvements including an edible Kitchen Community Garden, rain gardens, infiltration planters, and a butterfly garden; Site amenities including fencing, signage, and site furnishings; and Utility upgrades including stormwater storage, downspout disconnection on the modular and a new hose bibb.

**PHASE II:**

It is contemplated that the Project Descriptions for the Phase II Sites will be substantially similar to those for Phase I.

EXHIBIT 2

REQUISITION FORM

State of Illinois )  
 ) SS  
County of Cook )

The affiant, \_\_\_\_\_, of the Board of Education of the City of Chicago, a body corporate and politic (the "Board"), hereby certifies that with respect to that certain Intergovernmental Agreement between the Board and the City of Chicago dated \_\_\_\_\_, 2016, regarding \_\_\_\_\_ school (the "Agreement"):

A. The following is a true and complete statement of all expenditures for the Phase \_\_\_\_\_ of the Project at \_\_\_\_\_ to date:

TOTAL: \$

B. This paragraph B sets forth and is a true and complete statement of all costs of Phase \_\_\_\_\_ of the Project at \_\_\_\_\_ reimbursed by the City to date:

\$

C. The Board requests reimbursement for the following cost of Phase \_\_\_\_\_ of the Project at \_\_\_\_\_ ; \_\_\_\_\_ :  
\$

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

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

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

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

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

F. Attached hereto are: (1) a cost itemization of the applicable portions of the budget attached as Exhibit \_\_\_\_\_ to the Agreement; and (2) evidence of the expenditures for Phase \_\_\_\_\_ of the

Project at \_\_\_\_\_ for which the Board hereby seeks reimbursement

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

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Agreement.

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

By:  
Name: Title:

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

My commission expires:

Agreed and accepted: CITY OF CHICAGO  
DEPARTMENT OF WATER MANAGEMENT

By:  
Name:  
Title:

**EXHIBIT 3**

**PHASE I - PILOT PROJECT EXPENDITURES**

	<b>Leland Elementary Task</b>	<b>Morrill Elementary Project Estimate</b>	<b>Grissom Elementary Project Estimate</b>	<b>Schmid Elementary Project Estimate</b>	<b>Project Estimate</b>
Design	\$15,000	\$88,000	\$19,800	\$93,800	
Construction	\$1,140,000	\$1,350,000	\$1,390,650	\$1,385,000	
Environ Remediation	\$23,500	\$12,000			
Administration	\$74,100	\$87,750	\$90,392	\$90,025	
Contingencies	\$0	\$10,000			
<b>Total</b>		<b>\$1,252,600</b>	<b>\$1,535,750</b>	<b>\$1,512,842</b>	<b>\$1,568,825</b>

The City's commitment with respect to each site shall not exceed \$500,000.

**EXHIBIT 4**

ESTIMATED PHASE II PROJECT BUDGET FOR EACH PHASE II SITE

<b>Task</b>	<b>Project Estimate</b>	
Design	\$120,000	
Construction	\$1,200,000	
Environ Remediation	\$30,000	
Administration	\$78,000	
FF&E	\$0	
<u>Contingencies</u>	<u>\$72,000</u>	
<b>Total</b>		<b>\$1,500,000</b>

Costs may vary among the Phase II Sites due to individual differences in those sites, such size of space and configuration.

The City's commitment with respect to each site shall not exceed \$500,000.

**EXHIBIT 5**

**OPERATIONS AND MAINTENANCE PLANS (CONTAINED WITHIN THE  
DRAWINGS FOR EACH RESPECTIVE SITE)**

**PHASE I:**

The Operations and Maintenance Plans for the Phase I Sites are on file with and have been approved by the Department.

**PHASE II:**

It is contemplated that the Operations and Maintenance Plans for the Phase II Sites will be substantially similar to those for Phase I and will be filed with the Department.

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OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

February 10, 2016

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

Ladies and Gentlemen:

At the request of the Commissioner of Water Management, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Board of Education regarding the "Room to Grow" Program.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

CHICAGO, March 16, 2016

To the President and Members of the City Council:

Your Committee on the Budget and Government Operations, having had under consideration an Ordinance authorizing the execution of an intergovernmental agreement between the City of Chicago and the Board of Education necessary for the "Green Stormwater Infrastructure" Project; and having had the same under advisement, begs leave to report and recommend that Your Honorable Body pass the Ordinance transmitted herewith.

Chairman

This recommendation was concurred in by a viva voce vote of the members of the Committee.

## **CORPORATION COUNSEL**