



Office of the City Clerk

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Legislation Text

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OFFICE OF THE MAYOR

CITY OF CHICAGO
RAHM EMANUEL
MAYOR

June 8, 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

CITY COUNCIL JULY 6, 2011

TO THE PRESIDENT AND MEMBERS OF THE CITY COUNCIL:

Your Committee on Special Events and Cultural Affairs having had under consideration Ordinance Expenditure of Open Space Impact Funds (Kelvyn Park High School, Ebinger Elementary School and Farnsworth High School Garden). Upon Mayor Rahm Emanuel Request

The Committee beg leave to recommend that your Honorable Body DO PASS the proposed event which was submitted on July 5, 2011 at the Committee on Special Events and Cultural Affairs meeting.

This recommendation was concurred by all members of the Committee present, with no dissenting vote.

Respectfully submitted,

Chairman

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 ("HED") has determined that the Fee-Paying Developments built in the Community Areas listed on Exhibit A attached hereto have deepened the already significant deficit of open space in those Community Areas, 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 Chicago Public Schools (the "CPS") is the owner of parcels of land on the campuses of Kelvyn Park High School, Ebinger Elementary School and Farnsworth High School, legally identified and described on Exhibit A hereto (collectively, the "Property");

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

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WHEREAS, the City, the CPS and Openlands desire to create school gardens at each of the above mentioned schools (collectively, the "Project") for the benefit and use of the above mentioned schools and the respective Community Areas in which they are located; and

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

WHEREAS, HED desires to provide to Openlands Open Space Fees in an amount not to exceed \$247,833 (the "Grant") for the Project; and to create open spaces and recreational facilities in the Community Areas 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, HED 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, HED 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, HED 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, HED 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 HED (the "Commissioner") or a designee of the Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel to

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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 \$247,833 from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amounts on Exhibit A from the Community Areas' 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.

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EXHIBIT A DESCRIPTION OF PROJECT

School Garden Projects

1. Kelvvn Park High School Garden

Address: 4347 W. Wrightwood, Chicago, Illinois (the "Property")

P.I.N.: 13-27-411-001 Community Area: Hermosa

Description of Project: Asphalt removal, installation of fence, garden bed, and mosaic art work

Amount of Open Space Fees: \$40,851

2. Ebinger Elementary School Garden

Address: 7341-45 W. Farwell, Chicago, Illinois (the "Property")

P.I.N.: 09-36-227-049 Community Area: Edison Park

Description of Project: Asphalt removal, installation of fence and garden bed, sculptural art work

Amount of Open Space Fees: \$106,982

3. Farnsworth High School Garden

Address: 5414 N. Linder Chicago, Illinois (the "Property")

P.I.N.: 13-09-105-001 Community Area: Jefferson Park

Description of Project: Asphalt removal, installation of fence and garden bed

Amount of Open Space Fees: \$100,000

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 ("HED"), 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 "Hermosa Open Space Fees Proceeds") for new dwelling units built in the Community of Hermosa ("the Hermosa Community") and has deposited such Hermosa Open Space Fees Proceeds in a separate fund identified by CAPS Code PS20 131 54 5020 2604; and

WHEREAS, the Department of Revenue has collected Open Space Fees (the "Edison Park Open Space Fees Proceeds") for new dwelling units built in the Community of Edison Park ("the Edison Park Community") and has deposited such Edison Park Open Space Fees Proceeds in a separate fund identified by CAPS Code PS09 131 54 0920 2604; and

WHEREAS, the Department of Revenue has collected Open Space Fees (the "Jefferson Park Open Space Fees

Proceeds") for new dwelling units built in the Community of Jefferson Park ("the Jefferson Park Community") and has deposited such Jefferson Park Open Space Fees Proceeds in a separate fund identified by CAPS Code PS 11 131 54 5011 2604; and

WHEREAS, the Chicago Public Schools ("CPS") is the owner of parcels of land on the campus of Kelvyn Park High School, Ebinger Elementary School and Farnsworth High School, each legally identified and described on Exhibit A hereto (collectively, 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;

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WHEREAS, HED desires to provide to Openlands' Open Space Fees, from the Hermosa Open Space Fees Proceeds, Edison Park open Space Proceeds and Jefferson Park Open Space Proceeds respectively, in an amount not to exceed \$247,833 (the "Grant"), for reimbursement costs associated with the Project; and

WHEREAS, on_, 2011, 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;

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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 HED, and only after Openlands has submitted Certificate(s) of Expenditure to HED (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 HED. Delivery by Openlands to HED 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,

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(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: PS20 131 54 5020 2604, PS09 131 54 09202604 and PS11 131 54 5011 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..

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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 HED, which approval will not be unreasonably withheld, conditioned or delayed*. The approval of the Drawings by HED 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 HED, 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 HED, which approval will not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, in no event will the approval of HED 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.

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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.

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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 and understand that the CPS 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.

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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.

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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 1000, 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

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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.

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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

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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,¹ 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.

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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.

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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. Adelman

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

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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

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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.]

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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

OPENLAND'S

an Illinois not-for-profit corporation

By:

President

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EXHIBIT A

Legal Descriptions

Property Address: P.I.N.:

Community Area: Legal Description:

Kelvyn Park High School Garden

4347 W. Wrightwood

Chicago, Illinois 60639

13-27-411-001

Hermosa

PARCEL 1

LOTS 1 TO 44 IN BLOCK 4 IN KEENEY & PEMBERTHY'S ADDITION TO PENNOCK A SUBDIVISION OF THE SOUTH WEST QUARTER OF THE SOUTH EAST QUARTER OF SECTION 27, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS, AND VACATED ALLEYS.

Property Address:

P.I.N.:

Community Area: Legal Description:

Ebinger Elementary School Garden

7341-45 W. Farwell Chicago, Illinois 60631 09-36-227-049 Edison Park

LOTS 18-36 BOTH INCLUSIVE IN HIELDS' EDISON PARK ADDITION, IN THE NE 1/4 OF SECTION 36, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

Property Address: P.I.N.:

Community Area: Legal Description:

Farnsworth High School Garden

5414N.Linder Chicago, Illinois 60630 13-09-105-001 Jefferson Park

IN BLOCK SEVEN (7) IN STEWARD D. ANDERSON'S ADDITION TO JEFFERSON PARK, BEING A SUBDIVISION OF LOTS SIX (6), SEVEN (7), EIGHT (8), NINE (9) AND TEN (10), IN THE CIRCUIT COURT PARTITION OF THAT PART OF THE NORTH WEST HALF (V₂) OF THE NORTH WEST FRACTIONAL QUARTER (1/4) OF SECTION 9, TOWN 40 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING BETWEEN MILWAUKEE AVENUE AND ELSTON AVENUE AND LOT TWO (2) IN THE SUBDIVISION OF THE SOUTH EAST HALF (V₂) OF SAID QUARTER, IN , COOK COUNTY ILLINOIS.

EXHIBIT B

Budget and Eligible Costs Total: \$247,833

Kelvyn High School Garden: \$40,851

Cost Item

\$ 491 Mosaic art work on cement wall \$32,000 Design, hard scape and plant material \$ 8,360
Project management

Ebinger Elementary School Garden: \$106,892

Cost Item

\$ 6,500 Asphalt removal to 9"
\$ 15,000 Sculptural art work
\$ 1,066 Topographic survey
\$64,091 Design, hardscape and plant material
\$20,325 Project management

Farnsworth High School Garden: \$100,000

Cost Item

\$ 6,000 Asphalt removal to 9" \$ 10,500 Fence
Concrete benches, foundation and grading \$ 62,000 Design, hardscape and plant material \$ 19,000
Project management \$ 2,500 Construction variance

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, Openlands, an Illinois not-for-profit 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. The _ 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. The _ 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 _ 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. The _ 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. The _ 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 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 1000

312.744.0524

EXHIBIT F Insurance Form

[To be attached at Closing]

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CITY OF CHICAGO ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT Related to Contract/Amendment/Solicitation EDS # 22099

SECTION I - GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting the EDS: Openlands

Enter d/b/a if applicable:

The Disclosing Party submitting this EDS is:

the Applicant

B. Business address of the Disclosing Party:

25 E Washington St. Suite 1650 Chicago, IL 60602 United States

C. Telephone:

312-863-6270

Fax:

312-863-6251

Email:

j.zaplatosch@openlands.org <mailto:zaplatosch@openlands.org>

D. Name of contact person: Ms. Jaime Zaplatosch

E. Federal Employer Identification No. (if you have one):

36-2649603

F. Brief description of contract, transaction or other undertaking (referred to below the "Matter") to which this EDS pertains:

Open Space Impact Fee grant agreement

Which City agency or department is requesting this EDS?

DEPT OF HOUSING AND ECONOMIC DEVELOPMENT

Specification Number

Contract (PO) Number

Revision Number

Release Number

User Department Project Number

SECTION II DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Not-for-profit corporation

Is the Disclosing Party also a 501(c)(3) organization?

Yes

Is the Disclosing Party incorporated or organized in the State of Illinois? Yes

B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

Officer/Director:

Title:

Role:

Ms. Jill Alread

Chair

Both

Officer/Director:

Title:

Role:

Mr. Steven M. Ricchio

Treasurer

Both

Officer/Director:

Title:

Role:

Ms. Carrie C. McNally

Secretary

Both

Officer/Director:

Title:

Role:

Mr. Gerald W. Adelmann President and CEO Both

Officer/Director:

Title:

Role:

Mr. John Tyler Anthony

Director

Director

Officer/Director:

Title:

Role:

Mr. Paul L. Becker

Director

Director

Officer/Director:

Title:

Role:

Mr. Alan Bell

Director

Director

Officer/Director:

Title:

Role:

Mrs. Shaun C. Block

Director

Director

Officer/Director:

Title:

Role:

Mr. Richard J. Carlson

Director

Director

Officer/Director:

Mr. Harry T. Chandler Jr

Title: Role:

Director Director

Officer/Director:

Title:

Role:

Mr. George W. Davis

Director

Director

Officer/Director:

Title:

Role:

Ms. Garrett Handley Dee

Director

Director

Officer/Director:

Title:

Role:

Officer/Director:

Title:

Role:

Mrs. Susan Dupree

Director

Director

Mrs. Victoria C. Drake

Director

Director

Officer/Director:

Title:

Role:

Officer/Director:

Title:

Role:

Ms. Josephine F. Elting

Director

Director

Mr. Joseph M. Flavin

Director

Director

Officer/Director:

Title:

Role:

Mr. Hugh D. Frisbie

Director

Director

Officer/Director:

Title:

Role:

Mr. John M. Haight III

Director

Director

Officer/Director:

Title:

Role:

Officer/Director:

Title:

Role:

Mr. Jonathan C. Hamill

Director

Director

Mr. Scott Jamieson

Director

Director

Officer/Director:

Title:

Role:

Officer/Director:

Title:

Role:

Ms. Ellen Newcomer

Director

Director

Ms. Janis W. Notz

Director

Director

Officer/Director:

Title:

Role:

Mr. Andrew Otting

Director

Director

Officer/Director:

Title:

Role:

Mr. J. Timothy Ritchie

Director

Director

Officer/Director:

Title:

Role:

Mr. Charles Saltzman

Director

Director

Mr. Patrick Shaw

Director

Director

Officer/Director:

Title:

Role:

Officer/Director:

Title:

Role:

Ms. Nancy W. Sutherland

Director

Director

Officer/Director:

Title:

Role:

Mr. Randy Vickery

Director

Director

1 .a.5 Are there any members of the non-for-profit Disclosing Party which are legal entities?

No

SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

SECTION IV - DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

1. Has the Disclosing Party retained any legal entities in connection with the Matter?

No

Yes

2. List below the names of all legal entities which are retained parties.

Anticipated/ Retained:

Name:

Christy Webber and Company Anticipated

Business Address:

2900 W Ferdinand

Chicago, IL 60612 United States

Relationship:

Subcontractor - MWDBE

Fees

94000

(\$\$ or %):

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SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

SECTION IV - DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or

(2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

1. Has the Disclosing Party retained any legal entities in connection with the Matter?

No

Yes

2. List below the names of all legal entities which are retained parties.

Anticipated/ Retained:

Name:

Christy Webber and Company Anticipated

Business Address:

Relationship: Fees

2900 W Ferdinand

Chicago, IL 60612 United States

Subcontractor - MWDBE

94000

(\$\$ or %):

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Estimated/Paid:

Estimated

Name:

Anticipated/ Retained:

Business Address:

Relationship: Fees

(\$\$ or %): **Estimated/Paid:**

Prestigious Metals and Designs Anticipated

22636 Fox Trail Lane

Plainfield, IL 60544 United States

Subcontractor - non MWDBE

10500

Estimated

Name:

Anticipated/ Retained:

Business Address:

Relationship: Fees

(\$\$ or %): **Estimated/Paid:**

Beverly Asphalt Paving Co. Anticipated

1514 W. Pershing Rd.

Chicago, IL 60609 United States

Subcontractor - non MWDBE

6000

Estimated

3. Has the Disclosing Party retained any persons in connection with the Matter?

No

SECTION V CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415. substantial owners of business entities that contract with

the City must remain in compliance with their child support obligations throughout the contract's term. Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

Not applicable because no person directly or indirectly owns 10% or more of the Disclosing Party

B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows:

- i. neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and
- ii. the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City.

NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

I certify the above to be true

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

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3. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's

official capacity;

b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or

c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or

d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

I certify the above to be true

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3:

- bid-rotating in violation of 720 ILCS 5/33E-4: or

- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

I certify the above to be true

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics) of the Municipal Code.

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I certify the above to be true

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies that, as defined in Section 2-32-455(b) of the Municipal Code, the Disclosing Party

is not a "financial institution"

D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

No

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued

to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

SECTION VI - CERTIFICATIONS FOR FEDERALLY-FUNDED MATTERS

Is the Matter federally funded? For the purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

No

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SECTION VII -- ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. A training program is available on line at www.cityofchicago.org/city/en/depts/ethics.html

<<http://www.cityofchicago.org/city/en/depts/ethics.html>>. and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

I acknowledge and consent to the above The Disclosing Party understands and agrees that:

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the

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¹ City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section

2-154-020 of the Municipal Code.

I acknowledge and consent to the above The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

I certify the above to be true

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U.S. General Services Administration.

I certify the above to be true

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. ~ above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

I certify the above to be true

FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS

This question is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

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Under Municipal Code Section 2-154-015. the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all corporate officers of the Disclosing Party, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

No

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ADDITIONAL INFO

Please add any additional explanatory information here. If needed you may add an attachment below.

List of vendor attachments uploaded by City staff None.

List of attachments uploaded by vendor None.

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CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS are true, accurate and complete as of the date furnished to the City.

Is/ 05/12/2011

Mr. Gerald W. Adelman

President

Openlands

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.

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Mayor