

## CONSENT AND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This Consent and Amendment to Intergovernmental Agreement (this "Amendment") is made and entered into as of December 1, 2008, (the "Effective Date") by and between the City of Chicago (the "City"), an Illinois municipal corporation, by and through its Department of Planning and Development ("DPD"), and the Chicago Park District (the "Park District"), an Illinois municipal corporation. The Park District and the City are sometimes referred to herein as the "Parties."

### RECITALS

**WHEREAS**, an ordinance approved by the City Council of the on September 13, 2006, and published at pages 83223 to 83251 of the Journal of the Proceedings of the City Council (the "Journal of Proceedings") of that date, authorized the Commissioner of DPD to execute, subject to the review of the Corporation Counsel of the City as to form and legality and subject to the approval of the City Comptroller, an intergovernmental agreement with the Park District to develop a parcel of land within the Central Loop Redevelopment Area (as hereinafter defined) and located generally at South State Street and West Van Buren Street in Chicago, Illinois (the "Property"), as legally described in Exhibit A-1, to contract for the environmental remediation of the Property, and to build and maintain a park on the Property (the "Project"); and

**WHEREAS**, DPD and the Park District therefore entered into that certain Intergovernmental Agreement dated February 7, 2007 (the "Agreement"), a copy of which is attached hereto as Exhibit 1; and

**WHEREAS**, the City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11—74.4-1 *et seq.*, as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects; and

**WHEREAS**, in accordance with the provisions of the Act, and pursuant to ordinances adopted on June 20, 1984 and published in the Journal of Proceedings for said date at pages 7573 to 7718, the City Council: (i) approved and adopted a redevelopment plan and project for a portion of the City known as the "North Loop Redevelopment Project Area" (the "North Loop Redevelopment Area"); (ii) designated the North Loop Redevelopment Area as a "redevelopment project area;" and (iii) adopted tax increment allocation financing for the North Loop Redevelopment Area; and

**WHEREAS**, in accordance with the provisions of the Act, and pursuant to ordinances adopted on February 7, 1997 and published in the Journal of Proceedings for said date at pages 38260 to 38425, the City Council expanded and renamed the North Loop Redevelopment Area when it: (i) approved and adopted a redevelopment plan and project (the "Plan") for the expanded area now known as the "Central Loop Redevelopment Project Area" (the "Central Loop Redevelopment Area"); (ii) designated the Central Loop Redevelopment Area as a "redevelopment project area;" and (iii) adopted tax increment allocation financing for the Central Loop Redevelopment Area, as amended from time to time; and

**WHEREAS**, under 65 ILCS 5/11-74.4-3(q)(7), such incremental ad valorem taxes which pursuant to the Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay all or a portion of a taxing district's capital costs resulting from a redevelopment project necessarily incurred or to be incurred in furtherance of the objectives of the redevelopment plan and project, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Central Loop Redevelopment Area shall be known as the "City Increment"); and

**WHEREAS**, pursuant to the Agreement and in accordance with the Act, DPD agreed to provide to the Park District a portion of the City Increment in an amount not to exceed \$1,000,000 for the purpose of funding the environmental remediation and development of a park on the Property in the Central Loop Redevelopment Area; and

**WHEREAS**, the Parties have subsequently determined that it is in the best interests of the City to expand the Project to include the environmental remediation, development, and maintenance (the "Expansion") onto a parcel of City-owned property located adjacent to the Property at 12-26 West Van Buren Street (the "City Property"), as legally described in Exhibit A-2; and

**WHEREAS**, the Parties have agreed that an additional \$200,000 is necessary to complete the Expansion and an additional \$200,000 is necessary for unanticipated increases in the cost of the Project; and

**WHEREAS**, the City and the Park District desire to amend the Agreement to include the Expansion and to increase the amount of City Increment available to the Park District from an amount not to exceed \$1,000,000 to an amount not to exceed \$1,400,000;

**WHEREAS**, the Board of Commissioners of the Park District authorized the execution of the Agreement and this Amendment pursuant to resolutions adopted on June 14, 2006, February 14, 2007 and August 13, 2008;

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

**Section 1. Incorporation of Recitals; Definitions.** The matters recited above are hereby incorporated into and made a part of this Amendment. Any capitalized term not defined in this Amendment shall have the meaning assigned to it in the Agreement.

**Section 2. Amendments to the Agreement.**

- a. Recital C is amended by replacing the entire text with the following:

"The City has proposed the development of certain parcels of City-owned land generally located at the northwest corner of State Street and Van Buren Street and legally described in Exhibit A-1 (the "Property"), for the purposes of remediating the Property and constructing a park on the Property (the "Project"), as further described in Sections 1.2, 1.3 and 1.4 hereof."

- b. Recital D is amended by replacing the entire text with the following:

"On November 5, 2008, the City Council approved the expansion of the Project to include the development and temporary maintenance of a park (the "Expansion") onto a parcel of City-owned property located adjacent to the Property at 12-26 West Van Buren Street legally described in Exhibit A-2 hereof (the "City Property"), and the Parties wish to complete the Expansion to the extent and in the manner provided herein."

- c. Recital E is amended by replacing the entire text with the following:

"The Property and the City Property lie wholly within the boundaries of the Central Loop Redevelopment Area (as hereinafter defined)."

- d. Recital G of the Agreement is hereby amended by adding the underlined text as follows:

"In accordance with the provisions of the Act, pursuant to ordinances adopted on June 20, 1084 and published in the Journal of Proceedings for said date at pages 7573 to 7718, the City Council: (i) approved and adopted a redevelopment plan and project for a portion of the City known as the "North Loop Redevelopment Project Area"; (ii) designated the North Loop Redevelopment Area as a "redevelopment project area"; and (iii) adopted tax increment allocation financing for the North Loop Redevelopment Area (collectively, the "North Loop Ordinances"), thereafter City Council amended the North Loop Ordinances pursuant to ordinances adopted on February 1, 1997 and published in the Journal of Proceedings for said date at pages 38260 to 38425 (collectively, the "Central Loop Ordinances") which amended the redevelopment plan and project (the "Plan"), attached hereto as Exhibit B, and expanded the North Loop Redevelopment Project Area to an area now known as the "Central Loop Redevelopment Project Area" (the "Central Loop Redevelopment Area")."

- e. Recital I of the Agreement is hereby amended by deleting the stricken text and adding the underlined text as follows:

"DPD wishes to make available to the Park District a portion of the City Increment in an amount not to exceed ~~\$1,000,000~~ \$1,400,000 (the "TIF Assistance"), subject to Section 2.6, for the purpose of funding the Project and the Expansion (the "TIF- Funded Improvements) in the Central Loop Redevelopment Area to the extent and in the manner provided in the Agreement."

- f. Recital J is hereby amended by adding the underlined text as follows:

"The Plan contemplates that tax increment financing assistance would be provided for public improvements, such as the Project and the Expansion, within the boundaries of the Central Loop Redevelopment Area."

- g. Recital L is hereby amended by adding the underlined text as follows:

"In accordance with the Act, the TIF-Funded Improvements shall include such of the Park District's capital costs necessarily incurred or to be incurred in furtherance of the objectives of the Plan, and the City has found that the TIF-Funded Improvements consist of the Park District's capital improvements that are necessary and directly result from the redevelopment project constituting the Project and the Expansion, and therefore constitute "taxing district's capital costs" as defined in Section 5/11-74.4-3(u) of the Act."

- h. Recital M is hereby amended by replacing the entire text with the following:

"The Park District shall undertake the remediation necessary to obtain a "No Further Remediation" Letter (the "NFR Letter") from the Illinois Environmental Protection Agency under applicable regulatory standards of existing adverse environmental conditions (i) on the Property prior to taking ownership and (ii) on the City Property prior to operating a park thereupon (collectively, the "Remediation")."

- i. Recital N is hereby amended by deleting the stricken text as follows:

"Pursuant to the terms of the Agreement and upon receipt of a ~~"no further remediation letter from the State ("NFR Letter")~~, the City shall transfer the Property to the Park District. However, the City will retain ownership of the City Property."

- j. Recital O is hereby amended by adding the underlined text as follows:

"The City and the Park District wish to enter into this Agreement whereby the Park District shall undertake the Project and the Expansion and the City shall reimburse the Park District for the TIF-Funded Improvements."

- k. Recital P is hereby amended by replacing the entire text as follows:

"On September 13, 2006 and on November 5, 2008, the City Council adopted ordinances published in the Journal of Proceedings for said dates at pages 83223 to 83251 and 42779 to 42959 respectively, (collectively, the "Authorizing Ordinance"), among other things, authorizing the execution of this Agreement and authorizing the transfer of the Property from the City to the Park District by execution of a deed. The September 13, 2006 ordinance is also referred to herein as the "Transfer Ordinance."

- l. Recital Q is hereby amended by adding the underlined text and deleting the stricken text as follows:

"On June 14, 2006, February 14, 2007 and August 13, 2008, the Park District's Board of Commissioners passed ~~a Resolutions~~ expressing its desire to cooperate with the City in the transfer of the Property, the completion of the Project and the Expansion and authorizing the execution of this Agreement (the "Park District Ordinance")."

- m. Section 1.6 is added to the Agreement as follows:

"The terms of Sections 1.2, 1.3, 1.4 and 1.5 shall apply to the Expansion for the duration of the Expansion Right of Entry (as defined below). Exhibit C, the Plans and Specifications for the Project, shall be revised accordingly and shall be provided to the City prior to the disbursement of the TIF Assistance."

- n. Section 2.1 is hereby amended by deleting the stricken text and adding the underlined text as follows:

"The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Section 2 and such other conditions contained in this Agreement, disburse the TIF Assistance to the Park District upon submission of a Certificate of Expenditure completion of in connection with the Project and the Expansion

- o. Section 2.4 is hereby amended by deleting the stricken text and adding the underlined text as follows:

"The Park District may request that a certificate(s) of expenditure in the form of Exhibit E hereto ("Certificates of Expenditure") be processed and executed ~~periodically~~quarterly. The City shall not execute Certificates of Expenditure in the aggregate in excess of the actual costs of the Project and the Expansion that are TIF-Funded Improvements. Prior to each execution of a Certificate of Expenditure by the City, the Park District shall submit documentation regarding the applicable expenditures to DPD. Delivery by the Park District to DPD of any request for execution by the City of a Certificate of Expenditure hereunder shall, 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:

2.4.1. the total amount of the request for the Certificate 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 the Expansion, and/or their payees;

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

2.4.3. the Park District 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; and

2.4.4. the Park District 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, the Expansion or the Park District as related thereto."

- p. Section 2.6 is hereby amended by adding the underlined text and deleting the stricken text as follows:

"The current estimate of the cost of the Project and the Expansion is \$1,400,000~~1,000,000~~. The Park District has delivered to the Commissioner a budget for the Project and the Expansion in an amount not to exceed \$1,400,000, as attached as Exhibit D. The City will ~~use the remaining TIF Assistance (in an amount not to exceed \$100,000)~~ pay for the costs associated with obtaining a ~~"no further remediation" letter~~ NFR Letter from the State as set forth in Section 4 hereto. The Park District certifies that it has identified sources of funds sufficient to complete its budgeted portion of the Project and the Expansion. The Park District agrees that the City will reimburse the Park District with the TIF Assistance for the costs of the Project and the Expansion and that all costs of completing the Project and the Expansion over the TIF Assistance shall be the sole responsibility of the Park District. If the Park District at any point does not have sufficient funds to complete the Project or the Expansion, the Park District shall so notify the City in writing, and the Park District may narrow the scope of the Project and/or the Expansion (the "Revised Project") as agreed with the City in order to complete the Revised Project with the available funds."

- q. Section 2.7 is hereby amended by adding the underlined text and deleting the stricken text as follows:

"Exhibits D contains a preliminary list of remediation costs, capital improvements, land assembly costs, relocation costs, financing costs, and other costs, if any, recognized by the City as being eligible redevelopment project costs under the Act with respect to the Project and the Expansion, to be paid for out of the TIF Assistance. To the extent the TIF-Funded Improvements are included as taxing district capital costs under the Act, the Park District acknowledges that the TIF-Funded Improvements are costs for capital improvements and the City acknowledges it has determined that these TIF-Funded Improvements are necessary and directly result from the Plan. Prior to the expenditure of TIF Assistance funds on the Project and the Expansion, the Commissioner, based upon the Project and the Expansion budget, may make such modifications to Exhibit D as he or she wishes in his or her discretion to account for all of the TIF Assistance funds to be expended under this Agreement; provided, however, that all TIF-Funded Improvements shall (i) qualify as redevelopment project costs under the Act, (ii) qualify as eligible costs under the Plan; and (iii) be improvements that the Commissioner has agreed to pay for out of TIF Assistance funds, subject to the terms of this Agreement."

- r. Section 2.9 is hereby amended by adding the underlined text as follows:

"If the aggregate cost of the Project and the Expansion is less than the amount of the TIF Assistance contemplated by this Agreement, the Park District shall have no claim to the difference between the amount of the TIF Assistance contemplated by this Agreement and the amount of the TIF Assistance actually paid by the City to the Park District and expended by the Park District on the Project and the Expansion."

- s. Section 3.5 is added to the Agreement as follows:

"For the purposes of the City Property, the Parties agree that the City will maintain ownership of the City Property, while the improvements of the City Property will be maintained by the Park District. The City hereby agrees that the Park District, its contractor and their respective designees shall have such right or rights of entry upon the City Property as may be required in order to commence, manage and after completion maintain the Expansion (the "Expansion Right of Entry"). The Park District shall provide evidence of the types and amounts of insurance as set forth in Section 5.1 and indemnification as set forth in Section 6. The Park District and the City may terminate the Expansion Right of Entry upon 60-day prior written notice."

- t. Section 4.4 is added to the Agreement as follows:

"The terms of Sections 4.1, 4.2, and 4.3 and of Exhibit F, shall apply to the Expansion for the duration of the Expansion Right of Entry.

- u. The last sentence of Section 5.10 is hereby amended by adding the underlined text as follows:

"In all contracts relating to the Project and Expansion, the Park District agrees to require the contractor to name the City as an additional insured on insurance coverages and to require the contractor to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Project and Expansion by the contractor or contractor's suppliers, employees, or agents."

- v. Section 5.12 is added to the Agreement as follows:

"To the extent permitted by applicable Law, the Park District may self insure for the insurance requirements specified in this Section 5."

- w. Section 6.1(ii) of the Agreement is amended by adding the underlined text as follows:

"the Park District's or any of the Park District's contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project or the Expansion. The defense and indemnification obligations in this Section 6.1 shall survive any termination or expiration of this Agreement"

- x. Section 6.3 is added to the Agreement as follows:

"Except as otherwise provided in Section 4.4, and to the extent permitted by applicable Laws, the City agrees to indemnify and hold harmless the Park District, its officers and employees, from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the Park District arising from or in connection with the Park District's development and maintenance of the City Property, except to the extent such losses are attributable to the Park District's negligence or

intentional misconduct. The defense and indemnification obligations in this Section 6.3 shall survive any termination or expiration of this Agreement."

y. Section 6.4 is added to the Agreement as follows:

"Any contract to be awarded by the Park District for the Project and/or the Expansion shall require a contractor to indemnify, save and hold harmless the City and its officers, agents, employees and representatives, individually and collectively, from all claims, demands, actions and the like, made or instituted by third parties arising or alleged to arise out of the Project and/or the Expansion as a result of any negligent or willful act or omission of a contractor or its subcontractors or any of their employees or agents."

z. Section 7.2 of the Agreement is hereby amended by replacing the entire text as follows:

"If the Park District, without the City's written consent, fails to complete the Project and the Expansion within [48] months after the execution of this Agreement, then the City may (i) terminate this Agreement by providing written notice to the Park District; (ii) amend this Agreement with the consent of the Park District to redefine the scope of the Project and the Expansion; or (iii) allow additional time for performance."

aa. Exhibits A, C, D and E to the Agreement are replaced by the Exhibits attached to this Amendment as follows:

- Exhibit A is replaced by attached Exhibit A-1 and Exhibit A-2
- Exhibit C is replaced by attached Exhibit C
- Exhibit D is replaced by attached Exhibit D
- Exhibit E is replaced by attached Exhibit E

All Exhibits attached to this Amendment are incorporated to the Agreement and all references to the original Exhibits A, C, D and E in the Agreement shall be replaced by references to the applicable Exhibit attached to this Amendment.

**Section 3. Representation of Authority to Contract.** Each party represents and warrants to the other party that the execution and delivery of this Amendment by it has been duly authorized by all proper actions and proceedings and that this Amendment constitutes the legal, valid and binding obligation of such party.

*[The remainder of this page is intentionally blank. Signature page follows.]*



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

CITY OF CHICAGO, a municipal corporation,  
by and through its Department of Planning and  
Development

By: Arnold Bankall  
Commissioner

CHICAGO PARK DISTRICT, a municipal  
corporation

By: \_\_\_\_\_  
General Superintendent and CEO

Attest: \_\_\_\_\_  
Secretary

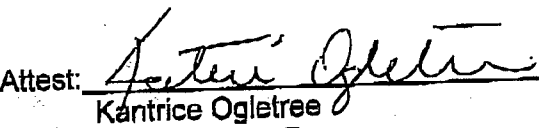
IN WITNESS WHEREOF, each of the Parties has caused this Amendment to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation,  
by and through its Department of Planning and  
Development

By: \_\_\_\_\_  
Commissioner

CHICAGO PARK DISTRICT, a municipal  
corporation

By:   
Timothy J. Mitchell  
General Superintendent and CEO

Attest:   
Kantrice Ogletree  
Secretary Pro Tempore