## INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF CHICAGO, BY AND THROUGH ITS DEPARTMENT OF PLANNING AND DEVELOPMENT, AND THE BOARD OF EDUCATION OF THE CITY OF CHICAGO REGARDING OROZCO ACADEMY OF FINE ARTS AND SCIENCES

This Intergovernmental Agreement regarding Orozco Academy of Fine Arts and Sciences School (this "Agreement") is made and entered into as of the <u>J++</u> day of <u>OroG</u>, 2016 (the "Agreement Date") by and between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development (the "Department"), and the Board of Education of the City of Chicago (the "Board"), a body corporate and politic, organized under and existing pursuant to Article 34 of the School Code of the State of Illinois.

#### RECITALS

WHEREAS, pursuant to the provisions of an act to authorize the creation of public building commissions and to define their rights, powers and duties under the Public Building Commission Act (50 ILCS 20/1 et seq.), the City Council of the City (the "City Council") created the Public Building Commission of Chicago (the "Commission") to facilitate the acquisition and construction of public buildings and facilities; and

WHEREAS, the Board operates a school known as Orozco Academy of Fine Arts and Sciences (the "School") located at 1940 West 18<sup>th</sup> Street, Chicago, Illinois 60608 (the "Property"); and

WHEREAS, the Board desires to rehabilitate the School and related improvements (the "Facility") on the Property to serve the School (the rehabilitation of the Facility shall be referred to herein as the "Project"); 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 blight conditions through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, to induce certain redevelopment pursuant to the Act, the City Council adopted ordinances on February 5, 1998 (as published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages 61204 to 61411), as amended by ordinances adopted by the City Council on July 30, 2014 (published at pages 84889 through 84892 of the Journal for said date): approving and adopting a tax increment financing redevelopment project and plan for the Western/Ogden Redevelopment Project Area; designating the Western/Ogden Redevelopment Project Area (the aforesaid Ordinances are collectively referred to herein as the "Western/Ogden TIF Ordinances is referred to herein as the "Western/Ogden Redevelopment Plan" and the redevelopment project area created by the Western/Ogden TIF Ordinances, as amended, is referred to herein as the "Western/Ogden Redevelopment Plan" (the redevelopment Project area created by the Western/Ogden TIF Ordinances, as amended, is referred to herein as the "Western/Ogden Redevelopment Plan" (the redevelopment Project area created by the Western/Ogden TIF Ordinances, as amended, is referred to herein as the "Western/Ogden Redevelopment Plan" (the redevelopment Project area created by the Western/Ogden TIF Ordinances, as amended, is referred to herein as the "Western/Ogden Redevelopment Plan"); and

WHEREAS, all of the Property lies wholly within the boundaries of the Western/Ogden Redevelopment Area; and

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## ARTICLE TWO: THE PROJECT

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1. The School, the Facility and the Project are described in Exhibit A hereto. The pla<sup>19</sup> and specifications for the Project shall be provided to the City by the Board and approved by tl City in the City's discretion. The Board shall comply with all applicable federal, state and local law statutes, ordinances, rules, regulations, codes and executive orders, as well as all policie programs and procedures of the Board, all as may be in effect from time to time, pertaining to affecting the Project or the Board as related thereto. The Board shall include a certification of su compliance with each request for City Funds hereunder and at the time the Project is complete The City shall be entitled to rely on this certification without further inquiry. Upon the City's reque

out of or resulting from work on the Project by the contractor or contractor's suppliers, employees, or agents.

## ARTICLE THREE: FUNDING

1. (a) On a quarterly basis (or as otherwise agreed to by the Department), the Board shall provide the Department with a Requisition Form, in the form of Exhibit E hereto, along with: (i) a cost itemization of the applicable portions of the budget attached as Exhibit G hereto; (ii) evidence of the expenditures upon TIF-Funded Improvements which the Board has incurred; and (iii) all other documentation described in Exhibit E. The City shall review and, in the City's discretion, approve each Requisition Form and make the applicable requested and approved disbursement of City Funds, subject to the availability thereof. The availability of the City Funds is subject to the City's compliance with all applicable requirements regarding the use of such funds and the timing of such use. No City Funds shall be disbursed with respect to the Project until the Board has evidenced to the City in writing to the City's satisfaction that the Board owns or otherwise controls the Property, or has the right to enter the Property and undertake such activities as the Board deems necessary prior to owning or otherwise controlling the Property. The Board will only request disbursement of City Funds and the City will only disburse City Funds for the costs of the Project, to the extent that such costs are TIF-Funded Improvements.

(b) Delivery by the Board to the Department of a Requisition Form hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such Requisition Form, that:

(i) the total amount of the City Funds disbursed in the previously made Disbursement (if any) represents the actual amount 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;

(ii) all amounts shown as previous payments on the current Requisition Form have been paid to the parties entitled to such payment;

(iii) the Board has approved all work and materials for the current Requisition Form, and such work and materials conform to the plans and specifications for the Project; and

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

The City shall have the right, in its discretion, to require the Board to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any approval of a Requisition Form by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; <u>provided</u>, <u>however</u>, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Board.

(c) [intentionally omitted]

#### (d) [intentionally omitted]

(e) (i) The Board's right to receive payments hereunder shall be subordinate to all prior obligations of the City to be paid from Western/Ogden Increment.

(ii) The City, subject to the terms of this subsection 1(e)(ii), may, until the earlier to occur of (1) the expiration of the Term of this Agreement or (2) the date that the City has paid directly or the Board has been reimbursed in the full amount of the City Funds under this Agreement, exclude up to 90% of the Increment generated from the construction value of a new assisted development project and pledge that Increment to a developer on a basis superior to that of the Board. For purposes of this subsection, "a new assisted development project" shall not include any development project that is or will be exempt from the payment of ad valorem property taxes. Further, for purposes of this subsection, "Increment generated from the construction value of a new assisted development project" shall be the amount of Increment generated by the equalized assessed value ("EAV") of such affected parcels over and above the EAV of such affected parcels for the year immediately preceding the year in which the new assisted development project commences (the "Base Year"). Except for the foregoing, the Board shall retain its initial lien status relative to Western/Ogden Increment. In the event that the City elects to avail itself of the provisions of this subsection, it shall, at least seven (7) days prior to executing a binding commitment pledging the Increment described above, certify, in a letter to the Board, the affected parcels and the EAV thereof for the Base Year.

(f) [intentionally omitted]

(g) The availability of City Funds is subject to: (i) the City's annual retention of Western/Ogden Increment in an amount necessary for the payment of expenses incurred by the City in the administration of the Western/Ogden Redevelopment Area; and (ii) the City's compliance with all applicable requirements regarding the use of such funds and the timing of such use.

(h) The Board shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Western/Ogden Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements ("Bonds"); provided, however, that any such amendments shall not have a material adverse effect on the Board or the Project. The Board shall, at the Board's expense, cooperate and provide reasonable assistance in connection with the marketing of any such Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto. The City may, in its sole discretion, use all or a portion of the proceeds of such Bonds if issued to pay for all or a portion of the TIF-Funded Improvements.

2. The current estimate of the cost of the Project is \$1,500,000. The Board has delivered to the Commissioner, and the Commissioner hereby approves, a detailed project budget for the Project, attached hereto and incorporated herein as <u>Exhibit G</u>. The Board certifies that it has identified sources of funds (including the City Funds) sufficient to complete the Project. The Board agrees that the City will only contribute the City Funds to the Project and that all costs of completing the Project over the City Funds shall be the sole responsibility of the Board. If the Board at any point does not have sufficient funds to complete the Project, the Board shall so notify the City in

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writing, and the Board may narrow the scope of the Project as agreed with the City in order to construct the Facility with the available funds.

3. Attached as <u>Exhibit H</u> and incorporated herein is a preliminary list of capital improvements, land assembly costs, relocation costs and other costs, if any, recognized by the City as being eligible redevelopment project costs under the Act with respect to the Project, to be paid for out of City Funds ("TIF-Funded Improvements"); and to the extent the TIF-Funded Improvements are included as taxing district capital costs under the Act, the Board 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 Western/Ogden Redevelopment Plan. Prior to the expenditure of City Funds on the Project, the Commissioner, based upon the detailed project budget, shall make such modifications to <u>Exhibit H</u> as he or she wishes in his or her discretion to account for all of the City Funds to be expended under this Agreement; provided, however, that all TIF-Funded Improvements shall (i) qualify as redevelopment Plan; and (iii) be improvements that the Commissioner has agreed to pay for out of City Funds, subject to the terms of this Agreement.

4. If the aggregate cost of the Project is less than the amount of the City Funds contemplated by this Agreement, the Board shall have no claim to the difference between the amount of the City Funds contemplated by this Agreement and the amount of the City Funds actually paid by the City to the Board and expended by the Board on the Project.

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

6. [intentionally omitted]

7. During the Term hereof the Board shall not sell, transfer, convey or otherwise dispose of all or any portion of the Facility and/or the Property or any interest therein to a party other than the City (a "Transfer"), or otherwise effect or consent to a Transfer to a party other than the City, without the prior written consent of the City. The City's consent to any Transfer may, in the City's sole discretion, be conditioned upon (among other things) whether such a Transfer would conflict with the statutory basis for the grant of the City Funds hereunder pursuant to the Act.

## ARTICLE FOUR: TERM

The Term of the Agreement shall commence as of the Agreement Date and shall expire on the date on which the Western/Ogden Redevelopment Area is no longer in effect (through and including February 5, 2021).

## ARTICLE FIVE: INDEMNITY; DEFAULT

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

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2. The failure of the Board to perform, keep or observe any of the pecifying the conditions, promises, agreements or obligations of the Board under this Agreent capable of agreement directly related to this Agreement shall constitute an "Event of Default" tommitted an hereunder. Upon the occurrence of an Event of Default, the City may terminate this Agt within such all agreements directly related to this Agreement, and may suspend disbursemen such default Funds. The City may, in any court of competent jurisdiction by any action or proceedir equity, pursue and secure any available remedy, including but not limited to injunctive specific performance of the agreements contained herein.

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

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3. The failure of the City to perform, keep or observe any of the covenants being cured promises, agreements or obligations of the City under this Agreement or any othe an Event of directly related to this Agreement shall constitute an "Event of Default" by the City herech thirty (30) the occurrence of an Event of Default, the Board may terminate this Agreement arault until the agreement directly related to this Agreement. The Board may, in any court of competer by any action or proceeding at law or in equity, pursue and secure any available remeibut not limited to injunctive relief or the specific performance of the agreements contained.

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

### ARTICLE SIX: CONSENT

Whenever the consent or approval of one or both parties to this Agreemen hereunder, such consent or approval shall not be unreasonably withheld.

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Board of Education of the City of Chicago 42 West Madison Street, 2<sup>nd</sup> Floor Chicago, Illinois 60602

and

General Counsel Board of Education of the City of Chicago One North Dearborn Street, 9<sup>th</sup> Floor Chicago, Illinois 60602

Notice to the City shall be addressed to:

Commissioner Department of Planning and Development 121 North LaSalle Street, Room 1000 Chicago, Illinois 60602

and

Corporation Counsel 121 North LaSalle Street, Room 600 Chicago, Illinois 60602 Attention: Finance and Economic Development Division

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

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

ARTICLE EIGHT: ASSIGNMENT; BINDING EFFECT

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

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

## ARTICLE NINE: MODIFICATION

This Agreement may not be altered, modified or amended except by written instrument

signed by all of the parties hereto.

# ARTICLE TEN: COMPLIANCE WITH LAWS

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

## ARTICLE ELEVEN: GOVERNING LAW AND SEVERABILITY

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

## ARTICLE TWELVE: COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one instrument. A signature delivered by facsimile or electronic means shall be considered binding for both parties.

# ARTICLE THIRTEEN: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties regarding the Project.

# ARTICLE FOURTEEN: AUTHORITY

Execution of this Agreement by the City is authorized by an ordinance passed by the City Council of the City on June 22, 2016. Execution of this Agreement by the Board is authorized by Board Resolution 01-0725-RS2. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

## ARTICLE FIFTEEN: HEADINGS

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

# ARTICLE SIXTEEN: DISCLAIMER OF RELATIONSHIP

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

### ARTICLE EIGHTEEN: NO PERSONAL LIABILITY

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

## ARTICLE NINETEEN: REPRESENTATIVES

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

For the Board:	Mary De Runtz, Deputy Chief Facilities Officer Board of Education of the City of Chicago 42 West Madison Street, 9 <sup>th</sup> Floor Chicago, Illinois 60602 Phone: 773-553-2900 Email:
For the City:	Denise Roman, Economic Development Coordinator City of Chicago, Department of Planning and Development 121 North LaSalle Street, Room 1003 Chicago, Illinois 60602 Phone: 312-744-6502 Email: denise.roman@cityofchicago.org

Each party agrees to promptly notify the other party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such party for the purpose hereof.

[Signature Page Follows]

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

City of Chicago, Illinois

By:

Commissioner Department of Planning and Development

The Board of Education of the City of Chicago

By: Frank M. Clark, President

10/6/16 Attest: Estela G. Beltran, Secretary

By: Forrest Claypool, Chief Executive Officer

Board Report No. 01-0725-RS2-54

Approved as to legal form:((

Ronald L. Marmer, General Counse

### AGREEMENT EXHIBIT A FEATURES OF THE FACILITY

### OROZCO ACADEMY SPACE TO GROW PROJECT

The project will provide playgrounds, artificial turf, outdoor classrooms, walkways, native planting, gardens, fencing, lighting, site furnishings, drainage, utility upgrades, and enhanced accessibility.

The project work consists of selective demolition, site excavation, backfill, and grading; site paving, both permeable and non-permeable; artificial turf and athletic track; storm drainage and retention systems; playground equipment and site furnishings; landscaping and fencing; and site lighting modifications.

The improvements will provide Orozco Academy with schoolyards that provide students, their families and the broader community with the opportunity for active play, space for physical education classes, opportunities for outdoor learning, gardening and environmental literacy, and engagement with art. These green schoolyards also provide much-needed green space in otherwise heavily urbanized neighborhoods and contribute to a reduction in storm water runoff across the city.

Project is scheduled to be completed by the end of summer 2016.

### AGREEMENT EXHIBITS B-D [intentionally omitted]

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### AGREEMENT EXHIBIT E REQUISITION FORM

### **REQUISITION FORM**

State of Illinois	)
	) SS
County of Cook	)

The affiant, \_\_\_\_\_\_, \_\_\_\_\_\_\_\_of the Board of Education of the City of Chicago, a body corporate and politic (the "Board"), hereby certifies to the City of Chicago (the "City") that with respect to that certain Intergovernmental Agreement between the Board and the City regarding Orozco Academy of Fine Arts and Sciences School dated \_\_\_\_\_\_, 20\_\_\_\_ (the "Agreement"):

A. The following is a true and complete statement of all expenditures for the Project by the Board to date:

TOTAL: \$\_\_\_\_\_

B. This paragraph B sets forth and is a true and complete statement of all costs of TIF-Funded Improvements for the Project paid for by the City to date:

\$\_\_\_\_\_

C. The Board requests disbursement for the following cost of TIF-Funded Improvements:

\$\_\_\_\_\_

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

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

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

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

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

F. Attached hereto are: (1) a cost itemization of the applicable portions of the budget attached as Exhibit G to the Agreement; and (2) evidence of the expenditures upon TIF-Funded Improvements for which the Board hereby seeks reimbursement.

All capitalized terms that are not defined herein have the meanings given such terms in the Agreement.

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

By:	
Name:	
Title:	

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

My commission expires:

Agreed and accepted: CITY OF CHICAGO DEPARTMENT OF PLANNING AND DEVELOPMENT

Name:	
Title:	

AGREEMENT EXHIBIT F [intentionally omitted]

# AGREEMENT EXHIBIT G PROJECT BUDGET

Project Budget Orozco Campus Park 2016-31281-NCP

Project Estimate	
\$110,000	
\$1,100,000	
\$80,000	
\$100,000	
\$0	
\$110,000	
\$1,500,000	
	\$110,000 \$1,100,000 \$80,000 \$100,000 \$0 \$110,000

# AGREEMENT EXHIBIT H PROJECT TIF-FUNDED IMPROVEMENTS

Project TIF-Funded Improvements Orozco Campus Park 2016-31281-NCP

Task	Project Estimate
Design	\$110,000
Construction	\$1,100,000
<b>Environ Remediation</b>	\$80,000
Administration	\$100,000
FF&E	\$0
Contingencies	\$110,000
Total	\$1,500,000