RESOLUTION 2016-003    PASSED: JANUARY 11, 2016

AUTHORIZING THE MAYOR OF THE CITY OF
DEKALB, ILLINOIS TO ENTER INTO AN
INTERGOVERNMENTAL TAX INCREMENT
FINANCING (TIF) AGREEMENT WITH DEKALB
COMMUNITY SCHOOL DISTRICT #428 IN AN
AMOUNT NOT TO EXCEED $2,000,000 FOR THE
PURPOSE OF FINANCING FACILITY
IMPROVEMENTS.

BE IT RESOLVED BY THE CITY COUNCIL of the City of DeKalb, Illinois, as follows:

Section 1. That the Mayor of the City of DeKalb, Illinois, is authorized and directed to sign
an intergovernmental agreement with the DeKalb Community School District #428 for TIF
funding in an amount not to exceed $2,000,000.

Section 2. That the terms and conditions of the agreement shall follow the form in the copy of
the Funding Agreement attached as Exhibit "1".

Section 3. That the City Clerk of the City of DeKalb is authorized and directed to attest
the Mayor's signature.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a regular
meeting thereof held on the 11th day of January, 2016, and approved by me as Mayor on
the same day. Passed by roll call vote of 6-0-2. Aye: Jacobson, Marquardt, Snow, Noreiko,

ATTEST:

JENNIFER JEEP JOHNSON, City Clerk  JOHN A. REY, Mayor
INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN
THE CITY OF DEKALB, DEKALB COUNTY, ILLINOIS AND DEKALB COMMUNITY
UNIT SCHOOL DISTRICT NO. 428

THIS INTERGOVERNMENTAL AGREEMENT ("Intergovernmental Agreement") entered into this 11th day of January, 2018, by and between the City of DeKalb, DeKalb County, Illinois, an Illinois municipal home rule corporation ("City") and DeKalb Community Unit School District Number 428, a school district and body politic and corporate of the State of Illinois ("School District").

WHEREAS, pursuant to the Tax Increment Allocation Redevelopment Act (the "TIF Act") 65 ILCS 5/11-74.4-1 et seq., in 1986, the City adopted Ordinance Nos. 86-78, 86-79 and 86-80 approving the Central Area Tax Increment Redevelopment Plan (the "Plan"); designating the Central Area Tax Increment Project Area as a "redemption project area" (the "Project Area"); and, adopting the TIF Act as applicable to the Project Area; and,

WHEREAS, the Plan provided for an estimated date of completion of all redevelopment projects by December 31, 2009, however, pursuant to the TIF Act and with the support of the School District and other affected taxing bodies, the estimated date of completion was extended by twelve (12) years on the condition that, commencing 2011, the City would declare a surplus of fifty percent (50%) of the incremental revenues received by it for distribution, pro rata, to all taxing districts having jurisdiction over the Project Area, including the School District as set forth in that certain Intergovernmental Agreement on the Extension of the Central Area Tax Increment Financing Redevelopment Plan and Project dated May 29, 2007 (the "2007 Intergovernmental Agreement"); and,
WHEREAS, the School District has now approached the City with several redevelopment projects, it desires to undertake at its facilities which are located within the Project Area and which could total more than $2,000,000; and,

WHEREAS, the City and the School District desire to work together for the betterment of the community, the City is prepared to authorize the use of the incremental revenue available to it pursuant to the TIF Act to assist the School District to improve its facilities thereby benefiting the residents of the City; and,

WHEREAS, the School District has presented several improvement projects it desires to undertake as hereinafter itemized and the City is prepared to approve such projects on the terms and conditions hereinafter set forth; and,

WHEREAS, the reimbursement by the City for such projects pursuant to the terms hereof, shall be in addition to the payments received by the School District pursuant to the 2007 Intergovernmental Agreement.

NOW, THEREFORE, the parties, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1. Incorporation of Recitals.

The Parties agree that all of the recitals contained in the Preambles to this Intergovernmental Agreement are true and correct and are hereby incorporated into this Intergovernmental Agreement as though they were fully restated in this Section 1.

Section 2. School District’s Obligations.

(a) The School District intends to undertake some or all of the following redevelopment projects within the Project Area (collectively the “Projects”):
1. Chiller Installation at Founders Elementary School – estimated cost of $500,000;
2. Roof Repairs and/or replacement at Founders Elementary School – estimated cost of $850,000;
3. Roof Repairs and/or replacement at Clinton Rosette Middle School – estimated cost of $160,000;
4. Rear Parking Lot Repairs and/or Replacement at Founders Elementary School – estimated cost of $150,000;
5. Front Parking Lot Installation Clinton Rosette Middle School – estimated cost of $200,000;
6. Re-duct second floor HVAC & Replace Ceiling/lights at Clinton Rosette Middle School – estimated cost $750,000.

(b) The City acknowledges and agrees that costs for the Projects qualify as “Redevelopment Project Costs”, as hereinafter defined, which are eligible for reimbursement pursuant to the terms of the TIF Act and this Intergovernmental Agreement.

(c) The School District covenants and agrees that it will substantially complete the Projects for which it seeks reimbursement before September 30, 2017, in accordance with all applicable codes, rules and regulations of all agencies or governmental bodies having jurisdiction over the Projects (the “Legal Requirements”).

Section 3. Reimbursement by the City.

(a) In consideration of the undertaking some or all of the Projects in accordance with the terms of this Intergovernmental Agreement, the City shall reimburse the School District for costs the School District actually incurs for the Projects, subject to the limitations and authorization of the TIF Act, this Intergovernmental Agreement and provided that such costs constitute “Redevelopment Project Costs” as hereinafter defined. The total reimbursements to the School District shall in no event exceed $2,000,000.00. For purposes of this Intergovernmental Agreement, “Redevelopment Project Costs” shall mean and include all costs defined as
“redevelopment project costs” in Section 11-74.4-3(q) of the TIF Act, as from time to time amended.

(b) The City has established a Special Tax Allocation Fund (the “STAF”), into which the City deposits all incremental real estate tax generated from the Redevelopment Project Area. The City agrees to reimburse the School District a total sum of $2,000,000.00 from the STAF for the Redevelopment Project Costs the School District incurs in connection with the Projects. Payment will be made consistent with and upon completion and satisfaction of all the requirements and procedures set forth in Section 4 below.

Section 4. Procedures for and Application of Reimbursement to the School District.

(a) The School District shall advance all funds and all costs necessary to construct and complete the Projects which the School District elects to undertake.

(b) To be eligible for reimbursement of any Redevelopment Project Costs, construction of the Projects shall have been done in accordance with the Legal Requirements and this Intergovernmental Agreement.

(c) To establish a right of reimbursement for specific Redevelopment Project Costs the School District shall submit to the City Manager or his or her designated officer or employee a written statement in the form attached to this Intergovernmental Agreement as Exhibit A (a “Request for Reimbursement”) setting forth the specific Redevelopment Project Costs for which reimbursement is sought. The School District need not submit a single Request for Reimbursement for the entire $2,000,000 and may submit a Request for Reimbursement upon completion of any item included in the list of Projects. The Request for Reimbursement shall be accompanied by such bills, contracts, invoices, lien waivers or other evidence as the City Manager or his or her
designee shall reasonably require to evidence for each project of the Projects the right of the School District to the reimbursement of a maximum of $2,000,000. The City Manager or his or her designee shall have twenty (20) days after receipt of the Request for Reimbursement from the School District to recommend approval for immediate payment or disapproval of such Request and, if disapproved, to provide the School District in writing and in detail with an explanation as to why he or she is not prepared to recommend such reimbursement and allow the School District to provide such additional information as may be required. The only reason for disapproval of any expenditure for which reimbursement is sought shall be that such expenditure is not an eligible Redevelopment Project Cost. The parties acknowledge that the determination of Redevelopment Project Costs and qualification for reimbursement under this Intergovernmental Agreement are subject to the TIF Act, all amendments to the TIF Act both before and after the date of this Intergovernmental Agreement, and judicial interpretations of such Act rendered during the term of this Intergovernmental Agreement. The City has no obligation to the School District to attempt to modify such judicial interpretations but will cooperate with the School District in obtaining approval of Redevelopment Project Costs. Payment of Redevelopment Project Costs will be made to the School District no more than thirty (30) days after approval.

Section 5. Term.

Unless earlier terminated pursuant to Section 13 the term of this Intergovernmental Agreement shall commence on the date of execution by both parties and terminate upon the earlier of: (i) reimbursement to the School District of $2,000,000; or, (ii) September 30, 2017.
Section 6. No Liability of City to Others for the School District's Expenses.

The City shall have no obligation to pay any cost relating to the Projects other than the reimbursements provided for in this Intergovernmental Agreement or to make any payment to any person or entity other than the School District, nor shall the City be obligated to pay any contractor, subcontractor, mechanic, or materialman providing services or materials to the School District.

Section 7. School District's Indemnification.

The School District shall indemnify and hold harmless the City, its agents, officers and employees against all injuries, deaths, losses, damages, claims, suits, liabilities, judgments, costs and expenses (including any liabilities, judgments, costs and expenses and reasonable attorney’s fees) which may arise directly or indirectly from the failure of the School District or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee thereof is hired by the School District) to timely pay any contractor, subcontractor, laborer or materialman; from any default or breach of the terms of this Intergovernmental Agreement by the School District; or from any negligence or reckless or willful misconduct of the School District or any contractor, subcontractor or agent or employee thereof (so long as such contractor, subcontractor or agent or employee is hired by the School District) in carrying out any Project subject to reimbursement by this Intergovernmental Agreement. The School District shall, at its own cost and expense, appear, defend and pay all charges of attorneys, costs and other expenses arising therefrom or incurred in connection therewith. If any judgment shall be rendered against the City, its agents, officers, officials or employees in any such action, the School District shall, at its own expense, satisfy and discharge the same. This paragraph shall not apply, and the School District shall have no obligation whatsoever, with respect to any acts of negligence or
reckless or willful misconduct or other wrongful conduct on the part of the City or any of its officers, agents, employees or contractors.

Section 8. Waiver.

Any party to this Intergovernmental Agreement may elect to waive any remedy it may enjoy hereunder, provided that no such waiver shall be deemed to exist unless the party waiving such right or remedy does so in writing. No such waiver shall obligate such party to waive any other right or remedy hereunder, or shall be deemed to constitute a waiver of other rights and remedies provided said party pursuant to this Intergovernmental Agreement.

Section 9. Severability.

If any section, subsection, term or provision of this Intergovernmental Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term or provision of this Intergovernmental Agreement or the application of same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

Section 10. Notices.

All notices, demands, requests, consents, approvals or other instruments required or permitted by this Intergovernmental Agreement shall be in writing and shall be executed by the party or an officer, agent or attorney of the party, and shall be deemed to have been effective as of the date of actual delivery, if delivered personally, or as of the third (3rd) day from and including the date of posting, if mailed by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

To the School District:
DeKalb Community Unit School District 428
Section 11. No Joint Venture, Agency or Partnership Created.

Neither anything in this Intergovernmental Agreement nor any acts of the parties to this Intergovernmental Agreement shall be construed by the parties or any third person to create the relationship of a partnership, agency, or joint venture between or among such parties.

Section 12. No Discrimination – Construction.

(a) The School District for itself and its successors and assigns agrees that in the construction of the Projects provided for in this Intergovernmental Agreement the School District shall not unlawfully discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The School District shall hire applicants and treat employees in a manner that does not unlawfully discriminate based upon race, creed, color,
religion, sex or national origin, with respect to all aspects of employment, including but not be limited to, the following: employment upgrading, demotion or transfer; recruitment or recruitment advertising and solicitations or advertisements for employees; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The School District agrees to post in conspicuous places, available to employees and applicants for employment, notices, which may be provided by the City, setting forth the provisions of this nondiscrimination clause. The School District shall comply with all applicable laws regarding rate of pay or other forms of compensation.

(b) Prevailing Wage Act.

The School District and its contractors and subcontractors shall be responsible for determining if the Project is a “public work” within the meaning of the Illinois Prevailing Wage Act (the “Act”) (820 ILCS 130/0.01 et seq.) requiring it to pay workers performing services on this Project no less than the “prevailing rate of wages” in the city where the work is performed. The School District agrees to indemnify and hold harmless the City, its agents, officers and employees for any violation by the School District or its contractors and subcontractors’ failure to comply with any provision of the Act, if applicable.

Section 13. Remedies – Liability.

(a) If, in the City’s judgment, the School District is in material default of this Intergovernmental Agreement, the City shall provide the School District with a written statement indicating any failure on the School District’s part to fulfill its obligations under this Intergovernmental Agreement. Except as required to protect against further damages, the City may not exercise any remedies against the School District in connection with such failure unless
School District has not cured such default within thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing of the same, so long as the School District diligently proceeds with such cure; if such default is cured within such 30-day or extended period, the default shall not be deemed to constitute a breach of this Intergovernmental Agreement. A default not cured as provided above shall constitute a breach of this Intergovernmental Agreement. Any failure or delay by the City in asserting any of its rights or remedies as to any default or alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

(b) If the School District materially fails to fulfill its obligations under this Intergovernmental Agreement after notice is given by the City and any cure periods described in paragraph (a) above have expired, the City may elect to terminate its obligations under this Intergovernmental Agreement or exercise any right or remedy it may have at law or in equity, including the right to specifically enforce the terms and conditions of this Intergovernmental Agreement.

(c) If, in the School District’s judgment, the City is in material default of this Intergovernmental Agreement, the School District shall provide the City with a written statement indicating in adequate detail any failure on the City’s part to fulfill its obligations under this Intergovernmental Agreement. The School District may not exercise any remedies against the City in connection with such failure unless the City has not cured such default within thirty (30) days after giving such notice. If such default cannot be cured within such thirty (30) day period, such thirty (30) day period shall be extended for such time as is reasonably necessary for the curing
of the same, so long as the City diligently proceeds with such cure; if such default is cured within such 30-day or extended period, the default shall not be deemed to constitute a breach of this Intergovernmental Agreement. Any failure or delay by the School District in asserting any of its rights or remedies as to any default or any alleged default or breach shall not operate as a waiver of any such default or breach or of any rights or remedies it may have as a result of such default or breach.

(d) In addition to any other rights or remedies, a party may institute legal action against the other party to cure, correct or remedy any default, or to obtain any other remedy consistent with the purpose of this Intergovernmental Agreement, either at law or in equity, including, but not limited to the equitable remedy of an action for specific performance; provided, however, no recourse under or upon any obligation contained herein or for any claim based thereon shall be had against the City, its officers, agents, attorneys, representatives or employees in any amount or in excess of any specific sum agreed to be paid by the City hereunder, and no liability, right or claim at law or in equity shall be attached to or incurred by the City, its officers, agents, attorneys, representatives or employees in any amount in excess of any specific sums agreed by the City to be paid hereunder and any such claim is hereby expressly waived and released as a condition of and as consideration for the execution of this Intergovernmental Agreement by the City. Notwithstanding the foregoing, in the event either party shall institute legal action against the other party because of a breach of any Intergovernmental Agreement or obligation contained in this Intergovernmental Agreement, the prevailing party shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred in connection with such action.
(e) The rights and remedies of the parties are cumulative and the exercise by a party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or for any other default by the other party. This Intergovernmental Agreement shall be interpreted and enforced in accordance with the laws of the State of Illinois. Any legal proceedings shall be commenced in the Circuit Court of DeKalb County.

Section 14. Amendment.

This Intergovernmental Agreement, and any exhibits attached to this Intergovernmental Agreement, may be amended only in a writing signed by all parties with the adoption of any ordinance or resolution of the City and the School District approving said amendment, as provided by law, and by execution of said amendment by the parties or their successors in interest. Except as otherwise expressly provided herein, this Intergovernmental Agreement supersedes all prior negotiations and discussions relative to this two million dollar reimbursement for the Projects. This Intergovernmental Agreement does not alter, impact or otherwise amend the 2007 Intergovernmental Agreement with the exception that both parties to this Intergovernmental Agreement hereby waive their respective rights to object with regard to the amount of surplus distributions made prior to the date of this Agreement.

Section 15. Time; Force Majeure.

Time is of the essence of this Intergovernmental Agreement; provided, however, a party shall not be deemed in material breach of this Intergovernmental Agreement with respect to any obligations of this Intergovernmental Agreement on such party's part to be performed if such party fails to timely perform the same and such failure is due in whole or in part to any strike, lock-out,
labor troubles (whether legal or illegal), civil disorder, inability to procure materials, wet soil conditions, failure or interruptions of power, restrictive governmental laws and regulations, wrongful failure of governmental agencies to issue necessary approvals or permits, condemnations, riots, insurrections, wars, fuel shortages, accidents casualties, floods, earthquakes, fires, acts of God, epidemics, quarantine restrictions, freight embargoes, acts caused directly or indirectly by the other party (or the other party’s agents, employees or invitees) or similar causes beyond the reasonable control of such party (“Force Majeure”). If one of the foregoing events shall occur or either party shall claim that such an event shall have occurred, the party to whom such claim is made shall investigate same and consult with the party making such claim regarding the same and the party to whom such claim is made shall grant any extension for the performance of the unsatisfied obligation equal to the period of the delay, which period shall commence to run from the time of the commencement of the Force Majeure; provided that the failure of performance was reasonably caused by such Force Majeure.

Section 16. Counterparts.

This Intergovernmental Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed by their duly authorized officers on the above date at DeKalb, Illinois.

City of DeKalb, an Illinois municipal corporation

By: [Signature]

Mayor

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DeKalb Community Unit School District 428

By:

President of the Board of Trustees
Exhibit A
REQUEST FOR REIMBURSEMENT

[Date]

City of DeKalb
200 South 4th Street
DeKalb, Illinois 60115

Re: Intergovernmental Agreement dated ____________, by and between the City of DeKalb (the "City"), DeKalb, Illinois, and DeKalb Community Unit School District 428 (the "School District")

Dear Sir:

You are requested to reimburse the School District described above in the amount of $_______ for the purpose(s) set forth in this Request for Reimbursement.

1. An amount of $__________ is hereby requested to be disbursed pursuant to this Request for Reimbursement will be used to reimburse the School District for those Redevelopment Project Costs detailed in Schedule 1 attached to this Request for Reimbursement.

2. The undersigned certifies that:
   (i) the amounts included in 1 above were made or incurred in accordance with the construction contracts, and building permits heretofore in effect;
   (ii) the amounts paid or to be paid, as set forth in this Request for Reimbursement, represent a part of the funds due and payable for Redevelopment Project Costs;
   (iii) the expenditures for which reimbursement is being sought are proper Redevelopment Project Costs as defined in the Intergovernmental Agreement and have not been included in any previous Request for Reimbursement;
   (iv) the moneys requested will reimburse the School District for its funds actually advanced for Redevelopment Project Costs;
   (v) the amount of Redevelopment Project Costs to be reimbursed in accordance with this Request for Reimbursement, together with all amounts reimbursed to the Developer pursuant to the Intergovernmental Agreement, is not in excess of $2,000,000.00.

3. Attached to this Request for Reimbursement is Schedule 1, together with copies of documents (which may include invoices or bills of sale and Mechanic's Lien Waivers) covering all items for which reimbursement is being requested, on which it has been noted all Redevelopment Project Costs heretofore reimbursed to the School District.

Date: ____________  By: ___________________________________________________________________

Approved: City of DeKalb, DeKalb County, Illinois

Date: ____________  By: ___________________________________________________________________

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