



Office of the City Clerk



O2012-5776

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	9/12/2012
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Lease agreement with Walsh Construction Co. for vacant land at 5145 S Western Blvd
Committee(s) Assignment:	Committee on Housing and Real Estate



HSG

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

September 12, 2012

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

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith ordinances authorizing the execution of lease agreements.

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

A handwritten signature in cursive script that reads "Rahm Emanuel".

Mayor

ORDINANCE

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

SECTION 1: On behalf of the City of Chicago as Tenant, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a Lease with Walsh Construction Company as Landlord governing the access to approximately 50,000 square feet of vacant land located at 5145 South Western Boulevard for use by the Department of Streets and Sanitation and the Department of Fleet and Facility Management; such Lease to be approved as to form and legality by the Corporation Counsel in substantially the following form:

**5145 South Western Boulevard
Department of Streets and Sanitation
Lease No. 13062**

SECTION 2: This Ordinance shall be effective from and after the date of its passage and approval.

LEASE

This LEASE (this "Agreement") is made as of _____, 2012 (the "Commencement Date"), by and between the CITY OF CHICAGO, an Illinois municipal corporation and home rule unit (the "Tenant") and WALSH CONSTRUCTION COMPANY, an Illinois corporation (the "Landlord").

RECITALS

WHEREAS, Landlord is the owner of the property more commonly known as 5145 South Western Boulevard, Chicago, Cook County, Illinois; and

WHEREAS, Tenant is the owner of the adjacent property more commonly known as 2300 West 52nd Street, Chicago, Cook County, Illinois; and

WHEREAS, Tenant is expanding Tenant's operations at 2300 West 52nd Street and Tenant requires additional parking and operational space; and

WHEREAS, Landlord is not presently using Landlord's 5145 South Western Boulevard property; and

WHEREAS, Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord, approximately 50,000 square feet of vacant land located in the rear of 5145 South Western Boulevard be used by the Tenant for non-public parking and operational space (the "Use").

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:

1. **Incorporation of Recitals.** The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

2. **Grant.** Landlord hereby leases to Tenant the following described premises:

Approximately 50,000 square feet of vacant land located in the rear of 5145 South Western Boulevard, Chicago Illinois (part of PIN 20-07-304-047 - the "Premises").

This grant extends to, and the Tenant shall be responsible for, its agents, employees, contractors, subcontractors and consultants. This Lease agreement is non-assignable.

3. **Term.** The term of this Lease ("Term") shall begin on the Commencement Date and shall end on December 31, 2014 unless sooner terminated, or extended, as set forth in this Lease.

4. **Cost.** Tenant shall pay base rent for the Premises in the amount of One Dollar (\$1.00) for the entire Term with the receipt and sufficiency of said sum hereby acknowledged by both parties. The Tenant shall be responsible for all costs and expenses associated with the Use.

5. **Indemnification.** The Tenant shall indemnify, defend and hold the Landlord, and its officers, agents, and employees, harmless from and against any and all negligent actions, claims, suits, losses, damages, liens, liabilities, fines, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) incurred in connection with, arising out of or incident to (a) any act or omission of the Tenant or its agents, employees, contractors, subcontractors or consultants, or (b) any entry upon or use of the Premises by or on behalf of the Tenant in connection with this agreement, or (c) any default by Tenant under this Lease. The foregoing indemnity shall survive any termination of this agreement. Landlord agrees to use commercially reasonable efforts to deliver notice of any matured claim for indemnification no later than six months after the termination of the Lease.

6. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties regarding the Tenant Use and the Tenant's right of entry and supersedes any prior oral or written agreements with respect to the matters stated herein.

7. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original signature.

8. **Alterations and Improvements.** Tenant may make improvements and repairs to the fencing located on the south of the Premises. Tenant shall have no rights to make any other alterations, additions, or improvements on the Premises without the Landlord's written consent.

9. **Termination.** Tenant and Landlord shall have the right to terminate this agreement for any reason without penalty by providing the other party with thirty (30) days prior written notice at any time.

10. **Condition on Termination.** Upon expiration of the Term, Tenant shall surrender the Premises to Landlord in the same condition of the Premises at the beginning of this agreement. Tenant must remove all equipment and materials placed on the Premises upon termination of this agreement.

11. **Licensing and Permits.** For any activity which Tenant desires to conduct on the Premises in which a license or permit is required, said license or permit must be obtained by Tenant prior to using the Premises for such activity. Landlord is not obligated to provide any assistance relative to Tenant's Use of the Premises.

12. **Repairs for Tenant Negligence, Vandalism, or Misuse.** Tenant shall assume all responsibility for any repairs to the Premises or any of Landlord's adjoining property necessitated by the use, negligence, vandalism, or misuse of the Premises or equipment therein by Tenant's employees, invitees, agents, or contractors.

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13. **Inspection, Maintenance, Snow Removal.** Tenant has inspected the Premises and accepts the Premises in "as-is" condition. Landlord shall have no obligation to maintain the Premises for Tenant. Landlord shall have no obligation to keep the Premises free of ice or snow.

14. **Notice.** All notices, demands and requests which may be or are required to be given demanded or requested by either party to the other shall be in writing. All notices, demands and requests by Landlord to Tenant shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to Tenant as follows:

Department of Fleet and Facility Management
Office of Real Estate Management
30 North LaSalle Street
Suite 300
Chicago, Illinois 60602

or at such other place as Tenant may from time to time designate by written notice to Landlord and to Tenant at the Premises. All notices, demands, and requests by Tenant to Landlord shall be delivered by a national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to Landlord as follows:

Walsh Construction Company
929 West Adams Street
Chicago, Illinois 60607

or at such other place as Landlord may from time to time designate by written notice to Tenant. Any notice, demand or request which shall be served upon Landlord by Tenant, or upon Tenant by Landlord, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

15. **Partial Invalidity.** If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

16. **Governing Law.** This Lease shall be construed and be enforceable in accordance with the laws of the State of Illinois.

17. **Entire Agreement.** All preliminary and contemporaneous negotiations are merged into and incorporated in this Lease. This Lease contains the entire agreement between the parties and shall not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

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18. **Captions and Section Numbers.** The captions and section numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Lease nor in any way affect this Lease.

19. **Binding Effect of Lease.** The covenants, agreements, and obligations contained in this Lease shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns.

20. **No Principal/Agent or Partnership Relationship.** Nothing contained in this Lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

21. **Authorization to Execute Lease.** The parties executing this Lease hereby represent and warrant that they are the duly authorized and acting representatives of Landlord and Tenant respectively and that by their execution of this Lease, it became the binding obligation of Landlord and Tenant respectively, subject to no contingencies or conditions except as specifically provided herein.

22. **Force Majeure.** When a period of time is provided in this Lease for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is so delayed.

23. **Amendments.** From time to time, the parties hereto may administratively amend this Lease with respect to any provisions reasonably related to Tenant's use of the Premises and/or Landlord's administration thereof including, but not limited to, leasehold expansion or leasehold reduction. Provided, however, that such amendment(s) shall not serve to extend the Lease Term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both Landlord and Tenant. Such amendment(s) shall only take effect upon execution by both parties. Upon execution, such amendment(s) shall become a part of this Lease and all other provisions of this Lease shall otherwise remain in full force and effect.

24. **Holding Over.** Any holding over by Tenant shall be construed to be a tenancy from month to month only beginning on January 1, 2015. During such holding over all other provisions of this Lease shall remain in full force and effect.

25. Disclosure Provisions.

25.1 **Business Relationships.** Landlord acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City of Chicago, or any person acting at the direction of such official, to contact, either orally or

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in writing, any other City of Chicago official or employee with respect to any matter involving any person with whom the elected City of Chicago official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), 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, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Landlord hereby represents and warrants that no violation of Section 2-145-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

25.2 Patriot Act Certification. Landlord represents and warrants that neither Landlord nor any Affiliate (as hereafter defined) 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 of Chicago may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section, an "Affiliate" shall be deemed to be a person or entity related to Landlord that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Landlord, and a person or entity shall 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 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.

25.3 Prohibition on Certain Contributions-Mayoral Executive Order No. 2011-4. Landlord agrees that Landlord, any person or entity who directly or indirectly has an ownership or beneficial interest in Landlord of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Landlord's contractors (i.e., any person or entity in direct contractual privity with Landlord regarding the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Landlord and all the other preceding classes of persons and entities are together the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (a) after execution of this Agreement by Landlord, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

Landlord represents and warrants that from the later of (a) May 16, 2011, or (b) the date the Tenant approached Landlord, or the date Landlord approached the Tenant, as applicable,

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regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Landlord agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Landlord agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Notwithstanding anything to the contrary contained herein, Landlord agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Lease or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the Tenant, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the Tenant to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Landlord intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the Closing, the Tenant may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

(a) "Bundle" means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

(b) "Other Contract" means any other agreement with the Tenant to which Landlord is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

(c) "Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are "domestic partners" if they satisfy the following criteria:

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- (i) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (ii) neither party is married; and
- (iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (v) two of the following four conditions exist for the partners:
 - (1) The partners have been residing together for at least 12 months.
 - (2) The partners have common or joint ownership of a residence.
 - (3) The partners have at least two of the following arrangements:
 - (A) joint ownership of a motor vehicle;
 - (B) joint credit account;
 - (C) a joint checking account;
 - (D) a lease for a residence identifying both domestic partners as Landlords.
 - (4) Each partner identifies the other partner as a primary beneficiary in a will.

(e) "Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

25.4 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Landlord warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Agreement is executory, Landlord's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the Tenant to all remedies under the Agreement, at law or in equity. This section does not limit Landlord's, general contractor's and its subcontractors' duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the Tenant as grounds for the termination of this Agreement, and may further affect the Landlord's eligibility for future contract awards.

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25.5 Failure to Maintain Eligibility to do Business with City of Chicago. Failure by Landlord or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement and the transactions contemplated thereby. Landlord shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

25.6 Cooperation with Office of Inspector General and Legislative Inspector General. It is the duty of Landlord and any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such grantee, subgrantee, bidder, proposer, contractor, 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, and to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Landlord represents and warrants that it understands and will abide by all provisions of Chapter 2-55 and Chapter 2-56 of the Municipal Code and that Landlord will inform its contractors and subcontractors of this provision and require their compliance.

25.7 Shakman Prohibitions.

(i) The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the August 16, 2007 "City of Chicago Hiring Plan" (the "City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(ii) Landlord is aware that City policy prohibits City employees from directing any individual to apply for a position with Landlord, either as an employee or as a subcontractor, and from directing Landlord to hire an individual as an employee or as a subcontractor. Accordingly, Landlord must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Landlord under this Lease are employees or subcontractors of Landlord, not employees of the City of Chicago. This Lease is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Landlord.

(iii) Landlord will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Lease, or offer employment to any individual to provide services under this Lease, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Lease, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of

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individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(iv) In the event of any communication to Landlord by a City employee or City official in violation of Section 9.9(c)(ii) above, or advocating a violation of Section 9.9(c)(iii) above, Landlord will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Lease. Landlord will also cooperate with any inquiries by IGO Hiring Oversight or the *Shakman* Monitor's Office related to the contract.

(Signature Page Follows)

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

LANDLORD:

WALSH CONSTRUCTION COMPANY,
an Illinois Corporation

By: _____

Print Name: _____

Its: _____

TENANT:

CITY OF CHICAGO,
an Illinois municipal corporation and home rule unit of government

THE DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By: _____
Commissioner

THE DEPARTMENT OF STREETS AND SANITATION

By: _____
Commissioner

Approved as to form:

Deputy Corporation Counsel