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City Council Document Tracking Sheet

**Meeting Date:** 6/6/2012  
**Sponsor(s):** Emanuel, Rahm (Mayor)  
**Type:** Ordinance  
**Title:** Intergovernmental agreement with Board of Election  
Commissioners  
**Committee(s) Assignment:** Committee on Housing and Real Estate

HSG.



OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

June 6, 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,

  
Mayor

**ORDINANCE**

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

**SECTION 1:** The Commissioner of the Department of Fleet and Facility Management is authorized to execute on behalf of the City of Chicago an Intergovernmental Agreement with the Board of Election Commissioners for the City of Chicago governing the Board of Election Commissioners for the City of Chicago's use of approximately 429,000 square feet of City-owned owned building space located at 1819 West Pershing Road and 1869 West Pershing Road for use as warehouse and office space; such Intergovernmental Agreement to be approved as to form and legality by the Corporation Counsel in substantially the following form:

**1819 West Pershing Road and 1869 West Pershing Road  
Board of Election Commissioners for the City of Chicago  
No. 20264**

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

## INTERGOVERNMENTAL AGREEMENT

**THIS INTERGOVERNMENTAL AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and between, **THE CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (hereinafter referred to as the "City") and **THE BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO**, a separate agency of government created by Illinois statute, (hereinafter referred to as the "Board").

### RECITALS

**WHEREAS**, the City is the owner of the buildings located at 1769 West Pershing Road, 1819 West Pershing Road, and 1869 West Pershing Road, Chicago, Cook County, Illinois more commonly known as the Pershing Road Warehouse Complex (the "Complex"); and

**WHEREAS**, the City does not presently use some of the space within the 1819 West Pershing Road and 1869 West Pershing Road buildings; and

**WHEREAS**, the City has agreed to allow the Board to access and use and the Board has agreed to access and use, the following warehouse and office space:

1819 West Pershing Road

1<sup>st</sup> Floor: 25,000 square feet

2<sup>nd</sup> Floor: 60,000 square feet (including 500 square feet of office space)

3<sup>rd</sup> Floor: 60,000 square feet

4<sup>th</sup> Floor: 90,000 square feet

1869 West Pershing Road

2<sup>nd</sup> Floor: 90,000 square feet (including 4,500 square feet of office space)

3<sup>rd</sup> Floor: 90,000 square feet

Overhead Crosswalk Connecting 1819 & 1869 West Pershing Road

2<sup>nd</sup> Floor: 2,000 square feet (on a non-exclusive basis)

3<sup>rd</sup> Floor: 2,000 square feet (on a non-exclusive basis)

**NOW THEREFORE**, in consideration of the covenants, terms and conditions set forth herein, the parties hereto agree and covenant as follows:

### **SECTION 1. GRANT**

The City hereby grants to the Board permission to access and use the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately 425,000 square feet of warehouse/office space located at 1819 West Pershing Road and 1869 West Pershing Road as outlined on the floor plan attached hereto as **Exhibit A** (part of PIN# 20-06-200-005 - the "Premises").

### **SECTION 2. TERM**

The term of this Intergovernmental Agreement ("Term") shall commence on the date of execution of this Intergovernmental Agreement ("Commencement Date") and shall end on December

31, 2017, unless sooner terminated as set forth in this Intergovernmental Agreement.

### **SECTION 3. USER FEE, UTILITIES**

3.1 User Fee. In consideration for the privilege to access and use the Premises, the Board shall pay to the City the amount of:

One Dollar (\$1.00) for the entire Term with the receipt and sufficiency of said sum hereby acknowledged by both parties.

3.2 Utilities. The City shall pay for gas, electricity, light, heat, cooling, and water supplied to the Complex. The Board shall pay when due all charges for telephone or other communication service provided to the Premises for the Board's use.

### **SECTION 4. ENJOYMENT OF PREMISES, ALTERATIONS AND ADDITIONS, SURRENDER, ASSIGNMENT, LIENS**

4.1 Covenant of Quiet Enjoyment. The City covenants and agrees that the Board, upon observing and keeping the covenants, agreements, and conditions of this Intergovernmental Agreement on its part to be kept, observed and performed, shall lawfully and quietly hold, occupy and enjoy the Premises (subject to the provisions of this Intergovernmental Agreement) during the Term without hindrance or molestation by the City or by any person or persons claiming under the City.

4.2 Maintenance of the Premises and Right of Access. The City shall take reasonable efforts to maintain all of the City's properties, including the Complex and the Premises. The City shall provide engineering services to the Complex and the Premises. The execution of this Intergovernmental Agreement is meant to memorialize the Board's occupancy of the Premises and the City's maintenance of the Premises as they have existed prior to the execution of this Intergovernmental Agreement and as the same shall exist after the date hereof and during the Term. The Board acknowledges that the Board accepts the Premises in "as-is" condition. The Board shall notify the City regarding any issues with maintenance of the Premises and/or Building. The City shall always have access to the Premises and/or Building, subject to the Board's security measures and protocols, but shall access the Premises in such a way that minimizes interruptions with the Board's operations.

4.3 Alterations and Additions. The Board may not make alterations, additions and improvements on the Premises, unless such alterations, additions and improvements shall be in full compliance with the applicable laws and the Board has obtained the prior written consent of the Commissioner of the Department of Fleet and Facility Management.

4.4 Use of the Premises. The Board shall not use the Premises in a manner that would violate any law. The Board further covenants not to do or suffer any waste or damage any portion of the Premises and/or Building, and to comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises, disfigurement or injury to the Premises, or to fixtures and equipment thereof. Any activities on the Premises must be limited to the Board's governmental purpose of conducting elections and warehousing of materials and equipment required for elections.

### **SECTION 5. ASSIGNMENT AND LIENS**

5.1 Assignment. The Board shall not assign this Intergovernmental Agreement in whole or in part, or sublet the Premises or any part thereof.

5.2 Board's Covenant against Liens. The Board shall not cause or permit any lien or encumbrance, whether created by act of the Board, operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Premises. All liens and encumbrances created by the Board shall attach to the Board's interest only. In case of any such lien attaching, the Board shall immediately pay and remove such lien or furnish security or indemnify the City in a manner satisfactory to the City in its sole discretion to protect the City against any defense or expense arising from such lien. Except during any period in which the Board appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, the Board shall immediately pay any judgment rendered against the Board, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If the Board fails to pay and remove any lien or contest such lien in accordance herewith, the City, at its election, may pay and satisfy same, and all sums so paid by the City, with interest from the date of payment at the rate set at 12% per annum.

## **SECTION 6. INSURANCE AND INDEMNIFICATION**

6.1 Insurance. Subject to 10 ILCS 5/6-70, the parties shall self-insure for any of their respective activities within the Premises.

6.2 Board's Indemnification. Subject to 10 ILCS 5/6-70, the Board shall indemnify, defend, and hold the City harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be expended by or accrue against, be charged to, or be recovered from the City or the Board by reason of the Board's performance of or failure to perform any of the Board's obligations under this Intergovernmental Agreement, or the Board's negligent acts or failure to act, or resulting from the acts or failure to act of the Board's contractors, respective officers, directors, agents, or employees.

## **SECTION 7. DAMAGE OR DESTRUCTION**

7.1 Damage or Destruction. If the Premises or Complex are damaged or destroyed or a casualty to such extent that the Board cannot continue, occupy or conduct its normal business therein, or if, in the Board's opinion, the Premises are rendered uninhabitable, either the City or the Board shall have the option to declare this Intergovernmental Agreement terminated as of the date of such damage or destruction by giving the other party written notice to such effect.

## **SECTION 8. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS**

8.1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises; nor shall any such official, employee, or member participate in making or in any way attempt to use her or his position to influence any City governmental decision or action with respect to this Intergovernmental Agreement.

8.2 No Contract Inducements. The City and the Board warrant that no payment, gratuity, or offer of employment has been made nor shall be made in connection with any City of Chicago contract as an inducement for the award of that contract or order. Any contract negotiated, entered into, or performed in violation of any of the provisions of this Section shall be voidable as to the City of Chicago.

## **SECTION 9. HOLDING OVER**

9.1 Holding Over. Any use of the Premises by the Board after January 1, 2018 shall be construed to be a month to month only beginning on January 1, 2018 and the user fee will be the same as outlined in Section 3.1 of this Intergovernmental Agreement. During any holding over all other provisions of this Intergovernmental Agreement shall remain in full force and effect.

## **SECTION 10. MISCELLANEOUS**

10.1 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 the Board to the City 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 the City as follows:

City of Chicago  
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 the City may from time to time designate by written notice to the Board. All notices, demands, and requests by the City to the Board 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 the Board as follows:

Board of Election Commissioners for the City of Chicago  
69 West Washington Street, 8<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attn: Executive Director

or at such other place as the Board may from time to time designate by written notice to the City. Any notice, demand or request which shall be served upon the Board by the City, or upon the City by the Board, 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.

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

10.3 Governing Law. This Intergovernmental Agreement shall be construed and be enforceable in accordance with the laws of the State of Illinois.

10.4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Intergovernmental Agreement. This Intergovernmental Agreement 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.

10.5 Captions and Section Numbers. The captions and section numbers appearing in this Intergovernmental Agreement 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 Intergovernmental Agreement nor in any

way affect this Intergovernmental Agreement.

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

10.7 Time is of the Essence. Time is of the essence of this Intergovernmental Agreement and of each and every provision hereof.

10.8 No Principal/Agent or Partnership Relationship. Nothing contained in this Intergovernmental Agreement 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.

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

10.10 Termination of Intergovernmental Agreement. The City and the Board shall have the right to terminate this Intergovernmental Agreement by providing each other with ninety (90) days prior written notice at any time after execution of this Intergovernmental Agreement.

10.11 Force Majeure. When a period of time is provided in this Intergovernmental Agreement 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.

10.12 Prior Use. The City and the Board acknowledge and agree that the Board has occupied the Premise since 1999. The City and the Board each acknowledge and agree that neither party has any claims against the other with respect to the Board's prior use of the Premises and/or the City's maintenance of the Premises and Complex.

10.13 No Brokers. The Board warrants to the City that no broker or finder (a) introduced the Board to the Premises, (b) assisted the Board in the negotiation of this Intergovernmental Agreement, or (c) dealt with the Board on the Board's behalf in connection with the Premises or this Intergovernmental Agreement. The City warrants to the Board that no broker or finder (a) introduced the City to the Board, (b) assisted the City in the negotiation of this Intergovernmental Agreement, or (c) dealt with the City on the City's behalf in connection with the Premises or this Intergovernmental Agreement.

10.14 Amendments. From time to time, the parties hereto may amend this Intergovernmental Agreement with respect to any provisions reasonably related to the Board's use of the Premises and/or the City's administration of said Intergovernmental Agreement, including, but not limited to expansion within the Complex. Provided, however, that such Amendment(s) shall not serve to extend the Intergovernmental Agreement 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 the City and the Board. Such Amendment(s) shall only take effect upon execution by both parties. Upon execution, such Amendment(s) shall become a part of this Intergovernmental Agreement and all other provisions of this Intergovernmental Agreement shall otherwise remain in full

force and effect.

10.15 Access to Docks. The City shall provide the Board with access to docks located in the 1819 West Pershing Road building and the 1869 West Pershing Road building. The City acknowledges that access to the dock doors is critical to the Board's operations.

10.16 Access to Parking Lot. The Board, its agents, employees, licensees, contractors, clients, and invitees shall have non-exclusive access to the rear parking lot of the Complex on a first-come first-served basis. Such use of the rear parking lot shall be subject to all rules in place, or hereinafter in place, governing the access to the rear parking lot.

10.17 Access to Freight Elevators. The City and the Board acknowledge that access to the freight elevators is critical to the City and the Board's operations. Both parties shall share such access. Board's access to the freight elevators shall be a priority when the Board is ramping up for elections. The City's access to the freight elevators shall be a priority during non-election cycles. Neither party shall ever have exclusive access to the freight elevators.

10.18 Contractor Access. The Board, its agents, employees, licensees, contractors, clients, and invitees shall have non-exclusive access to the Premises and the roof of the Premises for placement and maintenance of telecommunication's equipment or other devices required for the Board's operations within the Premises provided the City provides written approval of such access and work.

10.19 No Other Rights. The execution of this Intergovernmental Agreement does not give the Board any other right with respect to the Premises or Complex. Any rights not expressly granted to the Board through this Intergovernmental Agreement are reserved exclusively to the City.

## **SECTION 11. THE BOARD'S RESPONSIBILITIES**

11.1 Condition of Premises Upon Termination or Cancellation. Upon the termination or cancellation of this Intergovernmental Agreement, the Board shall surrender the Premises to the City in the same comparable condition to the condition of the Premises at the beginning of the Board's occupancy of the Premises, with normal wear and tear taken into consideration.

11.2 Hazardous Materials. The Board shall keep out of Premises materials which cause a fire hazard or safety hazard and comply with reasonable requirements of the City's fire insurance carrier.

11.3 Permit Requirement. For any activity which the Board desires to conduct on the Premises in which a license or permit is required, said license or permit must be obtained by the Board prior to using the Premises for such activity. The City must be notified of any such license or permit. Failure to obtain a required license or permit shall constitute a breach of the terms of this Intergovernmental Agreement.

11.4 General Care of Premises. The Board shall keep the Premises, including, without limitation, the equipment installed in the Premises by the Board in a clean, neat and safe condition.

11.5 Board Acceptance. The Board agrees that the Board has inspected the Premises and all related areas and grounds and that the Board is satisfied with the physical condition thereof. The Board accepts the Premises in "as-is" condition.

11.6 Security. The Board shall secure the office and warehouse space located within the Premises. The Board and the City shall abide by any security rules that may apply to the Complex and/or the Premises.

11.7 Adherence to Department of Fleet and Facility Management Procedures. The Board shall

follow all Department of Fleet and Facility Management Procedures and Regulations now or hereinafter in effect.

11.8 Illegal Activity. The Board shall not perform or permit any practice that may damage the reputation of, or otherwise be injurious to the Premises or neighborhood, be illegal, or increase the rate of insurance on the Premises.

11.9 Waste or Damage. The Board shall not suffer any waste or damage, disfigurement or injury to the Premises or to any improvements thereon, or to fixtures and equipment thereof, or permit or suffer any overloading of the floors. This subsection shall not apply to ordinary wear and tear that occurs from the normal use and occupancy of the Premises.

11.10 Trade Fixtures. The Board shall maintain the Board's equipment and trade fixtures in the Premises in good condition. Upon the termination or cancellation of this Intergovernmental Agreement, the Board shall remove the Board's personal property and equipment, provided that the Board shall repair any injury or damage to the Premises and/or Building resulting from such removal. If the Board does not remove the Board's furniture, machinery, trade fixtures and all other items of personal property, the City may, at its option, remove the same and deliver them to any other place of business of the Board or warehouse the same. The Board shall pay the cost of such removal, including the repair for such removal, delivery and warehousing, to the City on demand.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Intergovernmental Agreement as of the day and year first above written.

**CITY:**

**THE CITY OF CHICAGO,**  
an Illinois Municipal Corporation and Home Rule Unit of Government

**THE DEPARTMENT OF FLEET AND FACILITY MANAGEMENT**

Commissioner

APPROVED AS TO FORM AND LEGALITY:

BY: DEPARTMENT OF LAW

By: \_\_\_\_\_  
Deputy Corporation Counsel  
Real Estate Division

**BOARD:**

**BOARD OF ELECTION COMMISSIONERS FOR THE CITY OF CHICAGO**

By: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Director

**EXHIBIT A**

*(To Come)*