



# City of Chicago



O2021-2184

Office of the City Clerk

## Document Tracking Sheet

<b>Meeting Date:</b>	5/26/2021
<b>Sponsor(s):</b>	Lightfoot (Mayor)
<b>Type:</b>	Ordinance
<b>Title:</b>	Lease agreement of vacant land to Chicago Park District for development and operation of secure community gathering space including Outdoor Roller Rink and Community Plaza Project at 4004-4012 W Madison St
<b>Committee(s) Assignment:</b>	Committee on Housing and Real Estate

HSG



OFFICE OF THE MAYOR  
CITY OF CHICAGO

LORI E. LIGHTFOOT  
MAYOR

May 26, 2021

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

Ladies and Gentlemen:

At the request of the Commissioner of Assets, Information and Services, I transmit herewith an ordinance authorizing the execution of a lease agreement with the Chicago Park District.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink that reads "Lori E. Lightfoot". The signature is written in a cursive style with a large, looping "L" and "A".

Mayor

## ORDINANCE

**WHEREAS**, the City of Chicago (the “City”) is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the Chicago Park District (the “Park District”) is a body politic and corporate organized and existing under the Chicago Park District Act, 70 ILCS 1505/0.01 *et seq.*, with authority to exercise control over and supervise the operation of all parks within the corporate limits of the City; and

**WHEREAS**, the City owns the vacant land located at 4004-12 West Madison Street, as legally described on Exhibit A attached hereto (the “Vacant Land”); and

**WHEREAS**, the Vacant Land is located near the intersection of Madison Street and Pulaski Road in the main commercial corridor of West Garfield Park; and

**WHEREAS**, this stretch of the Madison/Pulaski commercial corridor has experienced a high level of crime rooted in historic disinvestment; and

**WHEREAS**, the Vacant Land does not currently serve any productive use and the City has determined that it can be better utilized to create a community gathering and recreational space; and

**WHEREAS**, the City and the Park District have collaborated with the Garfield Park Wellness Collaborative, community residents and volunteer design and engagement partners to plan and design this new community space; and

**WHEREAS**, based on this collaboration, the Park District desires to (i) construct a temporary roller rink, multi-purpose space and related improvements on the Vacant Land for immediate use in the summer of 2021, (ii) construct a permanent roller rink with lighting, furniture, stage and an outdoor activity space on the Vacant Land for long-term use following its temporary activation this summer, and (iii) operate and program the recreational facilities on the Vacant Land for the public (the “Outdoor Roller Rink and Community Plaza Project”); and

**WHEREAS**, the City, through its Department of Assets, Information and Services (“DAIS”), desires to lease the Vacant Land to the Park District for the Outdoor Roller Rink and Community Plaza Project, and the Park District desires to enter into such lease; and

**WHEREAS**, the Outdoor Roller Rink and Community Plaza Project is part of Mayor Lightfoot’s Neighborhood Activation pilot program, a new public safety initiative to invest in neighborhoods experiencing high levels of violence as a way of reducing crime and improving public safety for children, families and individuals; and

**WHEREAS**, in addition to the roller rink, it is envisioned that the improved Vacant Land will host activities and programs for young people and special events for the community, such as farmers markets, movie nights, and art workshops; and

**WHEREAS**, the City has received \$5,128,000 from the State of Illinois’ Cannabis Regulation Fund (created pursuant to the Illinois State Finance Act, 30 ILCS 105/6z-107, as amended) and appropriated such funds in Fund 021-0B70-099-9102 (the “Available Funds”); and

**WHEREAS**, the City wishes to make available to the Park District a portion of the Available Funds for the purpose of funding the construction of the Outdoor Roller Rink and Community Plaza Project; and

**WHEREAS**, DAIS and the Park District have agreed to enter into an intergovernmental agreement in substantially the form attached hereto as Exhibit B (the "Agreement") whereby the City shall pay for or reimburse the Park District for a portion of the costs of the Outdoor Roller Rink and Community Plaza Project; and

**WHEREAS**, the Park District has agreed to use the Available Funds for construction of the Outdoor Roller Rink and Community Plaza Project subject to the terms and conditions specified in the Agreement; now, therefore

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

**SECTION 1.** The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

**SECTION 2.** The City hereby approves the lease of the Vacant Land to the Park District for rent in the amount of \$1.00.

**SECTION 3.** Subject to the approval of the Corporation Counsel, the Commissioner of DAIS, or a designee of the Commissioner, is each hereby authorized to execute and deliver a lease agreement in substantially the form of Exhibit C attached hereto (the "Lease"), with such modifications as may be necessary or appropriate, and such other documents as may be necessary or appropriate to effectuate said Lease.

**SECTION 4.** Subject to the approval of the Corporation Counsel as to the form and legality, the Commissioner of DAIS, or a designee of the Commissioner, is authorized to execute the Agreement to fund certain improvements to the Vacant Land, such Agreement to be approved as to form and legality by the Corporation Counsel in substantially the form attached hereto as Exhibit B, and such other documents as are necessary, between DAIS and the Park District, which may contain such other terms as are deemed necessary or appropriate by the parties executing the same.

**SECTION 5.** To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any other provisions of this ordinance.

**SECTION 6.** This ordinance shall take effect immediately upon its passage and approval.

**EXHIBIT A**

**LEGAL DESCRIPTION OF VACANT LAND**

LOTS 43, 44, 45 AND 46 IN BLOCK 33 IN THE SUBDIVISION OF THE SOUTH HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 16-10-425-029-0000

ADDRESS: 4004-4012 WEST MADISON STREET

**EXHIBIT B**  
**INTERGOVERNMENTAL AGREEMENT**

*(See attached.)*

**AGREEMENT BETWEEN  
THE CITY OF CHICAGO  
AND THE CHICAGO PARK DISTRICT**

This Agreement (the "**Agreement**") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2021 (the "**Closing Date**"), under authority granted by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, by and between the City of Chicago (the "**City**"), an Illinois municipal corporation, by and through its Department of Assets, Information and Services ("**AIS**"); and the Chicago Park District (the "**Park District**"), an Illinois municipal corporation. The Park District and the City are sometimes referred to herein as the "**Parties**."

**RECITALS**

A. The City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs.

B. The Park District is a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois, and as such, has the authority to exercise control over and supervise the operation of parks within the corporate limits of the City.

C. The City is the owner of certain real property legally described on **Exhibit A** attached hereto (the "**Property**").

D. The Park District intends to make certain improvements to the Property as described in **Exhibit B** (the "**Project**").

E. The City has received \$5,128,000 from the State of Illinois' Cannabis Regulation Fund (created pursuant to the Illinois State Finance Act, 30 ILCS 105/6z-107, as amended) and appropriated such funds in Fund 021-0B70-099-9102 (the "**Available Funds**").

F. AIS wishes to make available to the Park District a portion of the Available Funds in an amount not to exceed a total of \$1,500,000 (the "**City Assistance**"), subject to Section 2.6, for the purpose of funding the Project on the Property (the "**Improvements**") to the extent and in the manner provided in the Agreement.

G. The City desires to lease the Property to the Park District pursuant to a lease agreement in a form acceptable to the City and approved by the Authorizing Ordinance, as hereinafter defined, (the "**Lease**"), and the Park District desires to enter into such Lease.

H. The City and the Park District wish to enter into this Agreement whereby the Park District shall undertake the Project and the City shall reimburse the Park District for the Improvements made pursuant to the Project.

I. Article VII, Section 10 of the 1970 Constitution of the State of Illinois authorizes state and local governing bodies to cooperate in the performance of their responsibilities by contracts and other agreements; and

J. By an ordinance adopted on March 10, 2021, the Board of Commissioners of the

Park District authorized (1) the acceptance of the City Assistance as described herein, (2) the execution of the Lease, (3) the acceptance of title to the Property from the City upon the fulfillment of the conditions set forth in the Lease, and (4) the execution of this Agreement (the "**Park District Ordinance**"); and

K. On \_\_\_\_\_, 2021, the City Council of the City ("**City Council**") adopted an ordinance published in the Journal of the Proceedings of the City Council at pages \_\_\_\_\_ through \_\_\_\_\_ for said date (the "**Authorizing Ordinance**"), among other things, authorizing the execution of this Agreement and the Lease.

**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 hereto agree as follows:

## **TERMS AND CONDITIONS**

### **SECTION 1. THE PROJECT**

1.1. No later than \_\_\_\_ months from the Closing Date, or later as the Commissioner of AIS (the "**Commissioner**") may agree in writing, the Park District shall let one or more contracts for the Project in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

1.2. The plans and specifications for the Project (the "**Plans and Specifications**") shall at a minimum meet or shall have met the general requirements set forth in **Exhibit B** hereof and comply with plans and specifications which the Park District will have provided to, and be approved by, AIS prior to the disbursement of the City Assistance. No material deviation from the Plans and Specifications may be made without the prior written approval of the City. The Park District shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

1.3. The Park District shall also provide the City upon request with copies of all governmental licenses and permits required to construct the Project and to use, occupy and operate the Property as a public park from all appropriate governmental authorities, including evidence that the Property is to be used, occupied, and operated as a public park/plaza.

1.4. The Park District shall include a certification of compliance with the requirements of **Sections 1.1, 1.2, and 1.3** hereof with the request for the City Assistance hereunder at the time the Project is completed and prior to any disbursement of the City Assistance. The City shall be entitled to rely on this certification without further inquiry. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

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



agents.

1.6. The Park District agrees to carefully inspect the Property prior to commencement of any activity on the Property to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Park District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Park District.

## **SECTION 2. FUNDING**

2.1. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Section 2 and such other conditions contained in this Agreement, disburse the City Assistance to the Park District.

2.2. Intentionally Omitted.

2.3. [Within 15 days after the Closing Date or such longer period of time as may be agreed to by the Commissioner , but in no event later than 90 days after the execution of this Agreement (the "**Satisfaction Period**"), the Park District must satisfy to the reasonable satisfaction of the Commissioner , the following conditions precedent for City's disbursement of the City Assistance to the Park District:]

2.3.1. The Park District has satisfied the conditions stated in this Section 2.3 within the Satisfaction Period. If the Park District is unable to satisfy said conditions, either Party may terminate this Agreement by providing written notice to the other Party;

2.3.2. The Park District may request payment from the City by submitting a Certificate of Expenditure in the form of **Exhibit D** hereto ("**Certificate of Expenditure**"), which may be processed and executed periodically. The City shall not execute and approve Certificates of Expenditure in the aggregate in excess of the actual costs of the Project, and in no event in an amount greater than the City Assistance. Prior to each execution of a Certificate of Expenditure by the City, the Park District shall submit documentation regarding the applicable expenditures to AIS. Delivery by the Park District to the City of any request for execution by the City of a Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Certificate of Expenditure, that:

2.4.1. The total amount of the request for the Certificate of Expenditure represents the actual amount payable to (or paid to) the general contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;

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

2.4.3 The Park District has approved all work and materials for the current request for a Certificate of Expenditure, and such work and materials conform to the Plans and Specifications;

and

2.4.4. The Park District is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or the Park District as related thereto.

2.5. The City shall have the right, in its discretion, to require the Park District to submit further documentation as the City may require in order to verify that the matters certified to in Section 2.4 are true and correct, and any execution and approval of a Certificate of Expenditure 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; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Park District.

2.6. The current estimated cost of the entire Project is \$1,500,000. The Park District has delivered to the Commissioner a budget for the Project attached as **Exhibit C**. The Park District certifies that it has identified sources of funds, including the City Assistance, sufficient to complete its budgeted portion of the Project. The Park District agrees that the City will only contribute City Assistance to reimburse the Park District for the costs of the Project and that all costs of completing the Project over the City Assistance shall be the sole responsibility of the Park District. If the Park District at any point does not have sufficient funds to complete the Project, the Park District shall so notify the City immediately in writing and cease all work on the Project until the City and the Park District agree on how to proceed; the Park District may narrow the scope of the Project (the "**Revised Project**") as agreed to by the City prior to the restart of any work in order to complete the Revised Project with the approved funds. The City has the right, at its election, to withhold and refuse all reimbursement in the event that the Park District fails to so notify the City and/or the Park District and the City fail to reach agreement on a Revised Project as described above.

2.7. **Exhibit C** contains a preliminary list of capital improvements, equipment costs, general construction costs, and other costs, if any. Prior to the expenditure of City Assistance funds on the Project, the Commissioner of AIS, based upon the Project budget, may make such modifications to **Exhibit C** as he or she wishes in his or her discretion upon consultation with the Park District to account for all of the City Assistance funds to be expended under this Agreement; provided, however, that all Improvements shall be improvements that the Commissioner has agreed to pay for out of City Assistance funds, subject to the terms of this Agreement.

2.8. The Park District hereby acknowledges and agrees that the City's obligations hereunder with respect to the City Assistance are subject in every respect to the availability of funds as described in and limited by this Section 2. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the City Assistance, then the City will notify the Park District in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

2.9. If the aggregate cost of the Project is less than the amount of the City Assistance contemplated by this Agreement, the Park District shall have no claim to the difference between the amount of the City Assistance contemplated by this Agreement and the amount of the City

Assistance actually paid by the City to the Park District and expended by the Park District on the Project.

### **SECTION 3. TERM**

3.1 The term of this Agreement shall commence on the Closing Date and shall expire on the fifth anniversary of the Closing Date, or on the date of termination of this Agreement according to its terms, whichever occurs first. Notwithstanding the foregoing, this Agreement may be renewed for two successive 5-year terms if extended by a valid amendment executed by both of the Parties.

3.2 The Park District, as tenant, and the City, as landlord, shall enter into the Lease. The term of the Lease shall commence on the date hereof and shall end on the "Expiration Date," as defined in the Lease.

3.3 The City and the Park District hereby agree that the contractors and any designee thereof shall have such right or rights of entry upon the Property as may be required in order to commence, manage and after completion maintain the Project during the term of the Lease. The contractor shall provide evidence of the types and amounts of insurance as set forth in Section 5 and indemnification as set forth in Section 6.1.

### **SECTION 4. ENVIRONMENTAL MATTERS**

4.1 The City has undertaken an environmental investigation of the Property. Subsurface soil and/or groundwater contamination is present at the site in concentrations that exceed one or more of the Illinois Environmental Protection Agency's Tiered Approach to Corrective Action Objectives (TACO) Tier 1 remediation objectives (ROs). Any construction that the Park District undertakes will need to include an engineered barrier which can consist of (1) the three feet of existing surface soils, or (2) replacement of any surface soils that are disturbed with fill material meeting TACO Tier 1 ROs, or (3) asphalt, or (4) concrete. Any soils needed for construction that Park District determines is required shall be properly disposed of in accordance with the Lease. If the Project involves subsurface work and/or will result in contact with soil and/or groundwater, a Construction Worker Health and Safety Plan will be required.

4.2 The Park District agrees to carefully inspect the Property prior to commencement of any activity related to the Project to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. The Park District shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Property. The Park District agrees to keep the Property free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for the Park District.

### **SECTION 5. INSURANCE**

5.1 The Park District shall provide and maintain at the Park District's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

5.1.1. Workers Compensation and Employers Liability. Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

5.1.2. Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

5.1.3. Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Park District shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

5.1.4. Professional Liability. When any architects, engineers or professional consultants perform work in connection with this Agreement, the Park District shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

5.1.5. Self Insurance. To the extent permitted by applicable Law, the Park District may self insure for the insurance requirements specified above, it being expressly understood and agreed that, if the Park District does self insure for any such insurance requirements, the Park District must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self insurance program must comply with at least such insurance requirements as stipulated above.

5.2. The Park District will furnish the City at the address stated in **Section 8.13**, original Certificates of Insurance evidencing the required coverage to be in force on the Closing Date, and renewal Certificates of Insurance, promptly as any requisite insurance is renewed. The Park District shall submit evidence of insurance on the City's Insurance Certificate Form or equivalent prior to the Closing Date. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence shall not be deemed to be a waiver by the City.

5.3. The Park District shall advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve the Park District of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or this Agreement may be terminated.

5.4. The required insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

5.5. Any and all deductibles or self insured retentions on referenced insurance coverages shall be borne by the Park District and its contractors.

5.6. The Park District agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

5.7. The Park District expressly understands and agrees that any coverage and limits furnished by the Park District shall in no way limit the Park District's liabilities and responsibilities specified by this Agreement or by law.

5.8. The Park District expressly understands and agrees that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by the Park District under this Agreement.

5.9. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

5.10. The Park District shall require all subcontractors to provide the insurance required herein and insurance customarily required by the Park District or the Park District may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of the Park District unless otherwise specified herein. In all contracts relating to the Project, the Park District agrees to require the contractor to name the City as an additional insured on insurance coverages and to require the contractor to indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Project by the contractor or contractor's suppliers, employees, or agents.

5.11. The City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## **SECTION 6. INDEMNITY / NO PERSONAL LIABILITY**

6.1. The Park District agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) the Park District's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) the Park District's or any contractor's failure to pay general contractors, subcontractors or materialmen in connection with the Project. The defense and indemnification obligations in this **Section 6.1** shall survive any termination or expiration of this Agreement.

6.2. No elected or appointed official or member or employee or agent of the City or the Park District shall be individually or personally liable in connection with this Agreement.

## **SECTION 7. DEFAULT**

7.1. If the Park District, without the City's written consent, fails to complete the Project within 36 months after the date of execution of this Agreement, then the City may terminate this

Agreement by providing written notice to the Park District.

7.2. In the event the Park District fails to perform, keep or observe any of its covenants, conditions, promises, agreements or obligations under this Agreement not identified in **Section 7.1** and such default is not cured as described in **Section 7.3** hereof, the City may terminate this Agreement. Furthermore, a default under the Lease which is not cured in accordance with Section 9.13 thereof shall be a default under this Agreement for which the cure provisions of Section 7.3 hereof will not apply.

7.3. Prior to termination, the City shall give its notice of intent to terminate 30 days prior to termination at the address specified in **Section 8.13** hereof, and shall state the nature of the default. In the event the Park District does not cure such default within the 30-day notice period, such termination shall become effective at the end of such period; provided, however, with respect to those defaults which are not capable of being cured within such 30-day period, the Park District shall not be deemed to have committed such default and no termination shall occur if the Park District has commenced to cure the alleged default within such 30-day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

7.4. The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

## **SECTION 8. GENERAL PROVISIONS**

8.1. **Authority.** Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by the Park District is authorized by the Park District Ordinance. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

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

8.3. **Compliance with Laws.** The Parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

8.4. **Consents.** Whenever the consent or approval of one or both Parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

8.5. **Construction of Words.** As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

8.6. **Counterparts.** This Agreement may be executed in several counterparts and by a different Party in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

8.7. **Further Assurance.** The Parties shall perform such acts, execute and deliver such

instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

8.8. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois.

8.9. Integration. This Agreement constitutes the entire agreement between the Parties, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

8.10. Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties, and their respective successors and permitted assigns (as provided herein). This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties, shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties.

8.11. Modification or Amendment. This Agreement may not be altered, modified or amended except by a written instrument signed by both Parties.

8.12. No Implied Waivers. No waiver by either Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, either Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

8.13. Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) facsimile (fax); (c) overnight courier; or (d) registered or certified first class mail, return receipt requested.

To the City:                      City of Chicago  
                                            Department of Assets, Information and Services  
                                            Attention: Commissioner  
                                            2 North LaSalle Street, Suite 200  
                                            Chicago, Illinois 60602  
                                            (312) 744-\_\_\_\_\_  
                                            (312) 744-\_\_\_\_\_ (Fax)

With copies to:                  City of Chicago  
                                            Department of Law  
                                            Attention: Finance and Economic Development Division

City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312) 744-0200  
(312) 744-8538 (Fax)

To the Park District: Chicago Park District  
Attention: General Superintendent  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4200  
(312) 742-5276 (Fax)

With copies to: Chicago Park District  
General Counsel  
541 North Fairbanks, Room 300  
Chicago, Illinois 60611  
(312) 742-4602  
(312) 742-5316 (Fax)

Such addresses may be changed by notice to the other Party given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (d) above shall be deemed received two business days following deposit in the mail.

8.14. Remedies Cumulative. The remedies of a Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

8.15. 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 City: Stephen Stults  
City of Chicago  
Department of Assets, Information and Services  
2 North LaSalle Street, Suite 200  
Chicago, Illinois 60602  
(312) 744-\_\_\_\_\_  
(312) 744-\_\_\_\_\_ (Fax)

For the Park District: Heather Gleason  
Chicago Park District  
Director of Planning and Construction  
541 North Fairbanks  
Chicago, Illinois 60611  
(312) 742-4685  
(312) 742-\_\_\_\_\_ (Fax)



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.

8.16. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

8.17. Survival of Agreements. Except as otherwise contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

8.18. Titles and Headings. Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

8.19. Time. Time is of the essence in the performance of this Agreement.

**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**, a municipal corporation, by and through its Department of Assets, Information and Services

By: \_\_\_\_\_  
David Reynolds  
Commissioner

**CHICAGO PARK DISTRICT**, a body politic and corporate of the State of Illinois

By: \_\_\_\_\_  
Michael P. Kelly  
General Superintendent and CEO

ATTEST

By: \_\_\_\_\_  
Sarah Gelder  
Acting Secretary

**EXHIBIT A TO THE AGREEMENT**

**THE PROPERTY**

**Legal Description:**

LOTS 43, 44, 45 AND 46 IN BLOCK 33 IN THE SUBDIVISION OF THE SOUTH HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

**Permanent Index Numbers ("PINS"):** PIN: 16-10-425-029-0000

**Address:** 4004-4012 West Madison Street, Chicago, IL

## **EXHIBIT B TO THE AGREEMENT**

### **PROJECT**

The Garfield Park Plaza on Madison is a new community gathering space near the intersection of Madison Street and Pulaski Road. Formerly a vacant lot, the site will be transformed into an active, welcoming, and secure community hub featuring shaded seating, a stage for events, a multi-purpose court surface for activities like roller skating, fitness classes, and pick-up sports, new lighting, and support space for temporary concessions and portable toilets. Once complete, this flexible and well-designed space will accommodate programs and activities for all ages and abilities, supported by the Chicago Park District. The construction budget for the Project is \$1,500,000, which includes a preliminary phase of improvements to the site that will allow activation this summer (summer 2021), as well as the final permanent improvements.

**EXHIBIT C TO THE AGREEMENT**

**PROJECT BUDGET**

Design/Contingencies:	\$ 300,000
Demolition	\$ 100,000
Paving	\$ 300,000
Landscape and Earthwork	\$ 200,000
Site Amenities	\$ 200,000
Shade Structure	\$ 100,000
Stormwater	\$ 100,000
Utilities	<u>\$ 200,000</u>
TOTAL	\$1,500,000



Chicago Park District

By: \_\_\_\_\_  
Name

Title: \_\_\_\_\_

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

My commission expires: \_\_\_\_\_

Agreed and accepted:

\_\_\_\_\_  
Name

Title: \_\_\_\_\_  
City of Chicago

**EXHIBIT C**

**LEASE**

*(See attached.)*



**LEASE**

**THIS LEASE** (the "**Lease**") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the "**Commencement Date**"), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (herein referred to as "**Landlord**" or "**City**") and the **CHICAGO PARK DISTRICT**, an Illinois municipal corporation, (hereinafter referred to as "**Tenant**" or "**Park District**").

**RECITALS**

**WHEREAS**, the City is the owner of the real property located at 4004-12 West Madison Street, Chicago, Cook County, Illinois, as legally described on **Exhibit A** attached hereto (the "**Premises**"), consisting of approximately 17,500 square feet of vacant land; and

**WHEREAS**, the Premises are located in the main commercial corridor of West Garfield Park; and do not currently serve any productive City use; and

**WHEREAS**, the Park District desires to use the Premises to construct, maintain and operate a new community gathering space and secure community hub featuring shaded seating, a stage for events, a multi-purpose court surface for activities like roller skating, fitness classes, and pick-up sports, new lighting, and support space for temporary concessions and portable toilets (collectively, and together with the Temporary Improvements hereinafter described, the "**Outdoor Roller Rink and Community Plaza Project**" or the "**Project**"); and

**WHEREAS**, the City desires to lease the Premises to the Park District for construction and operation of the Project (the "**Permitted Use**"); and

**WHEREAS**, the City has agreed to reimburse the Park District for the cost of constructing the Project in an amount not to exceed \$1,500,000 (the "**City Assistance**") pursuant to that certain Intergovernmental Agreement dated as of \_\_\_\_\_, 2021, and attached hereto as **Exhibit B** (the "**IGA**"); and

**WHEREAS**, the Outdoor Roller Rink and Community Plaza Project is part of Mayor Lightfoot's Neighborhood Activation pilot program, a new public safety initiative to invest in neighborhoods experiencing high levels of violence as a way of reducing crime and improving public safety for children, families and individuals; and

**WHEREAS**, in order to activate the Premises this summer, the Park District has completed certain temporary site improvements, including fencing the perimeter of the Premises, installing an asphalt roller rink, and covering the remainder of the site with gravel (the "**Temporary Improvements**"), as permitted by a Right of Entry agreement issued by the City to the Park District dated May 10, 2021; and

**WHEREAS**, the Park District will replace some or all of the Temporary Improvements on the Premises with the Outdoor Roller Rink and Community Plaza Project; and

**WHEREAS**, while the Premises currently consists of vacant, unimproved land, the City and Park District are aware that the Premises were previously improved with a multi-story building, and as a result, there may exist demolition debris at or below the ground surface; and

**WHEREAS**, as a result, the City performed an environmental investigation to determine the extent of contamination, if any, of the Premises; and

**WHEREAS**, the preliminary results of the environmental investigation, which results have been shared by the City with the Park District, suggest that while some environmental contaminants may exist below the ground surface, there is sufficient ground cover currently existing at the Premises to obviate the need for the City to enter the Premises into the Illinois Environmental Protection Agency (“IEPA”) Site Remediation Program (the “SRP”); and

**WHEREAS**, despite the present lack of need to conduct remediation or further environmental investigation on the Premises, the City will retain a right of entry to the Premises for further environmental site investigations and/or environmental remediation throughout the Term of this Lease; and

**WHEREAS**, on \_\_\_\_\_, 2021, the City Council adopted an ordinance published in the Journal of Proceedings for said date at pages \_\_\_\_ to \_\_\_\_ (the “Authorizing Ordinance”), authorizing the execution of this Lease and the IGA.

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

**SECTION 1. INCORPORATION OF RECITALS.** The recitals set forth above constitute an integral part of this Lease and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

**SECTION 2. LEASE OF PREMISES; TERM**

2.1 Lease of Premises. The City hereby leases to Tenant, and Tenant hereby leases from the City, the Premises, upon the terms and conditions hereinafter provided. This Lease is subject to all easements, encroachments, covenants and restrictions of record and not shown of record and such other title defects as may exist on the Commencement Date.

2.2 Initial Term. The initial term of this Lease (“**Initial Term**”) shall begin on the Commencement Date and shall end on December 31, 2026, unless sooner terminated as set forth herein.

2.3 Option to Extend. Tenant shall have two options to extend the Initial Term by an additional five (5) years, through December 31, 2031 (the “**First Extension Term**”), and through December 31, 2036 (the “**Second Extension Term**”), subject to the approval of the City. Tenant shall give the City written notice of its desire to extend the Term (“**Extension Notice**”) not less than one hundred eighty (180) days prior to the expiration of the Initial Term or the First Extension Term, as applicable. The City shall have thirty (30) days to either approve or deny the request to extend. If the City does not respond within such 30-day period, the request shall be deemed denied. If the City agrees to one or both extensions, each extension term shall be upon the same terms and conditions as provided for in the Initial Term. If Tenant does not deliver an Extension Notice within the time specified in this Section 2.3 or the City denies the request to extend, Tenant’s option to extend shall terminate, and this Lease shall expire as of the end of the Initial Term or the first Extension Term, as the case may be. The word “**Term**” as used in this Lease

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shall mean the Initial Term, the First Extension Term and the Second Extension Term, if Tenant requests and the City approves such extensions, as provided herein. Notwithstanding the foregoing, Tenant shall have no rights to extend under this Section 2.3 if an Event of Default exists on the expiration date of the Initial Term or the First Extension Term, as applicable, or on the date on which Tenant gives its Extension Notice.

**SECTION 3. RENT AND UTILITIES.**

3.1 Rent. Tenant shall pay base rent for the Premises in the amount of One Dollar (\$1.00) on the Commencement Date of this Lease.

3.2 Utilities. Tenant shall pay when due all charges for gas, electricity, light, heat, water, power, and telephone, or any other communication service, and all other utility services used by Tenant or supplied to the Premises on Tenant's behalf.

**SECTION 4. CONDITION AND ENJOYMENT OF PREMISES**

4.1 No Representations or Warranties; Release of City. The City makes no warranties or representations, express or implied, of any kind, as to the structural, physical or environmental condition of the Premises or the suitability of the Premises for any purpose whatsoever. Tenant, on behalf of itself and its Agents (as hereafter defined), agrees to enter upon the Premises in their "as is," "where is" and "with all faults" condition on the Commencement Date and at the Tenant's own risk. Tenant, on behalf of itself and its Agents, acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City with respect thereto. Tenant, on behalf of itself and its Agents, hereby releases, relinquishes and forever discharges the City from and against any and all claims that Tenant or any of its Agents now have or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, based upon, arising out of or in any way connected with, directly or indirectly (a) the structural, physical or environmental condition of the Premises, including, without limitation, the presence or suspected presence of Hazardous Substances (as hereafter defined) in, on, under or about the Premises, (b) the condition of title to the Premises, including, without limitation, any easements, encroachments, covenants, restrictions of record and not shown of record, and any other title defects; and (c) any entry upon or use of the Premises by or on behalf of Tenant or its Agents.

4.2 Covenant of Quiet Enjoyment. Landlord covenants and agrees that Tenant, upon paying the rent and upon observing and keeping the covenants, agreements and conditions of this Lease 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 Lease) during the Term without hindrance or molestation by Landlord or by any person or persons claiming under Landlord.

4.3 City's Right of Entry for Environmental Analysis and Remediation. The City shall have a right of entry to the Premises for the purposes of conducting environmental site assessments, including but not limited to conducting soil borings, and remediation of the Premises.

**SECTION 5. USE AND MAINTENANCE OF THE PREMISES.**

5.1 Permitted Use. Tenant covenants that Tenant shall use the Premises for the Outdoor Roller Rink and Community Plaza Project for the Term of this Lease.

5.2 Compliance with Laws. Tenant shall not use or occupy the Premises, or permit any portion of the Premises to be used or occupied, in a manner that would violate any Laws that may be applicable to the Premises or to the use, occupancy, repair, rehabilitation or improvement of the Premises. The rights granted hereunder extend to, and Tenant shall be responsible for, Tenant's agents, employees, contractors, subcontractors, consultants, invitees, guests, vendors, patrons and any other parties who enter the Premises at Tenant's direction or with Tenant's consent (collectively, "**Agents**"). Contract provisions that are required to be included in this Lease by any such Laws shall be deemed included. As used in this Lease, the term "**Laws**" means all applicable federal, state, local or other laws (including common law), statutes, codes, ordinances, rules, regulations, certificate of occupancy or other governmental requirements, now or hereafter in effect, as amended or supplemented from time to time, including without limitation, all applicable provisions of the Municipal Code of Chicago (the "**Municipal Code**"), and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative orders, consent decrees or judgments.

5.3 Non-Discrimination. Tenant shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the use or occupancy of the Premises or any part thereof.

5.4 Maintenance. Tenant shall, at Tenant's expense, keep the Premises in a condition of thorough repair and good order, and in compliance with all applicable provisions of the Municipal Code. If Tenant refuses or neglects to perform needed maintenance or repairs within thirty (30) days after written notice thereof sent by Landlord, unless such repair cannot be remedied within thirty (30) days, and Tenant has commenced and is diligently pursuing all necessary action to remedy such repair, Landlord, at Landlord's option, is authorized to either make such repairs and Tenant will promptly and within thirty (30) business days of demand reimburse Landlord for the reasonable cost thereof, or Landlord can immediately terminate this Lease by providing the Tenant with written notice thereof. Landlord shall have the right of access to the Premises for the purpose of inspecting and making repairs to the Premises.

5.5 Alterations, Additions, or Improvements. Tenant may make alterations, additions, or improvements to the Premises. Provided, however, that Tenant must first secure the prior written consent for such alterations, additions, or improvements from the Commissioner of the Department of Assets, Information & Services. Such alterations, additions, or improvements shall be in full compliance with all applicable Laws and codes.

5.6 Compliance with City Requirements. Tenant covenants and agrees to abide by, and contractually obligate and cause its contractors to abide by, the terms set forth in **Exhibit B** hereto.

5.7 Tenant's Environmental Responsibilities. The City has undertaken an environmental investigation of the Premises. As Tenant performs construction and demolition of improvements on the Premises to facilitate the Permitted Use, Tenant shall comply with the following requirements:

(a) Notice of Potential Environmental Contamination. Subsurface soil and/or groundwater contamination is present at the site in concentrations that exceed one or more of the IEPA's Tiered Approach to Corrective Action Objectives ("TACO") Tier 1 remediation objectives ("ROs"). Any construction that the Tenant undertakes will need to include an engineered barrier which can consist of: (1) the three feet of existing surface soils, or (2) replacement of any surface soils that are disturbed with fill material meeting TACO Tier 1 ROs, or (3) asphalt, or (4) concrete. If the Permitted Use involves subsurface work and/or will result in contact with soil and/or groundwater, a Construction Worker Health and Safety Plan will be required. Any soils that are excavated for construction of the Project shall be properly disposed of in accordance with this Lease. Neither Tenant nor its Agents shall conduct any activity on the Premises that may in any manner injure the health, safety and welfare of the public, diminish the value of the Premises, interfere with City operations, or violate any Laws, including, without limitation, any Environmental Laws (as hereinafter defined).

(b) Inspection and Work. Tenant agrees to carefully inspect, or cause its Agents to carefully inspect, the Premises prior to commencing any activities on the Premises to ensure that such activities will not damage the Premises or any surrounding property, structures, utility lines or subsurface lines or cables. Tenant and its Agents shall take all reasonable safety precautions to ensure that the Permitted Use will not pose a danger to the public, including, without limitation, adequately securing the Premises throughout the Term. Tenant and its Agents shall construct the Outdoor Roller Rink and Community Plaza Project in a good and workmanlike manner with due care and diligence, and in accordance with all applicable Laws. Tenant and its Agents shall keep the Premises and any adjoining sidewalks and streets free of debris and materials and generally in a clean and safe condition throughout the Term. Tenant and its Agents shall limit their activities to those reasonably necessary to construct and operate the Outdoor Roller Rink and Community Plaza Project. The City reserves the right to inspect the Outdoor Roller Rink and Community Plaza Project, after giving proper advance notice to the Park District, throughout the Term.

(c) Underground Storage Tank Impacts. If Tenant or its Agents, while performing work in furtherance of the Permitted Use, penetrates an underground storage tank ("UST") that results in a release, then Tenant must stop work immediately and contact AIS Environmental Health and Safety Bureau's Deputy Commissioner at 312-744-9139 and email kimberly.worthington@cityofchicago.org. Tenant shall be responsible for removal of the UST, reporting the incident to the Illinois Emergency Management Agency ("IEMA"), associated IEPA reporting, and remediation of the site in accordance with IEPA Leaking Underground Storage Tank ("LUST") regulations.

(d) Spills. If Tenant causes a spill or release of a hazardous substance during the Term, then Tenant must stop work immediately and contact AIS Environmental Health and Safety Bureau's Deputy Commissioner at 312-744-9139 and kimberly.worthington@cityofchicago.org. Tenant shall be responsible for cleaning up the spill including waste disposal as well as all notifications and reporting to any applicable agencies

(e) Borings Exceeding 30 ft (Methane). If any bore holes exceed 30 feet in depth, gas levels must be measured at the surface of the borehole. If gas levels exceed the warning level (10-20% of LEL), all drilling and construction activities in the immediate vicinity of the borehole must be stopped. Once the gas meter levels indicate that the

methane in the borehole has dissipated or is below the warning level (10-20% of LEL), the activities may continue. Any bore holes exceeding 30 feet in depth that are created as a part of the Permitted Use must be monitored from time to time until it is backfilled.

(f) Proper Abandonment. Unless otherwise approved by the City, all soil boring and/or monitoring wells installed must be properly abandoned within the Term of the Lease and pursuant to the requirements provided in Section 920.120 of the Illinois Water Well Construction Code (77 Ill. Adm. Code 920)

(g) Reports. Tenant and City agree to promptly deliver to the other party copies of all reports, surveys, field data, correspondence and analytical results prepared by or for Tenant or City regarding the condition of the Premises if such documentation is prepared as part of the Permitted Use. If applicable, the City shall have the right to review in advance and approve all documents that will be submitted to the SRP, as amended or supplemented from time to time, including, without limitation, the Comprehensive Site Investigation and Remediation Objectives Report, the Remedial Action Plan, and the Remedial Action Completion Report (collectively, the "**SRP Documents**") and any changes thereto, and the Tenant's estimate of the cost to perform the work required by the SPR (the "**Remediation Work**"). The reports should be sent to the Department of Assets, Information & Services, 2 North LaSalle, Suite 200, Chicago, IL 60602, Attn: Deputy Commissioner, Kimberly Worthington.

(h) Disposal of Excess Soil. Excavated soil generated from work conducted as part of the Permitted Use that cannot be returned to the point of excavation must be disposed of by the Tenant at a facility properly permitted to accept the material in accordance with all applicable municipal, county, state, federal or other statutes, laws regarding the disposal of said material. As the top three (3) feet of existing soil will serve as an engineered barrier, any excess soil material excavated three (3) feet below the surface must be separated from the top three (3) feet. Any soil excavated from below three (3) feet must only be returned to the excavation below three feet from the surface. Whatever cannot be returned to below three feet must be removed from site and disposed of at a Subtitle D landfill. Excess soil from the top three (3) feet may be returned to the excavation within the top three (3) feet or be characterized for disposal and be disposed of at a facility properly permitted to accept the material. At no time may soil exhibiting visual or olfactory signs of contamination be returned to the excavation. Any soil exhibiting signs of contamination must be characterized and disposed of at a properly permitted facility. Disposal by Tenant of any material generated while performing this work on the Premises that cannot be returned to the point of excavation shall be completed no later than forty-five (45) days of generation. Non-hazardous waste samples will be disposed of at a properly permitted landfill, and any waste from any samples determined to be hazardous shall be disposed of at the proper accredited treatment facility and in full accordance with all applicable laws and regulations. City shall have the right to review the testing results and approve of the disposal facility to be utilized by Tenant and any of its Agents. Tenant and its Agents are responsible for selecting and utilizing only properly permitted and legally authorized disposal facilities ("**Disposal Facilities**") and shall not be entitled to rely upon the City's approval of any of the Disposal Facilities. Only properly permitted Disposal Facilities shall be utilized for any and all disposal in accordance with all Environmental Laws. Tenant shall make available to City upon written request all documentation on all Disposal Facilities possessed by Tenant and shall provide City copies possessed by Tenant of all change of status documents and any notice of violation(s) on any of the Disposal Facilities.

5.8 Liability for Environmental Conditions.

(a) Pre-Existing Environmental Conditions. For purposes of this Lease, it is a presumption, rebuttable only by clear and convincing evidence, that any Hazardous Substances found at, on, under or about the Premises first arose prior to the Commencement Date ("Pre-Existing Environmental Conditions). Tenant shall not have any contractual liability under this Lease for any Pre-Existing Environmental Conditions, including, without limitation, any Hazardous Substances that are not presently known, and any passive migration or expansion of such condition, **unless**, and only to the extent, that any such condition is exacerbated by the failure of Tenant, or its Agents to exercise due care. In the event of the discovery or exacerbation (despite taking due care) of any Pre-Existing Environmental Conditions, the parties agree to cooperate with each other in good faith to identify funding sources to address such conditions. If the parties fail to identify funding sources for such previously unknown or exacerbated environmental conditions as aforesaid, and the Premises are no longer suitable for recreational purposes as a result thereof, either party may terminate this Lease by prior written notice of at least thirty (30) days to the other party.

(b) New Environmental Conditions. Tenant shall be responsible for, and accepts all liability resulting from, the presence or release of any Hazardous Substances first arising out of events occurring, , after the Commencement Date and caused by the actions or conduct of such Tenant and/or its Agents; **provided, however**, the foregoing provision specifically excludes responsibility for and liability resulting from the exacerbation of any Pre-Existing Environmental Conditions unless such party failed to Exercise due care as provided in Section 5.8(a) above.

(c) Discovery of Hazardous Substances. In the event that any party discovers Hazardous Substances at, on, under, or about the Premises that are not presently known or addressed, and that pose a threat to human health or the environment, such party shall promptly notify the other, and Tenant shall take reasonable steps to prevent public access to any affected area.

(d) This Section shall survive any termination or expiration of this Lease.

**SECTION 6. ASSIGNMENT, SUBLEASE, AND LIENS.**

6.1 Assignment and Sublease. Tenant shall not assign this Lease in whole or in part, or sublet the Premises or any part thereof.

6.2 Tenant's Covenant Against Liens. Tenant shall not cause or permit any lien or encumbrance, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon Landlord's title or interest in the Premises. All liens and encumbrances created by Tenant shall attach to Tenant's interest only. In case of any such lien attaching, Tenant shall immediately pay and remove such lien or furnish security or indemnify Landlord in a manner satisfactory to Landlord in its sole discretion to protect Landlord against any defense or expense arising from such lien. Except during any period in which Tenant appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, Tenant shall immediately pay any judgment rendered against Tenant, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If Tenant fails to pay and remove any lien or contest such

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lien in accordance herewith, Landlord, at its election, may pay and satisfy same, and all sums so paid by Landlord, with interest from the date of payment at the rate set at 12% per annum.

### **SECTION 7. INSURANCE AND INDEMNIFICATION.**

7.1 Self-Insurance. Tenant shall secure shall insurance coverages for each of the insurance requirements as incorporated herein under this Section 7 or Tenant may self-insure for the same types and amounts.

7.2 Insurance. Tenant shall procure and maintain at all times, at Tenant's own expense, during the Term, the insurance coverages and requirements specified below, insuring all operations related to the Lease. The kind and amounts of insurance required are as follows:

(a) Worker's Compensation and Employer's Liability. Workers Compensation as prescribed by applicable law, covering all employees who are to provide a service under this Lease, and Employer's Liability Insurance with limits of not less than \$500,000 each accident, illness or disease.

(b) Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent, with limits of not less than \$2,000,000 per occurrence, for bodily injury, personal injury, and property damage liability. Coverage shall include the following: All premises and operations, products/completed operations, defense, separation of insureds, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City of Chicago shall be named as an additional insured under the policy. Such additional insured coverage shall be provided on CG 20 10 or on a similar additional insured form acceptable to the City. The additional insured coverage shall not have any limiting endorsements or language under the policy such as, but not limited to, Tenant's sole negligence or the Additional Insured's vicarious liability. Tenant's liability insurance shall be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

(c) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the Lease, Tenant shall provide and maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago shall be named as an additional insured on a primary, non-contributory basis.

The Tenant shall be responsible for all loss or damage personal property (including, but not limited to materials, equipment, tools and supplies), owned, rented or used by Tenant.

7.3 Other Terms of Insurance. Tenant will furnish the City of Chicago, Department of Assets, Information & Services, Office of Real Estate Management, 2 North LaSalle Street, Suite 200, Chicago, Illinois 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term. Tenant shall submit evidence of insurance prior to execution of the Lease. The receipt of any certificate does not constitute agreement by Landlord that the insurance requirements in this Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all



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requirements in the Lease. The failure of Landlord to obtain certificates or other insurance evidence from Tenant shall not be deemed to be a waiver by Landlord. Tenant shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance shall not relieve Tenant of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Lease and the Landlord retains the right to terminate or suspend the Lease until proper evidence of insurance is provided.

The Tenant shall provide for 60 days prior written notice to be given to the Landlord in the event coverage is substantially changed, cancelled, or non-renewed.

Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Tenant.

Tenant hereby grants to the Landlord a waiver of any right of subrogation which any insurer of Tenant may acquire against the Landlord by virtue of the payment of any loss under the insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Landlord has received a waiver of subrogation endorsement from the insurer(s).

Tenant expressly understands and agrees that any coverages and limits furnished by Tenant shall in no way limit the Tenant's liabilities and responsibilities specified in this Lease or by law.

Tenant expressly understands and agrees that its insurance is primary and any insurance or self-insurance programs maintained by the Landlord shall not contribute with insurance provided by Tenant.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Lease or any limitation placed on the indemnity in this Lease given as a matter of law.

If Tenant is a joint venture or limited liability company, the insurance policies shall name the joint venture or limited liability company as a named insured.

If Tenant maintains higher limits than the minimums shown above, Landlord shall be entitled to coverage for the higher limits maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

Notwithstanding any provision to the contrary, the City of Chicago, Department of Finance, Office of Risk Management, maintains the rights to modify, delete, alter or change these requirements at any time during the Term of Lease.

7.4 Tenant's Indemnification. Tenant shall indemnify, defend, and hold Landlord 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 Landlord or Tenant by reason of Tenant's performance of or failure to perform any of Tenant's obligations under this Lease, or Tenant's negligent acts or failure to act, or resulting from the acts or failure to act of Tenant's Agents.

**SECTION 8. ADDITIONAL RESPONSIBILITIES OF TENANT.**

8.1 Securing the Premises. Tenant shall be responsible for securing the Premises at all times and provide and pay for security where necessary.

8.2 Illegal Activity. Tenant, or any of its Agents, shall not perform or permit any practice or activity 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.

8.3 Hazardous Substances. Tenant shall not use or store any Hazardous Substances (defined below) on the Premises. Tenant shall promptly notify the City if Tenant discovers any Hazardous Substances on the Premises. As used in this Lease, the term "**Hazardous Substances**" shall mean any toxic substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Laws (as defined hereunder), or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, polychlorinated biphenyls (PCBs), crude oil, any fraction thereof, or refined petroleum products such as oil, gasoline, or other petroleum-based fuels, lead paint, asbestos or asbestos-containing materials, urea formaldehyde, any radioactive material or by-product material, radon and mold. "**Environmental Laws**" shall mean any and all Laws, permits and other requirements or guidelines of governmental authorities applicable to the Premises and relating to the regulation and protection of human health, safety, the environment, natural resources or to any Hazardous Substances, including without limitation, any Laws requiring the filing of reports and notices relating to Hazardous Substances. Tenant shall submit Safety Data Sheets for all substances, including but not limited to sealants and paints, to the City Department of Assets, Information & Services Bureau of Environmental Health and Safety, attn: Kimberly Worthington, prior to use on site.

8.4 Full Responsibility. Tenant assumes full legal and financial responsibility and liability for any and all use of the Premises by Tenant and Tenant's Agents, and any other person or persons entering the Premises.

8.5 No Alcohol or Drugs. Tenant agrees that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Premises.

8.6 Permits and Licensing. 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 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 Lease.

8.7 Obligation to Restore the Premises. Upon completion of the Term, Tenant shall remove all improvements constructed by Tenant, trash, wastes and debris placed on the Premises by Tenant or its Agents. Tenant shall remove any asphalt or concrete ground covering constructed by Tenant and restore such areas with sod. Tenant shall dispose of all trash, wastes and debris in accordance with all applicable Laws, including without limitation, all applicable Environmental Laws (as hereinafter defined). Any improvements, trash, wastes or debris left by Tenant on or about the Premises shall be considered abandoned and may be disposed of in the City's sole discretion. Tenant agrees to pay for any removal or disposal costs the City may incur. The City shall be reimbursed for all sums it pays in connection with this Lease. Tenant shall be

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responsible for any damage to the Premises or any surrounding property, structures, utility lines or subsurface lines or cables caused by the acts or omissions of Tenant or its Agents, including but not limited to, vandalism or misuse of the Premises, and shall undertake any repairs necessitated by such acts or omissions.

8.8 No Liens. Tenant shall not cause or permit any lien or encumbrance, whether created by act of Tenant or its Agents, operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Premises. In case of any such lien attaching, Tenant shall immediately pay and remove such lien. If Tenant fails to pay and remove any lien, the City, at the City's election, may, but is not obligated to, pay and satisfy same, and all sums so paid by the City shall be reimbursed by Tenant within fifteen (15) days of such payment with interest from the date of payment at the rate of 12% per annum.

8.9 Reports. Tenant agrees to promptly deliver to the City copies of all reports, surveys, field data, correspondence and analytical results prepared by or for Tenant regarding the condition of the Premises during the Term. In addition, Tenant agrees to promptly deliver to the City a report including details of the Permitted Use completed including all photographs of all improvements and Safety Data Sheets for all materials used on site.

**SECTION 9. MISCELLANEOUS.**

9.1 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 Tenant to Landlord 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 Landlord as follows:

City of Chicago  
Department of Assets, Information & Services  
Office of Real Estate Management  
2 North LaSalle Street, suite 200  
Chicago, Illinois 60602

and:

City of Chicago  
Corporation Counsel  
City Hall, Room 600  
121 North LaSalle Street  
Chicago, Illinois 60602  
Attn: Real Estate Division

or at such other place as Landlord may from time to time designate by written notice to Tenant. All notices, demands, and requests by Landlord to Tenant 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 Tenant as follows:

Chicago Park District  
541 North Fairbanks  
Chicago, Illinois 60611  
Attn: General Superintendent

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with a copy to:           General Counsel  
                                  Chicago Park District  
                                  541 North Fairbanks  
                                  Chicago, Illinois 60611

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

9.2    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.

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

9.4    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.

9.5    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.

9.6    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, and is subject to no contingencies or conditions except as specifically provided herein.

9.7    Time is of the Essence. Time is of the essence of this Lease and of each and every provision hereof.

9.8    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.

9.9    Authorization to Execute Lease. The parties executing this Lease hereby represent and warrant that they are duly authorized and acting representatives of Landlord and Tenant respectively.

9.10   Termination of Lease. Landlord and Tenant shall have the right to terminate this Lease by providing each other with sixty (60) days prior written notice at any time after execution of this Lease. In addition, the Lease shall terminate in the event that the Landlord conveys the subject Premises to the Tenant pursuant to Quitclaim Deed or other instrument of conveyance. In such event, this Lease shall terminate as of the date the parties execute such instrument of conveyance.

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9.11 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.

9.12 Condemnation. If the whole or any substantial part of the Premises are taken or condemned by any competent authority for any public use or purpose, or if any adjacent property or street shall be so condemned or improved in such a manner as to require the use of any part of the Premises, the term of this Lease shall, at the option of Landlord or the condemning authority, be terminated upon, and not before, the date when possession of the part so taken shall be required for such use or purpose, and Landlord shall be entitled to receive the entire award without apportionment with Tenant.

9.13 Tenant Default. Tenant must adhere to all provisions of this Lease. Failure of Tenant to adhere to all provisions of this Lease will result in default. In the event of such default, Landlord will notify Tenant in writing as to the circumstances giving rise to such default. Upon written receipt of such notice, Tenant must cure such default within ten (10) business days. If Tenant does not cure such default within ten (10) business days, Landlord may cancel this Lease with five (5) days written notice.

9.14 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Tenant 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 Lease is executory, Tenant's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Lease, constitutes a breach of and an event of default under this Lease, 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 City to all remedies under the Lease, at law or in equity. This section does not limit Tenant'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 Lease. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Lease, and may further affect the Tenant's eligibility for future contract awards.

9.15 Amendments. This Lease may be amended or modified periodically by the parties hereto provided such amendment or modification is approved in writing by all of following: the Superintendent of the Chicago Park District, the City of Chicago's Deputy Corporation Counsel (Real Estate Division), the Commissioner of the Department of Fleet and Facility Management, and the Commissioner of the Department of Planning and Development. Provided, however, that such amendment or modification shall not materially alter the provisions of this Lease or extend the term hereof.

9.16 Counterparts. This Lease 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.

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**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

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

**LANDLORD:**

**CITY OF CHICAGO**, an Illinois municipal corporation

**THE DEPARTMENT OF ASSETS, INFORMATION & SERVICES**

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

*APPROVED AS TO FORM AND LEGALITY*  
BY: THE DEPARTMENT OF LAW

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

**TENANT:**

**CHICAGO PARK DISTRICT**, an Illinois municipal corporation

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

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**EXHIBIT A**

LOTS 43, 44, 45 AND 46 IN BLOCK 33 IN THE SUBDIVISION OF THE SOUTH HALF OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PIN: 16-10-425-029-0000

Common Address: 4004-4012 West Madison Street



EXHIBIT B

CITY REQUIREMENTS

1. Conflict of Interest and Governmental Ethics.

(a) 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 his or her position to influence any City governmental decision or action with respect to this Lease.

(b) Duty to Comply with Governmental Ethics Ordinance. The City and Tenant shall comply with Chapter 2-156 of the Municipal Code, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment 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 Chapter 2-156 shall be voidable as to the City of Chicago.

2. Business Relationships. Tenant acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code, (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, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as described in Section 2-156-080 of the Municipal Code), 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 Lease, 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 Lease shall be grounds for termination of this Lease and the transactions contemplated hereby. Tenant hereby represents and warrants that no violation of Section 2-145-030 (b) has occurred with respect to this Lease or the transactions contemplated hereby.

3. Patriot Act Certification. Tenant represents and warrants that neither Tenant 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 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 Tenant that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Tenant, 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.

4. Prohibition on Certain Contributions-Mayoral Executive Order No. 2011-4. Tenant agrees that Tenant, any person or entity who directly or indirectly has an ownership or beneficial

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interest in Tenant of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Tenant's contractors (i.e., any person or entity in direct contractual privity with Tenant regarding the subject matter of this Lease) ("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 (Tenant 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 Lease by Tenant, (b) while this Lease or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Lease or any Other Contract, or (d) during any period while an extension of this Lease 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.

Tenant represents and warrants that from the later of (a) May 16, 2011, or (b) the date the City approached Tenant, or the date Tenant approached the City, as applicable, regarding the formulation of this Lease, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Tenant 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.

Tenant 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, Tenant 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 Lease, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Lease, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Tenant intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the execution of this Lease, the City may elect to decline to execute this Lease.

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 City to which Tenant is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code; (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, as amended.

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

- (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 tenants.
  - (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, as amended.

5. Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code, Tenant 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 Lease is executory, Tenant's, any general contractor's or any subcontractor's violation of the Waste Sections, whether or not relating to the performance of this Lease, constitutes a breach of and an event of default under this Lease, 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 City to all remedies under the Lease, at law or in equity. This section does not limit Tenant'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

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or later, and whether or not they appear in this Lease. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Lease, and may further affect Tenant's eligibility for future contract awards.

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

7. Cooperation with Office of Inspector General. It is the duty of Tenant 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 Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Tenant represents and warrants that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that Tenant will inform its Contractors and Subcontractors of this provision and require their compliance.

### 8. 2014 Hiring Plan Prohibitions.

(a) The City is subject to the June 16, 2014 "City of Chicago Hiring Plan", as amended (the "2014 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 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

(b) Tenant is aware that City policy prohibits City employees from directing any individual to apply for a position with Tenant, either as an employee or as a subcontractor, and from directing Tenant to hire any individual as an employee or as a subcontractor. Accordingly, Tenant must follow its own hiring and contracting procedures, without being influenced by the City or City employees. Any and all personnel provided by Tenant under this Lease are employees or subcontractors of Tenant, not employees of the City. 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 Tenant.

(c) Tenant will not condition, base, or knowingly prejudice or affect any term or aspect of 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 individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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(d) In the event of any communication to Tenant by a City employee or City official in violation of paragraph (ii) above, or advocating a violation of paragraph (iii) above, Tenant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("OIG Hiring Oversight"), and also to the head of the relevant City department utilizing services provided under this Lease. Tenant will also cooperate with any inquiries by OIG Hiring Oversight.