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O2012-3790

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City Council Document Tracking Sheet

Meeting Date:	6/6/2012
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement with Illinois Secretary of State
Committee(s) Assignment:	Committee on Budget and Government Operations

BUDG.



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

June 6, 2012

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

Ladies and Gentlemen:

At the request of the Director of Administrative Hearings, I transmit herewith an ordinance authorizing the renewal of an intergovernmental agreement with the Illinois Secretary of State.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, The City of Chicago (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; and

WHEREAS, The Office of the Secretary of State of Illinois (the "S.O.S.") is an agency of the State of Illinois and is authorized under the laws of the State of Illinois to maintain, through its Vehicle Services Department and Driver Services Department, computer records regarding motor vehicle title and registration; and

WHEREAS, The City, through its Department of Administrative Hearings ("DOAH"), is charged with the responsibility of adjudicating vehicle related municipal code violations including, among other matters, parking and compliance tickets, automated traffic law violations, and vehicle impoundment matters; and

WHEREAS, accurate and current information concerning vehicle title and registration, and driver's license information is critical to the proper adjudication of these matters; and

WHEREAS, the Illinois Vehicle Code, 635 ILCS 5/11-208.3, mandates that the name and address of the registered owner as the same are recorded with the S.O.S. be used for service of parking and compliance tickets, automated traffic law violation notices, and service of additional administrative adjudication notices; and

WHEREAS, The S.O.S. has decided to grant DOAH on-line computer access to such information, subject to certain security requirements; and

WHEREAS, The City and the S.O.S. wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement") whereby the S.O.S. shall grant to DOAH access to certain motor vehicle title and registration and driver's license information for use in adjudicating ordinance violations; 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 a part of this ordinance as though fully set forth herein.

SECTION 2. The Director of the Department of Administrative Hearings, or designee, is authorized to execute and deliver the Agreement, and such other documents as are necessary, between the City of Chicago and the Office of the Secretary of State of Illinois, which Agreement may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 3. The Director of the Department of Administrative Hearings, or designee, is further authorized to renew or extend the term of the Agreement beyond its original termination date, and to execute and deliver the renewed or extended Agreement, and such other documents as are necessary, between the City of Chicago, and the Office of the Secretary of State, which renewed or extended Agreement may

contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the City.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or any 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 provision of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

EXHIBIT A TO THE ORDINANCE

**ON-LINE ACCESS AGREEMENT
BETWEEN
ILLINOIS SECRETARY OF STATE
AND
CITY OF CHICAGO, DEPARTMENT OF ADMINISTRATIVE HEARINGS
FOR RETRIEVING COMPUTER STORED INFORMATION**

WHEREAS, City of Chicago, Department of Administrative Hearings, with its principal address at 740 North Sedgwick Street, Chicago, Illinois 60654, ("Seeker"), seeks to obtain information maintained on the computer files of the Driver Services Department of the Office of the Secretary of State of Illinois, with its principal address at the Driver Services Department, 298 Howlett Building, Springfield, Illinois 62756 and of the Vehicles Services Department of the Office of the Secretary of State of Illinois, with its principal address at the Vehicles Services Department, 312 Howlett Building, Springfield, Illinois 62756 (both collectively referred to as "SOS"), pertaining to one or more groups of files described in Section 1 Computer Access;

WHEREAS, Seeker is entitled to certain information maintained in such files which is now available by a manual search of the SOS records for purposes as outlined in Exhibit A and in accordance with the Federal Drivers Privacy Protection Act (18 USC 2721, et. seq.);

WHEREAS, the files prescribed in Section 1, Computer Access are "unprotected" in that any party possessing the required access code can obtain virtually all information contained in the files;

WHEREAS, the SOS has decided to grant Seeker retrieval access to these files by on-line access, subject to certain access code security requirements;

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements of the parties, and other consideration, the receipt and adequacy of which is hereby acknowledged, it is hereby agreed by and between Seeker and SOS, that the following terms and conditions shall control the agreed access to computer files:

1. COMPUTER ACCESS:

SOS will provide on-line access to Seeker six days a week (Monday, 12:00 a.m. through Saturday, 11:59 p.m.). Seeker will be authorized to access the following database files ONLY:

From the Driver Services Department: Driver abstracts which are a documented record of only current driver's license number issuance information (except information concerning judicial driving permits and Monitoring Device Driving Permits), convictions, and orders entered revoking, suspending or canceling a driver's license or privilege. All other information shall remain confidential and will not be available to Seeker.

From the Vehicle Services Department: Vehicle title and registration data limited to name, address, and vehicle make, model, license plate and vehicle identification number. Handicap Placard information limited to name, address,

date of birth, effective dates and placard number. All other information shall remain confidential and will not be available to Seeker.

2. COMPUTER EQUIPMENT:

Seeker will be responsible for and acknowledges the following:

- a. Whereas Seeker currently has a connection to the Illinois Central Management Services (CMS) mainframe for terminal access, that same connection and access method shall be used for access to the SOS system. Any additional costs incurred as a result of this access shall be the responsibility of the Seeker. Should this connection to CMS be discontinued for any reason, SOS must, in writing, approve a new connection method.

3. COMPUTER SECURITY:

- a. Seeker shall take any and all lawful measures necessary to prevent the unauthorized use and disclosure of SOS information and to prevent unauthorized persons or entities from obtaining or using such information. Seeker shall be liable for any unauthorized use and disclosure of SOS data. This includes, but is not limited to: accessing the database(s) without authority, allowing anyone not a party to this Agreement to access the database(s) or to view SOS information or altering any existing SOS information in any form. Seeker must immediately report any unauthorized use or misuse of SOS information, as well as any breach of Seeker's security system that may involve SOS information, to SOS by contacting the Secretary of State Inspector General's Office (217/785-2012) and the Office of the General Counsel (217/785-3094).
- b. Seeker will be responsible for the security of this information, including the prevention of any unauthorized use. Ultimately, Seeker shall be responsible for any unauthorized use. Seeker acknowledges that SOS has the authority to change the requirements for accessing the system as technological, fiscal, security or other considerations dictate. SOS agrees to provide Seeker with as much prior notice of such changes as is practicable. Upon termination of this Agreement, Seeker shall immediately return to SOS all documents concerning access to SOS data, whether tangible, electronic or otherwise, in its custody, possession or control, and shall immediately cease using such access.
- c. Seeker shall provide to SOS the names, addresses and phone numbers of all persons responsible for managing SOS data or otherwise executing the provisions of this Agreement on behalf of the Seeker. SOS must issue an individual RACF ID to every officer and employee of Seeker before the officer or employee may access SOS data. Under no circumstances may officers or employees of Seeker share a RACF ID. When an officer or employee is no longer employed by the Seeker, Seeker must immediately notify SOS so that the RACF ID of that officer or employee can be terminated. Breach of the provisions of this paragraph shall be deemed a material breach and will result in this Agreement being terminated by SOS.

- d. This Agreement authorizes Seeker only to retrieve data from the database(s) set forth in Section 1. Computer Access. Seeker may not enter any information on any SOS file, nor may Seeker alter, or attempt to alter, any existing SOS file in any form.
- e. This Agreement authorizes the SOS or its representatives access to Seeker's system to audit, verify and assess security controls. Failure to provide adequate security controls is a material breach and cause for immediate termination.
- f. SOS security policies and data security standards, as amended, shall be incorporated into this Agreement by reference.
- g. As a condition precedent of this contract, Seeker agrees to complete the SOS Network Security Assessment, if required by SOS and to return same to SOS prior to the execution of this contract.

4. DATA MINING PROHIBITIONS:

- a. Seeker agrees to refrain from any type of data mining or web mining of SOS data.
- b. Prohibited data mining/web mining includes, but is not limited to, use of website copying software, web data pre-processing, creation of web metrics and mathematical models; web log analysis, static and dynamic visitor profiling, intelligent information retrieval, hyperlink analysis, use of spider, crawl or bot programs (vertical search engines), web usage mining, web structure mining, web content mining, data/information extraction, web information integration and schema matching, knowledge synthesis, segmenting, noise detection, use of topic-sensitive PageRank software, use of filtering techniques, meta-search engines, or any other type of automated search of information that goes beyond keyword extraction.
- c. Violation of this section is considered a material breach and will result in termination of online access.
- d. Data/Web mining is considered "Computer Tampering," a criminal act under the Illinois Criminal Code. A person who commits the offense of "Computer Tampering" is guilty of a Class 4 Felony. 720 ILCS 5/16D-3.

5. USE OF INFORMATION:

- a. Seeker agrees that it will obtain the data from SOS on an "AS IS" basis. Seeker acknowledges that SOS compiles the data as required by statute for its own public purposes and that by providing such data to Seeker pursuant to this Agreement, SOS is providing only access convenient to Seeker. SOS assumes no responsibility for the accuracy of the data and disclaims any liability for damages, costs, and/or expenses, including,

without limitation, consequential damages, arising or resulting from any inaccurate data.

- b. Seeker represents that this request for information is in accordance with Federal and Illinois law. Seeker shall furnish a certified statement (in the form of a sworn and notarized affidavit) setting forth the specific uses to be made of the data received from SOS. This certified statement is subject to the approval of SOS and shall be incorporated into this Agreement as Exhibit A. Seeker agrees neither to deviate from nor to alter the certified statement of specific uses without the prior express written consent of SOS. This Agreement authorizes SOS or its representative to audit Seeker, including any and all computer systems and documents, to verify that the data is being used only in accordance with the approved certified statement.
- c. Seeker agrees that the data received in its original form will not be made available to other persons, firms, corporations, partnerships, members of the public, persons outside the employ or direct control of the Seeker or other entities without the prior express written consent of SOS.
- d. Pursuant to 92 Illinois Administrative Code 1002.60, should Seeker disclose any personal information obtained from SOS in any manner allowed under this Agreement, Seeker shall, for a minimum of five (5) years, keep records identifying each person or entity that received such information and the permitted purpose for which the information was disclosed. Seeker will make said records available to SOS upon request by SOS.
- e. Seeker shall not sell or repackage the data under the name of SOS or use the State seal with respect to any data obtained through this Agreement. This Agreement does not authorize Seeker to use the State seal for any purpose.
- f. No person shall be allowed to access SOS's computer system or shall be allowed access to data obtained from SOS's computer system for reasons outside of the Seeker's intended and legitimate use of such information under this Agreement, as identified in the approved certified statement of uses.
- g. While some of the data contained in such files is considered public information, some of the data to which Seeker is entitled is considered personally identifying information, the dissemination of which is limited by the Federal Drivers Privacy Protection Act, 18 USC 2721 et. seq. Seeker acknowledges that the improper dissemination of personally identifying information is a violation of the Federal Drivers Privacy Protection Act and that any individual who violates this Act is subject to criminal prosecution, fines and civil penalties of \$2,500 for each improper disclosure of information. Thus, all information whether displayed on the screen or in printed form is for the EXCLUSIVE use of Seeker and shall not be provided to anyone not a party to this Agreement without prior express written consent of SOS. Seeker agrees that each of its officers and

employees who will be given access to SOS information will be informed, in writing, of the limitations on the dissemination of this information and of the civil and criminal penalties for violating the Federal Drivers Privacy Protection Act. Each officer and employee shall acknowledge in writing the receipt of this requirement.

- h. All members of the public must, by law, purchase copies of abstracts for their own use from SOS as outlined in 625 ILCS 5/2-123 and 92 Illinois Administrative Code 1002.
- i. Seeker agrees not to use, sell, furnish, or otherwise make available drivers, vehicles, handicap placards or title lists or any other data supplied pursuant to this Agreement for commercial solicitation purposes, to contact individuals for advertising, offering for sale, marketing or sale of products or services; or identifying potential employees, except for the United States Armed Forces; or to update, enhance, or verify any information which may then be sold, offered or otherwise distributed to any user to directly or indirectly use such information to contact individuals for advertising, offering for sale, marketing or sale of products or services as set forth by Title 92, Illinois Administrative Code, Chapter II, Section 1002.42. A violation of this provision shall result in the SOS's denial of sale of information to the Seeker for a term of five (5) years.
- j. Should Seeker misuse SOS information or have a breach of its security systems that allows unauthorized users access to SOS information, Seeker shall be responsible for any costs SOS incurs in relation to notifying SOS customers of the unauthorized access and/or use of their information.
- k. Seeker agrees to hold the SOS, its officers, agents and employees, harmless from and against any and all liabilities, demands, claims, suits, losses, damages, causes of action, fine or judgments, including costs, attorneys' and witnesses' fees, and expenses incident thereto, relating to the unauthorized access to and/or release of personal information resulting from the acts or omissions, including negligence or misconduct of Seeker, its employees, agents or subcontractors in the performances of this Agreement. Should Seeker misuse any SOS information or have a breach of its security systems that compromises the security of SOS information which results in SOS having to notify its customers of the misuse or compromise of their information, Seeker shall bear all costs associated with said notification and breach.
- l. Breach of any of these provisions contained within this section by Seeker shall be deemed a material breach of this Agreement and shall result in the immediate termination of this Agreement.

6. FORCE MAJEURE:

Seeker acknowledges that SOS agrees to provide computer accessible stored data to Seeker as an accommodation to Seeker. SOS shall not be responsible for any failure to deliver data in a timely manner or at all, in the event that SOS

suffers a breakdown of its computer stored information facilities, the failure of transmission equipment, fire, floods, earthquakes, explosions, acts of authority exercised by a public functionary, acts of a public enemy, legislation, governmental regulation or other such circumstances which are difficult to foresee and resist, and which impede the ability of SOS to provide the services described in this Agreement, which shall be known as force majeure. SOS shall notify Seeker of an event of force majeure that may delay or preclude provision of the data contemplated under this Agreement, and shall notify Seeker when such force majeure no longer exists or precludes or delays such provision of data. SOS shall refund any payment made by Seeker for undelivered data; however, SOS shall have no further responsibility or liability to Seeker with respect to such undelivered data.

7. GOVERNING LAW AND JURISDICTION:

This Agreement is subject to the rules outlined in 92 Illinois Administrative Code 1002, all relevant sections of the Illinois Vehicle Code and the Federal Drivers Privacy Protection Act, 18 USC 2721 et. seq. and the Fair Credit Reporting Act, 15 USC 1681 et. seq. This Agreement shall be interpreted in accordance with the laws of the State of Illinois, U.S.A. Seeker agrees that any dispute arising under this Agreement which cannot be resolved amicably among the parties shall be submitted to the court of competent jurisdiction in the State of Illinois, to which jurisdiction Seeker hereby submits.

8. TERM AND TERMINATION:

- a. Term. The effective date of this Agreement shall be the date set out at the end hereof. This Agreement shall continue in effect until termination by either party pursuant to the terms hereof, or until the breach of any of the terms and conditions of this Agreement, and in particular Sections 3., 4. and 5., or by two (2) years from the effective date set out at the end hereof, whichever comes first.
- b. Termination on notice. The parties shall each have the right to terminate this Agreement without cause upon 5 days prior written notice to the other party.
- c. Additional basis for termination. The SOS shall have the right to terminate this Agreement immediately if, at any time, Seeker shall breach any material provision of this Agreement.
- d. Survival of terms. The terms and conditions of Sections 2. Computer Equipment, 3. Computer Security, 4. Data mining Prohibitions, 5. Use of Information, and 7. Governing Law and Jurisdiction and this paragraph are substantive provisions constituting the essence of the Agreement and the obligations of the parties. These provisions shall survive termination of this Agreement unless and until discharged by the parties.

9. NOTICE:

Any and all notices required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficiently made if given by certified or registered mail, postage prepaid, addressed to a party by name at the address first indicated above. Except as specifically provided herein, notices so given shall be deemed made when delivered to the addressee; provided, however, that if delivery of such mail is delayed or not effectuated for any reason other than temporary or permanent loss in, or substantial disruption of, the mails, then such notice shall be deemed to have been made on the 5th business day following the date of deposit in the United States mails. A receipt showing delivery of certified or registered mail, signed by the addressee or its agent or employee, or a written notification given in due course by the postal authority indicating the reason for non-delivery shall be sufficient evidence thereof, respectively. The aforesaid address for service of notice may be changed only by the changing party giving 10 days' notice thereof by certified or registered mail in the manner hereinabove provided, but there shall be no presumption of delivery of such notice of change of address in the absence of actual delivery. Nothing herein contained shall preclude the giving of written notice by any other lawful means.

10. GENERAL:

- a. **Integrated Agreement.** This Agreement constitutes the entire agreement between the parties concerning access by Seeker to the Computer Stored Information of the SOS and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties' respective successors and assigns.
- b. **Assignment.** Seeker may not assign any right or obligation hereunder without the prior express written consent of the SOS. Any attempted assignment in violation of this provision shall be void and of no effect.
- c. **Implementation.** Each party hereto agrees to execute such further documents and take such further steps as the other party reasonably determines may be necessary or desirable to effectuate the purposes of this Agreement.
- d. **Compliance.** Each party hereto shall comply with all applicable laws, rules, ordinances, guidelines, consent decrees and regulations of any federal, state, or other governmental authority.
- e. **Waiver.** No modification, amendment, supplement to or waiver of this Agreement or any of its provisions shall be binding upon a party hereto, unless made in writing and duly signed by such party. A failure of or delay by either party to this Agreement to enforce at any time any of the provisions of this Agreement or to require at any time performance of any of the provisions of this Agreement shall in no way be construed to be a waiver of such provision. A waiver by either party of any of the terms and conditions of this Agreement in any individual instance shall not be deemed a waiver of such terms or conditions in the future, or of any subsequent breach of this agreement.

- f. Severability. If any provision(s) or clause(s) of this Agreement, or portion thereof, are held by any court or other tribunal of competent jurisdiction to be illegal, void or unenforceable in such jurisdiction, such provision(s) or clause(s) shall be reformed to approximate as nearly as possible the intent of the parties, and the remainder of the provisions shall not thereby be affected and shall be given full effect without regard to the invalid portion(s), and to this end such provisions are declared to be severable.
- g. Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only, and do not constitute a part of this Agreement.
- h. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
- i. Fiscal planning. The continuation of this contract and the obligations of the State are contingent upon the appropriation by the legislature or federal funding source of sufficient and appropriate funds to fulfill the requirements of the contract. If sufficient funds as determined by the State are not appropriated, the contract shall terminate on the first date in any fiscal year on which sufficient funds are no longer available. The State will give 30 days or as much notice as possible of an appropriation issue.
- j. Criminal Conviction/Criminal Background Check. Seeker certifies that neither Seeker nor any employee or officer of Seeker has been convicted of a felony, or, if so convicted, at least five years have passed since completion of sentence as of the effective date of this Agreement, unless no person held responsible by a prosecutorial office for the facts upon which the conviction was based continues to have any involvement with the business. (30 ILCS 500/50-10)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or by its duly authorized officer as of the _____ day of _____, 20_____.

DATE: _____

CITY OF CHICAGO, DEPARTMENT OF
ADMINISTRATIVE HEARINGS

By: _____
Patricia Jackowiak
Director/Chief Administrative Law Judge

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____
Michael Mayer
Director, Driver Services

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

By: _____
Ernest Dannenberger
Director, Vehicle Services

DATE: _____

STATE OF ILLINOIS
SECRETARY OF STATE

JESSE WHITE
SECRETARY OF STATE

Reviewed for Legal Sufficiency:

DATE: _____

By: _____
Irene Lyons
General Counsel
Illinois Secretary of State's Office