



City of Chicago



O2017-206

Office of the City Clerk
Document Tracking Sheet

Meeting Date: 1/25/2017
Sponsor(s): Emanuel (Mayor)
Type: Ordinance
Title: Third Amendment to lease agreement with Erie Family Health Center, Inc. at 2418 W Division St for use of office and clinical space
Committee(s) Assignment: Committee on Housing and Real Estate



HSG-

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

January 25, 2017

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

Ladies and Gentlemen:

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

Your favorable consideration of these ordinances will be appreciated.

Very truly yours,

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

Mayor

ORDINANCE

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 City is the owner of the real property and improvements located at 2418 West Division Street, Chicago, Illinois, known as the West Town Neighborhood Health Center (the “Property”); and

WHEREAS, on July 1, 2012, the City and Erie Family Health Center, Inc., an Illinois not for profit corporation (“Erie”) executed Lease No. 20253 (the “Lease”) governing Erie’s use of approximately 11,310 square feet of office and clinical space in the West Town Neighborhood Health Center (the “Original Space”) for a term ending on July 1, 2019; and

WHEREAS, on October 1, 2015, the City and Erie executed a First Amendment to the Lease (“First Amendment”), which expanded the Original Space to include an additional 4,633 square feet of space (the “First Amendment Space”); and

WHEREAS, Erie has been awarded a Federal grant in the amount of \$499,702 from the Health Resources and Services Administration (“HRSA”), an agency of the U.S. Department of Health and Human Services, to fund improvements to Erie’s clinic; and

WHEREAS, in order to satisfy the conditions of the Federal grant, the City and Erie entered into a Second Amendment to the Lease (“Second Amendment”), which, among other things, (i) extended the term of the Lease to December 31, 2026, (ii) expanded the leasehold premises to include an additional 329 square feet of space (the “Second Amendment Space” and, together with the Original Space and the First Amendment Space, the “Premises”), and (iii) included certain additional provisions required by HRSA; and

WHEREAS, the Premises are depicted on Exhibit B attached hereto; and

WHEREAS, 4,000 square feet of the Premises will be improved using the HRSA grant funds (the “Project Area”), and the Project Area is depicted on Exhibit C attached hereto; and

WHEREAS, one of HRSA’s requirements is to record a Notice of Federal Interest against the Property, acknowledging that the Project Area was improved with Federal funds and imposing certain use and disposition requirements; and

WHEREAS, the Notice of Federal Interest states that the Property may not be used for any purpose inconsistent with the grant program; may not be mortgaged or otherwise used as collateral without the written permission of HRSA; and may not be sold or transferred to another party without the written permission of HRSA; and

WHEREAS, in an attempt to limit the duration of the Federal interest, the City added a provision to the Notice of Federal Interest, stating that the Federal interest would terminate upon

the termination of the Lease; and

WHEREAS, the Notice of Federal Interest, as amended by the City, was attached as Exhibit C to the Second Amendment; and

WHEREAS, pursuant to an ordinance adopted on October 5, 2016, and published at pages 33813 through 33822 in the Journal of the Proceedings of the City Council for such date, the City Council authorized the execution of the Second Amendment; and

WHEREAS, the City and Erie executed the Second Amendment on November 8, 2016; and

WHEREAS, HRSA subsequently informed Erie that the Notice of Federal Interest attached to the Second Amendment did not meet Federal requirements because it included a termination provision; and

WHEREAS, HRSA requires a continuing Federal interest in the Property without any specified expiration or release date; and

WHEREAS, the City understands that the Notice of Federal Interest will encumber the Property and will prohibit the use of the Project Area for any purpose other than a healthcare facility until HRSA relinquishes its Federal interest; and

WHEREAS, when HRSA determines that the Property is no longer needed for a healthcare facility, HRSA will authorize disposition of the Federal interest; and

WHEREAS, HRSA's disposition instructions will authorize or require Erie (and by extension the City, as owner of the Property) to do one of the following: (1) retain title to the Property without further obligation to the Federal government after Erie (or the City) compensates the Federal government for that percentage of the current fair market value of the Property attributable to the Federal share in the project; (2) sell the Property under guidelines provided by HRSA and pay the Federal government for that percentage of the current fair market value of the Property attributable to the Federal share in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds); or (3) transfer title to the Property to the Federal government or to an eligible third party provided that, in such cases, the City shall be entitled to compensation for its attributable percentage of the current fair market value of the Property; and

WHEREAS, HRSA and Erie have acknowledged that Erie, as the recipient of the HRSA grant, is primarily responsible for meeting the requirements of the Federal interest; provided, however, if Erie defaults or is otherwise unable to continue operating the clinic, the City would be responsible for continuing such use or another use that is approved by HRSA, and if unable to do so, would have to compensate the Federal government for its attributable percentage of the current fair market value of the Property; and

WHEREAS, Erie's use of the Premises to provide health care services reduces the

burdens on government and serves the public interest; and

WHEREAS, the City and Erie wish to execute a Third Amendment to the Lease to replace the Notice of Federal Interest that was attached as Exhibit C to the Second Amendment with a Notice of Federal Interest that conforms with HRSA's requirements, and for other purposes as more fully set forth in the Third Amendment; now, therefore,

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

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The City hereby consents to encumbering the Property with a continuing Federal interest in the Property. This approval is expressly conditioned upon the City and Erie entering into a Third Amendment to the Lease in substantially the form attached hereto as Exhibit A ("Third Amendment"). The Commissioner of the Department of Fleet and Facility Management (the "Commissioner"), or a designee of the Commissioner, is each hereby authorized, with the approval of the Commissioner of the Department of Public Health and the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Third Amendment, the Notice of Federal Interest attached as Exhibit A to the Third Amendment, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Lease, as amended, with such changes, deletions, insertions, terms and provisions as the Commissioner deems appropriate.

SECTION 3. This ordinance shall take effect immediately upon its passage and approval.

THIRD AMENDMENT TO LEASE

THIS THIRD AMENDMENT TO LEASE (the "Third Amendment") is made and effective as of _____, 2017 (the "Commencement Date") by and between **CITY OF CHICAGO**, a Municipal Corporation and Home Rule Unit of Government (the "City" or "Landlord") and **ERIE FAMILY HEALTH CENTER, INC.**, an Illinois not-for-profit corporation ("Tenant").

RECITALS

WHEREAS, on July 1, 2012, Landlord and Tenant executed Lease No. 20253 (the "Lease") governing Tenant's use of the Premises located in the West Town Neighborhood Health Center; and

WHEREAS, the West Town Neighborhood Health Center is located at 2418 West Division Street, Chicago, Illinois, PINs 16-01-229-040, -047, -048, and -049, (the "Property"); and

WHEREAS, on October 1, 2015, Landlord and Tenant executed the First Amendment to the Lease (the "First Amendment"); and

WHEREAS, Tenant has been awarded a Federal grant from the Health Resources and Services Administration ("HRSA"), an agency of the U.S. Department of Health and Human Services, to fund improvements to Tenant's clinic on the Premises; and

WHEREAS, in order to satisfy the conditions of the Federal grant, Landlord and Tenant executed the Second Amendment to the Lease (the "Second Amendment") on November 8, 2016; and

WHEREAS, one of HRSA's requirements is to record a Notice of Federal Interest against the Property, which was attached as Exhibit C to the Second Amendment; and

WHEREAS, HRSA subsequently informed the Tenant that the Notice of Federal Interest attached to the Second Amendment did not meet Federal requirements because it included a termination provision; and

WHEREAS, HRSA requires a continuing Federal interest in the Property without any specified expiration or release date; and

WHEREAS, HRSA and the Tenant acknowledge that the Tenant, as the grantee for the Federal grant, has the responsibility for the disposition of the Federal interest in the Property; and

WHEREAS, the Landlord and Tenant wish to execute this Third Amendment to replace the Notice of Federal Interest that was attached as Exhibit C to the Second Amendment with a Notice of Federal Interest that conforms with HRSA's requirements, and for other purposes as more fully set forth in this Third Amendment.

NOW THEREFORE, in consideration of the above recitals, and mutual promises, covenants, rights and obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and Tenant mutually agree as follows:

1. Recitals and Terms of Art. The foregoing recitals are hereby incorporated into and made a part of this Third Amendment by this reference. All capitalized terms in this Third Amendment shall have the same meaning ascribed thereto in the Lease, unless otherwise provided herein.
2. Federal Interest. The Notice of Federal Interest attached as Exhibit C to the Second Amendment shall be replaced with the Notice of Federal Interest attached as Exhibit A hereto.
3. Tenant's Responsibility for the Federal Interest.
 - a. The Tenant, as the grantee organization for the Federal grant, acknowledges that Tenant bears the responsibility for the disposition of the Federal Interest in the Property, not the Landlord. At such point when Premises are no longer needed or used for its original purpose, the Tenant shall coordinate with HRSA and Tenant shall either:
 - i. Transfer the Federal Interest to a different property owned or operated by Tenant, and have the Notice of Federal Interest withdrawn from this Property; or
 - ii. Pay back to HRSA its attributable percentage of the current fair market value of the Property, as determined by and in accordance with Federal law.
 - b. Tenant agrees to indemnify the Landlord against any and all amounts owed to the Federal government under the Federal grant and any losses related to the Federal grant.
 - c. Throughout the Term of the Lease, the Tenant shall maintain a depreciation schedule of the HRSA funded capital improvements in accordance with applicable Federal regulations and the terms and conditions of the Federal grant.
4. Incorporation into Lease No. 20253. This Third Amendment shall be incorporated into the Lease as executed by Landlord and Tenant on July 1, 2012, the First Amendment as executed on October 1, 2015, and the Second Amendment as executed on November 8, 2016. Unless otherwise expressly provided herein, all other provisions of the Lease, the First Amendment, and the Second Amendment shall remain in full force and effect and shall be applicable to this Third Amendment. Unless expressly provided herein, if there is a conflict between the terms and conditions of the Lease, the First Amendment, or the Second Amendment and the terms and conditions of the Third Amendment, the terms and conditions of this Third Amendment shall prevail.

5. Counterparts. This Third Amendment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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

LANDLORD:

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

DEPARTMENT OF PUBLIC HEALTH

By: _____
Commissioner

DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By: _____
Commissioner

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

By: _____
Chief Assistant Corporation Counsel
Real Estate Division

TENANT:

ERIE FAMILY HEALTH CENTER, INC.,
an Illinois not-for-profit corporation

By: _____

Name: _____

Its: _____

(SUB-EXHIBIT A)

State of Illinois
Cook County

NOTICE OF FEDERAL INTEREST

On December 14, 2012, the Health Resources and Services Administration's Bureau of Primary Health Care awarded Grant No. C12CS25610 to Erie Family Health Center (Erie). The grant provides Federal funds for alteration and renovation of Erie Division Street and Teen Health Centers, the former site of the Chicago Department of Public Health West Town clinic located at 2418 W. Division St., Chicago, IL 60622-2940. Erie Division Street and Teen Health Centers provide primary health care services to 12,361 patients through over 54,000 patient visits annually, regardless of a patient's ability to pay. Through this project, Erie will demolish and renovate 4,000 square feet of the facility to include: 7 exam rooms, 1 larger treatment room, 1 lab, a waiting area with three registration stations, a centralized care station with a nurse and additional space for medical assistants, private consultation space adjacent to the waiting room, and offices for behavioral health, case management, and WIC services. The Health Center is located on the property described below in Cook County, State of Illinois:

Lots 19 through 29 in Block 8 in the Resubdivision of the South Part of Blocks 5, 6, 7 & 8 of Winslow & Jacobson's Subdivision of the Southeast ¼ of the Northeast ¼ of Section 1, Township 39 North, Range 14, East of the Third Principal Meridian in Cook County Illinois.

Permanent Index Numbers: 16-01-229-040, 16-01-229-047, 16-01-229-048, and 16-01-229-049

Address: 2418 W. Division St., Chicago, IL 60622-2940

The Notice of Grant Award for this grant includes conditions on use of the aforementioned property and provides for a continuing Federal interest in the property. Specifically, the property may not be (1) used for any purpose inconsistent with the statute and any program regulations governing the award under which the property was acquired; (2) mortgaged or otherwise used as collateral without the written permission of the Associate Administrator, Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee; or (3) sold or transferred to another party without the written permission of Associate Administrator, Office of Federal Assistance Management (OFAM), Health Resources and Services Administration (HRSA), or designee. These conditions are in accordance with the statutory provisions set forth in the Patient Protection and Affordable Care Act of 2010, Section 10503, P.L. 111-148, Title IV, Section 4101, Title 45 CFR part 74 or 92 (as appropriate), the HHS Grants Policy Statement, and other terms and conditions of award.

These grant conditions and requirements cannot be nullified or voided through a transfer of ownership. Therefore, advance notice of any proposed change in usage or ownership must be provided to the Health Resources and Services Administration (HRSA), Office of Federal Assistance Management (OFAM).

Signature of Property Owner: _____

Typed Name: _____

Title: _____

Date: _____

On this the ____ day of _____, 2017, before me the undersigned, a Notary Public for the State of Illinois at Large, personally appeared before me and is known to be the person who executed this instrument on behalf of the City of Chicago.

Witness my hand and official seal.

SWORN AND CONFIRMED TO BEFORE ME THIS _____ DAY OF _____, 20____

Signature of Notary Public

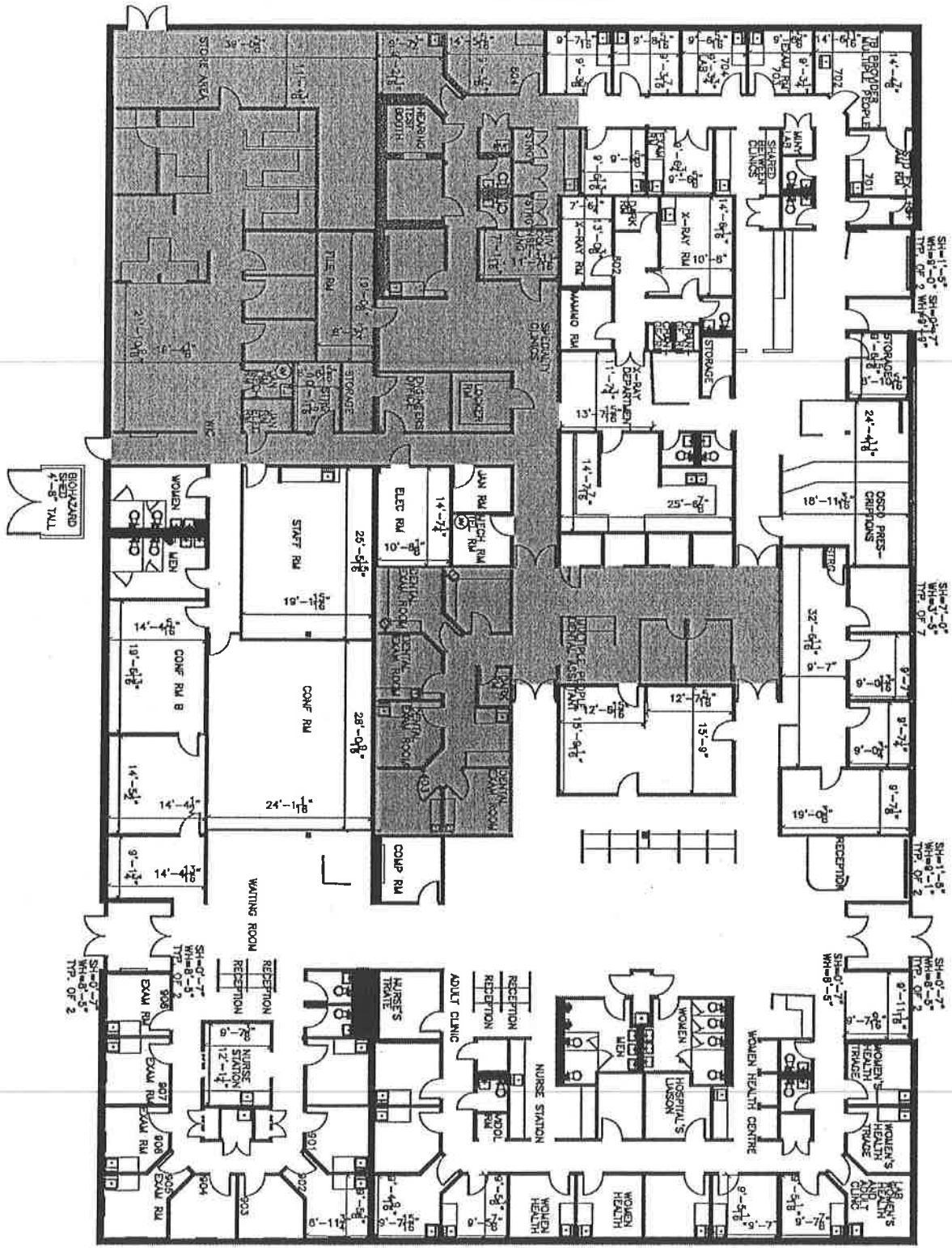
County / State

My Commission Expires (Date)

Notary Seal:

EXHIBIT C
The Project Area
 Shown as shaded area

N. WESTERN



W. DIVISION



JOSEPH A. MOORE

ALDERMAN, 49TH WARD
7356 NORTH GREENVIEW AVENUE
CHICAGO, ILLINOIS 60626
TELEPHONE: 773-338-5796
ward49@cityofchicago.org
www.ward49.com

**CITY COUNCIL
CITY OF CHICAGO**

COUNCIL CHAMBER

CITY HALL, ROOM 200
121 NORTH LA SALLE STREET
CHICAGO, ILLINOIS 60602
TELEPHONE 312-744-3067

COMMITTEE MEMBERSHIPS

HOUSING AND REAL ESTATE
CHAIRMAN

BUDGET AND GOVERNMENT OPERATIONS

COMMITTEES, RULES AND ETHICS

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FINANCE

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HUMAN RELATIONS

SPECIAL EVENTS, CULTURAL AFFAIRS AND RECREATION

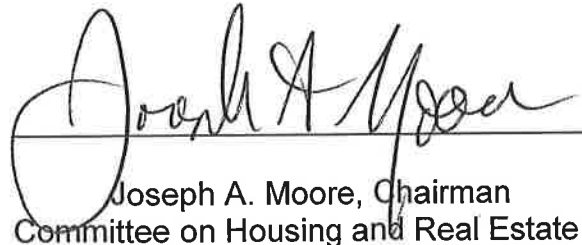
February 22, 2017

To the President and Members of the City Council:

Your Committee on Housing and Real Estate, for which a meeting was held on February 21, 2017, having had under consideration the ordinance introduced by Mayor Rahm Emanuel on January 25, 2017, this being lease amendment with Erie Family Health Center, Inc. for space at 2418 W. Division St., begs leave to recommend that Your Honorable Body Approve said ordinance transmitted herewith.

This recommendation was concurred in by a voice vote of all committee members present with no dissenting votes.

Respectfully submitted,



Joseph A. Moore, Chairman
Committee on Housing and Real Estate



APPROVED
R. E. Mann
2/24/17
Mayer

APPROVED
[Signature]
CORPORATION COUNSEL