



City of Chicago



O2013-5525

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	7/24/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Lease agreement with North Park University for use of property at 5151 N Kimball Ave by Chicago Public Library
Committee(s) Assignment:	Committee on Housing and Real Estate

ORDINANCE

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

SECTION 1: On behalf of the City of Chicago, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a Lease with North Park University governing the City's use of property located at 5151 North Kimball Avenue by the Chicago Public Library; such Lease to be approved by the Commissioner of the Chicago Public Library and approved as to form and legality by the Corporation Counsel in substantially the following form:

LEASE

THIS LEASE is made as of _____, 2013 (the "Commencement Date"), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (the "Tenant" or "City"), and **NORTH PARK UNIVERSITY**, an Illinois 501 (c)(3) not-for-profit corporation (the "Landlord") (both parties are collectively referred to herein as the "Parties").

RECITALS

WHEREAS, Landlord owns a parking lot located at 5151 North Kimball Avenue (part of PINs 13-11-404-009; -010; and -011) in Chicago, Cook County, Illinois; and

WHEREAS, Landlord operates a university adjacent to the 5151 North Kimball Avenue parking lot; and

WHEREAS, Tenant is constructing the new Albany Park Branch of the Chicago Public Library located at 5150 North Kimball Avenue; and

WHEREAS, the construction of the new Albany Park Branch of the Chicago Public Library at 5150 North Kimball Avenue has a projected completion date of late 2014; and

WHEREAS, Tenant desires to maintain a library presence in the immediate area; and

WHEREAS, Tenant has requested access to approximately 1,360 square feet of space on Landlord's 5151 North Kimball Avenue property to operate a Book Mobile on such portion of the 5151 North Kimball Avenue property as delineated in **Exhibit A** attached hereto and made a part hereof (the "Premises"); and

WHEREAS, Landlord has agreed to grant the Tenant access to the Premises solely to allow Tenant to operate a Book Mobile from the Premises (the "Use") upon the terms, protections, and conditions set forth herein.

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

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

2. **Grant.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

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Approximately 1,360 square feet of space located at 5151 North Kimball Avenue as delineated in **Exhibit A**.

This Lease is non-assignable.

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

4. **Cost.** Tenant shall be responsible for all costs and expenses associated with the Use. Tenant acknowledges that Landlord shall not assume any costs for the Use and that Landlord shall not assume any costs for Tenant's access to the Premises. Tenant shall pay Landlord the sum of \$1.00 for the Term for access to the Premises under this Lease. Tenant and Landlord acknowledge the receipt and sufficiency of this \$1.00 payment.

5. **Indemnification.** Subject to allocation of adequate appropriations and other applicable legislative procedures, requirements, and approvals, the Tenant will indemnify, defend and hold the Landlord, and its officers, agents, and employees, harmless from and against any and all negligent actions, claims, suits, losses, damages, liens, liabilities, fines, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) incurred in connection with, arising out of or incident to (a) any negligent act or omission of the Tenant or its agents, employees, contractors, subcontractors or consultants, or (b) any entry upon or negligent use of the Property by or on behalf of the Tenant in connection with this Lease. The foregoing indemnity shall survive any termination of this Lease.

6. **Completion.** Upon completion of the Use, the Tenant shall remove all equipment placed on the Premises by the Tenant or its agents, employees, contractors, subcontractors or consultants.

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

8. **Entire Agreement.** This Lease embodies the entire agreement and understanding between the parties regarding the Use and the Tenant's access to the Premises. This Lease supersedes any prior oral or written agreements with respect to the matters stated herein.

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9. **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. A facsimile signature shall be deemed an original signature.

10. **Termination.** Tenant and Landlord shall have the right to terminate this Lease at any time without penalty, with or without cause, by providing the other party with thirty (30) days prior written notice.

11. **Maintenance.** Tenant acknowledges that Landlord will not have any maintenance responsibilities for the Premises with respect to Tenant's Use during the Term of this Lease. Tenant accepts the condition of the Premises in its as-is condition. Landlord may provide snow removal services for Landlord's 5151 North Kimball Avenue parking lot, but Landlord shall not have an affirmative obligation to provide snow removal for the Premises.

12. **Security.** Tenant shall secure Tenant's property, including, equipment, vehicles, and materials stored within the Premises during the Term of this Lease. Tenant acknowledges that Landlord shall not have any security responsibilities for the Premises with respect to Tenant's Use during the Term of this Lease.

13. **Tenant's Use.** Tenant shall keep the Premises clean and free of debris. Tenant shall keep the Premises clean, presentable, and free of litter. Tenant shall properly discard any fly dumping materials placed on the Premises. Tenant shall provide and pay for Tenant's own scavenger service if reasonably necessary. Tenant shall pay when due all charges for electricity, telephone, other communication, and any other utilities that may be assessed on the Premises as a result of Tenant's Use of the Premises.

14. **Condition on Termination.** Upon expiration of the term, Tenant shall surrender the Premises to Landlord in the same condition as at the beginning of this Lease. Upon termination of this Lease, Tenant must remove all of Tenant's property, including equipment, vehicles, and materials.

15. **No Alterations and Additions.** Tenant may not make any alterations, additions, or improvements to the Premises.

16. **Landlord Use.** Tenant acknowledges that Landlord uses the Premises as part of the 5151 North Kimball Avenue parking lot for use as parking by Landlord's faculty and staff. Tenant shall not use the Premises in a way that interferes with Landlord's use and enjoyment of the 5151 North Kimball Avenue parking lot. Landlord shall have access to the Premises at all times. At all times, Tenant shall coordinate all activities associated with access to the Premises through Landlord's representative(s) on site.

17. **Repairs for Tenant Negligence, Vandalism, or Misuse.** Tenant shall assume all responsibility for any repairs to the Premises or to Landlord's 5151 North Kimball Avenue

parking lot necessitated by the use, negligence, vandalism, or misuse of the Premises or equipment therein by Tenant's employees, agents, contractors, or invitees.

18. **Miscellaneous Provisions.**

18.1 **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 Landlord to Tenant shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to Tenant as follows:

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

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

North Park University
3225 West Foster Avenue
Chicago, Illinois 60625
Attention: Chief Financial Officer

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

18.2 **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 shall be valid and in force to the fullest extent permitted by law.

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

18.4 **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.

18.5 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.

18.6 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.

18.7 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.

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

18.9 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.

18.10 Holding Over. Any holding over by Tenant shall be construed to be a tenancy from month to month only beginning on January 1, 2015 and the rent shall be the same as listed in Section 4 of this Lease. During such holding over all other provisions of this Lease shall remain in full force and effect.

19. Disclosure Provisions.

19.1 Business Relationships. Landlord acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, 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 defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (C) notwithstanding anything to the contrary contained in this 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. Landlord hereby represents and warrants that no violation of Section 2-156-030 (b) has occurred with respect to this Lease or the transactions contemplated hereby.

19.2 Patriot Act Certification. Landlord represents and warrants that neither Landlord nor any Affiliate thereof (as defined in the next paragraph) 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 law, rule, regulation, order or judgment, the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

As used in the above paragraph, an "Affiliate" shall be deemed to be a person or entity related to Landlord that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Landlord, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

19.3 Prohibition on Certain Contributions-Mayoral Executive Order No. 2011-4. Landlord agrees that Landlord, any person or entity who directly or indirectly has an ownership or beneficial interest in Landlord of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Landlord's contractors (i.e., any person or entity in direct contractual privity with Landlord regarding the subject matter of this 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 (Landlord and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Lease by Landlord, (ii) while this Lease or any Other Contract is executory, (iii) during the Term of this Lease or any Other Contract between Landlord and the City, or (iv) 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.

Landlord represents and warrants that from the date the City approached the Landlord or the date Landlord 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.

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

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political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

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

Notwithstanding anything to the contrary contained herein, Landlord agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision 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, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Landlord intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the execution of this Lease, the City may elect to decline to lease the Premises to Landlord or to terminate the Lease after execution.

For purposes of this provision:

“Bundle” means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fundraising committee.

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

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

Individuals are “Domestic Partners” if they satisfy the following criteria:

- (A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (B) neither party is married; and
- (C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

- (D) 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
- (E) 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. a 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.

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

19.4 Waste Ordinance Provisions. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Landlord warrants and represents that it has not violated and is 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, Landlord'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 Commissioner of the Department of Fleet and Facility Management. Such breach and default entitles the City to all remedies under the Lease, at law or in equity. This section does not limit Landlord's 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 Landlord's eligibility for future contract awards.

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

19.6 Cooperation with Inspector General and Legislative Inspector General. In accordance with Chapter 2-26-110 et seq. of the Municipal Code, the Landlord acknowledges that every officer, employee, department and agency of the City shall be obligated to cooperate

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with the Office of the Inspector General and the Office of the Legislative Inspector General in connection with any activities undertaken by such office with respect to this Lease, including, without limitation, making available to the Office of the Inspector General and the Office of the Legislative Inspector General the Landlord's premises, equipment, personnel, books, records and papers. The Landlord agrees to abide by the provisions of Chapter 2-26-110 et seq.

19.7 Shakman Prohibitions.

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

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

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

(iv) In the event of any communication to Landlord by a City employee or City official in violation of Section 19.7 (ii) above, or advocating a violation of Section 19.7 (iii) above, Landlord will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Lease. Landlord will also cooperate with any inquiries by IGO Hiring Oversight or the *Shakman* Monitor's Office related to the contract.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Lease as of the Commencement Date.

TENANT:

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

DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By: _____
Commissioner

CHICAGO PUBLIC LIBRARY

By: _____
Commissioner

**APPROVED: THE CHICAGO PUBLIC LIBRARY
BOARD OF DIRECTORS**

By: _____
President

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

By: _____
Deputy Corporation Counsel
Real Estate Division

LANDLORD:

NORTH PARK UNIVERSITY,
an Illinois 501 (c)(3) not-for-profit corporation,

By: _____

Print Name: _____

Its: _____

EXHIBIT A

**5151 North Kimball Avenue
Chicago Public Library
Lease No. 19054**

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