



Office of the City Clerk

City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
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Legislation Details (With Text)

File #: O2021-780
Type: Ordinance **Status:** Passed
File created: 2/24/2021 **In control:** City Council
Final action: 3/24/2021

Title: Expenditure of Open Space Impact Fee funds for capital improvements in expansion of Donovan Park at 3609 S Lituania Ave including acquisition and remediation of private parcel at 837 W 36th St

Sponsors: Lightfoot, Lori E.

Indexes: Intergovernmental, Open Space Impact Fees

Attachments: 1. O2021-780.pdf

| Date | Ver. | Action By | Action | Result |
|-----------|------|---|---------------------|--------|
| 3/24/2021 | 1 | City Council | Passed | Pass |
| 3/10/2021 | 1 | Committee on Special Events, Cultural Affairs and Recreation | Recommended to Pass | |
| 2/24/2021 | 1 | City Council | Referred | |

OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

February 24, 2021

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

Ladies and Gentlemen:

At the request of the Commissioner of Planning and Development, I transmit herewith an ordinance authorizing an Open Space Impact Fee expenditure for the expansion of Donovan Park.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

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 authorized under its home rule powers to regulate the use and development of land; and

WHEREAS, it is a reasonable condition of development approval to ensure that adequate open space and recreational facilities exist within the City; and

WHEREAS, on April 1, 1998, the City Council of the City (the "City Council") adopted the Open Space Impact Fee Ordinance codified at Chapter 18 of Title 16 (the "Open Space Ordinance") of the Municipal Code of Chicago (the "Code") to address the need for additional public space and recreational facilities for the benefit of the residents of newly created residential developments in the City; and

WHEREAS, the Open Space Ordinance authorizes, among other things, the collection of fees from residential developments that create new dwelling units without contributing a proportionate share of open space and recreational facilities for the benefit of their residents as part of the overall development (the "Fee-Paying Developments"); and

WHEREAS, pursuant to the Open Space Ordinance, the Department of Finance ("DOF") has collected fees derived from the Fee-Paying Developments (the "Open Space Fees") and has deposited those fees in separate funds, each fund corresponding to the Community Area (as defined in the Open Space Ordinance), in which each of the Fee-Paying Developments is located and from which the Open Space Fees were collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees: (i) be used for open space acquisition or capital improvements, or both, which provide a direct and material benefit to the new development from which the fees are collected, and (ii) be expended within the same or a contiguous Community Area from which they were collected after a legislative finding by the City Council that the expenditure of the Open Space Fees will directly and materially benefit the developments from which the Open Space Fees were collected; and

WHEREAS, the Department of Planning and Development (the "Department") has determined that the Fee-Paying Developments built in the Bridgeport Community Area have deepened the already significant deficit of open space in the Bridgeport Community Area which deficit was documented in the comprehensive plan entitled "The City Space Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998; and

1

WHEREAS, the Chicago Park District, an Illinois municipal corporation (the "Park District"), has proposed to make certain park improvements at Donovan Park located at 3609 South Lituania Avenue, Chicago, Illinois (the "Park"); and

WHEREAS, the Park District desires to acquire a privately-owned 0.46 acre lot across the street from

the Park located at 837 West 36th Street, Chicago, Illinois, and remediate the newly acquired property to make it available for passive recreation (the "Project"); and

WHEREAS, the Department wishes to make available to the Park District proceeds from the Open Space Fees collected by DOF in an amount not to exceed Three Hundred Ninety-Three Thousand Seven Hundred Seventy-Five and 36/100 Dollars (\$393,775.36) (the "City OSIF Funds") for the Project which will provide open space and recreational facilities for the benefit of the residents of the Bridgeport Community Area; and

WHEREAS, pursuant to an ordinance adopted by the City Council on November 24, 2020, and published in the Journal for such date at pages 24643 through 24723, inclusive, the City issued its General Obligation Bonds (the "Bonds"); and

WHEREAS, the City has agreed to make a grant from the proceeds of the Bonds (or such other appropriate and available sources of funds) to the Park District in an amount not to exceed One Hundred Fifty-Three Thousand and No/100 Dollars (\$153,000) (the "City Bond Funds") for costs associated with the Project; and

WHEREAS, the Department and the Park District have agreed to enter into an intergovernmental agreement in connection with the Project in substantially the form attached hereto as Exhibit 1 (the "Agreement") whereby the Department shall pay for or reimburse the Park District for a portion of the Project costs; and

WHEREAS, the Department has determined that the use of the Open Space Fees to assist with the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected in that the Open Space Fees used for the Project will come from the specific funds set up by DOF for the Bridgeport Community Area in which the respective Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, the Park District has agreed to use the proceeds from the Open Space Fees for capital improvements relating to the Project subject to the terms and conditions specified in the Agreement; and

WHEREAS, the Department has recommended that the City Council (i) approve the use of the Open Space Fees for the purposes set forth in this ordinance; (ii) make a finding that the expenditure of the Open Space Fees as described herein will directly and materially benefit the Fee-Paying Developments from which the Open Space Fees were collected; and (iii) authorize the Department to enter into the Agreement; now, therefore,

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

2

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 Council hereby finds that the expenditure of the Open Space Fees for the purpose of funding the Project will directly and materially benefit the residents of those Fee-Paying Developments from which the Open Space Fees were collected and approves the use of the Open Space Fees for the Project.

SECTION 3. The Commissioner of the Department (the "Commissioner") is hereby authorized to provide City OSIF Funds to the Park District in an aggregate amount not to exceed Three Hundred Ninety-

Three Thousand Seven Hundred Seventy-Five and 36/100 Dollars (\$393,775.36) from the corresponding funds to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. The Commissioner is hereby authorized to provide City Bond Funds to the Park District in an aggregate amount not to exceed One Hundred Fifty-Three Thousand and No/100 Dollars (\$153,000) in connection with the Project.

SECTION 5. Subject to the approval of the Corporation Counsel as to the form and legality, the Commissioner is authorized to execute and deliver the Agreement in substantially the form attached hereto as Exhibit 1, and such other documents as are necessary, between the Department and the Park District, which may contain such other terms as are deemed necessary or appropriate by the parties executing the same on the part of the Department.

SECTION 6. To the extent that any ordinance, resolution, rule, order or provision of the Code, 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 7. This ordinance shall take effect immediately upon its passage.

See *Mack*
EXHIBIT 1

ed.

4

AGREEMENT BETWEEN THE CITY OF CHICAGO AND THE
CHICAGO PARK DISTRICT - DONOVAN PARK

This Agreement is entered into this _____, 2021, between the City of Chicago (the "City"), a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, by and through its Department of Planning and Development ("DPD") and the Chicago Park District (the "Park District"), a body politic and corporate and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

WHEREAS, the Park District has proposed to make certain park improvements at Donovan Park located at 3609 South Lituania Avenue, Chicago, Illinois (the "Park"), as identified on a map attached hereto as Exhibit A;

WHEREAS, the Park District desires to acquire a privately-owned 0.46 acre lot across the street from the Park located at 837 West 36th Street, Chicago, Illinois, which also identified on Exhibit A and remediate the newly acquired property to make it available for passive recreation (the "Project"); and

WHEREAS, the Open Space Impact Fee Ordinance, Chapter 18 of Title 16 of the Municipal Code of Chicago (the "Code"), authorizes collection of fees as a condition of issuance of a building permit for

proposed new dwelling units to ensure that adequate open space and recreational facilities are available to serve residents of new developments in the City (the "Open Space Fees"); and

WHEREAS, the Department of Finance has collected Open Space Fees for new dwelling units built in the Bridgeport Community Area (the "Community") and contiguous communities (the "Proceeds") and has deposited such Proceeds in the fund set up for the Community; and

WHEREAS, on [], the City Council of the City adopted an ordinance published in the Journal of the Proceedings of the City Council for said date at pages [] to [], (the "Authorizing Ordinance") among other things, (i) finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees; and (ii) authorizing the transfer of a portion of the Proceeds in an amount not to exceed \$393,775.36 (the "City OSIF Funds") to the Park District as a contribution towards the costs of the Project; and

WHEREAS, pursuant to an ordinance adopted by the City Council on November 24, 2020, and published in the Journal for such date at pages 24643 through 24723, inclusive, the City issued its General Obligation Bonds (the "Bonds"); and

WHEREAS, the City has agreed to make a grant from the proceeds of the Bonds (or such other appropriate and available sources of funds) to the Park District in an amount not to exceed \$153,000.00 (the "City Bond Funds," and collectively with the City OSIF Funds, the "Project Assistance") for costs associated with the Project; and

WHEREAS, on January 15, 2020, the Park District's Board of Commissioners passed

an ordinance expressing its desire to accept funding from the City for the development of the Project and authorizing the execution of this Agreement (the "Park District Ordinance");

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:

TERMS AND CONDITIONS

SECTION 1. INCORPORATION OF RECITALS

The recitals set forth above are incorporated in this Agreement and made a part hereof.

SECTION 2. THE PROJECT

A. No later than 36 months from the date hereof, or later as the Commissioner of DPD may agree in writing, the Park District shall let one or more contracts for the construction of 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. Upon the City's request, the Park District shall provide evidence satisfactory to the City of such compliance.

B. At such time as the Park District begins construction of the Project, the Park District shall also provide the City 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 appropriately zoned to be used, occupied and operated as a public park.

C. If the Park District, without the City's written consent (i) fails to comply with the provisions of paragraphs A and B in this Section 2; or (ii) fails to complete the Project within 48 months after the date of execution of this Agreement, then the City may terminate this Agreement by providing written notice to the Park District. If the City so terminates this Agreement, the Park District shall reimburse the City for the full amount of the Project Assistance.

D. 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 3. FUNDING

2

A. Within 15 days after the execution of this Agreement (the "Closing Date") or such longer period of time as may be agreed to by the Commissioner of DPD (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 the City's disbursement of the Project Assistance to the Park District.

B. The City shall, subject to the Park District's satisfaction of the conditions precedent for disbursement described in this Agreement, disburse the Project Assistance to the Park District. The Park District has delivered to the Commissioner a budget for the Project Assistance, attached as Exhibit C. The Park District shall keep the Project Assistance in a segregated general ledger account to be used only for the Project.

C. The Park District shall provide the City with reports on the progress of the Project and reasonably access to its books and records relating to the Project.

SECTION 4. ENVIRONMENTAL MATTERS

It shall be the responsibility of the Park District, at its sole cost and expense, to investigate and determine the soil and environmental condition of the Property, including obtaining phase I and, if applicable, phase II environmental audits for the property. The City makes no covenant, representation or warranty as to the environmental condition of the Property or the suitability of the Property as a park or for any use whatsoever.

SECTION 5. INSURANCE

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

insuring all operations related to the Agreement.

A. INSURANCE TO BE PROVIDED

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.

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.

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.

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.

B. OTHER REQUIREMENTS

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.

The Park District will furnish the City of Chicago, Department of Planning and Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Park District shall submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Agreement award. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreements 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 from Agreement shall not be deemed to be a waiver by the City.

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

The 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.

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

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

4

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 within the Agreement documents or by law.

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

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.

The Park District shall require all subcontractors to provide the insurance required herein 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.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

SECTION 6. INDEMNITY

To the extent liability of a municipal corporation, as such is precluded by the Local and Governmental Tort Immunity Act or the common law of the State of Illinois, and subject to the provisions on non-appropriation in Section 17(i) of the Chicago Park District Act, 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.

SECTION 7. NO PERSONAL LIABILITY

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 8. TERM

The term of this Agreement shall commence on the date of its execution and shall expire upon completion of the parties' compliance with their respective obligations hereunder or termination of this Agreement according to its terms, whichever occurs first.

SECTION 9. GENERAL PROVISIONS

A. ASSIGNMENT. This Agreement, or any portion thereof, shall not be assigned by either party without the express prior written consent of the other.

5

B. 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 Order. The parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

C. 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.

D. 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.

E. 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.

F. COUNTERPARTS. This Agreement may be executed in counterparts and by different parties 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.

G. EXHIBITS. Any exhibits to this Agreement will be construed to be an integral part of this Agreement to the same extent as if the same has been set forth verbatim herein.

H. FURTHER ASSURANCES. 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.

I. GOVERNING LAW. 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.

J. INTEGRATION. This Agreement contains the entire agreement between the parties.

K. MODIFICATION. This Agreement may not be modified or amended except by an agreement in writing signed by the parties.

L. NOTICE. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the address set forth below by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram, or fax; (c) overnight courier; or (d) registered or certified first class mail postage prepaid, return receipt requested.

To the City: City of Chicago
Department of Planning and Development Attention:
Commissioner City Hall, 10th Floor 121 N. LaSalle Street
Chicago, Illinois 60602 (312) 744-4190 6
(312) 744-2271 (Fax)

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 Court
Chicago, Illinois 60611 (312) 742-7529 (312) 742-
5328 (Fax)

With copies to:

Chicago Park District Department of Law
541 North Fairbanks Court Chicago,
Illinois 60611 (312) 742-7529 (312) 742-
5328 (Fax)

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively. Any notice, demand or communication given pursuant to clause (c) hereof shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three (3) business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

M. PARTIES' INTEREST/NO THIRD PARTY BENEFICIARIES. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the parties hereto. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party of this Agreement 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 City or the Park District shall be deemed or construed by any of the parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving the City or the Park District.

N. 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: Meg Gustafson
City of Chicago
Department of Planning and Development
City Hall, 10th Floor
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-0524
(312) 744-6550 (Fax)

For the Park District: Heather Gleason
Chicago Park District
Director of Planning and Construction
541 North Fairbanks
Chicago, Illinois 60611
(312) 742-4650
(312) 742-5347 (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.

O. 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. In such event, the parties shall negotiate, in good faith, a substitute, valid and enforceable provision or agreement which most nearly affects the parties' intent in entering into this Agreement.

P. TITLES AND HEADINGS. Titles and headings to sections herein are inserted for the convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

Q. TIME. Time is of the essence in the performance of this Agreement.

R. VENUE AND CONSENT TO JURISDICTION. 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 and the United States District Court for the Northern District of Illinois.

[The remainder of this page is intentionally blank. Signatures appear on the following page.]

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 Planning and Development

By:
Maurice D. Cox Commissioner

CHICAGO PARK DISTRICT, a body politic and corporate

By:
Michael P. Kelly
General Superintendent and Chief Executive Officer

Attest:

By:
Kantrice Ogletree Secretary

Exhibit A Map See attached.