



Office of the City Clerk

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Legislation Details (With Text)

File #: O2014-3320
Type: Ordinance **Status:** Passed
File created: 4/30/2014 **In control:** City Council
Final action: 5/28/2014

Title: Lease agreement with Chicago Park District for use of vacant City-owned land at 1222 W Touhy Ave for public park

Sponsors: Emanuel, Rahm

Indexes: Lease

Attachments: 1. O2014-3320.pdf

Date	Ver.	Action By	Action	Result
5/28/2014	1	City Council	Passed	Pass
5/21/2014	1	Committee on Housing and Real Estate	Recommended to Pass	Pass
4/30/2014	1	City Council	Referred	

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

April 30, 2014

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 agreements.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,

ORDINANCE

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

SECTION 1: On behalf of the City of Chicago as Landlord, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a Lease with the Chicago Park District, as Tenant, governing the use of City-owned vacant land located at 1222 West Touhy Avenue for use as a public park; such Lease to be approved as to form and legality by the Corporation Counsel in substantially the following form:

LEASE NO. 20279

LEASE

THIS LEASE is made and entered into this _____ day of _____, 2014 by and between, the CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government (herein referred to as the "City"), and the CHICAGO PARK DISTRICT, a body politic and corporate and unit of local government (hereinafter referred to as the "District").

RECITALS

WHEREAS, the City, through the City's Department of Water Management, is the owner of the premises more commonly known as 1222 West Touhy Avenue, Chicago, Cook County, Illinois; and

WHEREAS, the property located at 1222 West Touhy Avenue has no present municipal use; and

WHEREAS, the District is organized for the purpose of operating parks and playgrounds within the City of Chicago, and desires to continue to operate certain parks now owned by the City as detailed in Exhibit A attached hereto and made a part hereof; and

WHEREAS, the District has utilized the property located at 1222 West Touhy Avenue as a public park pursuant to prior City as Landlord Lease agreements; and

WHEREAS, the City has agreed to lease to the District, and the District has agreed to lease from the City approximately 59,000 square feet of land located at 1222 West Touhy Avenue as depicted on Exhibit B attached hereto and made a part hereof to be used for public recreational space known as Sam Leone Beach Park; and

NOW THEREFORE, in consideration of the covenants, terms and conditions set forth herein, the Parties hereto agree and covenant as follows:

SECTION 1. GRANT

The City hereby leases to the District the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately 59,000 square feet of a vacant land located at 1222 West Touhy Avenue, Chicago,

Illinois (PINs 11-29-321-005 through -008- the "Premises").

SECTION 2. TERM

The term of this Lease ("Term") shall commence on the execution date ("Commencement Date") and shall end on December 31, 2037, unless sooner terminated as set forth in the Lease.

SECTION 3. RENT, TAXES, AND UTILITIES

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1 Rent. The District shall pay rent for the Premises in the amount of:

One Dollar (\$1.00) for the entire Term, the receipt and sufficiency of said sum being herewith acknowledged by both parties.

2 Utilities. The District shall pay when due all charges for gas, electricity, water, sewer, light, heat, telephone, other communication, and any other utilities and charges that may be assessed on the Premises during, or as a result of, the District's use of the Premises.

3 Taxes. The District shall pay when due any leasehold, real estate, and other property taxes, interest, or penalties assessed or levied on the Premises during the Term. The District acknowledges that real estate and leasehold taxes are one (1) year in arrears in Cook County and that as a result the District shall be responsible for satisfaction of leasehold, real estate, interest, and penalties assessed or levied on the Premises on account of the District's use for at least one (1) year after the District vacates the Premises. The District's failure to pay any such taxes, penalties, or interest shall constitute a default under this Lease. Notwithstanding the foregoing, nothing herein shall preclude the District from contesting any charge or tax levied against the Premises. The District's tax responsibilities under this section shall survive the expiration, cancellation, or termination of this Lease.

SECTION 4. CONDITION AND ENJOYMENT OF PREMISES, ALTERATIONS AND ADDITIONS, USE, STANDARDS

1 Covenant of Quiet Enjoyment. The City covenants and agrees that the District, upon paying the rent and upon observing and keeping the covenants, agreements, and conditions of this Lease on its part to be kept, observed, and performed, shall lawfully enjoy the Premises (subject to the provisions of this Lease) during the Term without hindrance or molestation by the City. .

2 District's Duty to Maintain Premises and Right of Access. The District shall, at the District's expense, keep the Premises in a condition of good repair and order, and in compliance with all applicable provisions of the Municipal Code of Chicago, including, but not limited to, those provisions in Title 13 ("Building and Construction"), and Title 17 ("Landscape Ordinance"). The City shall have the right of access to the Premises for the purpose of inspecting, provided that except in the case of emergencies, the City shall first give notice to the District of its desire to enter the Premises and will schedule its entry so as to minimize any interference with the District's use, and the public's enjoyment, of the Premises.

3 Use of the Premises. The District shall not use the Premises in a manner that would violate any law. The District further covenants not to do or suffer any waste or damage, comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments which may be applicable to the Premises or to the use or manner of use of the Premises, disfigurement or injury to any building or improvement on the Premises, or to fixtures and equipment thereof. Any activities on the Premises must be limited to use as public recreational space. The promotion and operation of public recreational space does not include direct or indirect participation or intervention in

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political campaigns on behalf of or in opposition to any candidate for public office. The District shall not use said Premises for political or religious activities. The District agrees that, in providing programming, the District shall not discriminate against any member of the public because of race, creed, religion, color, sexual orientation, or national origin.

4.4 Alterations and Additions. The District may make major capital alterations, additions, and improvements to the Premises but only with the prior written approval of the Commissioner of the Department of Water Management. Any such alterations and additions shall be made in full compliance with any applicable codes, laws, or standards.

SECTION 5. ASSIGNMENT, SUBLEASE, AND LIENS

1 Assignment and Sublease. The District shall not assign this Lease in whole or in part, or sublet the Premises or any part thereof, without the prior written consent of the Commissioner of the Department of Water Management.

2 District's Covenant against Encumbering Title. The District shall not do any act which shall in any way encumber the fee simple estate of the City or the Department of Water Management in and to the premises, nor shall the interest or estate of the City or the Department of Water Management in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by District any claim to, or lien upon, the leased Premises arising from any act or omission of District shall accrue only against the District's leasehold estate and shall be subject to and subordinate to the paramount title and rights of the City and the Department of Water Management in and to the Premises.

3 District's Covenant against Liens. The District shall not permit the Premises to become subject to any mechanic's, laborer's, or materialmen's liens on account of labor or material furnished to the District or claimed to have been furnished to the District. In case of any such lien attaching, the District shall immediately pay and remove such lien or furnish security or indemnify the City in a manner satisfactory to the City in its sole discretion to protect the City against any defense or expense arising from such lien. Except during any period in which District appeals any judgment or obtains a rehearing of any such lien, or in the event judgment is stayed, the District shall immediately pay any judgment rendered against the District, with all proper costs and charges, and shall have the lien released and any judgment satisfied. If the District fails to pay and remove any lien or contest such lien in accordance herewith, the City, at its election, may pay and satisfy same, and all sums so paid by the City, with interest from the date of payment at the rate set at 12% per annum provided that such rate shall not be deemed usurious by any Federal, State, or Local law.

SECTION 6. INDEMNIFICATION AND INSURANCE

6.1 Indemnification. The District shall indemnify, defend, and hold the City harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), whether such claim is related to or arises from personal injury or property damage which may be

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expended by or accrue against, be charged to, or be recovered from the City or the District by reason of the District's performance of or failure to perform any of the District's obligations under this Lease or the District's negligent acts or failure to act, or resulting from the acts or failure to act of the District's contractors, respective officers, directors, agents, employees, or invitees or any liabilities, judgments or settlements that may arise from any access to the Premises by the District's invitees or any third parties.

6.2 Self-Insurance. The District is self-insured and will provide City with a letter executed by an authorized official indicating that the District is self-insured. This letter shall be provided to the City on an annual basis.

SECTION 7. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS

1 Conflict of Interest. No official or employee of the City of Chicago, nor any member of any board, commission or agency of the City of Chicago, shall have any financial interest (as defined in Chapter 2-156 of the Municipal Code), either direct or indirect, in the Premises. Nor shall any such official, employee, or member participate in making or in any way attempt to use his/her position to influence any governmental decision or action with respect to this Lease.

2 Duty to Comply with Governmental Ethics Ordinance. The City and the District shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics," including but not limited to section 2-156-120, which states that no payment, gratuity, or offer of employment shall be made in connection with any City of Chicago contract, as an inducement for the award of that contract or order. Any contract or lease negotiated, entered into, or performed in violation of any of the provisions of Chapter 2-156 shall be voidable as to the City.

SECTION 8. HOLDING OVER

8.1 Holding Over. Any holding over by the District shall be construed to be a tenancy from month to month beginning on January 1, 2038 and the rent shall be the same as listed in Section 3.1 of this Lease. During such holding over all other provisions of this Lease shall remain in full force and effect.

SECTION 9. MISCELLANEOUS

9.1 Notice. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by the District to the City 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 the City as follows:

City of Chicago
Department of Water Management Attention:
Commissioner's Office 1000 East Ohio Street

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Chicago, Illinois 60611 With a courtesy

copy to: City of Chicago
Department of Fleet and Facility Management Office of Real
Estate Management 30 North LaSalle Street, Suite 300
Chicago, Illinois 60602

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

Chicago Park District
Attention: General Counsel
541 North Fairbanks Court, 7th Floor
Chicago, Illinois 60611

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

2 Partial Invalidity. If any covenant, condition, provision, term or agreement of this Lease shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Lease shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Lease shall be valid and in force to the fullest extent permitted by law.

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

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.

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.

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.

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

8 No Principal/Agent or Partnership Relationship. Nothing contained in this Lease shall be deemed or construed by the Parties hereto nor by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties hereto.

9 Authorization to Execute Lease. The Parties executing this Lease hereby represent and warrant that they are duly authorized and acting representatives of the City and the District respectively and that by their execution of this Lease, it became the binding obligation of City and District respectively, without any contingencies or conditions except as specifically provided herein.

10 Termination of Lease. The City and the District shall have the right to terminate this Lease without penalty and for any, or no, reason by providing each other with one-hundred eighty (180) days prior written notice at any time after the Commencement Date.

11 Force Majeure. When a period of time is provided in this Lease for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, acts of terrorism, 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.

12 Default. The District must adhere to all provisions of this Lease. Failure of District to adhere to all provisions of this Lease will result in default. In the event of such default, the City will notify the District in writing as to the circumstances giving rise to such default. Upon written receipt of such notice, the District must cure such default within sixty (60) days. If the District does not cure such default within sixty (60) days, the City may cancel this Lease with sixty (60) days written notice.

13 District Representations. The District represents as follows:

a) The District shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders that are in effect from time to time that pertain to or affect the Premises, the District, or this Lease. Upon the City's request, the District shall provide evidence satisfactory to the City of such compliance.

b) The District agrees that provisions required to be inserted in this Lease by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Lease and that in no event will the failure to insert such provisions prevent the enforcement of this Lease.

c) Signing, delivery and performance by the District of this Lease does not violate its resolutions, including

but not limited to the District resolution, or any applicable provision of law, or constitute a material breach of, default under or require any consent under, any

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agreement, instrument or document, including any related to borrowing monies, to which the District is party or by which it is bound.

(d) There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the District that would materially impair its ability to perform under this Lease.

14 Amendments. From time to time, the parties hereto may administratively amend this Lease with respect to any provisions reasonably related to the District's use of the Premises and/or the City's administration of this 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 the City and the District. 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.

15 Prior Leases. The City and the District acknowledge and agree that the District has occupied the Premises under prior Lease agreements dating back to September 28, 1960. Since the expiration of such prior Leases, the District has continued to occupy the Premises under the terms of such prior Leases. The City and the District each acknowledge and agree that the other party has performed all obligations under such prior Leases and that neither party has any claims against the other with respect to such prior Leases.

16 No Personal Liability. No elected or appointed official or member or employee or agent of the City or the District shall be individually or personally liable in connection with this Lease because of their execution or attempted execution or because of any breach hereof. This limitation on liability survives any termination or expiration of this Lease.

17 No Construction against Preparer. This Lease shall not be interpreted in favor of either the City or the District. The City and the District acknowledge that both parties participated fully in the mutual drafting of this Lease.

SECTION 10. ADDITIONAL RESPONSIBILITIES OF DISTRICT

1 Satisfaction with Condition. The District has inspected the Premises and all related areas and grounds and the District is satisfied with the physical condition thereof. The District agrees to accept the Premises in its "as is," "where is" and "with all faults." The District acknowledges that the adjoining property is owned by the City's Department of Water Management and that this property is used as an active water pumping station.

2 Custodial Services. The District, at its expense, shall provide custodial services to the Premises, which shall be construed as maintaining the landscaping and removal of debris and materials placed on the Premises. The District, at its sole cost and expense, shall provide its own scavenger service when necessary.

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3 Maintenance. The District shall provide, at the District's expense, any and all service for maintenance, repair, and upkeep of the Premises. The District acknowledges that the City shall not have any maintenance obligations with respect to the Premises.

4 Security. The District acknowledges that the City has no security obligations with respect to the Premises. The District shall be responsible for securing the Premises and will provide for security where necessary in the District's opinion.

5 Snow Removal. The District shall provide and pay for removal of snow and ice from sidewalks which immediately abut the Premises. The District acknowledges that the City shall have no snow or ice removal responsibilities.

6 Repairs for District Negligence, Vandalism, or Misuse. The District shall assume all responsibility for any repairs to any portion of the Premises necessitated by the negligence, vandalism, misuse, or other acts on any portion of the Premises by the District's employees, clients, invitees, agents, contractors, invitees, or third parties.

7 Programming. All programming shall be supervised by the District employees or District contractors. Such programming may include, but is not limited to, the use of the Premises by public high schools, soccer leagues, summer sport camps, and similar privately run programs. Any revenues realized by the District from the use of the Premises for such programs shall be devoted solely to covering the District's operational costs.

8 Illegal Activity. The District, and any of its agents or employees, shall not perform or permit any practice that is injurious to the Premises or unreasonably disturbs area residents, is illegal, or increases the rate of insurance on the Premises.

9 Hazardous Materials. The District shall keep out of Premises materials which cause a fire hazard or safety hazard and will comply with reasonable requirements of the City's fire insurance carrier, if applicable.

10 No Alcohol or Drugs. The District shall ensure that no alcoholic beverages or illegal drugs of any kind or nature shall be sold, given away, or consumed on the Premises.

11 Full Responsibility. The District assumes full responsibility and all liability for all activities and events on the Premises undertaken by or through the District's staff, agents, or invitees.

12 No Substitute for Required Permitting. For any activity which the District desires to conduct on the Premises and for which a City license or permit is required, said license or permit must be obtained by the District prior to using the Premises for such activity. The City must be notified of any such license or permit. Failure to obtain a required license or permit shall constitute a breach of the terms of this Lease. The District understands that this Lease shall not act as a substitute for any other permitting or approvals that may be required to undertake activities on the Premises.

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10.13 Condition upon Termination. Upon termination of this Lease in the event that the City and the District are unable to renew or extend this Lease, the District shall surrender the Premises to the City in a comparable condition to the condition of the Premises at the beginning of the District's occupancy, with normal wear and tear taken into consideration.

14 Trade Fixtures. Upon the termination of this Lease in the event that the City and the District are unable to renew or extend this Lease, the District shall remove or demolish the District's property, equipment, and trade fixtures from the Premises. Provided, however, that the District shall repair any injury or damage to the Premises which may result from such removal or demolition. If the District does not remove the District's property, equipment, and trade fixtures and all other items of property from the Premises upon termination, the City may, at its option, remove the same and deliver them to any other place of business of the District or warehouse the same. In such event, the District shall pay to the City the cost of removal, including the repair for such removal, delivery and warehousing. In the alternative, the City may treat such property as being conveyed to the City with this Lease acting as a bill of sale, without further payment or credit by the City to the District.

15 No Other Rights. This Lease does not give the District any other right with respect to the Premises. Any rights not specifically granted to the District by and through this Lease are reserved exclusively to the City. Execution of this Lease does not obligate the City in any manner and the City shall not undertake any additional duties or services.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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LEASE NO. 20279

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

CITY OF CHICAGO,

an Illinois municipal corporation and home rule unit of government

BY: DEPARTMENT OF WATER MANAGEMENT

By:.

Commissioner

BY: DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

By:

Commissioner

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

Deputy Corporation Counsel Real Estate Division

CHICAGO PARK DISTRICT,

a body politic and corporate and unit of local government

BY: CHICAGO PARK DISTRICT

By:

General Superintendent

Approved as to legal form:

General Counsel Chicago Park District

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EXHIBIT A

SUMMARY OF WATER FUND LEASES

Park

- 1 Beilfuss Natatorium
- 2 Block Park
- 3 Clarendon Community Ctr.
- 4 Clark (John S.) Park
- 5 Gross Park
- 6 Hasan Park
- 7 Hodes Park
- 8 Kells Park-1040
- 9 Leone Beach Pk-1013
- 10 Murray Park-1053
- 11 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001
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Rainbow Beach Pk-1001 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001 Rainbow Beach Pk-1001
- 12 Seneca Park-1242
- 13 Woodhull Park

Address	PINs
1725 N. Springfield	13-15-317-
346 W. 104th St.	26-16-200-
4501 N. Clarendon	14-16-103-
4615 W. Jackson	16-15-113-
2708 W. Lawrence	13-12-422-
6851-59 S. Oglesby	20-24-413-
1601 -11 E. 73rd St.	20-25-123-
3201 W. Chicago	16-11-207-
1222 W. Touhy	11-29-321-
1743 W. 73rd	20-30-220-
3120 E. 79th St.	21-29-100-
3110 E. 79th St.	21-29-100-
7540 S. Lake Park	21-30-124-
7568 S. Lake Park	21 -30-124-
2861 E. 76th St.	21-30-124-
2875 E. 75th St.	21-30-202-
2885 E. 75th St.	21-30-202-
2895 E. 75th St.	21-30-202-
2900 E. 75th St.	21-30-202-

7501 South Shore Dr. 21-30-202-
7602 S. South Shore Dr. 21-30-405-
7616 S. Lake Park 21-30-405-
7626 S. Lake Park 21 -30-405-
7652 S. Lake Park 21 -30-405-
7601 S. South Shore Dr. 21-30-406-
3029 E. 78th St. 21-30-413-
7850 S. South Shore Dr. 21-30-415-
7870 S. South Shore Dr. 21-30-418-
7866 S. South Shore Dr. 21-30-418-
220-34 E. Chicago 17-03-232-
7340 S. East End 20-25-123-

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EXHIBIT B DEPICTION OF PREMISES

1222 West Touhy Avenue Chicago Park District

Lease No. 20279

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