



Office of the City Clerk

City Hall
121 N. LaSalle St.
Room 107
Chicago, IL 60602
www.chicityclerk.com

Legislation Details (With Text)

File #: O2017-6227
Type: Ordinance **Status:** Passed
File created: 9/6/2017 **In control:** City Council
Final action: 10/11/2017

Title: Expenditure of Open Space Impact Fee funds and grant agreement with NeighborSpace for development of community garden at 5346 N Ravenswood Ave

Sponsors: Emanuel, Rahm

Indexes: Open Space Impact Fees

Attachments: 1. O2017-6227.pdf

Date	Ver.	Action By	Action	Result
10/11/2017	1	City Council	Passed	Pass
10/4/2017	1	Committee on Special Events, Cultural Affairs and Recreation	Recommended to Pass	Pass
9/6/2017	1	City Council	Referred	

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

September 6, 2017

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 expenditure of Open Space Impact Fee Funds for NeighborSpace.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

ORDINANCE

WHEREAS, the City of Chicago (the "City"), is a home rule unit of government under Article VII, Section 6(a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the 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 Department of Planning and Development ("DPD") has determined that significant deficits of open space persist in the Lincoln Square community area, which deficits were previously documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council ("Journal") of the same date; and

WHEREAS, DPD has determined that residents' needs for public open spaces in the Lincoln Square community area is not adequately met by currently existing open space areas, insofar as The CitySpace Plan recommends that a public open space should be available within a short walk of all residents; and

WHEREAS, NeighborSpace, an Illinois not-for-profit corporation, was created as a collaboration among the City, the Chicago Park District and the Forest Preserve District of Cook County, for the purposes of owning, leasing, managing, or holding easements to typically small, open spaces in the City for development and maintenance

by neighborhood community and business groups since such open space projects can be more efficiently managed by local groups than by governmental agencies; and

WHEREAS, NeighborSpace desires to acquire real property having the common address of 5346 N. Ravenswood ("Property"), which is identified on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the City desires to grant NeighborSpace impact fee funds to pay or reimburse NeighborSpace for a portion of the acquisition costs for Bowmanville Balmoral Community Garden (the "Funded Project"); and

WHEREAS, DPD desires to provide to NeighborSpace Open Space Fees in amounts not to exceed \$70,000 for the Funded Project; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be used for open space acquisition and capital improvements, which provide a direct and material benefit to the new development from which the fees are collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees 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, DPD has determined that the use of the Open Space Fees to fund the Funded Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected; and

WHEREAS, DPD has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific funds set up by DOF for the Lincoln Square Community Area, in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, DPD has recommended that the City Council approve the use of the Open Space Fees for the purposes set forth herein through this ordinance; and

WHEREAS, DPD has recommended that the City Council 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

WHEREAS, the City Council finds that the acquisition of the Property by NeighborSpace for use as public open space will help alleviate the public open space shortage in the Lincoln Square community area and is in the best interests of the City; now, therefore,

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

SECTION 1. The above recitals are expressly incorporated in and made part of this ordinance as though fully set forth herein.

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SECTION 2. The City Council hereby finds that the expenditure of the Open Space Fees 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 purposes described herein.

SECTION 3. The Commissioner and a designee of the Commissioner are each hereby authorized, subject to the approval of the Corporation Counsel to enter into an agreement with NeighborSpace substantially in the form of Exhibit B attached hereto and made a part hereof in connection herewith, containing such terms as the Commissioner deems necessary, and to provide Open Space Fees proceeds to NeighborSpace in an aggregate amount not to exceed \$70,000, from the corresponding fund to pay for expenses permitted under the Open Space Ordinance.

SECTION 4. Open Space Fees in the amount of \$70,000 from the Lincoln Square Community Area Open Space Fees Funds are hereby appropriated for the purposes described herein.

SECTION 5. 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 6. This ordinance shall be in full force and effect from and after the date of its passage.

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Parks\Ordinances\Bowmanville Balmoral Community Garden-Neighborspace\Ordinance
v.2.docx

EXHIBIT A-1 LEGAL DESCRIPTION . (Subject to

Final Title and Survey)

THAT PART OF THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED AS FOLLOWS: ON THE SOUTH BY THE EASTERLY EXTENSION OF THE NORTH LINE OF SUMMERDALE AVENUE; ON THE NORTH BY THE SOUTH LINE OF BALMORAL A VENUE; ON THE EAST BY A LINE PARALLEL WITH AND DISTANCE 30 FEET WESTERLY, MEASURED AT RIGHT ANGLES FROM THE CENTER LINE OF THE WESTBOUND MAIN TRACK (THE WESTERLY MOST MAIN TRACK) OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY, AS SAID MAIN TRACK IN NOW LOCATED; AND THE WEST BY THE EAST LINE OF RAVENSWOOD AVENUE. THIS PROPERTY ALSO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF LOT 1 IN NICHOLAS MILLER'S SUBDIVISION OF THE EAST 511 FEET OF THE NORTH V2 OF THE SOUTHWEST % OF THE NORTHEAST CORNER OF SECTION 7, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN (SAID POINT ALSO BEING THE

INTERSECTION OF THE WESTERLY RIGHT OF WAY LINE OF RAVENSWOOD AVENUE AND THE SOUTHERLY RIGHT OF WAY LINE OF BALMORAL AVENUE); THENCE EASTERLY ALONG THE SOUTH RIGHT OF WAY LINE OF BALMORAL A VENUE, A DISTANCE OF 80 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG AFORESAID LINE EXTENDED, A DISTANCE OF 27.84 FEET; THENCE SOUTHERLY ALONG A LINE 30 FEET WESTERLY AND PARALLEL WITH THE MAIN TRACK OF THE CHICAGO AND NORTHWESTERN TRANSPORTATION COMPANY (AS SAID TRACK IS NOW LOCATED), A DISTANCE OF 266.44 FEET; THENCE WESTERLY ALONG THE EASTERLY EXTENSION OF THE NORTH RIGHT OF WAY LINE OF SUMMERDALE A VENUE, A DISTANCE OF 27 .74 FEET; THENCE NORTHERLY ALONG THE EAST LINE OF RAVENSWOOD A VENUE, A DISTANCE OF 266.40 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 5346 N. RAVENSWOOD AVE., CHICAGO, ILLINOIS P.I.N. 14-07-212-021-

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EXHIBIT B GRANT AGREEMENT (attached)

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GRANT AGREEMENT BETWEEN

**THE CITY OF CHICAGO AND
NEIGHBORSPEACE**

Bowmanville Balmoral Community Garden

This grant agreement (this "Agreement") is entered into this _____ day of _____, 2017, between the City of Chicago (the "City"), an Illinois municipal corporation, acting through its Department of Planning and Development ("DPD"), and NeighborSpace, an Illinois not-for-profit corporation ("NeighborSpace"). NeighborSpace and the City are sometimes referred to herein as the "Parties."

RECITALS

WHEREAS, NeighborSpace was created as a collaboration among the City, the Chicago Park District and the Forest Preserve District of Cook County, for the purposes of owning, leasing, managing, or holding easements to typically small, open spaces in the City for development and maintenance by neighborhood community and business groups since such open space projects can be more efficiently managed by local groups than by governmental agencies; and

WHEREAS, the City is a municipal corporation and home rule unit of local government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; 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

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WHEREAS, the Department of Planning and Development ("DPD") has determined that the Fee-Paying Developments built in the Lincoln Square Community Area have deepened the already significant deficits of open space in the Lincoln Square Community Area, which deficits were documented in the comprehensive plan entitled "The CitySpace Plan," adopted by the Chicago Plan Commission on September 11, 1997 and adopted by the City Council on May 20, 1998 pursuant to an ordinance published at pages 69309-69311 of the Journal of the Proceedings of the City Council (the "Journal") of the same date; and

WHEREAS, the city desires to grant NeighborSpace impact fee funds to pay or reimburse NeighborSpace for land acquisition costs associated with the development of a community garden at 5346 N. Ravenswood Avenue (the "Project"); and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees be used for open space acquisition and capital improvements, which provide a direct and material benefit to the new development from which the fees are collected; and

WHEREAS, the Open Space Ordinance requires that the Open Space Fees 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, DPD has determined that the use of the Open Space Fees to fund the Project will provide a direct and material benefit to each of the Fee-Paying Developments from which the Open Space Fees were collected; and

WHEREAS, DPD has determined that Open Space Fees to be used for the purposes set forth herein have come from the specific funds set up by DOF for the Lincoln Square Community Area, in which the Fee-Paying Developments are located and from which the Open Space Fees were collected; and

WHEREAS, DPD desires to provide to NeighborSpace Open Space Fee proceeds in an amount not to exceed \$70,000 (the "Grant") to undertake the Project; and

WHEREAS, on _____, 2017, the City Council of the City adopted an ordinance published in the Journal for said date on pages ____-____ thereof, among other things, finding that the Project would provide a direct and material benefit to the residents of the new developments originating the Open Space Fees and authorizing the Grant subject to certain terms and conditions; and

WHEREAS, under the terms and conditions hereof, the City agrees to make the Grant available to NeighborSpace; and

WHEREAS, the City and NeighborSpace have among their powers and authority the ability to contract with each other to perform the undertakings described 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:

TERMS AND CONDITIONS

SECTION 1. INCORPORATION OF RECITALS The recitals set forth above are

incorporated into this Agreement and made a part hereof.

SECTION 2. THE GRANT

A. Subject to the provisions set forth in this Agreement, the City will disburse the Grant to pay or reimburse NeighborSpace for all or part of the cost of completing the Project. The Grant must be used exclusively towards completion of the Project. If the Grant should exceed the cost of completing the Project, NeighborSpace must repay any such excess Grant funds to the City.

B. NeighborSpace hereby acknowledges and agrees that the Grant may be used only to pay acquisition costs as described in Exhibit 1 ("Eligible Costs").

C. NeighborSpace is solely responsible for any fees, costs and expenses in excess of the amount of the Grant and will hold the City harmless from all such excess fees, costs and expenses.

D. The source of funds for disbursements under this Agreement is Fund Number PS04 131 54 5004 2604.

E. NeighborSpace hereby acknowledges and agrees that the City's obligations hereunder are subject in every respect to the availability of the Open Space Fee proceeds. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of Grant funds, then the City will notify NeighborSpace in writing of that occurrence, and this Agreement will terminate on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

SECTION 3. COVENANTS AND REPRESENTATIONS

NeighborSpace hereby warrants, represents and/or covenants to the City that:

A. NeighborSpace will use the Grant Funds solely for the Project and to pay only for Eligible Costs.

B. NeighborSpace will comply with all applicable federal, state, and local statutes, laws, ordinances, rules, regulations and executive orders that are in effect from time to time that pertain to or affect the Project, NeighborSpace, or the Grant. Upon the City's request, NeighborSpace will provide evidence of such compliance satisfactory to the City.

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

D. NeighborSpace has full power and authority to enter into and perform its obligations under this Agreement, and the signing and delivery of this Agreement and the performance of its obligations under this Agreement have been duly authorized by all requisite corporate action.

E. Signing, delivery and performance by NeighborSpace of this Agreement does not violate its bylaws, articles of incorporation, resolutions or any applicable provision of law, or constitute a material breach of, default under or require any consent under, any agreement, instrument or document, including any related to borrowing monies, to which NeighborSpace is party or by which it is bound.

F. There are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting NeighborSpace that would materially impair its ability to perform under this Agreement.

G. NeighborSpace is not in default on any loan or borrowing that may materially affect its ability to perform under this Agreement.

H. NeighborSpace and all its contractors and subcontractors shall meet labor standards and prevailing wage standards required by federal, state and City laws, regulations and ordinances.

I. NeighborSpace shall maintain and keep in force, at its sole cost and expense, at all times during its existence, insurance in such amounts and of such type as set forth in Section 6 hereof.

J. NeighborSpace shall at all times perform its work in fulfilling NeighborSpace's corporate mission with the utmost care, skill and diligence in accordance with the applicable standards currently recognized in the community.

K. NeighborSpace shall comply with all policies issued by the City relating to Illinois not-for-profit corporations and federal tax-exempt entities, as such policies may be modified, amended or supplemented from time to time.

L. NeighborSpace shall maintain title to the Property in perpetuity and shall operate it, or cause it to be operated, as an open public space for such term.

M. It is the duty of NeighborSpace and any bidder, proposer, subcontractor and every applicant for

certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of NeighborSpace and any such bidder, proposer, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. NeighborSpace represents that it understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

N. It is the duty of NeighborSpace and any bidder, proposer, subcontractor and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees Of NeighborSpace and any such bidder, proposer, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code.

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NeighborSpace represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that it will inform subcontractors of this provision and require their compliance.

SECTION 4. TERM

The term of this Agreement shall commence on the date hereof 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 5. DISBURSEMENTS

The City will disburse the Grant funds to NeighborSpace after the City has reviewed and approved a listing of Eligible Costs, in such detail and with such supporting documentation as the City may require.

SECTION 6. INSURANCE

NeighborSpace shall provide and maintain at NeighborSpace'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, NeighborSpace 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.

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Professional Liability

When any architects, engineers or professional consultants perform work in connection with this Agreement, NeighborSpace 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

NeighborSpace 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. NeighborSpace shall submit evidence of insurance on the City of Chicago Insurance Certificate Form 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 required under this Agreement shall not be deemed to be a waiver by the City of any requirements for NeighborSpace to obtain and maintain the specified coverages.

NeighborSpace shall advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance shall not relieve NeighborSpace of the obligation to provide insurance as 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 NeighborSpace and contractors.

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

NeighborSpace expressly understands and agrees that any coverage and limits furnished by NeighborSpace shall in no way limit NeighborSpace's liabilities and responsibilities specified within the Agreement documents or by law.

NeighborSpace expressly understands and agrees that any insurance or self-insurance programs maintained by the City of Chicago shall not contribute with insurance provided by NeighborSpace 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 in this Agreement given as a matter of law.

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NeighborSpace shall require all subcontractors to provide the insurance required herein or NeighborSpace may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements as NeighborSpace is subject to under this Agreement, unless otherwise specified herein.

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

SECTION 7. INDEMNIFICATION

NeighborSpace agrees to indemnify and hold the City, its officials, agents and employees harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, attorney's fees and court costs suffered or incurred by the City arising from or in connection with this Agreement. This indemnification shall survive the termination or expiration of this Agreement.

SECTION 8. DEFAULT, REMEDIES AND TERMINATION

A. If NeighborSpace, without the City's written consent, fails to complete the Project within 365 days after the date hereof or transfers title to the Project property to a third party after the date hereof, then the City may terminate this Agreement by providing written notice to NeighborSpace. If the City so terminates this Agreement, NeighborSpace shall reimburse the City promptly any amounts received pursuant to this Agreement.

B. If NeighborSpace defaults by failing to perform any of its obligations under this Agreement not described in paragraph A of this Section 8, and does not cure its default as provided in paragraph C of this Section 8, the City may terminate this Agreement and NeighborSpace will repay the City promptly any amounts received pursuant to this Agreement.

C. If NeighborSpace's default is not described in paragraphs A of this Section 8, the City will give NeighborSpace 30 days advance written notice of the City's intent to terminate stating the nature of the default. If NeighborSpace does not cure the default within the 30-day notice period, the termination will become effective at the end of the period. With respect to those defaults that are not capable of being cured within the 30-day period, NeighborSpace will not be deemed to be in default if it has begun to cure the default within the 30-day period and thereafter diligently and continuously pursues the cure of the default until cured.

D. The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, seek the specific performance of the agreements contained in this Agreement, or damages for failure of performance, or both.

E. Failure by NeighborSpace or any controlling person (as defined in Section 1-23-010 of the Municipal Code) thereof to maintain eligibility to do business with the City as required by Section 1-23-030 of the Municipal Code shall be grounds for termination of this Agreement and the transactions contemplated hereby.

SECTION 9. NO LIABILITY OF OFFICIALS

No elected or appointed official or member or employee or agent of the City shall be charged personally by NeighborSpace or by an assignee or subcontractor, with any liability or

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expenses of defense or be held personally liable under any term or provision of this Agreement because of their execution or attempted execution or because of any breach hereof.

SECTION 10. NO BUSINESS RELATIONSHIPS WITH ELECTED OFFICIALS

Pursuant to Section 2-156-030(b) of the Chicago Municipal Code, it is illegal for (i) 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 any business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code) on the part of the official, or the "Domestic Partner" (as defined in Section 2-156-010 of the Municipal Code) or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months, and (ii) for any elected official to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has any business relationship that creates a Financial Interest on the part of the official, or the Domestic Partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. Any 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 Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030(b) has occurred with respect to this Agreement or the transactions contemplated hereby.

SECTION 11. GENERAL CONDITIONS

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

B. 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.

C. 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.

D. Entire Agreement. This Agreement contains the entire agreement between the City and NeighborSpace and supersedes all prior agreements, negotiation and discussion between them with respect to the Project.

E. 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.

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F. 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.

G. Inspection and Records. NeighborSpace shall provide the City with reasonable access to its books and records relating to the Project as shall be required by the City and necessary to reflect and disclose fully the amount and disposition of the Grant. Any duly authorized representative of the City shall, at all reasonable times, have access to all portions of the Property where the Project is located. The rights of access and inspection provided in this paragraph shall continue for five years from the later of the expiration or the termination of this agreement

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

I. 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.

City of Chicago
Department of Planning and Development
Attention: Commissioner
City Hall, Room 1000
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-4190
(312) 744-2271 (Fax)

Department of Law City of Chicago
Attention: Finance and Economic Development Division
City Hall, Room 600
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-0200
(312) 744-8538 (Fax)

NeighborSpace
445 N Sacramento Blvd, Suite 204 Chicago, IL 60612 Phone:(773) 826-3127 Fax: (773) 442-0299
Attention: Ben Helphand, Executive Director

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

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notice, demand or communication given pursuant to clause (d) hereof shall be deemed received three 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.

J. 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 to 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 NeighborSpace, 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 NeighborSpace.

K. 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.

L. Titles and Headings. Titles and headings in this Agreement are inserted for convenience and are not intended to be part of or affect the meaning or interpretation of this Agreement.

M. 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.

N. Waiver. Waiver by the City with respect to the breach of this Agreement shall not be considered or treated as a waiver of the rights of the City with respect to any other default or with respect to any particular default except to the extent specifically waived by the City in writing. Any waiver by the City must be in writing. Failure of the City, for any period of time or on more than one occasion, to exercise any remedy available to the City under this Agreement or otherwise shall not constitute a waiver of the right to exercise the same at any time thereafter or in the event of any subsequent event of default. No act of omission or commission of the City, including specifically any failure to exercise any right, remedy or recourse, shall be deemed to be a waiver or release of the same; any such waiver or release is to be effected only through a written document executed by the City and then only to the extent specifically recited therein.

O. Executive Order 2011-4. NeighborSpace agrees that NeighborSpace, any person or entity who directly or indirectly has an ownership or beneficial interest in NeighborSpace of more than 7.5 percent ("Owners"), spouses and Domestic Partners of such Owners, NeighborSpace's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractors of more than 7.5 percent ("Sub-owners") and spouses and Domestic Partners of such Sub-owners (NeighborSpace and all the other

H)

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 (the "Mayor") or to his Political Fundraising Committee (i) after execution of this bid, proposal or Agreement by NeighborSpace, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between NeighborSpace and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

NeighborSpace represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached NeighborSpace or the date

NeighborSpace approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a Contribution of any amount to the Mayor or to his Political Fundraising Committee.

NeighborSpace agrees that NeighborSpace shall not: (a) coerce, compel or intimidate NeighborSpace's employees to make a Contribution of any amount to the Mayor or to the Mayor's Political Fundraising Committee; (b) reimburse NeighborSpace's employees for a Contribution of any amount made to the Mayor or to the Mayor's Political Fundraising Committee; or (c) Bundle or solicit others to Bundle Contributions to the Mayor or to his Political Fundraising Committee.

NeighborSpace 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.

NeighborSpace 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 Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If NeighborSpace violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement resulting from this specification, the Commissioner may reject NeighborSpace's bid.

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 to which NeighborSpace are a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code; (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.

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

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"Political Fundraising Committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code.

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

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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, an Illinois municipal corporation

By:

David L. Reifman Commissioner
Department of Planning and Development

NEIGHBORSPACE, an Illinois not-for-profit corporation

By: Ben Helphand Executive Director

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Exhibit 1

Eligible Cost Bowmanville Balmoral Community Garden

<u>Acquisition</u>	<u>\$ 70,000</u>	Total:	\$ 70,000
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