



Office of the City Clerk

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

Legislation Text

File #: O2014-6839, Version: 1

ORDINANCE FOR LONG TERM EASEMENT

WHEREAS, The City of Chicago ("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 Council of the City of Chicago, after due investigation and consideration, has determined that the nature and extent of the public use and the public interest to be subserved is such as to warrant a long term easement for an existing pedestrian overpass over the public alley described in the following ordinance; now therefore,

WHEREAS, First FM, LLC, an Illinois limited liability company and 40 W. Hubbard, LLC, an Illinois limited liability company (together, the "Grantees") are the owners of the properties commonly identified as 32-36 W. Hubbard Street, 431-451 N. Dearborn Street, and 441-443 N. Dearborn Street; and

WHEREAS, Grantees own an existing pedestrian overpass (the "Pedestrian Overpass") that bridges the public right of way between adjacent properties owned by the Grantees; and

WHEREAS, the Pedestrian Overpass was previously permitted under the Use of the Public Way Program by the Department of Business Affairs and Consumer Protection, but is now not being handled by that program; and

WHEREAS, Grantees have expended a substantial sum in constructing the Pedestrian Overpass, and related construction, in order to facilitate the interconnection between their buildings; and

WHEREAS, the Pedestrian Overpass will require the use of the public right-of-way, specifically the limited air rights above the grade of the alley, as more fully described on the Plat of Easement attached hereto and make a part hereof as Exhibit A; and

WHEREAS, the Department of Transportation has determined that the Pedestrian Overpass will not interfere with the City's traffic infrastructure and will benefit the businesses; and

WHEREAS, the City is willing to grant Grantees an easement on the same terms and conditions set forth in the Public Way Easement Agreement (the "Public Way Easement

Agreement") attached hereto and incorporated herein as Exhibit B; now, therefore,

Be it Ordained by the City Council of the City of Chicago;

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

SECTION 2. The Commissioner of the Department of Transportation or a designee of the Commissioner (the "Commissioner") is each hereby authorized, along with the approval of the City's Corporation Counsel as to form and legality, to execute and deliver the Public Way Easement Agreement between Grantees and the City, in the form attached thereto as Exhibit B and made a part hereof, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Public Way Easement Agreement.

SECTION 3. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 4. The vacation herein provided for is made upon the express condition that within 180 days after the passage of this ordinance, Grantees shall pay or cause to be paid to the City of Chicago as compensation for the benefits which will accrue to the owners of the properties abutting said part of the public alley hereby bridged the sum of _____ dollars (\$ _____), which sum in the judgment of this body will be equal to such benefits.

SECTION 5. The Public Way Easement Agreement herein provided for is made upon the express condition that within one hundred eighty (180) days after the passage of this ordinance, First FM, LLC and 40 W. Hubbard, LLC shall file or cause to be filed for recording in the Office of the Recorder of Deeds of Cook County, Illinois a copy of the Public Way Easement Agreement, together with its accompanying Plat of Easement as approved by the Department of Transportation's Superintendent of Maps and Plats, as well as a separately recorded oversized and legible copy of the same Plat of Easement for greater clarity.

SECTION 6. This ordinance shall take effect upon its passage and need not be recorded. The Public Way Easement Agreement will take effect upon recording.

Easement approved:

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Rebekah Scheinfeld Commissioner of Transportation

Richard Wendy Deputy Corporation Counsel

Honorable Brendan Reilly Alderman 42nd Ward

Approved as to form and legality:

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EXHIBIT B TO ORDINANCE

This Instrument Prepared By and After
Recording Return to: Karen Bielarz
Senior Counsel City of Chicago
Department of Law 121 North LaSalle
Street Room 600
Chicago, Illinois 60602

(The Above Space For Recorder's Use Only)

Public Way Easement Agreement (Pedestrian
Bridge)

This Agreement (the "Agreement") is entered into as of this _____ day of _____ 2014, by and between the City of Chicago, an Illinois home rule municipal corporation, by and through its Department of Transportation, (the "City") and: First FM, LLC, an Illinois limited liability company and 40 W. Hubbard, LLC, an Illinois limited liability company (together, the "Grantees"). City and Grantees together shall be referred to herein from time to time as the "Parties".

Witnesseth:

WHEREAS, the Grantees are the owners of real property commonly known as 34-36 W. Hubbard Street, 431-439 N. Dearborn Street and 441-443 N. Dearborn Street, Chicago, Illinois, as legally described on Exhibit A attached hereto and made a part hereof (the "Property"), upon which Property the Grantees currently have an office building complex comprised of buildings that are bisected by an east-west, 18' wide City public alley ("Alley") bounded by W. Hubbard Street, W. Illinois Street, N. Dearborn Street and N. State Street; and;

WHEREAS, the Grantees' buildings together shall be referred to herein from time to time as the Overpass Buildings ("Overpass Buildings"); and

WHEREAS, the Grantees erected and were previously permitted for a pedestrian overpass ("Overpass") to connect the Overpass Buildings over and above the grade of the City's Alley by approximately one hundred seventy six square feet (176), and two thousand nine hundred and ninety two (2992) cubic feet more or less ("Easement Area"), as more fully described on the Plat of Easement ("Plat") attached hereto as Exhibit B; and

WHEREAS, the Overpass will continue to require the use of the Alley, specifically use of certain of the air rights above the alley, as more fully depicted on the Plat; and

WHEREAS, the Grantees require the use of the Overpass, which lies above the grade of the Alley, and the Easement Area, for safe pedestrian movement within the Overpass Buildings; and

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WHEREAS, the Overpass will benefit the business by allowing customers, visitors and staff to traverse between the Overpass Buildings protected from the weather and vehicular traffic; and

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

Grant of Easement Area. The City hereby grants to Grantees an easement ("Easement") to use and occupy, in accordance with this Agreement, those certain limited air rights in and above the Alley in the Easement Area, as identified and legally described on the Plat, for the installation, operation, maintenance, repair and replacement of the Overpass. The Parties hereto may, upon review and approval of the Commissioner ("Commissioner") of the Department of Transportation, or any successor department ("CDOT"), may substitute a revised Easement legal description for the Easement legal description set forth on Exhibit C attached hereto and made a part hereof, subject to review and approval of the City's Corporation Counsel.

1. Terms. The following terms and conditions apply to the Easement:

a) The Easement is an easement appurtenant in favor of First FM, LLC, and 40 W. Hubbard, LLC.

b) The Easement is granted for a term of twenty (20) years ("Term") provided that the Grantees pay compensation to the City in the amount described in the Easement Ordinance.

c) The Easement shall burden the Easement Area as the servient tenement.

d) The Grantees warrant to the City that they are the owners ("Owners") of the Overpass Buildings, are owners of the existing Overpass structure, and that the Grantees have sufficient title and fee interest to/in the Property to enter into this Agreement.

e) The public way Easement granted pursuant to this Agreement constitutes a contemporaneous grant of interest in real property and is not executory in nature.

f) Grantees shall not transfer any interest in the Easement without prior written consent by the Commissioner ("Commissioner") of the City's Department of Transportation ("CDOT").

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2. Grantees' Obligations.

a) The Grantees expressly warrant that the Overpass is designed and constructed in compliance with all federal, state and local laws and regulations. The Grantees further expressly warrant that the Overpass is designed and constructed in compliance with accessibility standards, including, but not limited to: (1) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the regulations promulgated thereunder; (2) the Illinois Environmental Barriers Act (410 ILCS 25/1 et seq. (1996)); (3) The Illinois Accessibility Code, 71 Ill. A. Code 400; (4) all local City ordinances, codes, regulations.

b) The Grantees shall be responsible for obtaining ongoing approvals of and payment for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, or any structures or facilities located in or adjacent to the Easement Area which are owned by the City, including pavements, bridges, poles, and other facilities and utilities, which are or may be necessary or appropriate to facilitate work related to the Overpass. The Grantees shall be responsible for obtaining the consent of and making suitable arrangements with all entities owning and having an interest in such structures and facilities, including any City department.

(d) The Grantees shall secure all necessary permits, including but not limited to, building permits.

3. Uses Within the Easement Areas.

a) The Overpass shall be open for use by the public at such times that the Overpass Buildings are open to the public.

b) The Grantees may not authorize the Overpass for any purpose that will substantially interfere with the use of the Overpass by the public.

c) The Grantees may utilize the Overpass for exhibits, displays and the like that shall not substantially interfere with the public's use described in this Agreement.

d) Grantees may establish reasonable rules and regulations related to the use by the public of the Overpass. Grantees may at their sole discretion control the use of and access to the Buildings through the Overpass. Notwithstanding the foregoing, the City reserves a right to access the Overpass and Easement Area for City business purposes and services available to all similarly situated improvements.

4. Overpass Alterations.

Grantees may from time to time replace, remodel or demolish all or any portion of the Overpass so long as the Grantees secure the prior written approval of the Commissioner (or any successor department's Commissioner) and City Council for alterations that may affect the Easement Area or other portions of the public right-of-way before making any alterations to the Overpass that would change the description provided on the Plat.

5. Removal and Restoration. Grantees shall have the right to terminate this Easement at any time. Upon termination of the Easement granted by this Agreement the

Grantees, without cost or expense to the City, shall promptly remove the Overpass, and all other structures and facilities related to the Overpass as may be located in the Easement Area and other affected public way. Grantees shall restore the public way to the extent altered, disturbed, or damaged by the installation, construction, use, operation, inspection, maintenance, repair, replacement or removal of the Overpass, and all work related thereto, to a proper condition under the supervision and to the satisfaction of the Commissioner and in accordance with the Municipal Code of Chicago.

6. Indemnity. Except with respect to the negligent or wrongful intentional acts of City (to the extent the same are the cause of an injury or loss to a third person), Grantees hereby indemnify and agrees to hold harmless and defend City from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to the City, any natural person, or the City's property, including but not limited to the Easement Area and all other impacted City right-of-way, the property of any person, arising out of, or occurring in any manner relating to the Easement Area, or the Overpass. In the event any legal action is taken against City or its agents or any claim is

made relating to the Easement Area or the Overpass, the City may elect to tender said defense to Grantees which shall and must defend such action or claim at Grantees' own expense and City shall cooperate with Grantees in the defense thereof. City shall have the right to join Grantees as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of the City, and City shall maintain whatever other right of indemnity it may have under common law, by statute, or by ordinance.

7. Grantees' Operation. Maintenance and Security of the Easement Area and Overpass during the Term of this Agreement.

a) Grantees shall maintain the Easement Area and Overpass at their sole cost and expense.

b) Grantees shall maintain the Easement Area and Overpass so that the improvement does not unduly interfere with any use of the public way by the City, the public, or any person or entity authorized to use or occupy the public way.

c) Grantees shall conduct regular, documented inspections of the Overpass and the Easement Area and maintain the Overpass and Easement Area in a structurally sound, clean, aesthetically attractive, and usable condition consistent with the public use required by this Agreement. All Overpass and Easement Area maintenance records shall be made available to CDOT upon CDOT's written request for such documentation to one or both of the Grantees.

d) Grantees shall attach no fixtures, post no verbiage, signage, symbols, art or advertising of any kind on the structure, or on the interior of the structure that may be visible from the exterior. The Grantees shall not lease nor enter into any agreement for the Overpass or Easement Area lying over, under, on or in the public way for advertising space purposes, or for any other promotional use(s) for the Grantees or any third parties.

e) Grantees shall cooperate with the City concerning the coordination of uses of the public way, including prompt responses to inquiries, attending meetings and site visits,

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and providing complete disclosure of information concerning the Easement Area and Overpass.

(f) Grantees shall pay for any and all utility expenses incurred with respect to the operation, maintenance, repair, and/or replacement of the Overpass, or any part thereof, within the Easement Area.

(g) Grantees shall provide security over the Easement Area and Overpass at their sole cost and expense.

8. City Has No Maintenance and Operational Duties. The Grantees acknowledge that City is not responsible for the operation, maintenance, repair, and/or replacement of or security of the Easement Area and the Overpass, and City has no obligations with respect thereto (other than the provision, through the exercise of the City's right to access the Overpass and Easement Area for City business purposes and services available to all similarly situated improvements).

9. **Insurance.**

a) The Grantees shall procure and maintain, at all times, or shall cause to be procured and maintained, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Agreement, whether performed by the Grantees or any of its contractors.

b) The kinds and amounts of insurance required are as follows:

(i) Workers' Compensation and Occupational Disease Insurance.

Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide Work under this Agreement. Employers' liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, illness or disease.

ii) Commercial Liability Insurance (Primary and Umbrella).

Commercial General Liability Insurance, or equivalent, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage liability. All premises and operations, products/completed operations, independent contractors, explosion, collapse, underground, pollution (if commercially available), separation of insureds, defense and contractual liability coverages are to be included. The City is to be named as an additional insured on a primary non-contributory basis for any liability related directly or indirectly to this Agreement.

Contractors performing work for Grantees must maintain limits of not less than \$2,000,000 with the same terms herein.

iii) Automobile Liability Insurance. (Primary and Umbrella)

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When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Grantees provide or cause to be provided, Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

Contractor performing work for Grantees must maintain limits of not less than \$1,000,000 with the same terms herein.

(c) Additional Requirements

The Grantees must provide and cause any of its contractors to provide the City of Chicago, Department of Transportation, 30 North LaSalle Street, Room 500, Chicago, Illinois 60602-2570, original Certificates of Insurance, 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 receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement 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 Grantees and contractor is not a waiver by the City of any requirements for the Grantees to obtain and maintain the specified coverages. The Grantees and contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantees and contractor 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.

Grantees agree to make commercially reasonable efforts to obtain from its insurers, when and if available in the industry, a certificate providing that such coverage shall not be suspended, voided, canceled, non-renewed, or reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Grantees and contractor.

The Grantees hereby agree and will cause their contractors to agree that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Grantees and contractor in no way limit the Grantees' and contractor's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Grantees and contractor under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

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If Grantees or contractor are a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Grantees must require the contractor to provide the insurance required herein. All contractors are subject to the same insurance requirements of Grantees unless otherwise specified in this Agreement.

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

11. Default. The Grantees shall be in default hereunder in the event of a material breach by Grantee/s of any term or condition of this Agreement including, but not limited to, a representation or warranty, where Grantees have failed to cure such breach within sixty (60) days after written notice of breach is given to Grantees by City setting forth the nature of such breach. Failure of City to give written notice of breach to Grantees shall not be deemed to be a waiver of the City's right to assert such breach at a later time. If the default is not capable of being cured within the sixty (60) day period, then provided Grantees have commenced to cure the default and is diligently proceeding to cure the default within the sixty (60) day period, and thereafter diligently prosecutes such cure through to completion, then the sixty (60) day period shall be extended for the length of time that is reasonably necessary to cure the default. If the default is not cured in

the time period provided for herein, the City may institute such proceedings at law or in equity as may be necessary or desirable to cure and remedy the default, including but not limited to, termination of this Agreement and removal of the Overpass at the Grantees' sole expense.

12. Compliance With Law. The Grantees agree that the Easement Area and Overpass shall be used, and any alterations to the Overpass shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in complete compliance with all applicable laws, statutes and ordinances.

13. Partial Invalidity. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect.

14. Notices. Any and all notices or other communications required or permitted pursuant hereto shall be in writing and shall be deemed to have been given if and when personally delivered or on the next following business day if transmitted by reputable overnight carrier. Notices shall be addressed to Grantees and City at their respective addresses set forth below, or to such substitute address as Grantees or City may have designated by notice in accordance herewith:

If to City:

Department of Transportation
30 North LaSalle Street, Room 500
Chicago, Illinois 60602
Attn: Maps and Plats / Vacations

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With a copy to:

Department of Law / Real Estate and Land Use Division
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel

If to Grantees:

Mr. Nick Helmer
First FM, LLC (on behalf of both First FM, LLC and 40 West Hubbard, LLC) 350 N. Clark
Street, Suite 400 Chicago, IL 60654

With a copy to:

Mr. Richard Toth
Daley & Georges
20 S. Clark Street, Suite 400
Chicago, Illinois 60603

16) Illinois Law. This Agreement has been negotiated, executed and delivered at Chicago, Illinois and shall be construed and enforced in accordance with the laws of Illinois, including the law of public trust with respect to the use and occupation of the public way.

17) Execution And Recordation of Agreement. The execution and recordation of this Agreement shall be subject to the finalization of all utility negotiations and further provided that the Grantees supply the City with sufficient proof of ownership of the Property, and any other documents that the City may deem necessary.

18) No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit solely of Grantees and City and their respective successors, assigns, licensees and legal representatives. This document and the terms hereof are intended solely for the benefit of the parties hereto and their successors, licensee and assigns, as expressly referred to herein. No other person shall have any rights, responsibilities or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof.

19) Authority and Validity. Each party represents and warrants to the other party that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

20) **Miscellaneous.**

(a) The terms, benefits, and privileges set forth in this Agreement shall be deemed and taken to be covenants running with the Property and shall be binding upon the Grantees,

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their successors and assigns having any interest in the Property.

b) If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that this Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties.

c) In the event the time for performance hereunder falls on a Saturday, Sunday, or legal holiday, the actual time for performance shall be the next business day.

d) This Agreement and the accompanying Plat shall be governed by, and construed in accordance with, the internal laws of the State of Illinois. In the event that an adjudication of any kind shall be required in connection with this Agreement, the Parties agree that the venue therefor shall be the state or federal courts located in Cook County, Illinois, whichever may be applicable.

e) This Agreement constitutes the entire contract between the Parties with respect to the subject matter of this Agreement, and may not be modified except by an instrument in writing signed by all the Parties and dated a date subsequent to the date of this Agreement.

f) Each Party agrees that it will execute and deliver such other reasonable documents and take

such other reasonable actions as may be reasonably requested by the other party to effectuate the purposes and intention of this Agreement.

21) **Business Relationships.**

The Grantees acknowledge (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a "Business Relationship" (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Grantees hereby represent and warrant that no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

22) **Patriot Act Certification.**

The Grantees represent and warrant that neither the Grantees nor any Affiliate thereof (as defined in the next paragraph) is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule,

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regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

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

23) Prohibition on Certain Contributions Mayoral Executive Order 2011-4.

Grantees agree that Grantees, any person or entity who directly or indirectly have an ownership or beneficial interest in Grantees of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Grantees' contractors (i.e., any person or entity in direct contractual privity with Grantees regarding

the subject matter of this Agreement) ("Contractors"), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Grantees and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee (i) after execution of this Agreement by Grantees, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Grantees and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

Grantees represent and warrant that from the later to occur of (a) May 16, 2011, and (b) the date the City approached the Grantees or the date the Grantees 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.

Grantees agree that they shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) Bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Grantees agree 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.

Grantees agree 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, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

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If Grantees intentionally violate this provision or Mayoral Executive Order No. 2011-4 prior to the closing of this Agreement, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

"Bundle" means to collect contributions from more than one source, which is then delivered by one person to the Mayor or to his political fundraising committee.

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

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

Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- A) they are each other's sole domestic partner, responsible for each other's common welfare; and
- B) neither party is married; and
- C) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- D) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- E) two of the following four conditions exist for the partners:
 - 1. The partners have been residing together for at least 12 months.
 - 2. The partners have common or joint ownership of a residence.
 - 3. The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 - 4. Each partner identifies the other partner as a primary beneficiary in a will.

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

24) Failure To Maintain Eligibility To Do Business With The City.

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

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25) Inspector General and Legislative Inspector General.

It is the duty of every officer, employee, department, agency, contractor, subcontractor, Grantees and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the City's Legislative Inspector General and with the City's Inspector General in any investigation or hearing undertaken pursuant to Chapters 2-55 and 2-56, respectively, of the Municipal Code of Chicago. The Grantees understand and will abide by all provisions of Chapters 2-55 and 2-56 of the Municipal Code of Chicago.

26) Waste Ordinance Provisions.

In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Grantees warrant and represent that they, and to the best of their knowledge, their contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the "Waste Sections"). During the period while this Amendment is executory, Grantees, any general contractors or any subcontractors violation of the Waste Sections, whether or not relating to the performance of this Agreement,

constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Amendment, at law or in equity. This section does not limit Grantees', general contractor's and its subcontractor's duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Amendment. Noncompliance with these terms and conditions may be used by the City as grounds for the termination of this Amendment, and may further affect Grantees' eligibility for future contract awards.

27) **Shakman Accord.**

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

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

c) Grantees will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions,

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promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

(d) In the event of any communication to Grantees by a City employee or City official in violation of Section 27 (b) above, or advocating a violation of Section 27 (c) above, Grantees will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General ("IGO Hiring Oversight"), and also to the head of the relevant City Department utilizing services provided under this Agreement. Grantees will also cooperate with any inquiries by IGO Hiring Oversight or the Shakman Monitor's Office related to the contract.

THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK

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IN WITNESS WHEREOF, Grantees and City have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written above.

40 W. Hubbard, LLC
an Illinois limited liability company

By:

Name:

Title:

First FM, LLC
an Illinois limited liability company

By:

Name:

Title:

CITY OF CHICAGO,
a municipal corporation by and through its Department
of Transportation

By:
Name: Rebekah Scheinfeld Title:
Commissioner

Approved As To Form And Legality (excluding the
Legal Descriptions):

CITY OF CHICAGO Department of
Law

By:
Name: Karen Bielarz Title: Senior
Counsel

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid,
do hereby certify that Rebekah Scheinfeld personally known to me to be the Commissioner of the Department
of Transportation of the City of Chicago, an Illinois municipal corporation, and personally known to me to be

I, _____, a Notary Public in and for said County, in the State aforesaid,
do hereby certify that _____, personally known to me to be the
of _____, and personally known to me to be the same person
whose name is subscribed to the foregoing instrument, appeared before me this day in person
and being first duly sworn by me severally acknowledged that as such _____, he
signed and delivered the instrument pursuant to authority given by _____
as his free and voluntary act and as the free and voluntary act and deed of _____, for
the uses and purposes therein set forth.

GIVEN under my notarial seal this

NOTARY PUBLIC

LOT 7 (EXCEPT THE EAST 6 INCHES THEREOF) AND ALL OF LOT 9, 10 AND 11 IN ASSESSOR'S SECOND DIVISION OF LOTS 9 TO 16 INCLUSIVE IN BLOCK 8 IN WOLCOTT'S ADDITION TO CHICAGO IN SECTION 9, TOWNSHIP 39 NORTH RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Commonly known as: 33 W. Illinois Street, Chicago, Illinois

Property Index No.: 17-09-255-001-0000; 17-09-255-002-0000; 17-09-255-003-0000;
17-09-255-004-0000; and 17-09-255-005-0000

**LEGAL DESCRIPTION OF 40 W.
HUBBARD, LLC**

LOT 8 AND THE WEST 1/2 OF LOT 7 IN BLOCK 8 IN WOLCOTT'S ADDITION TO CHICAGO, A SUBDIVISION IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Commonly known as: 40 W. Hubbard Street, Chicago, Illinois Property Index No.: 17-09-255-019-0000 and 17-09-255-020-0000

EXHIBIT B

PLAT OF EASEMENT (Attached)

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EXHIBIT C
LEGAL DESCRIPTION OF EASEMENT AREA

THAT PART OF THE 18 FOOT PUBLIC ALLEY LYING NORTH OF AND ADJOINING LOT 8 IN BLOCK 8 IN WOLCOTT'S ADDITION TO CHICAGO, A SUBDIVISION IN THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, RECORDED JULY 2, 1835, LYING BELOW A HORIZONTAL PLANE HAVING AN ELEVATION OF +43.39 FEET CHICAGO CITY DATUM AND LYING ABOVE A HORIZONTAL PLANE HAVING AN ELEVATION OF +28.39 FEET CHICAGO CITY DATUM AND LYING WITHIN ITS HORIZONTAL BOUNDARY PROJECTED VERTICALLY AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 18.99 FEET WEST OF THE NORTHWEST CORNER OF SAID LOT 8 AS MEASURED ALONG THE NORTH LINE THEREOF, SAID NORTH LINE HAVING AN ASSUMED BEARING OF NORTH 89°44'49" EAST; THENCE NORTH 00°38'54" EAST 18.00 FEET TO A POINT ON THE NORTH LINE OF SAID ALLEY; THENCE NORTH 89°44'49" EAST ALONG THE NORTH LINE OF SAID ALLEY 10.00 FEET; THENCE SOUTH 00°38'54" WEST 18.00 FEET TO A POINT ON THE SOUTH LINE OF SAID ALLEY; THENCE SOUTH 89°44'49" WEST ALONG THE SOUTH LINE OF SAID ALLEY 10.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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