



Office of the City Clerk

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

Legislation Text

File #: SO2016-3977, Version: 1

I SUBSTITUTE

ORDINANCE

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 is the owner of the vacant parcel of real property commonly known as 147 South Western Avenue (a/k/a 2348-52 West Adams Street), Chicago, Illinois, and legally described on Exhibit A attached hereto (the "Property"); and

WHEREAS, pursuant to ordinances adopted by the City Council of the City (the "City Council") on February 16, 2000, and published in the Journal of the Proceedings of the City Council (the "Journal") for such date, (i) a certain redevelopment plan and project (the "Original Plan") for the Central West Tax Increment Financing Redevelopment Project Area (the "Area"), was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.,) (the "Act"); (ii) the Area was designated as a redevelopment project area pursuant to the Act; and (iii) tax increment financing was adopted pursuant to the Act as a means of financing certain Area redevelopment project costs (as defined in the Act) incurred pursuant to the Original Plan; and

WHEREAS, pursuant to ordinance adopted by the City Council on March 12, 2008, and published in the Journal for such date, the City Council approved an amendment to the Original Plan (the Original Plan, as amended, the "First Amended Plan"); and

WHEREAS, pursuant to ordinance adopted by the City Council on September 8, 2011, and published in the Journal for such date, the City Council approved an amendment to the First Amended Plan (the First Amended Plan, as amended, the "Second Amended Plan"); and

WHEREAS, the Property is located in the Area; and

WHEREAS, Western Adams LLC, an Illinois limited liability company (the "Developer" or "Grantee"), has offered to purchase the Property for its current appraised fair market value of One Hundred Sixty-Five Thousand Dollars (\$165,000); and

WHEREAS, the Developer intends to use the Property and six (6) adjacent Developer-owned parcels (such six (6) parcels are commonly known as 133-145 South Western Avenue, Chicago, Illinois) for the development of a ~~a-concrete padsite~~ (as further described below) to be used for a to-be-developed fast food restaurant (e.g., Wendy's) (the ~~construction~~ performance and ipompletion of such padsite work and ttsthe use of the Property by a restaurant, the "Project"); and

WHEREAS, the use of the Property for the Project is consistent with the Second Amended Plan; and

WHEREAS, by Resolution No. 16-CDC-9 adopted by the Community Development Commission of the City (the "CDC") on April 12, 2016, the CDC recommended the sale of the Property to the Developer; and

WHEREAS, by Resolution No. 16-031-21, adopted by the Plan Commission of the City (the "Plan Commission") on April 21, 2016, the Plan Commission recommended the sale of the Property; and

WHEREAS, public notices advertising the intent of the City's Department of Planning and Development (the "Department") to enter into a negotiated sale with the Developer and requesting alternative proposals appeared in the Chicago Sun-Times on April 13 and 27, and May 9, 2016; and

WHEREAS, no alternative proposals have been received by the deadline indicated in the aforesaid notice; now, therefore,

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

SECTION 1. The City Council hereby approves the sale of the Property to the Developer for the amount of One Hundred Sixty-Five Thousand Dollars (\$165,000).

SECTION 2. The Mayor or his proxy is authorized to execute, and the City Clerk or the Deputy City Clerk is authorized to attest, one or more quitclaim deeds conveying the Property to the Developer. Without limiting the quitclaim nature of such deed, such conveyance shall be subject to (i) standard exceptions in an ALTA insurance policy; (ii) general real estate taxes and any special assessments or other taxes; (iii) easements, encroachments, covenants, restrictions and liens of record and not shown of record; (iv) such other title defects as may exist; and (v) any and all exceptions caused by acts of the Grantee or its agents.

Such conveyance also shall be subject to the following conditions and covenants, in substantially the form set forth below, which are part of the consideration for the Property and which are to be taken and construed as running with the land and binding on the Developer and its successors and assigns:

FIRST: Grantee must ~~construct a concrete pad~~ ("Pad" perform, or cause to be performed, the following work on the Property^Fhe- (all such work, the "Site Work"):

(i) demolition of all existing improvements located on the Property, including, but not limited to all structures, footers, foundations, utility lines, underground tanks (if any) and paving, while leaving the Property in-a lien-free and environmental condition that complies with all federal, state and municipal laws, codes and ordinances;

(ii) grading the Property, as necessary, and filling all excavations with clean-engineered, either on-site or off-site import fill material suitable for backfill, extending to the perimeter of the Property and to applicable off-site appurtenances located immediately adjacent to the Property in accordance with engineering, grading, and utility plans and geotechnical report, and removing from the site any excess fill, rock and/or debris.

(iii) compacting all Property fill (other than building pad) to 90% of the maximum dry density as determined by ASTM-D-1556 modified proctor for cohesive fill and 85% relative density for granular fill;

(iv) providing the building pad area within 1/10" of the planned finished pad elevation, compacted to 95% of the maximum dry density as determined by ASTM -D -1556 modified proctor for cohesive fill and 85% relative density for granular fill, and certified by a licensed engineer as suitable for construction of the Pad a single story slab on-grade building, utilizing conventional spread footers at standard depths;

(v) not permitting standing areas of water on the Property from rough grading, and providing rough grading for parking areas and paved areas to depths to allow for paving;

(vi) stockpiling unused topsoil on the Property, in accordance with appropriate soil erosion/sediment control standards and applicable laws and regulations;

(vii) providing water, sanitary sewer and gas utilities, with such utilities shall extend to the boundary line of the Property.

The Site Work must commence not later than September 30, 2016, and must be completed not later than March 31, 2017, unless the Commissioner of the City's Department of Planning and Development or any successor department thereto (the "Commissioner") extends, in writing, such commencement and/or completion dates.

SECOND: The Pad must be for use by a fast food restaurant operating on the P-reBeftyrFollowing completion of the Site Work, the Property must be used by a fast food restaurant operating on the Property; provided, however, if the lease for the Property between Grantee and its initial tenant (i.e., Wendy's) terminates, this covenant numbered Second shall be suspended one (1) time for a period of six (6) months, commencing on the date of such lease termination, in order to give the Grantee an opportunity to enter into a new lease. Upon the completion of such six (6) month period, the Property must be used by a fast food restaurant operating on the Property. The Commissioner may in his/her sole discretion release the covenant set forth in this covenant SECOND.

THIRD: The City of Chicago (the "City") makes no covenant, representation or warranty, express or implied, of any kind, as to the structural, physical or environmental condition of the Property or the suitability of the Property for any purpose whatsoever, and Grantee agrees to accept the Property in its "as is," "where is" and "with all faults" condition.

FOURTH: Grantee shall not discriminate on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income in the sale, lease, rental, use or occupancy of the Property or any part thereof.

FIFTH: Grantee hereby waives and releases, and indemnifies the City from and against, any claims and liabilities relating to or arising from the structural, physical or environmental condition of the Property, including, without limitation, claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), and shall undertake and discharge all liabilities of the City arising from any structural, physical or environmental condition that existed on the

Property prior to the date of this deed, including, without limitation, liabilities arising under CERCLA. Grantee hereby acknowledges that, in purchasing the Property, Grantee is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or its agents or employees with respect thereto. If, after the date of this deed, the structural, physical and environmental condition of the Property is not in all respects entirely suitable for its intended use, it shall be Grantee's sole responsibility and obligation to take such action as is necessary to put the Property in a condition which is suitable for its intended use.

SIXTH: Grantee agrees for itself and its successors and assigns, and, if necessary to meet the requirements set forth herein, shall contractually obligate the | general contractor to agree, that during the construction of the P-adSite Work:

a) Consistent with the findings which support, as applicable, (i) the Minority-Owned and Women-Owned Business Enterprise Procurement Program, Section 2-92-420 et seq., Municipal Code of Chicago (the "Procurement Program"), and (ii) the Minority- and Women-Owned Business Enterprise Construction Program, Section 2-92-650 et seq., Municipal Code of Chicago (the "Construction Program," and collectively with the Procurement Program, the "MBE/WBE Program"), and in reliance upon the provisions of the MBE/WBE Program to the extent contained in, and as qualified by, the provisions of this covenant SIXTH,

j during the course of construction of the PadSite Work, at least 26% of the aggregate hard construction costs shall be expended for contract participation by minority owned businesses and at least 6% of the aggregate hard construction costs shall be expended for contract participation by women owned businesses.

b) For purposes of this covenant SIXTH only:

i) Grantee (and any party to whom a contract is let by Grantee in connection with the P-adSite Work) shall be deemed a "contractor" and this Deed (and any contract let by Grantee in connection with the PadSite Work) shall be deemed a "contract" or a "construction contract" as such terms are defined in Sections 2-92-420 and 2-92-670, Municipal Code of Chicago, as applicable.

ii) The term "minority-owned business" or "MBE" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

iii) The term "women-owned business" or "WBE" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services

as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

c) Consistent with Sections 2-92-440 and 2-92-720, Municipal Code of Chicago, Grantee's MBE/WBE

commitment may be achieved in part by Grantee's status as an MBE or WBE (but only to the extent of any actual work performed on the P-adSite Work by Grantee) or by a joint venture with one or more MBEs or WBEs (but only to the extent of the lesser of (i) the MBE or WBE participation in such joint venture, or (ii) the amount of any actual work performed on the PadSite Work by the MBE or WBE); by Grantee utilizing a MBE or a WBE as the general contractor (but only to the extent of any actual work performed on the PadSite Work by the general contractor); by subcontracting or causing the general contractor to subcontract a portion of the construction of the PadSite Work to one or more MBEs or WBEs; by the purchase of materials or services used in the construction of the PadSite Work from one or more MBEs or WBEs; or by any combination of the foregoing. Those entities which constitute both a MBE and a WBE shall not be credited more than once with regard to Grantee's MBE/WBE commitment as described in this covenant SIXTH. In accordance with Section 2-92-730, Municipal Code of Chicago, Grantee shall not substitute any MBE or WBE general contractor or subcontractor without the prior written approval of the Department.

d) Grantee shall deliver quarterly reports to the City's monitoring staff describing its efforts to achieve compliance with this MBE/WBE commitment. Such reports shall include, inter alia, the name and business address of each MBE and WBE solicited by Grantee or the general contractor to work on the PadSite Work, and the responses received from such solicitation, the name and business address of each MBE or WBE actually involved in the construction of the PadSite Work, a description of the work performed or products or services supplied, the date and amount of such work, product or service, and such other information as may assist the City's monitoring staff in determining Grantee's compliance with this MBE/WBE commitment. Grantee shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs in connection with the construction of the PadSite Work for at least five (5) years after completion of the PadSite Work, and the City's monitoring staff shall have access to all such records maintained by Grantee, on prior notice of at least five (5) business days, to allow the City to review Grantee's compliance with its commitment to MBE/WBE participation and the status of any MBE or WBE performing any portion of the construction of the P-adSite Work.

(e) Upon the disqualification of any MBE or WBE general contractor or subcontractor, if the disqualified party misrepresented such status, Grantee shall be obligated to discharge or cause to be discharged the disqualified general contractor or subcontractor, and, if possible, identify and engage a qualified MBE or WBE as a replacement. For purposes of this subsection (e), the disqualification procedures are further described in Sections 2-92-540 and 2-92-730, Municipal Code of Chicago, as applicable.

(f) Any reduction or waiver of Grantee's MBE/WBE commitment as described in this covenant SIXTH shall be undertaken in accordance with Sections 2-92-450 and 2-92-730, Municipal Code of Chicago, as applicable.

(g) During the construction of the PadSite Work, Grantee shall submit all documentation required by this covenant SIXTH to the City's monitoring staff, including, without limitation, the following: (a) subcontractor's activity report; (b) contractor's certification concerning

labor standards and prevailing wage requirements; (c) contractor letter of understanding; (d) monthly utilization report; (e) authorization for payroll agent; (f) certified payroll; (g) evidence that MBE/WBE contractor associations have been informed of the P-adSite Work via written notice and hearings; and (h) evidence of compliance with job creation/job retention requirements. Failure to submit such documentation on a timely basis, or a determination by the City's monitoring staff, upon analysis of the documentation, that Grantee is not complying with its obligations under this covenant SIXTH, shall, upon the delivery of written notice to Grantee, be deemed an Event of Default. Upon the occurrence of any such Event of Default, in addition to any other remedies provided in this Deed, the City may: (w) issue a written demand to Grantee to halt construction of the P-adSite Work or (x) seek any other remedies against Grantee available at law or in equity.

SEVENTH: Grantee agrees, and shall contractually obligate each Employer to agree, that during the construction of the P-adSite Work, Grantee and each Employer shall comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago as specified in Section 2-92-330 of the Municipal Code of Chicago (at least fifty percent); provided, however, that doing so does not violate a collective bargaining agreement of Grantee or an Employer and that in addition to complying with this percentage, Grantee and each Employer shall be required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions.

a) Grantee and the Employers may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 of the Municipal Code of Chicago in accordance with standards and procedures developed by the chief procurement officer of the City of Chicago.

b) "Actual residents of the City of Chicago" shall mean persons domiciled within the City of Chicago. The domicile is an individual's one and only true, fixed and permanent home and principal establishment.

c) Grantee and the Employers shall provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the construction of PadSite Work. Grantee and the Employers shall maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

d) Grantee and the Employers shall submit weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) to the Department in triplicate, which shall identify clearly the actual residence of every employee on

each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that Grantee or Employer hired the employee should be written in after the employee's name.

e) Grantee and the Employers shall provide full access to their employment records to the chief procurement officer, the Department, the Superintendent of the Chicago Police Department, the inspector general, or any duly authorized representative thereof. Grantee and the Employers shall maintain all relevant personnel data and records for a period of at least three (3) years after the date of the City's "Certificate of Completion", which Certificate of Completion shall be in recordable form, and shall, upon recording, constitute a conclusive determination of satisfaction and termination of the covenant numbered FIRST.

f) At the direction of the Department, Grantee and the Employers shall provide affidavits and other supporting documentation to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

g) Good faith efforts on the part of Grantee and the Employers to provide work for actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the chief procurement officer) shall not suffice to replace the actual, verified achievement of the requirements of this covenant SEVENTH concerning the worker hours performed by actual Chicago residents.

h) If the City determines that Grantee or an Employer failed to ensure the fulfillment of the requirements of this covenant SEVENTH concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this covenant SEVENTH. The parties agree that 1/20 of 1 percent (.05%) of the aggregate hard construction costs as set forth in an Owner's Sworn Statement acceptable to the Department in its sole discretion shall be surrendered by Grantee and for the Employers to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly shall result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Grantee and/or the other Employers or employees to prosecution.

(i) Nothing herein provided shall be construed to be a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Deed.

(j) Grantee shall cause or require the provisions of this covenant SEVENTH to be included in all construction contracts and subcontracts related to the construction of the P-adSite Work.

EIGHTH: Following the commencement of retail food sales at a restaurant developed on the P-a4Property, the Grantee shall submit a request for a return of the Performance Deposit (in the amount of Eight Thousand Two Hundred Fifty Dollars (\$8,250)), and the City shall return the Performance Deposit within ninety (90) days of receiving such request.

NINTH: The Grantee must supply a clarification to the existing Phase I Environmental Site Assessment Report specifying that the "Subject Property" of the report includes the PIN Number and legal description of the Property (conveyed pursuant to this deed). The Developer must conduct a Phase II Environmental Site Assessment on the Property to assess soil and soil gas for the constituent lists specified in 35 Illinois Administrative Code Section 740, Appendix A, including vapor migration and indoor inhalation issues. The City's Department of Fleet and Facility Management ("DFFM") shall have the right to review and approve the Scope of Work for the assessment before it is performed, and shall reserve the right to require additional assessments depending on the results of the initial assessment. If contaminants are identified in exceedance

of the standards of 35 Illinois Administrative Code Section 742.3025, the contaminants must be properly removed or remediated before redevelopment and occupancy. The City must be named in a reliance letter for all assessment reports produced concerning the Property. If Underground Storage Tanks (USTs) are discovered on the Property during development, the Grantee must remove the USTs and close any leaking underground storage tank incidents in accordance with Illinois Office of the State Fire Marshal and Illinois Environmental Protection Agency requirements before occupancy. Upon the completion of the requirements in this covenant, the Grantee shall request a review and inspection by DFFM. DFFM shall provide the Grantee with either a certificate of release of this covenant, or a written statement indicating how the Grantee have failed to complete the covenant requirements, and what measures or acts are necessary, in the sole reasonable opinion of DFFM, for the Grantee to take or perform in order to obtain the certificate of release of this covenant numbered NINTH.

The covenant numbered FIRST shall terminate on the date of the City's Certificate of Completion. The covenant numbered SECOND shall terminate on June 30, 2026. The covenants numbered SIXTH and SEVENTH shall terminate on the date the City issues a letter stating that the Grantee has satisfied the requirements of such covenants (either by complying with such covenants or paying any amounts owed to the City as a result of non-compliance). The covenant numbered EIGHTH shall terminate on the date the City returns the Performance Deposit to the Grantee. The covenant numbered NINTH shall terminate on the date DFFM issues its certificate of release.

The covenants numbered THIRD, FOURTH and FIFTH shall have no limitation as to time.

If Grantee fails to comply with any of the foregoing covenants and conditions, the City may exercise any and all remedies available to it at law or in equity, including the right to re-enter and take possession of the Property, terminate the estate conveyed to Grantee, record the Grantee's reconveyance deed, and revest title to the Property in the City, and such right, title and interest of Grantee in and to the Property shall revert to the City; provided, however, the City's right of reverter shall be limited by, and shall not defeat,

render invalid, or limit in any way: (i) the lien of any mortgage authorized by the Department; or (ii) any lease to a fast food restaurant in effect at the time of such reversion, provided that the lessee has been approved by the Department. If title to the Property reverts in the City pursuant to the right of reverter, the Grantee shall be responsible for all real estate taxes and assessments which accrued during the period the Property was owned by the Grantee, and shall cause the release of all liens or encumbrances placed on the Property (except those permitted by the Department) during the period of time the Property was owned by the Grantee. The Grantee will cooperate with the City to ensure that if the City records the reconveyance deed, such recording is effective for purposes of transferring title to the Property to the City, subject only to those title exceptions that were on title as of the date and time that the City conveyed the Property to the Grantee and utility easements. Notwithstanding the foregoing, with respect to the Grantee's violation, breach or failure to comply with the covenant numbered SIXTH or SEVENTH, the City may elect not to exercise its Right of Reverter and instead require the Grantee to pay the City money damages, within ninety (90) days of the default, in an amount determined by the City in accordance with covenant SIXTH and/or SEVENTH, as applicable.

SECTION 3. The Commissioner and the Managing Deputy Commissioner of the Department are each authorized to execute any ancillary closing documents on behalf of the City.

SECTION 4. The transfer of title of the Property from the City to the Developer must close on or before the date that is sixty (60) days following the date on which this ordinance is published in the Journal (the "Outside Closing Date"), unless the Commissioner in his sole discretion extends the Outside Closing Date.

This ordinance shall be null and void with respect to any portion of the Property that has not yet been transferred to the Developer by the Outside Closing Date, as may be extended.

SECTION 5. 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 6. All ordinances, resolutions, motions or orders inconsistent with this ordinance are hereby repealed to the extent of such conflict.

SECTION 7. This ordinance shall take effect upon its passage and approval.

EXHIBIT A

Legal Description

(Subject to Final Title Commitment and Survey)

[To come]

Address: 147 S. Western Avenue (a/k/a 2348-52 West Adams Street)
Chicago, Illinois 60612

Property Index Number: 17-18-106-007-0000

JOSEPH A. MOORE

Alderman, 49th Ward, 7356 North Greenview Avenue Chicago, Illinois 60626 telephone 773-338-5796 ward49@cityofchicago.org www.ward49.com

CITY COUNCIL

CITY OF CHICAGO COUNCIL CHAMBER

City Hall, Room 200 121 North LaSalle Street Chicago, Illinois 60602 Telephone 312-744-3067

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June 22, 2016

To the President and Members of the City Council:

Your Committee on Housing and Real Estate, for which a meeting was held on June 21, 2016, having had under consideration .the ordinance introduced by Mayor Rahm Emanuel on May 18, 2016, this being negotiated sale of City-owned property at 147 S. Western Avenue, begs leave to recommend that Your Honorable Body Approve said substitute ordinance transmitted herewith.

This recommendation was concurred in by a voice vote of all committee members present with no dissenting votes.

**Respectfully submitted,
seph A. Moore, Chairman tee on Housing andKeal Estate**

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