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Legislation Details (With Text)

File #: O2014-5825
Type: Ordinance
File created: 7/30/2014
Status: Passed
In control: City Council
Final action: 9/10/2014
Title: License agreement with Village of Elmwood Park for use of City-owned property at 4201 N Oak Park Ave
Sponsors: Emanuel, Rahm
Indexes: License
Attachments: 1. O2014-5825.pdf

Date	Ver.	Action By	Action	Result
9/10/2014	1	City Council	Passed	Pass
9/3/2014	1	Committee on Housing and Real Estate	Recommended to Pass	Pass
7/30/2014	1	City Council	Referred	

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL MAYOR

July 30, 2014

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

Ladies and Gentlemen:

At the request of the Commissioner of Fleet and Facility Management, I transmit herewith ordinances authorizing the execution of license agreements for occupancy of property.

Your favorable consideration of these ordinances will be appreciated.

Mayor

Very truly yours,

ORDINANCE BE IT ORDAINED BY THE CITY

COUNCIL OF THE CITY OF CHICAGO:

SECTION 1: On behalf of the City of Chicago as licensor, the Commissioner of the Department of Fleet and Facility Management is authorized to execute a License Agreement with the Village of Elmwood Park, as licensee, governing the Village of Elmwood Park's use of City-owned property located at 4201 North Oak Park Avenue; such License Agreement to be approved by the Commissioner of the Department of Streets and Sanitation and approved as to form and legality by the Corporation Counsel in substantially the following form:

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2014 (the "Commencement Date"), by and between the **CITY OF CHICAGO, an Illinois Municipal Corporation and Home Rule of Government (the "City")** and the **VILLAGE OF ELMWOOD PARK, Illinois municipal corporation and home rule unit of government (the "Village")**.

RECITALS

WHEREAS, the City owns the real property located at 4201 North Oak Park Avenue, Chicago, Illinois; and

WHEREAS, the 4201 North Oak Park Avenue property is vacant land utilized by the City's Department of Streets and Sanitations for salt storage and related municipal operations; and

WHEREAS, the Village requires access to vacant land for the placement of salt for use by the Village's Public Works Department during snow events; and

WHEREAS, the Village does not have access to vacant land near the Village's operations from which to store salt; and

WHEREAS, the 4201 North Oak Park Avenue property has sufficient spatial capacity to allow the Village to store the Village's salt without interfering with the City's municipal operations on the 4201 North Oak Park Avenue property; and

WHEREAS, the Village has requested access to a portion of the 4201 North Oak Park Avenue property, as delineated in Exhibit A, attached hereto and made a part hereof, for the placement, storage, and periodic removal of salt by Village's Public Works Department and the City has agreed to grant the Village such access upon the terms and conditions set forth herein; and

WHEREAS, the proposed access will help the Village streamline the Village's snow preparedness, and

shall improve pedestrian safety and traffic congestion during the snow season along multiple streets in the Village, including, but not limited to, major streets shared between the City and the Village; and

WHEREAS, the Illinois Intergovernmental Cooperation Act (5 ILCS 220 et seq.) authorizes municipalities and other branches of government to collaborate jointly in the effective delivery of public services; and

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

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SECTION 1. GRANT

1.1 Grant. Upon the terms and conditions hereinafter specified, the City hereby provides the Village the right to use and occupy the following described premises situated in the City of Chicago, County of Cook, State of Illinois, to wit:

Approximately 12,573 square feet of vacant land located at 4201 North Oak Park Avenue, Chicago, Cook County, Illinois as delineated on Exhibit A attached hereto and made a part hereof (the "Premises" - part of PIN 13-18-409-081).

This Agreement creates a license only and the Village acknowledges and agrees that the Village shall not hold or claim at any time an interest or estate of any kind whatsoever in the Premises by virtue of this Agreement or the Licensee's use of the Premises.

SECTION 2. TERM

2.1 Term. The term of this Agreement (the "Term") shall begin on the Commencement Date and shall end on December 31, 2017, unless sooner terminated, as set forth in this Agreement.

SECTION 3. RENT, TAXES, AND UTILITIES

1 Rent. The Village shall pay rent for access and use of the Premises in the amount of:

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

2 Taxes. The Village acknowledges that Premises are exempt from leasehold, real estate, and other property taxes. The Village shall pay when due any leasehold, real estate, and other property taxes assessed or levied on the Premises (including any interest and penalties) where attributable to the Village's use of the Premises. The Village shall pay such amounts and the Village shall provide City with proof of such payment within ten (10) days of such payment. The Village further acknowledges that real estate taxes are one (1) year in arrears in Cook County and that as a result the Village shall be responsible for satisfaction of leasehold, real estate, and other property taxes assessed or levied on the Premises (including any interest and

penalties) on account of the Village's use for at least one year after the Village vacates the Premises. The Village failure to pay any such taxes shall constitute a default under this Agreement. Notwithstanding the foregoing, nothing herein shall preclude the Village from contesting any charge or tax levied against the Premises. The failure of the Village to pay such taxes during the pendency of the contest shall not constitute a default under this Agreement. The Village's tax responsibilities under this section shall survive the expiration, cancellation, or termination of this Agreement.

3 Utilities. The Village shall pay when due all charges, if any, for utility services used in or supplied to the Premises for the Village's benefit.

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3.4 Accord and Satisfaction. No payment by the Village or receipt by the City of a lesser amount than any amounts due hereunder shall be deemed to be other than on account of the amount due, and no endorsement of statement or any check or any letter accompanying any check or payment of rent shall be deemed an accord and satisfaction. The City may accept such check or payment without prejudice as to the City's right to recover the balance of such installment or payment to pursue any other remedies available to the City.

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

1 Covenant of Quiet Enjoyment. The City covenants and agrees that the Village, upon paying the rent and upon observing and keeping the covenants, agreements, and conditions of this Agreement on its part to be kept, observed, and performed, shall lawfully and quietly hold, occupy, and enjoy the Premises (subject to the provisions of this Agreement) during the Term without hindrance or molestation by the City or by any person or persons claiming under the City.

2 Right of Access. The City shall have the right of unrestricted access to the entire 4201 North Oak Park Avenue property and the Premises in order to further any possible future development of the Premises. The City shall schedule any required entry to the Premises so as to minimize any interference with the Village's use of Premises.

3 Use of the Premises. The Village covenants not to do or suffer any waste or damage, comply in all respects with the laws, ordinances, orders, rules, regulations, and requirements of all federal, state and municipal governmental departments (collectively the "Laws") which may be applicable to the Premises or to the use or manner of use of the Premises. The Village shall not use the Premises in a manner that would violate any Laws. Any activities on the Premises must be limited to the Village's placement, storage, and periodic removal of salt (the "Use"). The Village shall also have access through the 4201 North Oak Park Avenue property in order to gain access to the Premises. The Village agrees that in utilizing the Premises, the Village shall not discriminate against any member of the public because of race, creed, color, sexual orientation, age, political perspective, immigration status, or national origin. The Village shall not charge a fee for Use of the Premises.

4 Alterations and Additions. The Village may not make any alterations, additions, and improvements to the Premises, without the express written consent of the Commissioner of the Department of Fleet and Facility Management.

SECTION 5. ASSIGNMENT, SUB AGREEMENT, AND LIENS

5.1 Assignment and Sublease. The Village shall not assign this Agreement in whole or in part, or sublet the Premises or any part thereof without the express written consent of the Commissioner of the Department of Fleet and Facility Management in each instance.

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5.2 Village's Covenant against Liens. The Village, the Village's contractors, or the Village's subcontractors, shall not cause or permit any lien or encumbrance, whether created by act of the Village (or the Village's contractors or subcontractors), operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Premises. All liens and encumbrances created by the Village shall attach to the Village's interest only.

SECTION 6. INSURANCE AND INDEMNIFICATION

6.1 Insurance. The Village shall procure and maintain, or cause the Village's contractors, subcontractors or consultants that are undertaking the Use to procure and maintain, at the Village's sole expense (or the expense of its contractors or subcontractors as applicable), during the entire term of this Agreement, the types and amounts of insurance set forth below with insurance companies authorized to do business in the State of Illinois, covering all Work under this Agreement, whether performed by or on behalf of the Village.

a) Worker's Compensation and Employer's Liability Insurance. The Village and its contractors and subcontractors shall procure and maintain Worker's Compensation Insurance, as prescribed by applicable law, covering all employees who are to provide a service under this Agreement, and Employer's Liability Insurance with limits of not less than \$100,000 each accident or illness.

b) Commercial General Liability Insurance (Primary and Umbrella). The Village and its contractors and subcontractors shall procure and maintain 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; provided, however, subcontractors performing work in connection with this Agreement may maintain limits of \$1,000,000 if the subcontract amount is less than \$100,000. Coverage shall include, at a minimum, all premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (with -no limitation endorsement). The City of Chicago shall be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Activity.

c) Automobile Liability Insurance (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with the Activity, the Village and its contractors and subcontractors shall procure and maintain Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage; provided, however, subcontractors performing work in connection with this Agreement may maintain limits of \$1,000,000 if the subcontract amount is less than \$100,000. The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

The Village shall deliver, or cause its contractors or subcontractors to deliver, to the City certificates of

insurance required hereunder. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set

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forth herein. The failure of the City to obtain certificates or other evidence of insurance from the Village (or its contractors or subcontractors as applicable) shall not be deemed to be a waiver by the City of the insurance requirements set forth herein. The Village shall advise all insurers of the insurance requirements set forth herein and the nature of its use of the Premises. Nonconforming insurance, or failure to submit a Certificate of Insurance evidencing such coverages, shall not relieve the Village of the obligation to provide insurance as specified herein. The City may terminate this Agreement for non-fulfillment of the insurance conditions, and retains the right to stop work until proper evidence of insurance is provided.

The Village (or its contractors or subcontractors as applicable) shall be responsible for any and all deductibles or self-insured retentions. The Village agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, and representatives. The Village expressly understands and agrees that any coverages and limits furnished by it (or its contractors or subcontractors as applicable) shall in no way limit the Village's liabilities and responsibilities specified in this Agreement or by law. The Village expressly understands and agrees that its insurance (or that of its contractors or subcontractors as applicable) is primary and any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by the Village (or its contractors or subcontractors as applicable) under this Agreement. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

The Village shall require all contractors and subcontractors to maintain the above-described coverage, or the Village may provide such coverage for its contractors and subcontractors. If the Village or any contractor or subcontractor wants additional coverage, such party shall be responsible for the acquisition and cost of such additional protection. The City shall have no responsibility to provide insurance or security for the Premises, material, supplies, or equipment to be used by the Village or any of its contractors or subcontractors in connection with the Activity.

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

6.2 Indemnification. The Village shall indemnify, defend, and hold the City harmless against all liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, costs, damages, and expenses (including reasonable attorney's fees, expenses, and court costs), and loss or damage to personal property, whether such claim is related to or arises from personal injury, property damage, or property loss which may be expended by or accrue against, be charged to, or be recovered from the City or the Village by reason of the Village's performance of or failure to perform any of the Village's obligations under this Agreement, or the Village's negligent acts or failure to act, or resulting from the acts or failure to act of the Village's or any of the Village's contractors, respective officers, directors, agents, employees, or invitees (the "Agents").

SECTION 7. CONFLICT OF INTEREST AND GOVERNMENTAL ETHICS

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

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

SECTION 8. HOLDING OVER

8.1 Holding Over. Any holding over by the Village shall be construed to be a month to month license beginning on January 1, 2018 (the "Holding Over") and the rent shall be the same as listed in Section 3.1 of this Agreement. During such Holding Over all other provisions of this Agreement shall remain in full force and effect.

SECTION 9. MISCELLANEOUS

9.1 Notice. All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other shall be in writing. All notices, demands and requests by the Village to the City shall be delivered by national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid addressed to the City as follows:

City of Chicago
Department of Fleet and Facility Management Office of
Real Estate Management 30 North LaSalle Street - Room
300 Chicago, Illinois 60602

or at such other place as the City may from time to time designate by written notice to the Village. All notices, demands, and requests by the City to the Village shall be delivered by a national overnight courier or shall be sent by United States registered or certified mail, return receipt requested, postage prepaid, addressed to the Village as follows:

Village Manager Village of Elmwood Park
11 Conli Parkway Elmwood Park, Illinois

60707

or at such other place as the Village may from time to time designate by written notice to the City. Any notice, demand or request which shall be served upon the Village by the City, or upon the City by the Village, in the manner aforesaid, shall be deemed to be sufficiently served or given for all purposes hereunder at the time such notice, demand or request shall be mailed.

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

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

4 Entire Agreement. All preliminary and contemporaneous negotiations are merged into and incorporated in this Agreement. This Agreement contains the entire agreement between the parties and shall not be modified or amended in any manner, except by an instrument in writing executed by the parties hereto.

5 Captions and Section Numbers. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections of this Agreement, nor in any way affect this Agreement.

6 Binding Effect of Agreement. The covenants, agreements, and obligations contained in this Agreement shall extend to, bind, and inure to the benefit of the parties hereto and their legal representatives, heirs, successors, and assigns.

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

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

9 Authorization to Execute Agreement. The parties executing this Agreement hereby represent and warrant that they are the duly authorized and acting representatives of the City and the Village respectively and that by their execution of this Agreement, it became the binding obligation of the City and the Village respectively, subject to no contingencies or conditions except as specifically provided herein.

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10 Termination of Agreement. The City and the Village shall have the right to terminate this Agreement for any reason without prepayment or penalty by providing sixty (60) days prior written notice at any time after the Commencement Date.

11 Force Majeure. When a period of time is provided in this Agreement for either party to do or perform any act or thing, the party shall not be liable or responsible for any delays due to strikes, lockouts, casualties, acts of God, wars, governmental regulation or control, and other causes beyond the reasonable control of the party, and in any such event the time period shall be extended for the amount of time the party is

so delayed.

12 Amendments. From time to time, the parties hereto may administratively amend this Agreement with respect to any provisions reasonably related to the Village's use of the Premises and/or the City's administration of the Agreement including, but not limited to, expansion, reduction, or relocation of the Premises. Provided, however, that such amendment(s) shall not serve to extend the Agreement term hereof nor serve to otherwise materially alter the essential provisions contained herein. Such amendment(s) shall be in writing, shall establish the factual background necessitating such alteration, shall set forth the terms and conditions of such modification, and shall be duly executed by both the City and the Village. Such amendment(s) shall only take effect upon execution by both parties. Upon execution, such amendment(s) shall become a part of this Agreement and all other provisions of this Agreement shall otherwise remain in full force and effect.

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

SECTION 10. ADDITIONAL RESPONSIBILITIES OF THE VILLAGE

1 Condition upon Termination. Upon the termination of this Agreement, the Village shall surrender the Premises to the City in a comparable condition to the condition of the Premises as of the Commencement Date, with normal wear and tear excepted.

2 No Representations or Warranties; Release of City Parties. The City makes no warranties or representations, express or implied, of any kind, as to the structural, physical or environmental condition of the Premises or the suitability of the Premises for any purpose whatsoever. The Village agrees to enter upon the Premises in their "as is," "where is" and "with all faults" condition and at the Village's and its Agent's own risk. The Village, on behalf of itself and its Agents, acknowledges that it 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 any of the City Parties with respect thereto. The Village, on behalf of itself and its Agents, hereby releases, relinquishes and forever discharges the City from and against any and all claims that the Village or any of its Agents now have or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, based upon, arising out of or in any way connected with, directly or

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indirectly, (a) the structural, physical or environmental condition of the Property, including, without limitation, the presence or suspected presence of hazardous substances in, on, under or about the Premises, (b) the condition of title to the Premises, including, without limitation, any easements, encroachments, covenants, restrictions of record and not shown of record, and any other title defects; and (c) any entry upon or use of the Premises by or on behalf of the Village or its Agents.

3 Maintenance. The Village shall keep the Premises clean and free of debris. The Village acknowledges that the City shall not have any maintenance or custodial obligations with respect to the Premises or with respect to the Village's use of the Premises.

4 Illegal Activity. The Village, or any of its agents and employees, shall not perform or permit any

practice that is injurious to the Premises or increases the rate of any applicable insurance on the Premises.

5 Hazardous Materials. The Village shall keep out of Premises materials which cause a fire hazard or safety hazard. The Village shall not destroy, deface, damage, impair, nor remove any part of the Premises or facilities, equipment or appurtenances thereto.

6 Alcohol and Drugs. The Village agrees that no alcoholic beverages of any kind or illegal drugs be sold, given away, or consumed on the Premises by anyone acting through or on behalf of the Village.

7 Security. The Village shall be responsible for properly securing and safeguarding the Village's salt, the Village's equipment, other vehicles, or materials placed on the Premises under this Agreement by the Village. The Village acknowledges that the City shall not have any security responsibilities relative to the Village's salt, the Village's equipment, other vehicles, or materials placed on the Premises under this Agreement by the Village.

8 Snow Removal. The Village acknowledges that the City shall not have any snow removal responsibilities with respect to the Premise or with respect to the 4201 North Oak Park Avenue property.

9 No Substitute for Required Permitting. The Village must secure all permits and approvals, if any, that may be required to undertake the Use. The Village understands that this Agreement shall not act as a substitute for any other permitting or approvals that may be required to undertake the Use.

10 Vandalism and Repairs. The Village shall be responsible for any damage to the Premises or the 4201 North Oak Park Avenue property caused by all acts and omissions, including, but not limited to, vandalism and/or negligence of the Village and its Agents.

11 Usage Restrictions. The Village shall not charge a fee for use of the Premises. The Village shall not create excessive noise, disruptions, or otherwise interfere or conflict with the residential, commercial, and educational nature of the adjacent neighborhood. The Village shall coordinate any access and operational issues with the City's Department of Streets and

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Sanitation. The Village shall not interfere with any of the operations of the City's Department of Streets and Sanitation. The Premises shall not be used for any religious or political purposes. The Village shall place protective tarps over any salt placed on the Premises in order to protect the adjoining areas and neighborhood from salt exposure. From time to time the City may reasonably require that the Village relocate the Village's operations to other sections of the 4201 North Oak Park Avenue property.

12 No Other Rights. This Agreement does not give the Village any other right with respect to the Premises or the 4201 North Oak Park Avenue property. Any rights not specifically granted to the Village by and through this Agreement are reserved exclusively to the City. Execution of this Agreement does not obligate the City in any manner and the City shall not undertake any additional duties or services.

13 Future Site Development. The Village acknowledges that the City's Department of Planning and Development and/or its successor department(s) shall actively market the Premises and the 4201 North Oak Park Avenue property for future development. The Village understands that the development of the Premises and the 4201 North Oak Park Avenue property is critical to the continued economic vibrancy of the area. In the event of any disposition of the Premises or the 4201 North Oak Park Avenue property, the Village's sole

remedy is to vacate the Premises. In the event of the City's sale of the Premises or the 4201 North Oak Park Avenue property, the City shall not be under any obligation to provide the Village with alternative locations for the Village's operations.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the Commencement Date.

CITY:

CITY OF CHICAGO,

an Illinois Municipal Corporation and Home Rule Unit of Government

DEPARTMENT OF FLEET AND FACILITY MANAGEMENT

Commissioner

DEPARTMENT OF STREETS AND SANITATION

Commissioner

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

Deputy Corporation Counsel Real Estate Division

VILLAGE:

VILLAGE OF ELMWOOD PARK,

an Illinois Municipal Corporation and Home Rule Unit of Government

By:

Name: Its:

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EXHIBIT A

**4201 North Oak Park Avenue Village of
Elmwood Park Agreement No. 20320**

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