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Legislation Details (With Text)

File #: O2015-2035
Type: Ordinance
File created: 3/18/2015
Status: Passed
In control: City Council
Final action: 4/15/2015
Title: Easement agreement with The Ozinga Foundation, Inc. for establishment of pedestrian path along western edge of S Dearborn St
Sponsors: Emanuel, Rahm
Indexes: Easement
Attachments: 1. O2015-2035.pdf

Date	Ver.	Action By	Action	Result
4/15/2015	1	City Council	Passed	Pass
4/9/2015	1	Committee on Housing and Real Estate	Recommended to Pass	Pass
3/18/2015	1	City Council	Referred	

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OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

March 18,2015

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

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance authorizing the execution of an easement agreement with the Ozinga Foundation.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

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, pursuant to an ordinance passed by the City Council of the City of Chicago on October 30, 1987, and published in the Journal of Proceedings of same date at pages 5786, 5788-5790, and as recorded in the Office of the Cook County Recorder on January 8, 1988, as Document No. 88-012180, the City vacated a portion of South Dearborn Street ("Vacated South Dearborn Street; and

WHEREAS, City is the owner of the westernmost six (6) feet (more or less) of the former right-of-way ("ROW") from the railroad viaduct along South Dearborn Street going north to 15th street. Additionally, City retains the entire ROW under the railroad viaduct above South Dearborn Street; and

WHEREAS, City, by and through its Department of Transportation ("CDOT"), is seeking to create a formal 13.5 foot wide pedestrian path (the "Pedestrian Path") along the western edge of South Dearborn Street between 15th Street to the North and 16th Street to the South, including the area under the railroad viaduct, and across that portion of the Vacated South Dearborn Street (the "Pedestrian Path Easement Area") as legally described on the Plat of Easement ("Plat") attached hereto as Exhibit A and made a part hereof; and

WHEREAS, The Ozinga Foundation, Inc., an Illinois not-for-profit corporation ("Ozinga") owns the fee simple title to the real estate located within the Pedestrian Path Easement Area; and

WHEREAS, City is seeking a perpetual, non-exclusive, Pedestrian Path easement (the "Pedestrian Path Easement") along the western edge of Dearborn Street between 15th and 16th Streets over the Pedestrian Path Easement Area; and

WHEREAS, Ozinga agrees to grant to the City, at no cost to the City, and the City accepts the Pedestrian Path Easement upon the terms and conditions set forth in a Pedestrian Path Easement Agreement ("Pedestrian Path Easement Agreement") by and between Ozinga and City, substantially in the form attached hereto as Exhibit B and made a part hereof; 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.

and after recording return to:
Karen Bielarz
Senior Counsel
City of Chicago
Department of Law
Real Estate and Land Use
121 N. LaSalle Street, Room 600
Chicago, Illinois 60602

PEDESTRIAN PATH EASEMENT AGREEMENT

This Pedestrian Path Easement Agreement ("Agreement") is made as of this **day of**, **2015, by and between The Ozinga Foundation, Inc., an Illinois** not-for-profit corporation, having an address of 19001 Old LaGrange Road, Suite 300, Mokena, Illinois, 60448, ("Grantor"), and the City of Chicago, a municipal corporation and a home rule government ("City"), acting by and through its Department of Transportation ("CDOT"), having its principal office at 30 North LaSalle Street, Chicago, Illinois 60602 ("Grantee"). The Grantor and Grantee shall collectively be referred to herein from time to time as the "Parties", and individually as a "Party".

RECITALS

WHEREAS, pursuant to an ordinance passed by the City Council of the City of Chicago on October 30, 1987, and published in the Journal of Proceedings of same date at pages 5786, 5788-5790, and as recorded in the Office of the Cook County Recorder on January 8, 1988, as Document No. 88-012180, the City vacated a portion of South Dearborn Street ("Vacated South Dearborn Street"), as legally described on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the Grantee is the owner of the westernmost six (6) feet (more or less) of the former right-of-way ("ROW") from the railroad viaduct along South Dearborn Street going north to 15th street. Additionally, the Grantee retains the entire ROW under the railroad viaduct above South Dearborn Street; and

WHEREAS, the Grantee is seeking to create a formal 13.5 foot wide pedestrian path (the "Pedestrian Path") along the western edge of South Dearborn Street between 15th Street to the North and 16th Street to the South, including the area under the railroad viaduct, and across that portion of the Vacated South Dearborn Street (the "Pedestrian Path Easement Area") as legally described on the Plat of Easement ("Plat") attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the Pedestrian Path will serve the public and, in part, serve the adjacent Daystar School located at 1550 South State Street, Chicago, Illinois; and

WHEREAS, the Grantee is seeking a perpetual, non-exclusive, Pedestrian Path easement

(the "Pedestrian Path Easement") along the western edge of Dearborn Street between 15th and 16th Streets over the Pedestrian Path Easement Area; and

WHEREAS, the Grantor agrees to grant to the Grantee, and Grantee accepts the Pedestrian Path Easement upon the terms and conditions set forth herein and for no other use or purpose.

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

SECTION 1. INCORPORATION OF RECITALS AND EXHIBITS. The recitals set forth above and the exhibits attached hereto constitute an integral part of this Agreement and are incorporated herein by this reference as the agreements of the parties.

SECTION 2. GRANT OF EASEMENT. Grantor, grants to the Grantee, for the benefit of the general public, the Pedestrian Path Easement in perpetuity for access' and for ingress and egress to from and over the Pedestrian Path Easement Area. Notwithstanding the preceding sentence the exercise of such easement rights shall commence on , 2015 (the "Commencement Date").

SECTION 3. AUTHORITY TO GRANT EASEMENT. Grantor represents and warrants to the Grantee that it has good and valid title to the Pedestrian Path Easement Area in fee simple and has the right, without title restriction, to execute and deliver this instrument and any other instrument in connection hereto. The Grantor represents and warrants that (a) its execution, delivery and recording of this Agreement has been duly authorized by all requisite corporation action; (b) it has full power and authority to grant the easement interests conveyed hereby; (c) the easement will benefit the general public for access and for ingress and egress to from and over the Pedestrian Path Easement Area; (d) no consents from any third parties are necessary for this Agreement to be effective; and (e) this Agreement constitutes the legally valid and binding obligation of the Grantor and is enforceable in accordance with its terms. The Grantor acknowledges and agrees that the City is relying upon such representations and warranties in entering into the Agreement.

SECTION 4. Grantor's Retained Rights. Grantee acknowledges that Grantor has the right and ability to develop, sell, transfer, or convey Grantor's real estate located west and/or East of the Pedestrian Path Easement Area, such real estate being legally described on Exhibit D attached hereto and made a part hereof ("Grantor's Real Estate"). Any such development, sale, transfer, or conveyance of Grantor's Real Estate

(collectively, the "Development or Transfer of Grantor's Real Estate") may result in the grant of other easements, uses, licenses, or other property interests (together, the "Other Property Interests"), in the Pedestrian Path Easement Area. Such Other Property Interests shall not interfere or unreasonably restrict the Grantee's Pedestrian Path Easement. Any Other Property Interests resulting in the re-location of the Pedestrian Path and/or Pedestrian Path Easement Area shall not unreasonably restrict the Pedestrian Path and/or Pedestrian Path Easement Area. Grantor shall have the right to temporarily alter the Pedestrian Path Easement for construction of improvements or alterations to the Grantor's Real Estate. Grantor shall provide Grantee with a thirty (30) day prior written request of any such improvements or alterations to the Pedestrian Path Easement for Grantee's review and approval, which approval shall not be unreasonably withheld.

SECTION 5. AUTHORITY TO ACCEPT EASEMENT GRANT. The City represents and warrants that its acceptance of the Pedestrian Path Easement interests granted by, an execution of, this Agreement.

SECTION 6. MAINTENANCE RESPONSIBILITY. Grantee shall have the right to access Grantor's property within the Vacated South Dearborn Street to maintain, repair, and replace, any portion of the Pedestrian Path at the City's expense. In performing maintenance, repair, and replacement work, Grantee shall not unreasonably interfere with the operations of Grantor or Daystar School. Grantee agrees to restore any part of the surface of the real estate that is materially damaged by the constructing and installing of the Pedestrian Path. The Grantee shall maintain the Pedestrian Path in a manner that is safe from hazards.

SECTION 7. PERMITTED USES. The Pedestrian Path Easement interests granted by this Agreement shall permit pedestrian, bicycle, and non-motorized traffic over the Pedestrian Path Easement Area, but shall exclude motorized traffic, except for motorized wheelchairs.

SECTION 8. CORRECTED LEGAL DESCRIPTION. In the event the Grantee determines that the legal description for the Pedestrian Path Easement Area attached hereto as Exhibit C is otherwise defective, the Parties agree to cooperate in amending this Agreement to correct such deficiencies or scrivener's errors.

SECTION 9. NOTICES. Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) electronic communications (email or facsimile); (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

The Ozinga Foundation, Inc.
19001 Old LaGrange Road, Suite
300
Mokena IL 60448 Attn: Barry Voorn

City of Chicago Department of Transportation 30 North LaSalle Street 11th Floor
Chicago, Illinois 60602 Attn: Tony Rainey

Corporation Counsel's Office 121 North LaSalle Street Room 600
Chicago, Illinois 60602 Attn: Real Estate Division

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means, respectively, provided that such electronic dispatch is confirmed as having occurred prior to 5:00 p.m. on a business day. If such dispatch occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received three business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 10. ENTIRE AGREEMENT. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party. This Agreement constitutes the entire agreement between the Parties as to the easement granted herein and supersedes any prior agreements, negotiations, and discussions. This Agreement may not be modified or amended in any manner without the prior written consent of the Parties hereto. No term of this Agreement may be waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party benefited by such term. This Agreement

supersedes and covers all agreements and stipulations between Grantor and Grantee.

SECTION 11. EXHIBITS. All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

SECTION 12. GOVERNING LAW. This Agreement shall be governed by and

construed in accordance with the laws of the State of Illinois.

SECTION 13. HEADINGS. The headings of the various sections and subsections of this Agreement have been inserted for convenience of reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions hereof.

SECTION 14. SEVERABILITY. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof is held invalid, 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.

SECTION 15. SUCCESSORS AND ASSIGNS. The terms, conditions, and covenants of this Agreement shall bind the parties hereto and their respective heirs, executors, administrators, successors, and assigns and shall run with the land. The easement granted hereby shall run with the land and be enforceable by the City, for the benefit of the general public.

SECTION 16. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile signature shall be deemed an original signature.

SECTION 17. AUTHORITY. The parties represent and warrant to each other that they have the full right and lawful authority to enter into this Agreement.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on or as of the date first above written.

GRANTOR:
THE OZINGA FOUNDATION, INC.

an Illinois not-for-profit corporation By:

Print Name:

Its:

GRANTEE:

CITY OF CHICAGO, an Illinois municipal corporation

By:

Commissioner of Transportation

Approved as to form and legality:

By:

Senior Corporation Counsel
STATE OF ILLINOIS)
COUNTY OF COOK)

)SS

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that , 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 acknowledged that as , he signed and delivered the instrument pursuant to authority given by the City as his free and voluntary act and as the free and voluntary act and deed of the City, for the uses and purposes therein set forth.

GIVEN under my notarial seal this day of , 2015.

NOTARY PUBLIC

STATE OF ILLINOIS)
COUNTY OF COOK)

) SS

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 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 acknowledged that as the Commissioner, he signed and delivered the instrument pursuant to authority given by the by the City of Chicago, as his free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

GIVEN under my notarial seal this _____ day of _____, 2015.

NOTARY PUBLIC

EXHIBIT A

LEGAL DESCRIPTION OF VACATED SOUTH DEARBORN STREET

ALL THAT PART OF SOUTH DEARBORN STREET LYING WEST OF THE WEST LINE OF LOTS 16, 17, AND 18; LYING EAST OF THE EAST LINE OF LOTS 43, 44 AND 45; LYING NORTH OF A LINE DRW AN FROM THE SOUTHWEST CORNER OF LOT 16 TO THE SOUTHEAST CORNER OF LOT 45; AND LYING SOUTH OF THE WESTWARDLY EXTENSION OF THE SOUTH LINE OF THE NORTH 5 FEET OF SAID LOT 18, ALL IN WILDER'S SOUTH ADDITION TO CHICAGO IN SECTION 21, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN; SAID PART OF PUBLIC STREET HEREIN VACATED BEING FURHTER DESCRIBED AS THE SOUTH 145 FEET OF THAT PART OF SOUTH DEARBORN STREET LYING NORTH OF WEST 16TH STREET.

EXHIBIT B PLAT OF EASEMENT (Attached)

PLAT OF EASEMENT

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EXHIBIT C

LEGAL DESCRIPTION OF PEDESTRIAN PATH EASEMENT AREA

THE WEST 13.5 FEET OF THAT PART OF SOUTH DEARBORN STREET, AS VACATED BY ORDINANCE PASSED OCTOBER 30, 1987 BY THE CITY COUNCIL OF CHICAGO AND RECORDED IN THE OFFICE OF THE COOK COUNTY RECORDER ON JANUARY 8, 1988 AS DOCUMENT 88-02150, LYING WEST OF THE WEST LINE OF LOTS 16, 17 AND 18, LYING EAST OF THE EAST LINE OF LOTS 43, 44 AND 45; LYING NORTH OF A LINE DRAWN FROM THE SOUTHWEST CORNER OF LOT 16 TO THE SOUTHEAST CORNER OF LOT 45; AND LYING SOUTH OF THE WESTWARDLY EXTENSION OF THE SOUTH LINE OF THE NORTH 5 FEET OF SAID LOT 18, ALL IN WILDER'S SOUTH ADDITION TO CHICAGO RECORDED JUNE 23, 1851 ANTE FIRE IN SECTION 21, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY ILLINOIS.

CONTAINING 1956.0 SQ FT.OR 0.0449ACRES (MORE OR LESS)

EXHIBIT D

LEGAL DESCRIPTION OF GRANTOR'S REAL ESTATE (To Come)