



Office of the City Clerk

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Legislation Text

File #: O2021-4847, Version: 1

ORDINANCE NPG CHI2 OGDEN LLC Acct.
No: 480573 - 1 Permit No: BACP1603110

ORDINANCE FOR GRANT OF PRIVILEGE IN PUBLIC RIGHT OF WAY

WHEREAS, the City of Chicago ("City") is a home rule unit of municipal government pursuant to Article VII, Section 6 (a) of the Illinois Constitution of 1970 and, as such, may exercise any power and perform any function related to its government and affairs; and

WHEREAS, the City Council of the City of Chicago ("City Council") passed an ordinance on May 22, 1991 ("1991 Ordinance"), for a grant of privilege ("Grant of Privilege") in the public way located on North Columbus Drive between East North Water Street and East Illinois Street, located beneath the elevated Columbus Drive bridge structure ("Grant of Privilege Area") for use and occupancy for public parking purposes to Ogden Plaza Garage Company, L.L.C., an Illinois limited liability company ("OPGC"), such 1991 Ordinance appearing on page 1115 of the Journal of Proceedings of the City Council ("Journal"); and

WHEREAS, the City Council passed a second ordinance on February 5, 2003, as appearing in the Journal of such date at pages 103940 - 103947 (the "2003 Renewal Ordinance") renewing OPGC's use and occupancy of the Grant of Privilege Area for a term of ten (10) years ending on February 29, 2013 (the "Expiration Date"); and

WHEREAS, since the Expiration Date, OPGC has continued to use and occupy the Grant of Privilege Area and pay for such use and occupancy pursuant to the terms of the 2003 Renewal Ordinance; and

WHEREAS, OPGC is under contract to sell the adjacent real property to which the Grant of Privilege applies to NPG CHI2 Ogden LLC, a Delaware limited liability company ("NPG"); and

WHEREAS, NPG desires to be issued a new Grant of Privilege for the use and occupancy of the Grant of Privilege Area for a term of ten (10) years; and

WHEREAS, the granting of permission and authority to NPG for the continued use and occupancy of the Grant of Privilege Area is a matter relating to the government and affairs of the City; and

WHEREAS, the City desires to grant and NPG, as grantee, desires to accept a new term of ten (10) years over the Grant of Privilege Area, subject to the terms and conditions hereof (the "2021 Ordinance").

NOW, THEREFORE,

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

SECTION 1. Permission and authority are hereby given and granted to NPG, upon the terms and subject to the conditions of this 2021 Ordinance, to maintain and use, as now constructed, and for all authorized uses, a parking lot as shown on Exhibit A which is attached and incorporated including suitable paving, sewers and drainage, lighting, water and sprinkling

system, gates and barriers, traffic and security systems and related appurtenances ("Facilities") in the Grant of Privilege Area.

The Grant of Privilege Area and the Facilities shall be maintained, operated, and used for all permitted uses in accordance with the Use of the Public Way Application submitted by NPG and all applicable laws and regulations. NPG shall keep the Grant of Privilege Area and the Facilities in good condition and repair, safe for public travel, free from snow, ice and debris to the satisfaction of the Commissioner of the City's Department of Transportation.

Nothing in this 2021 Ordinance shall be deemed an approval by the City of the design, construction, maintenance, operation, alteration or removal of the Facilities, nor shall anything in this 2021 Ordinance be deemed a waiver of or shall excuse NPG from any requirement of obtaining any required permit, approval or inspection. This ordinance shall be deemed permission and authority to use and occupy the Grant of Privilege Area only.

SECTION 2. The permission and authority herein granted shall commence on the date on which the Commissioner of the Department of Business Affairs and Consumer Protection (the "Commissioner") issues the permit described in Section 7 below (the "Permit Issuance Date") and terminate on the date that is ten (10) years following the Permit Issuance Date. The City shall have no obligation to grant any further renewal authority. NPG shall pay to the City as compensation for the privilege herein granted an amount equal to \$140,540 (the "Annual Grant of Privilege Fee") as described below in this Section 2 for each twelve (12) month period ("Period") during the term of this Grant of Privilege.

As a condition of the Grant of Privilege, NPG shall grant the City and the Chicago Park District (the "Park District") temporary access to NPG-owned real property adjacent to the Grant of Privilege Area for the purpose of repairing and/or replacing the membrane that sits under the Park District's Ogden Plaza, if the City or the Park District, as applicable, is legally required to perform such repair or replacement. The City's and the Park District's use of NPG-owned real property adjacent to the Grant of Privilege Area shall not unreasonably interfere with NPG's use of its property or the Grant of Privilege Area.

NPG shall pay the Annual Grant of Privilege Fee each year on or before sixty (60) days following the end of each Period. For the first Period, the Annual Grant of Privilege Fee is due prior to the City's issuance of a Use of Public Way Permit to NPG. The Annual Grant of Privilege Fee for each Period during the term of this Grant of Privilege shall be adjusted each year after the first Period by the percentage change of the Consumer Price Index for All Urban Consumers, all items, published by the U.S. Department of Labor, Bureau of Labor Statistics, for the Chicago-Naperville-Elgin Area, measured from the December of the preceding calendar year to the December of the then-current calendar year or such similar cost escalator. In the event the Grant of Privilege herein granted is terminated effective as of any day other than the last day of a Period, the Annual Grant of Privilege Fee shall be prorated to the effective date of termination. NPG shall not be entitled to any refund, off-set or credits for amounts paid to the City by OPGC for use of the Grant of Privilege Area.

SECTION 3. The City reserves the right to effect a termination for cause upon violation by NPG of any term or condition of this ordinance, which continues for a period of seven (7) days after written notice to NPG of such violation. In the event the City terminates for cause, NPG shall not be entitled to any compensation.

Prior to termination, or prior to expiration without a renewal having been obtained, NPG shall repair and restore the Grant of Privilege Area to good repair and condition, subject to City inspection and approval, shall remove all personal property from the Grant of Privilege Area, and shall install barriers to prevent vehicular access to the Grant of Privilege Area from the remainder of the Facilities. Upon termination or expiration, NPG shall tender possession of the Grant of Privilege Area and the Facilities in good repair and condition, subject to City inspection and approval. Such restoration, removal, installation of barriers and tender shall be conditions precedent to NPG's right to terminate. Upon such tender and upon acceptance by the City, possession and title to the Facilities shall vest in the City.

SECTION 4. The City retains the right to enter the Grant of Privilege Area for the inspection, maintenance, services, repair, and replacement of the bridge structure, at any time. If NPG's use of the Grant of Privilege Area is interrupted for more than seven (7) days in any month, the City shall give NPG a reduction in the annual compensation due for such year in an amount that is proportional to NPG's loss of use.

SECTION 5. NPG shall indemnify, defend and hold and save the City of Chicago, the Park District, their agents, officials, and employees harmless from any and all claims, liability, cost and expense, including but not limited to, environmental claims, attorney's fees, judgments, costs and damages, arising out of the use, operation, maintenance, repair, replacement, removal or alteration of the Facilities or NPG's use of the Grant of Privilege Area, including but not limited to any claim for nuisance, for improper use of the Grant of Privilege Area, for damage or destruction of property and/or for personal injuries to or deaths of persons. This indemnification shall survive the expiration or termination of the Grant of Privilege, regardless of the reason for such termination.

SECTION 6. NPG must provide and maintain at NPG's own expense, or cause to be provided, during the term of the Grant of Privilege authorized by the 2021 Ordinance and during the time period following the expiration of such term if NPG is required to return and perform any additional work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services and operations related to this 2021 Ordinance.

A. INSURANCE REQUIRED

1) Workers Compensation and Employers Liability (Primary and Umbrella) Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a work, services or operations pursuant to this 2021 Ordinance and Employers Liability coverage with limits of not less than \$1,000,000 each accident, \$1,000,000 disease-policy limit, and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

NPG may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)
Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include but not be limited to, the following: All premises and operations,

products/completed operations (for a minimum of two (2) years following project completion) explosion, collapse, underground, separation of insureds, defense, contractual liability (not to include endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of NPG work, services or operations and completed operations performed on behalf of NPG. Such additional insured coverage must be provided on ISO form CG 2037 10 01 or on an endorsement form at least as broad for ongoing operations and completed operations. The City's additional insured status must apply to liability and defense of suits arising out of NPG's acts or omissions, whether such liability is attributable to the City. The full policy limits and scope of protection also will apply to the City as additional insureds, even if they exceed the City's minimum limits required herein. NPG's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

NPG may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

3) Automobile Liability (Primary and Umbrella)

NPG must maintain Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage. Coverage must include but not be limited to, the following: ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work or devices, both on and off the Grant of Privilege Area including loading and unloading. The City is to be named as an additional insured on a primary, non-contributory basis.

NPG may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

4) Excess/Umbrella

Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$10,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. If a general aggregate limit applies the general aggregate must apply per project/location. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

NPG may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A. 1, A.2, A.3 and A.4 herein.

5) Builders.Risk

When NPG undertakes any construction, including improvements, betterments, and/or repairs, NPG must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, fixtures that are or will be part of the permanent facility/project.

Coverages must include but are not limited to, the following: material stored off-site and in-transit, water including overflow, leakage, sewer backup or seepage, damage to adjoining and existing property, collapse, debris removal and faulty workmanship or materials.

6) Valuable Papers

When any plans, designs, drawings, media, data, specifications, and other documents are produced or used pursuant to the Grant of Privilege authorized by the 2021 Ordinance, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever and must have limits sufficient to pay for the re-creation and reconstruction of such records.

7) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work, services, or operations in connection with the Grant of Privilege authorized by the 2021 Ordinance, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include, but not be limited to, pollution liability if environmental site assessments are conducted. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede start of work pursuant to the Grant of Privilege authorized by the 2021 Ordinance. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

8) Railroad Protective Liability

When any work, services, or operations is to be done adjacent to railroad or transit property, NPG must provide, with respect to the operations that NPG or contractors perform, Railroad Protective Liability Insurance in the name of the railroad or transit entity. The policy must have limits of not less than the requirement of the operating railroad for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

9) Contractors Pollution Liability

When any work, services, or operations performed involves a potential pollution risk that may arise from the operations of NPG relating to the Grant of Privilege authorized by the 2021 Ordinance, Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$2,000,000 per occurrence. Coverage must include but not be limited to completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the project. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City to be named as additional insureds.

B. ADDITIONAL REQUIREMENTS

Evidence of Insurance. NPG must furnish the City, Department of Business Affairs and Consumer Protection, 121 N. LaSalle Street, Room 800, Chicago, IL 60611 Attn: ^ Commissioner, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the effective date of the Grant of Privilege authorized by the 2021 Ordinance, and renewal certificates of insurance and

endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of the Grant of Privilege authorized by the 2021 Ordinance. The receipt of any certificate does not

constitute agreement by the City that the insurance requirements set forth herein have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set forth in the 2021 Ordinance. The failure of the City to obtain, or the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from NPG, its insurance broker(s) and/or insurer(s), will not be construed as a waiver by the City of any of the required insurance provisions. NPG must advise all insurers of the 2021 Ordinance provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect NPG for liabilities which may arise from or relate to the 2021 Ordinance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of NPG to comply with required coverage and terms and conditions outlined herein will not limit NPG's liability or responsibility nor does it relieve NPG of its obligation to provide insurance as specified in the 2021 Ordinance. Nonfulfillment of the insurance conditions may constitute a violation of the Grant of Privilege authorized by the 2021 Ordinance, and the City retains the right to suspend the Grant of Privilege authorized by the 2021 Ordinance until proper evidence of insurance is provided, or the Grant of Privilege authorized by the 2021 Ordinance may be terminated.

Notice of Material Change. Cancellation or Non-Renewal. NPG must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by NPG.

Waiver of Subrogation. NPG hereby waives its rights of subrogation and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to the Grant of Privilege authorized by the 2021 Ordinance. NPG agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City have received a waiver of subrogation endorsement for NPG's insurer(s).

NPG's Insurance Primary. All insurance required of NPG under the 2021 Ordinance must be endorsed to state that NPG's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to NPG's Liabilities. The coverages and limits furnished by NPG in no way limit NPG's liabilities and responsibilities specified within the 2021 Ordinance or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by NPG pursuant to the 2021 Ordinance.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in the 2021 Ordinance or any limitation placed on the indemnity in the 2021 Ordinance given as a matter of law.

Joint Venture or Limited Liability Company. If NPG is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by NPG. If NPG desires additional coverages, NPG will be responsible for the acquisition and cost.

Insurance required of Subcontractors. NPG must name its contractors and subcontractor(s) as named

insureds under NPG's insurance or NPG will require each contractor and subcontractor to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance and Professional Liability Insurance with coverages at least as broad as outlined in Section A, Insurance Required. The limits of coverage will be determined by NPG. NPG must determine if contractors and subcontractors must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. NPG is responsible for ensuring that each contractor and subcontractor has named the City as an additional insured where required and name the City as an additional insured under the Commercial General Liability on ISO form CG 2010 10 01 and CG 2037 10 01 for ongoing operation and completed operations on an endorsement form at least as broad and acceptable to the City. NPG is also responsible for ensuring that each contractor and subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. Failure of the contractors and subcontractors to comply with required coverage and terms and conditions outlined herein will not limit NPG's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the 2021 Ordinance to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

SECTION 7. The permission and authority herein granted shall not be exercised unless and until a permit authorizing it shall have been issued by the Commissioner. Such permit shall be, at all times, subject to NPG's strict compliance with and performance of all the conditions and provisions of this 2021 Ordinance, including the obligation to indemnify, keep and save harmless the City of Chicago, and its agents and employees, and the obligation to provide insurance.

SECTION 8. This ordinance shall take effect and be in force from and after its passage and publication; provided that NPG shall first file a written acceptance of this ordinance with the Department of Business Affairs and Consumer Protection.

Honorable Brendan Reilly Alderman 42nd Ward

Introduced by:

Exhibit A

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Department of Business Affairs and Consumer Protection

Small Business Center - Public Way Use Unit City Hall - 121 N. LaSalle Street, Room 800, Chicago, IL 60602 312-74-GOBIZ/312-744-6249 • (312) 744-1944 (TTY)

<<http://www.cityofchicago.org/bacp>>

10/27/2021

Alderman Brendan Reilly Ward #42 City of
Chicago City Hall, Room 800 121 N. LaSalle
Street Chicago, IL 60602

Re: An ordinance to use and maintain a portion of the public right-of-way for 1 Sub Space(s) for NPG CHI2 OGDEN LLC, adjacent to the premises known as 300 E NORTH WATER ST.

Dear Alderman Brendan Reilly:

The applicant referenced above has requested the use of the public right-of-way for Sub Space(s). An ordinance has been prepared by the Department of Business Affairs and Consumer Protection - Small Business Center - Public Way Use Unit for presentation to the City Council. Because this request was made for properties located in your ward, as approved by you as per the attached, I respectfully request that you introduce the attached ordinance at the next City Council meeting.

If you have any questions regarding this ordinance, please contact Anthony Bertuca at (312) 744-5506.

Department of Business Affairs and Consumer Protection