



Office of the City Clerk

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

Legislation Text

File #: O2022-2355, **Version:** 1

ORDINANCE

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The Commissioner of the Department of Public Health (the "Commissioner") is hereby authorized to execute the agreement substantially in the form attached hereto as Exhibit A (the "Agreement"), and to execute any and all instruments and take such additional actions which the Commissioner determines to be necessary or desirable to implement the objectives of this ordinance and the terms of the Agreement.

SECTION 2. This ordinance shall be effective immediately upon its passage and approval.

RIGHT OF ENTRY AGREEMENT

This RIGHT OF ENTRY AGREEMENT (this "Agreement") is made as of , 2022, by and between the CITY OF CHICAGO, an Illinois municipal corporation (the "City"), acting by and through the Chicago Department of Public Health, and COMMONWEALTH EDISION COMPANY (the "Grantor").

RECITALS

WHEREAS, steel manufacturers, Republic Steel and LTV, disposed of steel-manufacturing waste, including steel-making slag and arc furnace dust for many years at a site located southwest of the East 126th Place and South Avenue O intersection, Chicago, Illinois ("Schroud Site"), which disposal, upon information and belief, occurred without any engineered controls or protections for human health or the environment, including containment, groundwater monitoring, or access controls (e.g., fencing);

WHEREAS, soil and waste at the Schroud Site and in nearby Indian Creek are contaminated with lead, chromium, and other inorganic compounds;

WHEREAS, the City has received community requests to prevent trespassers from accessing the Schroud Site to reduce health risks from the Schroud Site;

WHEREAS, the Grantor has fee ownership in certain parcels of property located near the southern boundary of the Schroud Site, among others, consisting of Property Index Numbers 26-30 415-005, 26-30-416-008, 26-31-204-010, 26-31-204-012, 26-31-204-015, 26-31-204-021, 26-31 204-024, 26-31-204-026, and 26-31-205-019 (the "Property"), and, pursuant to a title report prepared for U.S. EPA by Toeroek Associates, Inc., may have an interest in other parcels near the southern boundary of the Schroud Site, consisting of Property Index Numbers 26-31 -204-013, 26-31-204-016, 26-31-204-017, 26-31-204-022, 26-31-204-023, 26-31-204-028, 26-31-204-032 (QI), 26-31-204-035 (RI), 26-31-205-018 (the "Parcels"), each as shown on the map attached hereto as Exhibit A;

WHEREAS, the City has requested access to the Property and the Parcels solely as needed to: (i) install barriers along or near the southern boundary of the Schroud Site (as generally shown on Exhibit A) to prevent unauthorized entry to the Schroud Site; and (ii) operate and maintain the barriers, as more specifically described on Exhibit B-1 attached hereto, as amended or supplemented from time to time (the "City Work"), and the Grantor has agreed to grant such access, to the extent of its ownership or other property interest, on the terms and conditions set forth herein; and

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 City and Grantor agree as follows:

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1. Incorporation of Recitals. The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the City and the Grantor.

2. Grant. Subject to the terms and conditions set forth herein, the Grantor hereby grants to the City a right of entry to the Property, and to the Parcels (to the extent of Grantor's ownership interest therein), for the sole purpose of allowing the City to perform the City Work. The right of entry granted hereunder extends to, and the City shall be responsible for, its agents, employees, contractors, subcontractors and consultants, and persons in their respective control, including, without limitation, Industrial Fence, Inc. and its subcontractors ("City Parties").

3. Term. The term of this Agreement (the "Term") shall begin on the last date on which this Agreement is executed by both the City and Grantor ("Effective Date"). The Term for construction and installation of the barriers shall end upon completion of the construction and installation of the barriers, not to exceed one hundred and twenty (120) days from the Effective Date. The Term for operation and maintenance of the barriers shall continue for a period of three (3) years or until the Schroud Site is remediated and/or no longer presents a risk to public health, whichever is earlier, and may be extended by written agreement of the City and Grantor on request of either party. The City and the Grantor shall have the right to terminate this Agreement for any reason at any time without penalty by providing the other party with 30 business days' prior written notice.

4. Cost. The City shall be responsible for all costs and expenses associated with the City Work. The City acknowledges that the Grantor shall not assume any other costs for the City Work or for the City's access to the Property and the Parcels.

5. Standards for Conducting City Work / Damage to Property and Parcels. The City must keep the Property and the Parcels in a safe condition at all times. The City is responsible for all damage to the Property or the Parcels caused by the City Parties, and conduct of the City Work shall be subject to the City's sole cost, risk, and expense. The City will require the City Parties to reasonably cooperate with the Grantor in scheduling and staging performance of the City Work and to conduct same in a manner that does not unreasonably interfere with the Grantor's business operations at the Property or Parcels or with Grantor's access to the power transmission lines and towers at or near the Property or Parcels. The City acknowledges that the Grantor's need to access and maintain the power transmission lines and towers at/near the Property and Parcels will continue during the Term and the City shall make necessary accommodations with the barriers to ensure such access can continue.

6. Use of Consultants, Contractors. The City has retained consultants and contractors, and/or will contract directly with third parties, to undertake the City Work on behalf of the City. The City shall ensure that all of its retained consultants and contractors must be bound by agreement with the City to comply at all times with the terms of this Agreement. Regardless of the use of any of the City's consultants and contractors, the City will remain responsible for the City Work being undertaken in compliance with this Agreement by the City's consultants and contractors.

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7. Compliance with Scope of City Work. The City may not undertake any activities on the Property and the Parcels except the City Work except with the prior, express, written consent of the Grantor.

8. Compliance with Laws. The City, at its sole expense, shall obtain all necessary permits and authority from governmental entities and agencies with jurisdiction with respect to any entry onto the Property and the Parcels or conduct of the City Work and upon request by the Grantor shall provide the Grantor with copies thereof. The City shall comply with all applicable laws and regulations with respect to any entry onto the Property and the Parcels or conduct of the City Work, including all laws relating to protection of human health and the environment.

9. Maintenance. The City acknowledges that the Grantor will not have any maintenance or any other responsibilities for the barriers or equipment on the Property and the Parcels relating to the City's Work.

10. Security. The City Parties shall secure equipment, vehicles, and materials on the Property and the Parcels that are utilized in connection with the City Work during the Term. The City acknowledges that the Grantor shall not have any security responsibilities for the Property and the Parcels with respect to the City's Work during the Term and shall not be responsible for any harm or damage to the barriers or equipment or otherwise relating to the City Work.

11. Acknowledgement. The City acknowledges that the Grantor does not make any warranty, express or implied: as to the condition of the Property and the Parcels and that the Property and the Parcels are accepted by the City in an "as is" condition for the City Work; the City further acknowledges that the Grantor does not make any representation or warranty, express or implied, as to the ownership interest in the Parcels, and this grant of access to the Parcels and the Property is only provided to the extent of the Grantor's interest therein.

12. Completion. Upon completion of the City's Work to construct and install the barriers, the City shall remove all equipment, vehicles or materials placed on the Property and the Parcels by the City Parties, and shall repair all damage to the Property and the Parcels caused by or resulting from the removal of such items therefrom, except that the barrier system and signage described in Exhibit B-1 shall remain on the Property and the Parcels. Upon termination of this Agreement, the City shall remove all equipment, vehicles or materials placed on the Property and the Parcels by the City Parties, and shall repair all damage to the Property and the Parcels caused by or resulting from the City Work, including removal of the barrier system and signage described in Exhibit B-1.

13. Insurance. The City is self-insured for worker's compensation and comprehensive general liability as it relates to the City Work at the Property and the Parcels. The City shall require any party hired by it to perform the City Work to maintain liability insurance in amounts and coverages reasonably acceptable to Grantor, naming Grantor as an additional insured. The City shall provide written evidence of such coverage prior to conducting Work on the Property and the Parcels.

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14. Indemnification. Subject to allocation of adequate appropriations and other applicable legislative procedures, requirements, and approvals, the City shall indemnify, defend and hold the Grantor, and its officers, agents, and employees harmless from and against any and all actions, claims, suits, losses, damages, liens, liabilities, fines, costs and expenses (including, without limitation, reasonable attorney's fees and court costs) (the "Claims") to the extent incurred in connection with, arising out of or incident to any act or omission of the City Parties in their use of, access to, or work on the Property and the Parcels, except with respect to Claims against the Grantor to the extent caused by the gross negligence or willful misconduct of the Grantor or its agents or employees. The foregoing indemnity is in addition to and does not preclude any indemnity, defense or hold harmless obligation from any other City Party, and shall survive any termination of this Agreement.

15. Amendment. This Agreement may not be amended or modified without the written consent of the City and the Grantor hereto.

16. Entire Agreement. This Agreement embodies the entire agreement and understanding between the City and the Grantor regarding the City Work and the City's right of entry to the Property and the Parcels. This Agreement supersedes any prior oral or written agreements with respect to the matters stated herein.

17. 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, electronic, or photocopy signature shall have the same legal effect as an original signature.

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

19. Grantor's Authority. To the extent Grantor has a property interest in the Property and the Parcels, the Grantor represents and warrants that it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and that this Agreement shall be binding upon and enforceable against the Grantor in accordance with its terms.

(Signature Page Follows)

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IN WITNESS WHEREOF, the City and the Grantor have executed this Agreement as of the Effective Date.

COMMONWEALTH EDISON COMPANY:

By:

[Name]

[Title]

Commonwealth Edison Company

Date:

CITY OF CHICAGO:

By:

Commissioner of Public Health

Date:

Approved as to form and legality o/b/o City by:

By:

Managing Deputy of Transactions and Deputy of AERC Division

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EXHIBIT A - THE PROPERTY AND PARCELS

SHO<i/S APPROXIMATE LOCATION OF BARRIER SYSTEM

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TOEROEK Associates, inc.

Figure 2 - Parcel Map

Schroud Property Site Chicago, Cook County, Illinois

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Legend

Site Boundary

Cook County Parcel Parcel of Interest Unassociated Parcel

March 2020

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EXHIBIT B-1

THE CITY WORK

The City's subcontractor, Industrial Fence, Inc. ("Industrial"), and Industrial's subcontractors will install a barrier system around the Property and the Parcels ("Barrier System"). The Barrier System will consist of a combination of jersey barriers and fencing as depicted in Group Exhibit B-2, however razor wire will not be included and the height of the fence will be 8'-8" (2'-8" wall and 6' chain link fence). The Barrier System will not be installed closer than 15 feet from any existing transmission tower on or near the Property or the Parcels.

Equipment that will be needed by Industrial and/or its subcontractors will include a flatbed semi-truck, service truck, crane truck and forklift.

The City will also install warning and/or no entry without permission signs on the Property and the Parcels.

Once mobilized it should take approximately 6-8 weeks to complete installation of the Barrier System and signage.

The City shall operate and maintain the Barrier System.

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GROUP EXHIBIT B-2

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GROUP EXHIBIT B-2 - FENCE DETAIL

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GROUP EXHIBIT B-2 - FENCE DETAIL

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City of Chicago: Zoning Website

Zoning and Land Use Map
OpenStreetMap: Planning and Development

GROUP EXHIBIT B-2 - LOCATION OF BARRIER FOR EAST SIDE

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GROUP EXHIBIT B-2 • LOCATION OF BARRIER FOR WEST SIDE

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**GROUP EXHIBIT B-2 - JERSEY BARRIER
EXAMPLE (DEPICTED HERE ARE USEPA JERSEY
BARRIERS ON NORTHEAST**

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EDGE)

OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT MAYOR

July 20, 2022

TO THE HONORABLE. THE CITY COUNCIL OF THE
CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Public Health, I transmit herewith an ordinance authorizing the execution of a long-term access agreement with Commonwealth Edison.

Your favorable consideration of this ordinance will be appreciated.

CITY HALL-ROOM 300 121
N.LASALLESTREET
CHICAGO, IL 60602 PHONE: 312-744-6860
WARD48@CITYOFCHICAGO.ORG
<mailto:WARD48@CITYOFCHICAGO.ORG>

HARRY OSTERMAN 48TH WARD
CHAIRMAN OF THE COMMITTEE ON HOUSING AND REAL ESTATE

September 21, 2022

TO THE PRESIDENT AND MEMBERS OF CITY COUNCIL:

Your Committee on Housing and Real Estate, for which a virtual meeting was held on September 13, 2022 was referred an Ordinance from the Department of Public Health for the long-term right of entry agreement with Commonwealth Edison at the former site of Republic Steel and LTV, located generally at E 126th PI and S Avenue O.

(02022-2355)

Having the same under advisement, begs leave to report and recommend that Your Honorable Body, Pass the proposed communication transmitted herewith.

The recommendation was Passed by the same roll call as was used to determine quorum in Committee.

Sincerely,

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**Harry Osterman, Chairman Committee on
Housing and Real Estate**

APPROVED APPROVED