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OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT MAYOR

January 18, 2023

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 an intergovernmental agreement with the Chicago Park District for the installation of weather stations and air monitors.

Your favorable consideration of this ordinance will be appreciated.

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, through the Department of Public Health ("DPH"), promotes public health and safety throughout the City of Chicago; and

WHEREAS, the Chicago Park District ("Park District") is the owner of over 8,000 acres of land in the City of Chicago, County of Cook and the State of Illinois;

WHEREAS, the City desires to access the Park District property for the limited, express, and non-

exclusive purpose of operating weather stations and air monitors ("monitoring equipment") to improve DPH's understanding of air pollution levels; and

WHEREAS, the Park District shall install and provide power to such monitoring equipment; and

WHEREAS, DPH shall maintain and repair such monitoring equipment; and

WHEREAS, as a condition to the Park District's granting the City access for the monitoring equipment, the Park District requires the City to enter into an access agreement, which includes, among other terms, the City's obligation to indemnify the Park District; and

WHEREAS, monitoring equipment will initially be deployed at the following four (4) Park District locations: 1) 2800 South Sacramento Avenue, 2) 6743 South Kedzie Avenue, 3) the Beach House / Concession Stand at Calumet Beach (approximately 9801 South Avenue G), and 4) 11712 South Ada Street, all in Chicago, Illinois; and

WHEREAS, this project will benefit the public by allowing DPH to collect real-time, hyperlocal data on air pollution and its sources, to provide meteorological forecasting, and to better understand how pollution varies across communities and how it can take action to improve air quality and reduce disparities; now, therefore,

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

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The Commissioner or designee of the Commissioner is hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate and execute and deliver an Access Agreement, substantially in the form attached and incorporated hereto as Exhibit A, with the Park District to deploy monitoring equipment on Park District property for the purpose of collecting information that supports DPH's air monitoring strategy and air pollution enforcement efforts, and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Access Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Access Agreement.

SECTION 3. 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 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall take effect upon its passage and approval. Attachments:

Exhibit A - Access Agreement

EXHIBIT A ACCESS AGREEMENT

See attachment

**CHICAGO PARK DISTRICT AND CHICAGO DEPARTMENT OF
PUBLIC HEALTH ACCESS PERMIT AGREEMENT**

This Permit Agreement (the "Agreement") is made and entered into as of March , 2023, by and between the Chicago Park District, a municipal corporation existing pursuant to 70 ILCS 1505/0.01 et seq. of the Illinois Compiled Statutes (the "Park District"), and the City of Chicago, an Illinois municipal corporation (the "City"), acting by and through its Chicago Department of Public Health ("DPH"). The Park District and the City are sometimes referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the Park District is the owner of over 8,000 acres of land in the City of Chicago, County of Cook and the State of Illinois;

WHEREAS, DPH promotes public health and safety throughout the City of Chicago;

WHEREAS, the City seeks to deploy weather stations and air quality monitors ("monitoring equipment") on Park District property (the "Sites") for the purpose of collection information in conjunction with their air quality monitoring and pollution compliance enforcement efforts;

WHEREAS, the City desires to access the Sites for the limited, express and non-exclusive purpose of operating the monitoring equipment (the "Project"). The Park District will maintain and repair such monitoring equipment;

WHEREAS, the Park District has determined that it is in the public interest to permit DPH and associated Personnel to access the Sites on a limited and non-exclusive basis solely for the benefit of the Project;

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants and agreements contained herein, the Parties agree as follows:

1. GRANT OF PERMIT.

1 Permit. The Park District grants to DPH non-exclusive permitted use of the Sites and of Park District facilities situated at the Sites. The initial four (4) Sites are listed in Exhibit A, attached and incorporated herein. The Park District may grant up to six (6) additional Sites to DPH under this Agreement, to accommodate future expansion of DPH's air monitoring efforts. DPH's access to the Sites is subject to the hours of 6:00 am - 9:00 pm, and subject to park rules and ordinances and the terms of this Agreement. Access to the Sites outside of regular park hours will require written permission from an authorized representative of the Park District.

2 Installation and Maintenance. DPH is permitted to use the Sites for the period of time, in accordance with the times listed in Section 1.1, and Section 3 of this Agreement.

(a) During the Project set-up period as specified in Section 1.1 and Section 3, the City shall be

responsible for delivery of all equipment and other items needed for the Project. The Park District must review and approve any installation plans before any on-site work commences.

- b) The City shall oversee the installation of the Project ("Installation"), in accordance with the terms of this Agreement. The Park District will be installing the City-provided equipment for the Project. Although the City will furnish all monitoring equipment, the Park District will provide all hardware, wiring, and other electrical components necessary to mount, secure, and provide power to the monitoring equipment.
- c) The City will reimburse the Park District for all Installation work expenses, including labor. The Park District will invoice the City for the expenses. If the anticipated cost of an Installation exceeds \$5,000.00, the Park District will notify DPH prior to beginning such work. DPH may elect not to proceed with the work or may seek alternate Sites or installation methods with the Park District to reduce costs. However, the Park District does not guarantee the availability of any alternate Sites.
- d) The City will be allowed to access the Sites during normal park hours for the duration of this Agreement. In the event of either bodily or property harm, the City may access the Sites at any time, and will contact the Park District within twenty-four (24) hours with the information about the access. <
- e) Park District will not be responsible for any damage, maintenance or power interruptions to the Project. Park District will, upon written request of DPH undertake any needed repairs or maintenance, subject to reimbursement of all costs incurred by Park District staff.

3 Intended Purpose. The Parties intend that the purpose of the Project is to provide a suitable location for the monitoring equipment. DPH will share results of the Project with the Park District upon its request.

4 Contact. DPH shall provide the Park District with a twenty-four (24) hour contact number for use during the duration of the Project in order to ensure that Park District personnel can contact responsible parties for any reasonable reason or occurrence which would warrant said contact. Similarly, Park District will provide a corresponding twenty-four (24) hour contact to DPH.

5 Other Activities. This Agreement shall not be misconstrued to provide authorization to conduct any activity or access the Sites for any reason beyond the express purposes stated herein. The Park District must be notified of any attempts to obtain another license or permit required hereunder. Failure to obtain a required license or permit shall constitute a breach of a material provision of this Agreement. For any activity that DPH desires to conduct on the Sites that requires a license or permit, beyond the non-exclusive access provided herein, said license or permit must be obtained by DPH prior to using the Sites for such activity.

1.6 Additional Space. To acquire use of space in addition to the Sites listed in Exhibit A, DPH may email a request to the Park District. Upon approval of the additional Sites, the Parties will remove the existing Exhibit A, and replace it with an updated version reflecting the additional Sites.

7 No Real Property Interest. This Agreement creates a permit only. The Parties understand and agree that this Agreement is not a lease and does not confer any real property interest whatsoever to the City, its officers, assigns, licensees, agents and employees. The City may not use the address of the Sites, or any other Park District address as its business address.

8 DPH's Covenant Against Liens. DPH shall not cause or permit any lien or encumbrance, whether created by act of DPH, operation of law or otherwise, to attach to or be placed upon the Park District's title or interest in the Sites. All liens and encumbrances created by DPH shall attach to DPH's limited permit interest only. Any liens against the Sites created by or caused to be created by DPH affecting the Park District's interest therein shall promptly be removed or bonded at DPH's sole expense.

2. FEES.

2.1 Permit Fee. There are no fees associated with this Agreement.

3. TERM AND TERMINATION.

1 Term. This Agreement shall begin on the date this Agreement is executed and shall remain in effect for ten (10) years (the "Term").

2 Extensions. At any time prior to the expiration of the present Term, DPH may request an additional ten (10) year extension to this Agreement. There shall be no automatic renewal without the prior written consent of both Parties.

3 Termination for Convenience. Notwithstanding the time periods herein, either party may terminate this Agreement for convenience at any time, with or without cause, by providing the other party with written notice of the termination. Upon the expiration or earlier termination for convenience of this Agreement, the Park District will remove the monitoring equipment from the Sites and return such monitoring equipment to the City, which will be required to pick up said equipment at the respective Sites within a reasonably agreed upon date and time.

4. CONDITION OF SITES, ALTERATIONS. AND ADDITIONS.

1 Condition of the Sites upon Delivery of Possession. The City accepts the Permit for the Sites, understanding that the current conditions are "AS IS" and "WHERE IS" and The City shall not cause any Sites to be disturbed and/or altered from its current and present condition beyond the approved plan for the Project. The Park District makes no warranties or representations concerning the fitness of the Sites for a particular purpose, other than the purpose(s) stated herein.

2 Alterations and Additions. The City shall cause no permanent alterations, additions and/or structure(s) to be permanently or temporarily affixed or attached to the Sites, including signage and lighting, without the prior written consent of the Park District. Removable equipment and/or portable structures specifically relating to the particular purpose of installation and maintenance, and removed upon the completion of the Project as contemplated by the parties are

permitted.

5. INSURANCE AND INDEMNIFICATION.

1 Insurance. The City is required to procure and maintain insurance, or an equivalent in self-insurance, in accordance with the specifications set forth in Exhibit B, attached hereto and incorporated herein.

2 Indemnification.

The City must defend, indemnify and hold harmless the Park District, including its Commissioners, officers, representatives, elected and appointed officials, agents, contractors and employees (the "Indemnitees"), against any losses, claims, damages, liabilities, actions, suits, proceedings, costs or expenses, including reasonable attorney's fees, that the Indemnitees may suffer, incur or sustain or for which it or they may become liable to the extent resulting from willful or intentional misconduct by the City.

The obligation to indemnify the Indemnitees shall survive the termination of this Agreement. The City acknowledges that the requirements set forth in this section to defend, indemnify and hold harmless the Park District are separate and apart from and not limited by the City's duties under this Agreement, including the insurance requirements in Exhibit B of this Agreement.

6. MISCELLANEOUS.

6.1 Notices. Any notice given pursuant to this Agreement must be in writing and shall be deemed received (i) when a copy thereof, addressed to such party as provided herein, is delivered by personal delivery or facsimile, (ii) the next business day after being delivered by overnight courier service, or (iii) three (3) days after being sent by certified mail, postage paid, return receipt requested, to the recipient at the address indicated below or to such other address as one Party may designate in writing to the other Party.

If to the Park District: Chicago Park District 541
North Fairbanks Court Chicago, Illinois 60611
Attention: General Superintendent

with a copy to: Chicago Park District
541 North Fairbanks Court Chicago,
Illinois 60611 Attention: General
Counsel

If to the City:
Chicago Department of Public Health 333 South
State Street

Chicago, Illinois 60604 Attn:
Commissioner

with a copy to:
City of Chicago Department of Law 121 North LaSalle
Street, Suite 600 Chicago, Illinois 60602 Attn: Real
Estate and Land Use Division

These addresses may be changed by notice to the other Party given in the manner provided above.

2 Assignment. DPH shall not assign this Agreement or any portion thereof without the prior written consent of the General Superintendent.

3 Media. Any of DPH's communications with the media relating to the Sites or the activities of the Park District shall be subject to the prior approval of the Park District's Press Secretary. This provision shall not apply to data collected from the Project.

4 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County in the State of Illinois.

5 Compliance with Laws. In performance of this Agreement, DPH shall comply with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, including but not limited to the Code of the Chicago Park District, which is hereby incorporated by reference. This Agreement shall not be legally binding on the Park District if entered into in violation of the provisions of 50 ILCS 105, the Public Officer Prohibited Activities Code.

6 Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties and shall inure to the benefit of the Parties. This Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor shall any act of the Parties be deemed or construed by any of the Parties hereto or by third parties to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, association or relationship involving any of the Parties.

7 Relationship of the Parties. Nothing contained in this Agreement is intended, and shall not be construed to place the Parties in the relationship of partners, principal and agent, employer/employee or joint venture. Neither Party shall have any right, power or authority to bind or obligate the other Party, nor shall either Party hold itself out as having such right, power or authority. Each Party shall be solely responsible for payment of all compensation owed to its

employees, if any, as well as all employment-related taxes.

8 Amendments. No amendment, change or modification to this Agreement shall be effective unless in writing and executed by authorized representatives of the Parties.

9 Waiver. No waiver by either Party of any breach or failure to perform by the other Party will be deemed a waiver of any other provisions of this Agreement, or of any future breach or failure to perform.

10 Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

11 Titles and Headings. Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

12 Force Majeure. It is mutually agreed that neither Party shall be held responsible for any losses resulting from the failure to fulfill any terms, conditions or provisions of this Agreement, if the Party shall be delayed or prevented because of war, revolution, riot, or other disorder, fire, flood or act of God.

13 Non-Discrimination. DPH shall not discriminate in the performance of this Agreement on the basis of sex, sexual orientation, religion, color, race, national origin, physical handicap, ancestry, age, marital status, unfavorable discharge from military service, or parental status.

14 No Personal Liability. The City expressly agrees that no member, official, employee or agent of the Park District will be individually or personally liable to it, its successors or assigns under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement or in the event of any default or breach by the Park District under this Agreement. The limitations on liability in this Section shall survive the expiration or termination of this Agreement and the expiration or termination of any obligation owing to either Party under this Agreement.

The Park District expressly agrees that no member, official, employee or agent of the City District will be individually or personally liable to it, its successors or assigns under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement or in the event of any default or breach by the City under this Agreement. The limitations on liability in this Section shall survive the expiration or termination of this Agreement and the expiration or termination of any obligation owing to either Party under this Agreement.

6.15 No Conflicts of Interest. No member of the governing body of the Park District (or

any person who has served in such capacity during the prior two (2) years), and no other trustee, officer, employee or agent of the Park District shall have any personal, financial or economic interest, direct or indirect, in this Agreement, or any subcontract or the performance of other work resulting therefrom.

16 Authority. The individual officers, agents and employees of DPH and the Park District who have executed this Agreement hereby individually represent and warrant that they have full power and lawful authority to execute this Agreement and perform the transactions contemplated hereunder on behalf of and in

the name of their respective principals and/or employers.

17 Survival. Notwithstanding the expiration of the Term of this Agreement or any termination of this Agreement, any duty or obligation which has been incurred and which has not been fully observed, performed and/or discharged, and any right, unconditional or conditional, which has been created and has not been fully enjoyed, enforced, and/or satisfied, shall survive such expiration or termination until such duty or obligation has been fully observed, performed and/or discharged and such right has been enforced, enjoyed and/or satisfied by both parties.

18 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one agreement.

19 Entire Agreement. This Agreement and the Exhibits attached to it, constitutes the entire agreement between the Parties and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon the Agreement that are not expressly addressed in this Agreement.

[Signatures begin on the next page.]

IN WITNESS WHEREOF, the Parties to this Agreement have caused it to be executed and delivered by their duly authorized representatives as of the date first above written.

CHICAGO DEPARTMENT OF PUBLIC HEALTH

By:
Daniel Cooper
Director of Environmental Services

Date:

EXHIBIT A

LIST OF FOUR INITIAL SITES

1. 2800 South Sacramento Avenue, Chicago, Illinois
2. 6743 South Kedzie Avenue, Chicago, Illinois
3. The Beach House/Concession Stand at Calumet Beach (approximately 9801 South Avenue G, Chicago, Illinois)

4. 11712 South Ada Street, Chicago, Illinois

EXHIBIT B

PARK DISTRICT INSURANCE REQUIREMENTS

DPH will procure and maintain at all times during the Term of this Agreement, at DPH's own expense, the types of insurance specified below:

General Liability Insurance on an occurrence basis or equivalent, with limits of liability not less than \$1,000,000 per occurrence, and \$2,000,000 aggregate for bodily injury, personal injury and property damage. The Chicago Park District is to be named as an additional insured on a primary, non-contributory basis.

Other Property Insurance

When any personal property owned by DPH is located/stored in a Chicago Park District building, it is recommended that property insurance be carried at 100% replacement cost value (the Chicago Park District cannot be responsible for loss of or damage to property caused by insurable hazards, including, but not limited to, fire, wind, explosion, smoke, or theft).

Other Insurance

In certain instances, the Risk Management Department of the Chicago Park District may determine in its reasonable discretion that other insurance coverages may be required, and will so .-advise DPH with an Addendum to this Agreement outlining the specific type of insurance and limits required.

DPH will furnish the Chicago Park District, Risk Management Department, 541 N. Fairbanks Ct., Chicago, Illinois 60611, with original certificates of insurance, policy language, declaration pages or endorsements evidencing the required coverage to be in force on the date of this contract, and renewal certificates of insurance, or such similar evidence, if the coverages have an expiration or renewal date during the Term of this Agreement. DPH will submit evidence of insurance prior to January 1 of each year of the Term. Failure to keep such insurance in force may constitute a violation of this Agreement and the Chicago Park District maintains the right to suspend operations until proper insurance is provided. Failure of the Chicago Park District to obtain such evidence before permitting DPH to commence operations will not be deemed a waiver by the Chicago Park District, and DPH will remain under continuing obligation to maintain insurance coverage.

Insurance will provide for thirty (30) days prior written notice to be given to the Chicago Park District, Department of Risk Management, in the event coverage is canceled, non-renewed, or materially changed, and the certificates will so state

DPH will require all subcontractors, if any, to carry the insurance herein, or it may provide the coverage for any or all subcontractors, and, if so, the evidence of insurance submitted will so stipulate. Any and all deductibles on referenced insurance coverages will be borne by DPH or subcontractors. DPH and each subcontractor expressly understands and agrees

that any insurance coverages and limits furnished by DPH will in no way limit the liabilities and responsibilities specified within the contract documents or by law, that their insurers will waive their rights of subrogation against the Chicago Park District and, further, that any insurance maintained by the DPH will apply in excess of and not contribute with insurance provided by DPH under the contract.

The Chicago Park District maintains the right to change, modify, alter delete or otherwise modify these requirements from time to time in its reasonable discretion.