

8/31/2011

53-R-11

A RESOLUTION

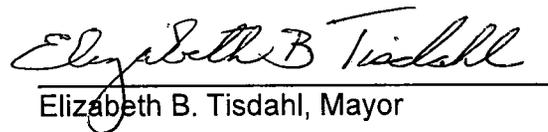
Authorizing the City Manager to Execute a License Agreement for the Installation of a Solar Canopy and Electric Vehicle Charging Station at a City Parking Lot

NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:

SECTION 1: That the City Manager is hereby authorized and directed to sign the license agreement ("Agreement") between the City and I-GO Car Sharing, attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2: That the City Manager is hereby authorized and directed to negotiate any additional conditions of the Agreement as he may determine to be in the best interests of the City.

SECTION 3: That this Resolution 53-R-11 shall be in full force and effect from and after its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: September 26, 2011

EXHIBIT A

**License Agreement Between the City
and I-GO Car Sharing**

License Agreement

This License Agreement is made and entered as of the 15TH day of NOVEMBER, 2011 by and between the Alternative Transportation Services for Chicagoland, an Illinois not-for-profit corporation d/b/a I-GO Car Sharing ("I-GO") and the City of Evanston ("Licensor"). Each of I-GO and Licensor are referred to individually as "Party" and collectively as "Parties."

WHEREAS, I-GO provides car sharing services which require dedicated parking locations for its vehicles and, for its electric and hybrid electric vehicles, in some cases, the placement of solar canopies and/or electric vehicle charging stations ("Parking Facility").

WHEREAS Licensor owns the properties commonly known as Parking Lots 3, 4 and 32 within the City of Evanston, and desires to have I-GO locate a solar canopy and car sharing facility for electric and hybrid vehicles at each such property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Facility Location. Licensor hereby grants to I-GO the privilege and license to use a portion of Parking Lots 3, 4 and 32, which Parking Lots are more specifically described on Exhibit A (each, a "Property") for the placement of a Parking Facility. Each such Parking Facility shall consist of a solar canopy, a charging station, ancillary related equipment and two dedicated parking spaces. The Parking Facility will be placed at the specific location on each Property as set forth in Exhibit B, and that specific location at each Property will be a "Licensed Premises."

2. Term. The Term of this Agreement shall commence on November 15, 2011 ("Effective Date") and continue for seven (7) years ("Initial Term"), unless otherwise terminated as provided herein. Licensor may agree to extend the term for additional one (1) year periods upon receipt of a written request for extension from I-GO and upon mutual agreement of the parties ("Renewal Term").

3. Solar Canopy Placement, Maintenance and Removal.

(a) I-GO shall own the solar canopy and related Parking Facility equipment and shall be responsible for all costs associated with the initial placement, operation, maintenance and removal of the solar canopy and related Parking Facility equipment at the end of the Term. At no time shall Licensor have any ownership or other interest in the solar canopy or other Parking Facility equipment. During the Term, I-GO shall maintain each Parking Facility in good working order. I-GO agrees to abide by all posted rules and regulations now in effect or hereafter implemented (as long as provided to I-GO in writing) pertaining to use of each Parking Facility or related to the safety, care and cleanliness of such

Parking Facility. The Parties agree that such rules and regulations shall not unreasonably restrict or diminish I-GO's rights under this License Agreement. I-GO shall not use, receive, store or dispose of any product, material or merchandise which is toxic, explosive, highly flammable or classified by law as hazardous at any Parking Facility and shall not permit any Parking Facility or Licensed Premises on which it is located to be used in any manner which would render the insurance risk on the premises as more hazardous. This section excludes the storage of items in the cars or charging systems (including but not limited to gas, oil, and battery acid) which would be expected to be in use for their intended purpose.

(b) Licensor agrees to provide I-GO with reasonable access for it, and its Parking Facility vendors, to the Licensed Premises to allow the placement of the solar canopy and the location of the related Parking Facility equipment and materials necessary to support the placement and operation of the Parking Facility. I-GO shall reimburse Licensor for any lost time of metered spaces near or adjacent to the Licensed Premises as a result of I-GO's or its vendors' obstruction of such spaces during the initial placement, ongoing maintenance or final removal activities. The Parties agree to cooperate in connection with such access, but any Licensor approvals in connection with such access will not be unreasonably withheld or delayed.

(c) I-GO shall have reasonable ingress and egress to each Parking Facility during the Initial Term and any Renewal Term, including reasonable access for its employees and vendors to maintain each Parking Facility and shall have the authority to order the towing of non-I-GO vehicles improperly parked in the I-GO designated spaces within any Parking Facility at I-GO's cost.

4. Parking Lot Maintenance/Repairs. In the event of any emergency repairs or maintenance commissioned by Licensor, I-GO agrees that Licensor, at its own expense, may tow I-GO vehicles in order to gain access to the I-GO-dedicated parking space(s) at any Parking Facility. Licensor shall make reasonable efforts to contact I-GO prior to moving the car(s) at I-GO's emergency phone number (773-278-4446). For routine maintenance at any Parking Facility, Licensor shall provide twenty-four (24) hours advance notice to I-GO at the same phone number. I-GO understands that Licensor must clear its parking lots of accumulated snow and that prior notice of such may not always be feasible. Licensor shall provide fifteen (15) days prior notice to I-GO of the dates and anticipated duration of any planned repairs and/or maintenance (such as such as striping and resurfacing) affecting any Parking Facility. I-GO acknowledges and agrees that I-GO may need to make other parking arrangements during the course of such planned repairs/maintenance. If I-GO fails to relocate the I-GO vehicles after notice has been provided, Licensor may tow (at I-GO's expense) such I-GO vehicles. In the event any repairs/maintenance conducted by Licensor materially damages I-GO signage or other I-GO equipment, reasonable costs to repair shall be the responsibility of Licensor.

5. Signage. I-GO shall have the right to place signage (pole, wall and/or pavement) at each Parking Facility at I-GO's expense. All signage and placement thereof shall be reviewed in advance with Licensor. Licensor acknowledges and agrees that such signage is an important component of I-GO's marketing of its car sharing services, and agrees that its review will not be unreasonably withheld or delayed. I-GO shall work with any local governing authorities to obtain permits for such signage and shall conform to applicable zoning or other governmental restrictions on such signage, including Licensor's sign regulations (as set forth in Title 4, Chapter 12 of the Evanston City Code of 1979, as amended). I-GO shall coordinate with (and seek approval from) Licensor regarding the color scheme for the canopy and Parking Facility equipment at Lot 3, to ensure that the Parking Facility components are reasonably complementary to nearby landmark properties, (but such consent will not be unreasonably withheld or delayed). Signage will reinforce the terms of this License Agreement by specifying that only I-GO's vehicles may be parked in the I-GO only designated spaces. Licensor shall not be responsible for towing of improperly parked cars or any charges or claims related thereto. Upon termination of this License Agreement for any reason, I-GO shall remove all signage and shall return the parking spaces to their previous condition, normal wear and tear excepted.

6. Use of Parking Spaces. In exchange for the rights granted under this Agreement, for the entire Term of this Agreement, I-GO agrees to purchase a 24 hour parking permit for each of the two (2) spaces in each Parking Facility that are dedicated to I-GO's exclusive use. Such permits may be purchased quarterly or annually, at I-GO's election, at the then current 24 hour parking permit rate. Licensor may continue to offer parking at the other two parking spaces at each Parking Facility to the public in accordance with its existing parking regulations.

7. Canopy Events. I-GO shall be allowed to hold publicity-related events at each Parking Facility once annually; provided, however, that I-GO shall provide Licensor no less than thirty (30) days advance notice of such events and work with Licensor as to the timing and duration of such events.

8. Taxes. I-GO shall be responsible for all taxes with respect to the solar canopy, the I-GO vehicles and its other Parking Facility equipment, including but not limited to personal property taxes and any assessments levied against any of the Parking Facility equipment, including the solar canopy and the vehicles.

9. Termination.

(a) In the event of a material breach of the terms and conditions hereunder by either Party, the non-breaching Party shall give the breaching Party notice of its intent to terminate this Agreement should such breach remain uncured for a period of thirty (30) days. "Material breach" includes, but is not limited to: (i) failure by I-GO to properly maintain the Parking Facilities in reasonably good condition; and (ii) failure by I-GO to maintain insurance as set forth herein.

(b) Notwithstanding anything to the contrary contained herein, this Agreement may be terminated by either Party if the other Party: (i) becomes insolvent or unable to pay its debts as they mature within the meaning of the United

States Bankruptcy Code or any successor statute; (ii) makes an assignment for the benefit of its creditors; (iii) files or has filed against it, voluntarily or involuntarily, a petition under the United States Bankruptcy Code or any successor statute unless such petition is stayed or discharged within ninety (90) days; or (iv) has a receiver appointed with respect to all or substantially all of its assets.

(c) In the event Licensor elects to sell or transfer the Property, or if the Property otherwise will cease to be operated by Licensor, Licensor shall give I-GO no less than one hundred eighty (180) days advance notice. At I-GO's request, Licensor shall use its best efforts to ensure that the buyer or transferee accepts an assignment of this License Agreement. In the event of a sale or transfer triggering a termination of this Agreement, I-GO shall have no less than sixty (60) days in which to remove its Parking Facility.

(d) Upon termination of this License Agreement for any reason, I-GO shall remove its equipment and personal property (including, without limitation, its solar canopy and all other equipment comprising the Parking Facility) and shall return the parking spaces to their previous condition, normal wear and tear excepted.

10. Representations.

(a) Each of the Parties represents and warrants that it is duly registered and validly existing under the laws of the jurisdiction of its formation and has the requisite power and authority to execute, deliver and perform its respective obligations under this License Agreement.

(b) As of the Effective Date, there is no material litigation, administrative proceeding or arbitration presently pending or, to the knowledge of either Party, threatened against such Party which, if adversely determined, could have a material adverse effect on the ability of such Party to perform its obligations under this License Agreement.

11. General Terms.

(a) Arbitration. Upon the mutual agreement of the Parties, any controversy, claim or dispute of whatever nature arising between the Parties arising out of or relating to this Agreement or the breach, termination, enforceability, scope or validity thereof, may be resolved by mediation or, failing mediation, by arbitration. Any arbitration hereunder shall be undertaken pursuant to the Federal Arbitration Act, and the decision of the arbitrator shall be enforceable in any court of competent jurisdiction. In the event there is no such mutual agreement, other than cure, the default remedy of either Party in the event of a material breach of any term of this Agreement by the other Party is to institute legal action.

(b) Assignment. Licensor will have the unrestricted right to assign its rights and obligations under this License Agreement to any entity as long as such assignment does not result in a requirement that I-GO exit or relocate any Parking Facility in a manner or under terms inconsistent with this License Agreement.

(c) Confidentiality. The Parties agree that in the course of dealing between the Parties, each Party may acquire Confidential Information. Each Party will take all commercially reasonable affirmative steps to prevent disclosure of the other Party's Confidential Information and maintain all Confidential Information, whether obtained either directly or incidentally and regardless of its form, confidential and safe from accidental or purposeful disclosure to any third Party. Each Party will disclose the other Party's Confidential Information only to those of its employees, agents, attorneys, consultants, and contractors ("Agents") who have a need to receive the Confidential Information to further the purposes of this Agreement. Notwithstanding the foregoing, the Party disclosing Confidential Information to its Agents shall be responsible and liable for any unauthorized disclosure by its Agents. Each Party shall make all reasonable efforts (including the design and implementation or use of an existing procedure for handling Confidential Information) to safeguard the other Party's Confidential Information from disclosure to unauthorized individuals and for as long as the information disclosed remains Confidential Information. For the purpose of this Contract, "Confidential Information" shall mean the terms and provisions of the Agreement and all information received by either Party or either Party's Agent (i) that is not generally known in the industry in which the other Party is or may become engaged, or (ii) which is marked "confidential" and/or "proprietary" about the other Party's processes, services and products, including, without limitation, information relating to research, development, inventions, manufacturing process, accounting, engineering, marketing, merchandising and selling, as well as customers and potential customers. The restrictions herein shall not apply with respect to Confidential Information which (i) is already available to the public; (ii) becomes available to the public through no fault of the receiving Party, its employees or associates; (iii) is already known to the receiving Party as shown by written records in the receiving Party's possession at the time that the Confidential Information was received, provided that the source of such information was not bound by a confidentiality agreement with another Party; or (iv) the receiving Party is required to disclose by a governmental or judicial entity or act, including but not limited to the Illinois Freedom of Information Act (5 ILCS 140/1 *et seq.*), provided that the receiving Party notifies the disclosing Party of the pending disclosure prior to such disclosure. This section shall survive the termination of this Agreement for a period of two (2) years.

(d) Force Majeure. Neither Party shall be deemed to be in default of its obligations hereunder (other than the obligation to make payments) to the extent any delay in its performance is caused by or is the result of factors beyond its reasonable control, including, without limitation, fire, explosion, accident, riot, flood, drought, storm, earthquake, lightning, frost, civil commotion, sabotage, vandalism,

smoke, hail, embargo, act of God or of a public enemy, other casualty, strike or lockout, (collectively, an event of "Force Majeure"). Without limiting any rights a Party may otherwise have hereunder to terminate this Agreement, if either Party is unable to perform its obligations under this Agreement for at least thirty (30) consecutive days due to an event of Force Majeure, either Party may terminate this Agreement by delivery of a written notice to such affect to the other Party. In the event of any such termination of obligations hereunder due to an event of Force Majeure, neither Party shall be liable for any damages to the other Party resulting solely from such termination.

(e) Indemnity. I-GO shall hold Licensor, its officials (whether appointed or elected and whether or not serving at the time of commencement of this Agreement), its officers, employees, volunteers and agents, harmless from and against any and all injury, death, loss, damage, claims, actions, suits, liabilities and expenses (including without limitation reasonable costs and expenses for investigation and litigation, whether in law or equity, and reasonable attorneys' fees) ("Claims") in any way arising from or connected with I-GO's breach of this Agreement or I-GO's use of the Licensed Premises. To the extent prohibited by applicable law, no person or entity indemnified hereunder shall be indemnified for claims to the extent arising from such person's or entity's own negligence, and the provisions hereof shall not be construed to require I-GO to indemnify any person or entity otherwise covered by this Section 11(e) to the extent of such person or entity's own negligence or to require any indemnification that would make any of the provisions in this Section 11(e) void or unenforceable. Notwithstanding the foregoing, I-GO's liability to Licensor shall be limited to direct actual damages only, and all other remedies or damages at law and equity, including consequential damages, punitive or other exemplary damages, are waived unless asserted against Licensor by an unrelated third party.

(f) Independent Contractor. I-GO shall be deemed to be an independent contractor and neither Party shall be deemed a partner or joint-venturer of the other.

(g) Insurance. I-GO shall maintain at all times, at its sole cost and expense, at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including but not limited to injury to a person, damage to property, contractual liability coverage, personal injury liability coverage and products liability coverage in an amount of not less than Two Million Dollars (\$2,000,000) for each occurrence; and (b) Automobile Liability for owned, hired and non-owned vehicles in an amount of not less than Two Million Dollars (\$2,000,000) for each accident. All policies maintained by I-GO hereunder shall list Licensor as additional an insured. I-GO shall not substantially modify or cancel such policy(ies) without at least thirty (30) days notice to Licensor.

(h) Notices. Any notices or other communications required to be given by the Parties hereunder shall be deemed given four (4) days after deposit in

the U.S. Mail (certified mail/return receipt requested) or one (1) day after deposit with an overnight delivery service or upon receipt of personally delivered and shall be sent to the following addresses:

LICENSOR: City Manager
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

With a copy to: Corporation Counsel
City of Evanston
2100 Ridge Avenue
Evanston, IL 60201

I-GO: Alternative Transportation Services for
Chicagoland d/b/a I-GO Car Sharing
2125 W North Avenue
Chicago, IL 60647
Attn: Marketing

(i) No Relief for Breach. The expiration or termination of this Agreement shall not relieve either Party of any liability for a breach of its obligations under this Agreement for any misrepresentation or failure to comply with any agreement or covenant therein. Any such expiration or termination shall not be deemed to be a waiver of any available remedy for any such breach, misrepresentation or failure to comply with any agreement or covenant.

(j) Governing Law. This License Agreement is made under and shall be governed by and construed in accordance with the substantive laws of the State of Illinois.

(k) Entire Agreement. This Agreement sets forth all of the promises, inducements, agreements, conditions and understandings between Licensor and I-GO relevant to the subject matter of this Agreement, and there are no promises, agreements, conditions or understandings, written or oral, express or implied, between them other than as herein set forth.

(l) Amendments. This Agreement may be amended from time to time with the mutual written consent of the Parties.

(m) Survival of Terms, Binding on Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement (and specifically including those provisions that, by their terms, survive the termination of this Agreement) shall be binding upon and inure to the benefit of the Parties hereto and their respective legal successors and permitted assigns and the covenants, provisions and agreements herein contained

(a) shall run with the Licensed Premises during the Term and shall expire twelve (12) months after termination of this Agreement.

(b) Severability. If any provision, condition, covenant or other clause, sentence or phrase of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised and the invalidity thereof shall not affect any other provision, condition, covenant, or other clause, sentence or phrase. Notwithstanding the foregoing, if any such invalid provision goes to the essence of this Agreement such that the purposes of this Agreement cannot be fulfilled, then this Agreement shall terminate as of the date of such judgment.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized representative.

LICENSOR

I-GO CAR SHARING

By: Wally Bobkiewicz By: Sharon Feibon
Name: WALLY BOBKIEWICZ Name: SHARON FEIBON
Title: CITY MANAGER Title: CEO

Approved as to form:

W. Grant Farrar
W. Grant Farrar
Corporation Counsel

Exhibit A

Properties

1. Lot 3, 1702 Chicago Avenue, Evanston, IL 60201
2. Lot 4, 2122 Central Street, Evanston, IL 60201
3. Lot 32, 825 Hinman Avenue, Evanston, IL 60202

Exhibit B

Parking Facility Locations

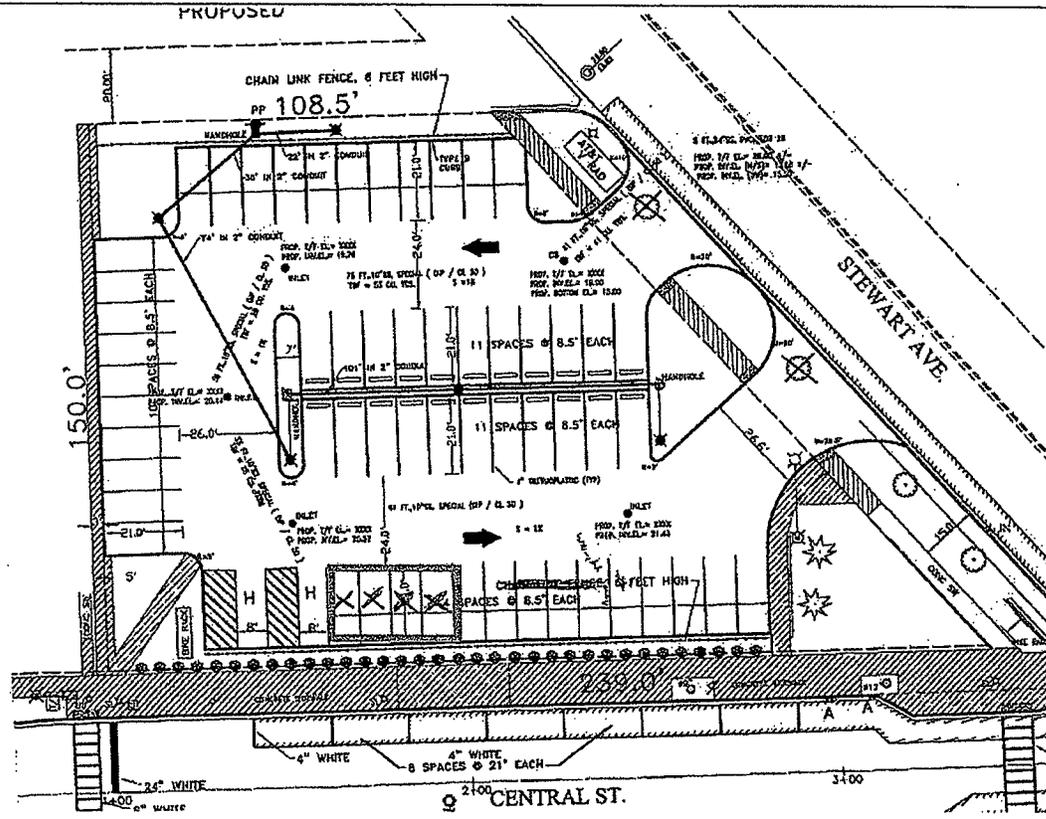
Lot 3, 1702 Chicago Avenue, Evanston, IL 60201

Location of proposed Solar Canopy in red



Lot 4, 2122 Central Street, Evanston, IL 60201

Location of proposed Solar Canopy in red



Lot 32, 825 Hinman Avenue, Evanston, IL 60202

Location of proposed Solar Canopy in yellow

