

3/25/2014

13-R-14

A RESOLUTION

Authorizing the City Manager to Execute a License Agreement with Chiaravalle Montessori School for the use of City Park Property to locate Mobile Classrooms

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:

SECTION 1: The City Manager is hereby authorized to execute the License Agreement attached hereto as Exhibit 1, the terms are incorporated herein by reference, with the Chiaravalle Montessori School, an Illinois not-for-profit corporation, for the use of City park property commonly known as "Currey Park", located at the corner of northeast corner Hinman Avenue and Dempster Street, for the purpose of constructing and occupying temporary mobile classrooms on the property from August 15, 2014 – June 15, 2015.

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

SECTION 3: That this Resolution 13-R-14 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.


Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: April 8, 2014

EXHIBIT 1
License Agreement

LICENSE AGREEMENT

THE LICENSE AGREEMENT (this “**Agreement**”) is made as of _____, 2014, by and between The City of Evanston, a home rule unit of local government located in Cook County, Illinois (the “**City**”), and Chiaravalle Montessori School, an Illinois not-for-profit corporation (“**Licensee**”).

R E C I T A L S:

WHEREAS, the City is the owner of the property commonly known as Currey Park located at the northeast corner of Dempster Street and Hinman Avenue, Evanston, Illinois (the “**City Property**”); and

WHEREAS, Licensee is the owner of that certain property commonly known as 425 Dempster Street, Evanston, Illinois and legally described on **Exhibit A** attached hereto and made a part hereof (the “**School Property**”) which is improved with a building owned and operated by Licensee as a private school known as Chiaravalle Montessori School (the “**School**”); and

WHEREAS, Licensee intends to demolish a portion of the existing School building and construct a new addition (the “**Project**”); and

WHEREAS, the City previously granted Licensee certain easements under, over and through the City Property in order to assist in the completion of the Project, solely for purposes of supporting construction on the Property, including staging, fence installation, and other temporary construction activities on limited areas of City Property; and

WHEREAS, Licensee has requested permission to construct and occupy 2 mobile classrooms (the “**Mobile Classrooms**”) on that portion of the City Property shown cross hatched on **Exhibit B**, occupying a total square footage of 8,400, attached hereto and made a part hereof (the “**Licensed Property**”) for the purpose of relocating certain classroom and School activities during the construction of the Project. Such use by Licensee, including the right of ingress and egress to and from the Licensed Property, is referred to herein as the “**Permitted Use**”; and

WHEREAS, pursuant to the terms of this Agreement, Licensee desires to enter onto the Licensed Property for purposes of performing the Permitted Use and the City is willing to grant Licensee a license to enter upon and use the Licensed Property for said purposes.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the City and Licensee agree as follows:

1. **Grant of License**. The City hereby grants the Licensee an exclusive license to enter upon and use the Licensed Property for the Permitted Use only upon the terms and conditions hereinafter set forth. Licensee and its contractors, agents, employees and invitees (collectively, “**Licensee Related Parties**”), shall have the right of reasonable ingress and egress to the Licensed Property for purposes of the Permitted Use only. Licensee agrees that its interest in the

Licensed Property shall be subject to all matters and conditions of record and to the terms and conditions of this Agreement. Exhibit B depicts the Licensed Property, which is a total of 8,400 square feet of City Property being utilized for the benefit of Licensee to locate the Mobile Classrooms.

2. **Use.** Licensee shall use the Licensed Property solely for the purpose of performing the Permitted Use. The Permitted Use shall be performed in accordance with all applicable laws, ordinances, rules and regulations. Licensee shall comply with and abide by the reasonable rules and regulations of the City with respect to the use of the Licensed Property, and shall cause the Licensee Related Parties to comply with the same. Licensee shall be responsible for any and all permit fees, survey fees, and installation and removal costs and expenses for the construction of the Mobile Classrooms.

3. **Term.** This Agreement will commence on *August 15, 2014* terminate on the earliest to occur of (i) *June 15, 2015* or (ii) demolition or removal of the Mobile Classrooms and all equipment associated thereto from the Licensed Property (the “**Term**”), unless sooner revoked or terminated as provided herein.

4. **License Fee.** In consideration of the City entering into this License Agreement and permitting Licensee to occupy City property during the Term, Licensee shall pay the City a one-time fee of Twelve Thousand Two Hundred Twenty-Five and no/100 Dollars (\$12,250.00) (\$1,225.00 per month, 10-month occupation at \$1.75 per square foot, total square footage for Licensed Area at 8,400) (the “**License Fee**”). Licensee shall disburse payment of the License Fee to the City within 30 (thirty) days of execution of this License Agreement. If Licensee occupies City Property after expiration of the Term, the License Fee shall double and payable on a monthly basis on or before the first date of the month at the rate of Two Thousand Four Hundred Fifty and no/100 Dollars (\$2,450.00). Licensee shall disburse payment of the elevated License Fee within 15 (fifteen) days of expiration of the Term until such time that the Mobile Classrooms have been removed or demolished. No prorations or reimbursements will be provided.

5. **Maintenance and Utilities.** Licensee shall be responsible during the Term, at its sole cost and expense, for the ongoing maintenance and upkeep of all or any portion of the Licensed Property used by Licensee or the Licensee Related Parties for the Permitted Use. Licensee shall also be responsible for payment of all utilities servicing the Licensed Property and the Mobile Classrooms.

6. **Tree Preservation Permit.** Licensee will not damage the existing trees or tree roots on the Licensed Property with the installation of its footings for the Mobile Classrooms. Licensee will obtain a tree preservation permit, if required by the Department of Public Works per City of Evanston Code of 2012, as amended.

7. **Surrender.** Upon the expiration of the Term, the Licensee shall, promptly remove all property and equipment owned by the Licensee and located upon the Licensed Property, including but not limited to the Mobile Classrooms. Licensee shall, at its sole cost and expense, repair or restore any of the Licensed Property in conformance with the drawings and specifications associated with the approved permit drawings for the Project which drawings and

specifications provide for the restoration of the Licensed Property to generally the same grade that existed prior to the Term. The City and Licensee acknowledge that the City will reconstruct Currey Park subsequent to the completion of the Project and that Licensee has contributed \$200,000 to the City to be used toward the redevelopment of the public park and restoration and repair efforts are in addition to the \$200,000 contribution.

8. **Indemnification**. Licensee shall defend, indemnify and hold harmless City and its officers, elected and appointed officials, agents, and employees from any and all liability, losses, or damages as a result of claims, demands, suits, actions, or proceedings of any kind or nature, including without limitation costs, and fees, including attorney's fees, judgments or settlements, resulting from or arising out of any negligent or willful act or omission on the part of the Licensee or Licensee's subcontractors, employees, agents or subcontractors during the performance of this Agreement. Such indemnification shall not be limited by reason of the enumeration of any insurance coverage herein provided. This provision shall survive completion, expiration, or termination of this License Agreement. Nothing contained herein shall be construed as prohibiting City, or its officers, agents, or employees, from defending through the selection and use of their own agents, attorneys, and experts, any claims, actions or suits brought against them. Licensee shall be liable for the costs, fees, and expenses incurred in the defense of any such claims, actions, or suits. Nothing herein shall be construed as a limitation or waiver of defenses available to City and employees and agents, including without limitation the Illinois Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101 *et seq.* At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this License Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Licensee must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

9. **Insurance**. Licensee, at its sole cost and expense, shall maintain and keep in effect comprehensive commercial general liability insurance in the minimum amount of \$2,000,000, covering, without limitation, any liability for personal injury, bodily injury (including, without limitation, death) and property damage arising out of Licensee's and Licensee Related Parties' acts, omissions and use of the City Property pursuant to this Agreement. All insurance policies shall be written with insurance companies licensed or authorized to do business in the State of Illinois and having a rate of not less than A- or better as published within the prior twelve months, or if none, the most recent edition of Best's Key Rating Guide. All general liability policies of insurance required herein shall name the City as an additional insured. Licensee expressly agrees to waive its rights, benefits and entitlements under the "Other Insurance" clause of its commercial general liability insurance policy with respect to the City. In the event Licensee fails to purchase or procure insurance as required above, the parties expressly agree that Licensee shall be in default under this Agreement, and that the City may recover all losses, attorney's fees and costs expended in pursuing a remedy, or reimbursement, at law or in equity, against Licensee.

10. **Liens.** Licensee shall pay in full for all repair, maintenance and other work performed by or on behalf of Licensee pursuant to the terms of this Agreement, and shall not permit any mechanics' or other liens to attach to or be maintained against the Licensed Property.

11. **Environmental.** Licensee shall comply with all Environmental Laws (hereinafter defined) and shall not cause or permit any Hazardous Substances (hereinafter defined) to be brought, kept or stored on the City Property, and shall not engage in or permit any other person or entity to engage in any activity, operation or business on City Property that involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of Hazardous Substances. In the event that any work performed by or on behalf of Licensee on or to the City Property exposes, uncovers or results in the presence of Hazardous Substances on the City Property (including presence in soils excavated in conjunction with the License), Licensee, at its sole cost and expense, shall be responsible for the remediation of such Hazardous Substances in accordance with Environmental Laws, except to the extent caused by City. As used in this License Agreement, "**Hazardous Substances**" means all hazardous or toxic materials, substances, pollutants, contaminants, or wastes currently identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), as amended, the Superfund Amendments and Reauthorization Act ("**SARA**"), the Resource Conservation and Recovery Act ("**RCRA**"), or any other federal, state or local legislation or ordinances applicable to the Property. As used in this License Agreement, "**Environmental Laws**" means all federal, state and local environmental laws, rules, statutes, directives, binding written interpretations, binding written policies, ordinances and regulations issued by any governmental authority and in effect on or after the date of this License Agreement with respect to or that otherwise pertain to or affect the City Property, or any portion of the Property, the use, ownership, occupancy or operation of the City Property, or any portion of the Property, or any owner of the City Property, and as same have been amended, modified, or supplemented from time to time, including but not limited to CERCLA, the Hazardous Substances Transportation Act (49 U.S.C. § 1802 et seq.), RCRA, the Water Pollution Control Act (33 U.S.C. § 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. § 300f et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. § 11001 et seq.), the Radon and Indoor Air Quality Research Act (42 U.S.C. § 7401 note, et seq.), SARA, comparable state and local laws, and any and all rules and regulations that are effective as of the date of this License Agreement, or become effective after the date of this License Agreement under any and all of the aforementioned laws.

12. **Default.** It shall be considered a "**Default**" under this License Agreement if Licensee fails to substantially comply with any provision of this License Agreement and does not cure such failure within 30 days after notice, except where the default cannot reasonably be cured in 30 days, in which case if Licensee has begun and continues efforts to remedy the default as soon as practicable, then such additional time shall be given to remedy the default. In the event of a Default and the Default has not been cured, the City may terminate this License Agreement by written notice to Licensee. Such termination right shall be in addition to all rights and remedies available to the City at law or in equity.

16. **Survival of Rights**. The termination of this Agreement shall not affect any rights, claims or cause of action based, in whole or in part, on rights hereunder and/or events occurring prior to the termination, all of which shall survive the termination.

17. **Remedies**. In the event of any default under this Agreement, the non-defaulting party shall be entitled to specifically enforce the provisions of this Agreement and shall be entitled to all other remedies available at law or in equity. In any action or litigation between the parties hereto as a result of failure to perform or a default under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, court costs, and other costs as may be awarded by the court.

18. **Governing Law**. This Agreement and all rights conferred and obligations imposed hereunder shall be interpreted and construed in accordance with the laws of the State of Illinois. In the event of a dispute hereunder, the Parties agree to submit to the exclusive jurisdiction of the state courts of, and federal courts sitting in, Cook County, Illinois

19. **Severability**. If any provision of this Agreement shall be determined invalid, illegal or unenforceable, then the balance of this Agreement shall remain in full force and effect.

20. **Binding Agreement; Assignment**. The terms of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns. Licensee shall not assign its rights hereunder without the prior written consent of the City.

21. **Waiver**. Failure by any party hereto to enforce any provision of this Agreement in a timely manner or otherwise shall not be deemed a waiver of the right to enforce that provision, and any express waiver by either party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of that provision or any other provision.

22. **Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the City and Licensee have executed this Agreement as of the last day and year first written below.

THE CITY:

City of Evanston, a home rule unit of local government located in Cook County, Illinois

By: _____

Name: _____

Its: _____

Date: _____, 2014

LICENSEE:

Chiaravalle Montessori School, an Illinois not-for-profit corporation

By: _____

Name: _____

Its: _____

Date: _____, 2014

EXHIBIT A

SCHOOL PROPERTY

LOT 2 IN THE CHIARAVALLE SUBDIVISION, BEING A SUBDIVISION OF LOTS 10 THROUGH 15 IN BLOCK 37 OF EVANSTON IN THE SOUTH EAST $\frac{1}{4}$ OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 425 DEMPSTER STREET, EVANSTON, ILLINOIS

EXHIBIT B

LICENSED PROPERTY



CHIARAVALLE
MONTESSORI
SCHOOL

ANNONDESIGN

228 West Maple Street, Suite 1100
Chicago, IL 60610
P. 312.467.1111
www.annondesign.com

1400 Commonwealth Blvd. Suite A
Chicago, IL 60610
P. 773.462.4444

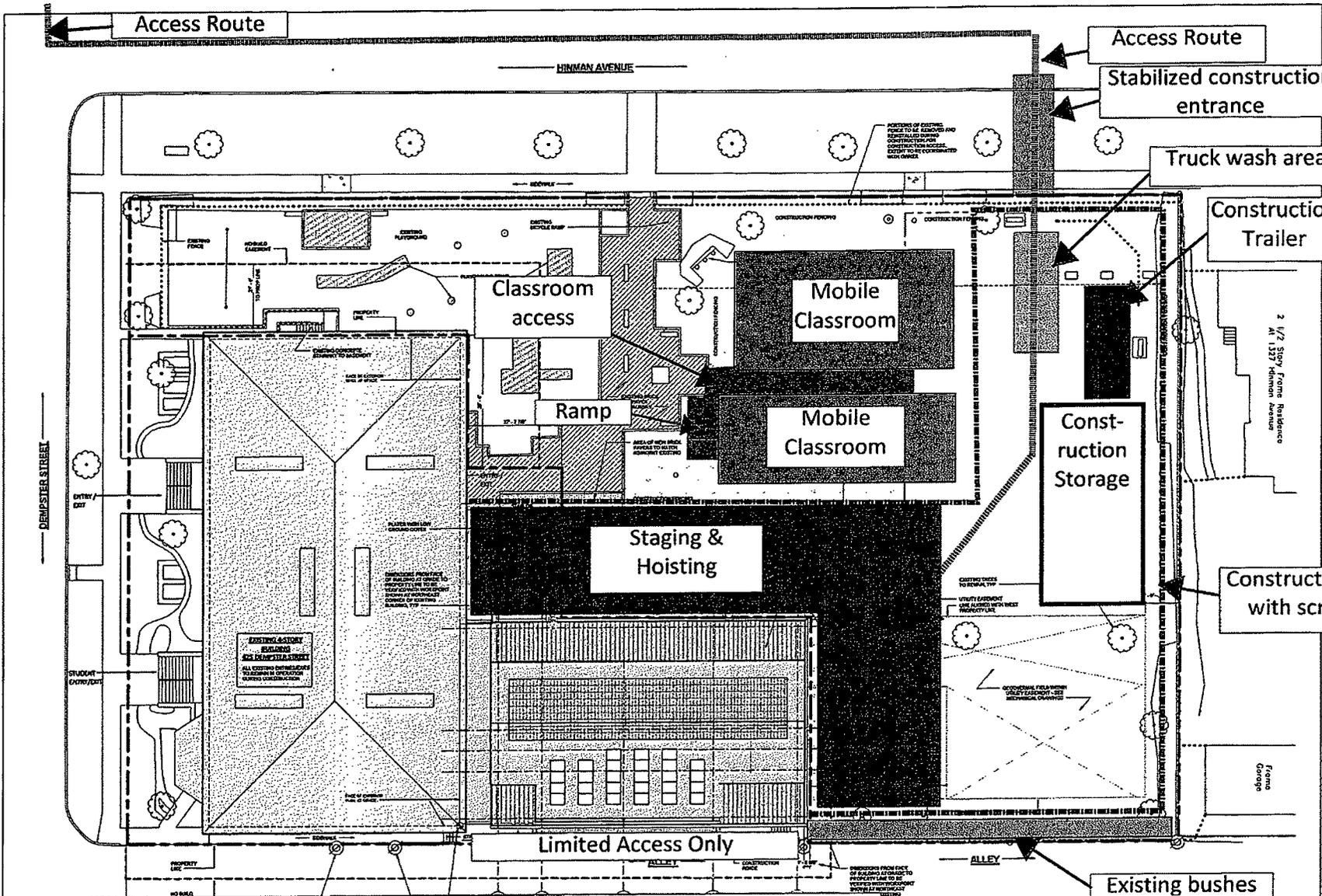
ISSUE FOR PERMITS & NO	12.18.13
ARCHITECTURAL REVIEW	11.24.13
ENGINEERING REVIEW	11.15.13
PERMITS REVIEW	09.11.13
CONSTRUCTION PERMITS	08.15.13

No. Description Date

Drawing Title:
ARCHITECTURAL SITE PLAN

Project No.: 040100 Client: Chiaravalle

A0100A



Access Route

Access Route

Stabilized construction entrance

Truck wash area

Construction Trailer

Construction Storage

Construction fence with screening

Classroom access

Mobile Classroom

Ramp

Mobile Classroom

Staging & Hoisting

Limited Access Only

Existing bushes

Logistics Plan
August 2014 through June 2015

2 ARCHITECTURAL SITE PLAN

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