

5/22/2015

60-R-15

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute a Parking Agreement with Accuity, Inc.

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

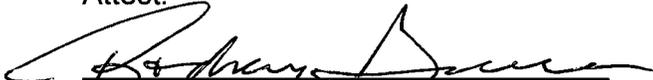
SECTION 1: The City Manager is hereby authorized to execute the Parking Agreement with Accuity, Inc., an Illinois corporation, attached hereto as Exhibit 1, the terms are incorporated herein by reference.

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

SECTION 3: That this Resolution 60-R-15 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: June 8, 2015

EXHIBIT 1

Parking Agreement

PARKING AGREEMENT

THIS PARKING AGREEMENT (“**Agreement**”) is entered by and between the CITY OF EVANSTON, an Illinois home rule municipal corporation (the “**City**”), and ACCUITY, INC., an Illinois corporation (“**Accuity**”) (City and Accuity collectively referred to as the “**Parties**”). This Agreement shall be effective as of the last date executed on the signature page.

RECITALS:

WHEREAS, the City is a home rule municipality in accordance with Section 6(a) of Article VII of the Constitution of the State of Illinois of 1970; and

WHEREAS, Accuity, Inc. is a company that provides electronic payment efficiency methods and compliance and financial counterpart solutions to its customers, the U.S. headquarters are currently located at 4709 Golf Road, Skokie, Illinois; and

WHEREAS, Accuity seeks to relocate the headquarters office with approximately 200 employees to Evanston and execute a 10-year lease of 36,000 square feet commercial space located at 1007 Church Street (the “**Property**”); and

WHEREAS, Accuity will be renovating the commercial lease space at the Property for its business and investing significant funds to complete the renovation and relocation to Evanston (the “**Project**”); and

WHEREAS, the City desires to attract new businesses such as Accuity, create new jobs, and provide for the general enhancement of the tax base of the City for the benefit of the City and its residents; and

WHEREAS, the Parties agree that extraordinary costs will be incurred by Accuity to relocate the business to Evanston and the City seeks to offset some of the Project costs by providing parking to 70 employees of Accuity in the City parking garage at 1800 Maple Avenue for 5 years and at reduced parking rates for an additional 5 years (“**Maple Avenue Garage**”); and

WHEREAS, the City has determined that providing financial assistance in the form of a parking agreement is a proper exercise of its home rule powers and the City Council has made the following findings with respect to the Property and the Project; and

- A. The Project is expected to create job opportunities within the City;
- B. The Project will serve to further stabilize areas through increasing occupancy rates in the building and thereby increasing property tax assessment and revenue;
- C. Accuity meets high standards of credit-worthiness and financial strength;
- D. The Maple Avenue Garage is an underutilized asset of the City that can be used to further City goals without funds being spent on the business; and
- E. This Agreement is made in the best interest of the City,

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals, the covenants, terms and conditions hereinafter set forth and other valuable consideration, the receipt and sufficiency

of which are acknowledged, it is mutually agreed by the Parties hereto as follows:

SECTION 1: Recitals. The Parties hereby agree that the Recitals set forth hereinabove are incorporated herein by reference, as if fully set forth herein.

SECTION 2: Parking.

A. Term and Parking Arrangement

1. Eligible Parking Customers: This Agreement is limited to Accuity employees only (“**Parking Customers**”).
2. Term: The Agreement will commence on the 1st day of January, 2016 (“**Commencement Date**”) and shall end at 11:59 p.m. on the 31st day of December, 2025.
3. The City will provide seventy (70) parking spaces on the top floor/4th floor of the Maple Avenue Garage for a period of five (5) years at no charge to Accuity, January 1, 2016 – December 31, 2020).
4. The City will provide up to seventy (70) parking spaces on the top floor/4th floor of the Maple Avenue Garage for the remainder of the Term, January 1, 2021 – December 31, 2025) at the reduced rate of \$50 per month per space. There will no extensions of the Term beyond the ten-year period.
5. The City will furnish 70 transponder devices or another electronic access device to Accuity for distribution to its employees to utilize during the Term.
6. The Economic Development fund will reimburse the City’s Parking Fund annually for the cost of this Parking Agreement. During the first five years of the Term, Economic Development fund will transfer \$42,000 to the Parking Fund for the cost associated with the free parking. The Economic Development Fund will not reimburse the Parking Fund in relation to the reduced rate for years 2021-2025.

SECTION 3. Accuity’s Responsibilities.

The Parking Agreement is conditioned on the completion and satisfaction of each part of this Section 3 and confirmed by the Director and/or his designee. If Accuity fails to perform any condition fully set forth herein, it shall be considered an Event of Default, defined in Section 9. For the Term of this Agreement, Accuity’s responsibilities shall include the following:

A. Summary of Project:

1. Accuity shall relocate the U.S. headquarters office from Skokie, Illinois to the Property. This is an incurable Event of Default and this Agreement is null and void if relocation does not occur on or about the first quarter of 2017.
2. Monitoring and Compliance: Accuity is charged with monitoring its employee’s compliance and usage of the Maple Avenue Garage parking spaces allocated.
 - a. Accuity will instruct its employees utilizing the Maple Avenue Garage that: (1) the employee can only utilize the transponder to commute to work; (2) the transponder cannot be given to another employee for use unless the subject employee is relinquishing his/her ability to park at the Maple Avenue Garage; and (3) the transponder cannot be utilized by any

other individual other than employee, including Accuity contractors, vendors, clients, or family or friends of employee.

- b. The Parties will monitor parking demand for the seventy (70) spaces semi-annually. If Accuity no longer needs 70 spaces due to increased use of transit by employees, utilization of car share programs, or by other means the number of spaces is no longer necessary or not being utilized by Accuity employees on a basis of no less than 75% of the period of review, then the allocation will be reduced.

B. Environmental Initiatives. Accuity's parent company has a robust environmental corporate responsibility initiative that incorporates water, waste, and electricity efficiency standards and to continue these efforts with the headquarters office, Accuity represents that it will pursue these initiatives in the Term:

1. Onsite Recycling: Accuity utilizes programs to reduce waste and encourage recycling by its employees through onsite recycling containers and consumption tracking/reporting against corporate standards.
2. Energy Efficient Operations: Accuity plans to work with the landlord of the Property to have a green/energy efficiency clause in the lease document to enable consumption tracking and improved environmental performance of the leased space.
3. Transit: Accuity will be promoting multi-modal transportation initiatives with its employees by providing pre-tax commuter benefit programs.

C. Philanthropy Efforts.

1. Mayor's Summer Youth Employment Program: Accuity shall sponsor the Mayor's Summer Youth Employment Program Job Fair at the Bronze Level for two (2) years, starting in 2016 – 2017. Bronze Level Status equates to a sponsorship cost of Five Thousand Seven Hundred and no/100 Dollars annually (\$5,700.00). Accuity will issue the sponsor funds on or before February 1st during the two year period and will coordinate with the Youth and Young Adult Coordinator, Kevin Brown on issuance of funds. The sponsorship supports food, employer kits, tables, chairs, table numbers, decorations, literature/printing/advertisements, and volunteer t-shirts for the event.
2. Accuity in Action Events. Accuity will continue to support local non-profit organizations through company sponsored "Cares" days and events entitled "Accuity in Action". Accuity in Action is volunteerism incentivized and encouraged by offering full-time employees two paid days per year to support an Evanston non-profit and/or local government agency.

E. Sale or Transfer prior to end of Term:

1. If Accuity sells or transfers in whole or in part any of its business to any unrelated entity or individual, it shall be considered an Event of Default.

2. If Accuity vacates the Property for a different location or reduces the footprint within the leased Property by more than 20%, it shall be considered an Event of Default.

3. If Accuity reduces the current number of its full-time employee staff working at the Property by more than twenty (20) percent during the Term of the Agreement, it shall be considered an Event of Default. As of the Effective Date, the Accuity employs approximately 200 people at its headquarters location in Skokie, Illinois and will not during the entire Term

reduce its full-time employee staff by more than twenty (20) percent at the new Evanston headquarters location at the Property.

F. Notwithstanding any other provision of this Agreement, in the event that Accuity declares insolvency or bankruptcy and subsequently closes the business, then this Agreement shall be deemed terminated and of no further force and effect, and the Parties are relieved of all covenants, conditions, obligations and liabilities hereunder.

G. Accuity acknowledges and agrees that the provisions of this Agreement shall be a matter of public record and subject to disclosure under the Freedom of Information Act, 5 ILCS 140/1 *et seq.*, and other transparency reporting to the City Council, as shall any and all payments made by the City to Accuity pursuant to this Agreement.

SECTION 4. Indemnification.

Accuity 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 Accuity or its 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 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. Accuity 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, Accuity 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 Accuity of any of its obligations under this Agreement. Any settlement of any claim or suit related to activities conducted under this Project by Accuity 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. No member, official, agent, legal counsel or employee of the City shall be personally liable to the Accuity, or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Accuity or successor or on any obligation under the terms of this Agreement.

SECTION 5. Mutual Assistance. Accuity and the City agree to do all things practicable and reasonable to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out the terms hereof.

SECTION 6. Anti-Discrimination and Minority Business Participation.

A. Accuity agrees to comply with all applicable laws prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sex, national origin

or sexual orientation. Accuity agrees to make good faith, commercially reasonable efforts to have its general contractor and major subcontractors, to the extent they hire new employees and can include minorities, women and City residents to work on the Project. Nothing herein shall require Accuity or its contractors or major subcontractors to displace any employees in its current work force to achieve the foregoing goal.

B. Notwithstanding the foregoing provisions, Accuity may be entitled to employ union labor hereunder pursuant to the rules, regulations and practices of applicable unions.

SECTION 7. Event of Default and Default Remedies.

A. **Notice of Default:** In the event of failure by either party to substantially perform any material term or provision of this Agreement, including but not limited to conditions contained in Sections 3 and 4 (“**Event of Default**”), the non-defaulting party shall have those rights and remedies provided herein, provided that such non-defaulting party has first provided to the defaulting party a written notice of default in the manner required by Section 14 hereof identifying with specificity the nature of the alleged default and the manner in which said default may be satisfactorily be cured.

B. **Cure of Default:** Upon the receipt of the notice of default, the alleged defaulting party shall promptly commence to cure, correct, or remedy such default within a 30-day period, and shall continuously and diligently prosecute such cure, correction or remedy to completion.

C. **Remedies not Exclusive:** If an Event of Default occurs, which either party has not cured within the timeframe set forth in subparagraph B above, either party, at its option, may terminate this Agreement and/or may institute legal action in law or in equity to cure, correct, or remedy such default, enjoin any threatened or attempted violation, or enforce the terms of this Agreement.

SECTION 8. Entire Agreement. This Agreement sets forth all the promises, inducements, Agreements, conditions and understandings between Accuity and City relative to the subject matter hereof, and there are no promises, Agreements, conditions or understandings, either oral or written, express or implied, between them, other than are herein set forth.

SECTION 9. Survival of Terms, Binding upon Successors. The covenants, terms, conditions, representations, warranties, agreements and undertakings set forth in this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

SECTION 10. Governing Law and Attorney’s Fees. The validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Illinois. In the event that the City commences any action, suit, or other proceeding to remedy, prevent, or obtain relief from a breach of this Agreement by Accuity, or arising out of a breach of this Agreement by Accuity, the City shall recover from the Accuity as part of the judgment against Accuity, its attorneys’ fees and costs incurred in each and every such action, suit, or other proceeding.

SECTION 11. Force Majeure. Performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lockouts, riots,

SECTION 17. **Execution of this Agreement.** This Agreement shall be signed last by the City and the City Manager shall affix the date on which he/she signs and approves this Agreement on the first page hereof, which date shall be the effective date, (“Effective Date”) of this Agreement.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date executed by the City ("Effective Date").

ACCUITY, INC., an Illinois corporation

By: _____
Hugh Jones IV
President

Dated: _____

CITY OF EVANSTON, an Illinois municipal
corporation

By: _____
Wally Bobkiewicz
Its City Manager

Dated: _____