

10/13/2015

63-R-15

A RESOLUTION

Authorizing the City Manager to Negotiate and Execute a Parking Agreement with Youth & Opportunity United, Inc.

WHEREAS, Youth & Opportunity United, Inc. ("Y.O.U") is the owner of a parking lot located at 1623 Dodge Avenue, Evanston, Illinois (the "Parking Lot"); and

WHEREAS, The City is the owner of that real property commonly known as the Gibbs Morrison Cultural Center at 1823 Church Street, which is located across the street from the Parking Lot; and

WHEREAS, Y.O.U is willing to permit the City to utilize parking spaces within the Parking Lot for visitors, employees, and other invitees to the Gibbs Morrison Cultural Center and in consideration the City will let Y.O.U. host events or meetings in the Gibbs Morrison Cultural Center and will stripe the Parking Lot,

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

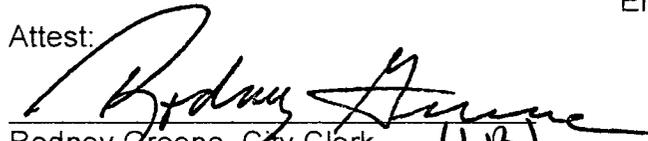
SECTION 1: The City Manager is hereby authorized to execute the Parking Agreement with Youth & Opportunity United, Inc. (Y.O.U.), an Illinois not-for-profit corporation, attached hereto as Exhibit 1, the terms are incorporated herein by reference.

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 63-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 (RB)

Adopted: October 21, 2015

EXHIBIT 1

Parking Agreement

PARKING LOT USE AGREEMENT

The following Agreement is between **Youth & Opportunity United, Inc.**, a/k/a Youth Organization Umbrella, Inc. (“Y.O.U.”), and the **City of Evanston**, an Illinois municipal corporation (the “City”). Y.O.U. and the City are sometimes herein referred to collectively as the “Parties” or individually as a “Party.” The Parties agree as follows:

I. Use of Parking Lot:

A. Description of Parking Lot. Y.O.U. is the owner of that certain parking lot located at 1623 Dodge Avenue, Evanston, Illinois (the “Parking Lot”). The City is the owner of that certain real property commonly known as the Gibbs Morrison Cultural Center at 1823 Church Street (“City Property”), located across the street from the Parking Lot.

B. Use of Parking Lot. Y.O.U. agrees to allow the City and the City’s employees, contractors, volunteers or invitees (collectively with the City, the “City Users”) to use all or such portion of the parking spaces located in the Parking Lot specified on Exhibit A commencing and ending on the dates and during the times provided in Exhibit A to this Agreement (“Usage Period”) until the expiration of this Agreement specified in Paragraph III.E below (“Expiration Date”). Up to a maximum of eight (8) spaces (but not the aisles adjoining such spaces) in the area shown on Exhibit B attached to this Agreement may be designated by the City for the sole use by the City Users until the Expiration Date (“City Reserved Spaces”) but only during the Usage Period specified on Exhibit A for such City Reserved Spaces (“Reserved Space Usage Period”), which the City shall have the right to identify by installing appropriate signage as “Reserved for Gibbs Morrison Center Users” or other similarly worded signage. Y.O.U. shall at all times be the sole owner of the Parking Lot and the City shall have no right or interest in the Parking Lot, except for the right to use the Parking Lot as provided in this Agreement.

1. Y.O.U.’s Construction Period Use. Notwithstanding the foregoing, Y.O.U. reserves the right during the time period (“Construction Period”) when its new facility is under construction at 1911 Church Street, Evanston, Illinois (“Y.O.U. New Facility”) to designate approximately 8 spaces (including the adjoining aisle space, as long as adequate ingress and egress to the City Reserved Spaces is preserved) in the area of the Parking Lot depicted on Exhibit B as reserved for use by the contractor and subcontractors working on the construction (“Reserved Construction Spaces”), but Y.O.U. reserves the right to use as many additional parking spaces as may be needed to accommodate the construction of the Y.O.U. New Facility during all or part of the Construction Period, as long as it continues to allow the City to use the City Reserved Spaces. The Construction Period is currently anticipated by Y.O.U. to commence on or around March 1, 2016 and end on or around November 30, 2016, but the dates for the Construction Period are subject to change (including extension) by Y.O.U. in Y.O.U.’s discretion. Such Reserved Construction Spaces shall be clearly marked as such by Y.O.U. or its contractor and shall not be used by any City Users during the hours of 7:00 a.m. to 4:00 p.m. and may also be fenced off in a manner that limits access thereto by any persons other than the contractor and subcontractors during the entire Construction Period.

2. Y.O.U.'s Post-Construction Use of the Parking Lot. The City understands and acknowledges that upon completion of Y.O.U.'s New Facility, Y.O.U. reserves the right to use and to allow its employees, directors, patrons, clients and other invitees to the New Facility to use the Parking Lot (other than the eight (8) City Reserved Spaces during the applicable Reserved Spaces Usage Period) on a first-come, first served basis during all of the other time periods when the City is permitted to use the Parking Lot.

3. Other Uses of Parking Lot. In addition to the foregoing provisions of Section I.B.1 and 2 above, the City acknowledges and understands that except for the right of the City to the exclusive use of the City Reserved Spaces during the Reserved Spaces Usage Period, the City's right to use the Parking Lot as provided herein is not exclusive and that Y.O.U. reserves the right to permit the Parking Lot to be used by the Evanston Township High School District No. 202 ("School District") for School District purposes, use by Y.O.U. and other businesses located in the area or the general public, and to permit the School District or Y.O.U. to post signage on the Parking Lot related to the use of other portions of the Parking Lot (excluding the City Reserved Spaces during the Reserved Spaces Usage Period), but that the use for City purposes will not include the dates or times of day set forth in Exhibit A for the School District's exclusive use.

4. Y.O.U. Not Responsible for Unauthorized Use of Parking Lot. The City acknowledges and agrees that Y.O.U. will not be responsible or liable to the City if any non-City Users park in the Parking Lot during the dates and times set forth in Exhibit A (or park in the City Reserved Spaces) regardless of whether such non-City Users are associated with the City or are otherwise permitted or unauthorized, except that Y.O.U. will make reasonable efforts to educate and advise its employees not to park in the City Reserved Spaces during the Reserved Spaces Usage Period.

C. Compensation. As compensation for the use of the Parking Lot, the City agrees to provide Y.O.U. with privileges to use the Gibbs Morrison Cultural Center once a month during the Term of this Agreement for Y.O.U. meetings or events. Y.O.U. and the City will coordinate and schedule the dates in advance for the Y.O.U. utilization of the Gibbs Morrison Cultural Center space. The City also agrees to stripe the Parking Lot once during the time period of the contract at the City's expense and consideration for the City's use of parking spaces outlined in this Agreement.

D. Maintenance of Parking Lot. Y.O.U. shall be responsible for the cost of repair and/or replacement of any damage to the Parking Lot, unless such damage is caused by the City or the City Users. The City shall not, however, be responsible for ordinary wear and tear to the Parking Lot.

E. No Improvements. The City shall not modify, alter, place or make any permanent fixtures or improvements upon the Parking Lot without Y.O.U.'s prior written approval. Y.O.U. acknowledges that the Parking Lot will comply with all City Code provisions and the Illinois Accessibility Code.

F. Required Parking Lot Enhancements. In addition to the costs to be incurred and the services to be provided by the School District provided elsewhere in this

Section I, the City will provide assistance in the cost of any re-striping required by the City in connection with its approval of the plans for the Y.O.U. New Facility.

II. Indemnification and Insurance Provisions:

A. **Indemnification.** The City and Y.O.U. each agree to mutually indemnify, defend, and hold harmless the other Party and their respective board members, employees, and agents from all claims, causes of action, damages, whether to person (including death) or property, costs (including reasonable attorneys' fees), and losses (collectively "Claims") to the extent the Claims arise out of the acts or omissions of the indemnifying Party. In addition, and without limited the foregoing, the City and not Y.O.U. shall be responsible and liable to Y.O.U. for any Claims for which the City would be required to indemnify Y.O.U. that are asserted against Y.O.U. by any City User, regardless of whether the use by a City User is during the days and times specified in Exhibit A. The City's indemnification obligations under this Agreement shall not in any way be limited by the amount of insurance available to the City or lack of any insurance coverage with respect thereto. The respective obligations of the City and Y.O.U. to indemnify, defend, and hold harmless the other Party from Claims to the extent provided in this Section II.A shall apply regardless of the joint and several nature of any liability either might have pursuant to applicable law or any limitations on liability of either of them as an employer pursuant to applicable law, including without limitation, the provisions of Section 2-1117 of the Code of Civil Procedure, 735 ILCS 5/2-1117, and except as stated elsewhere in this Section II, in the event there is a determination of joint or concurrent negligence on the part of the City and Y.O.U., each shall bear that portion of the loss or damages assessed on account of a Claim that its share of the joint or concurrent negligence bears to the total negligence (including that of third parties) which caused the asserted Claim.

B. **No Waiver of Tort Immunity Defenses.** Nothing contained in Section II.A of this Agreement, or in any other provision of this Agreement, is intended to constitute nor shall constitute a waiver of the defenses available to the City under the Illinois Local Governmental and Governmental Employees Tort Immunity Act, with respect to Claims by third parties against the City, but does not in any way affect the City's obligation to indemnify Y.O.U. from any Claims by third parties under Section II.A, including Claims by any City Users.

C. **Evidence of Insurance Coverage.**

1. **City Insurance.** The City represents and warrants to Y.O.U. that the City is self-insured for property and casualty (i.e., liability) and workers' compensation coverage up to \$1.25 Million per occurrence and shall maintain such self-insurance coverage amounts no greater than the foregoing without prior notice to Y.O.U. during the duration of this Agreement. From time to time upon request from Y.O.U., the City shall provide to Y.O.U. a certificate of insurance or other information reasonably requested by Y.O.U. evidencing that the City is self-insured in the aforementioned amount.

2. Y.O.U. Insurance. During the term of this Agreement, Y.O.U., at its sole cost and expense, shall carry and maintain comprehensive general liability insurance, with a minimum combined single limit of One Million (\$1,000,000) per occurrence with a general aggregate minimum limit of Two Million (\$2,000,000.00). In addition, the Y.O.U. shall keep and maintain Workers' Compensation Insurance providing limits and coverages not less than those required by statute in Illinois. Y.O.U. shall provide the City with certificates of insurance evidencing the existence of the coverage described above, including form and deductibles, during the duration of this Agreement.

D. Stated Insurance Coverage Limits Not the Extent of Liability. The insurance provided for by City in Section II.C.1 shall be primary and not excess as respects any Claims for which Y.O.U. is indemnified by the City. If the City from time to time carries insurance coverage of any one or more of the types required under Section II.C.1 with limits higher than what is required in Section II.C.1, the full amount of such insurance coverage shall be available to respond to a covered Claim and the coverage afforded to Y.O.U. shall not in any way be limited by the minimum insurance coverage limits specified in Section II.C.1 and shall be deemed increased to the amounts actually carried by the City.

E. Obligations Survive. The respective obligations of Y.O.U. and the City under this Section II shall survive the expiration or earlier termination of this Agreement.

III. Miscellaneous Provisions:

A. Partial Invalidity. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid, illegal, unenforceable or in conflict with any applicable federal, state or local law, regulation or code, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, shall not be affected thereby, but such remaining provisions shall be interpreted, applied and enforced so as to achieve, as near as may be, the purposes and intent of this Agreement to the greatest extent not prohibited by law.

B. Authority. The City represents and warrants to Y.O.U. that the execution and delivery of this Agreement has been duly authorized and executed as required under applicable law and that the City has full power and authority to enter into this Agreement and to perform the City's obligations under this Agreement pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, including without limitation, Section 10-20 thereof. Y.O.U. represents and warrants to the City that the execution and delivery of this Agreement has been duly authorized and executed and Y.O.U. has full power and authority to execute and deliver this Agreement and to perform Y.O.U.'s obligations under this Agreement.

C. Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

D. No Assignment. The City may not assign any rights or duties under this Agreement without the prior express written consent of Y.O.U., which may be withheld in Y.O.U.'s sole discretion.

E. Term; Termination. The Expiration Date of this Agreement shall be upon the expiration of the Construction Period. In addition, either Party may terminate this Agreement prior to the Expiration Date for any reason after providing not less than 90 days prior written notice to the other Party of its intention to terminate the Agreement and specifying the date on which it shall terminate. Upon the Expiration Date or earlier termination of this Agreement, the City shall remove all signage installed by the City and repair any damage to the Parking Lot caused by such removal.

F. Notices. All notices required or permitted by this Agreement must be in writing and delivered personally or sent by certified mail, return receipt requested to the respective Party's mailing address set forth below:

If to Y.O.U.: Youth & Opportunity United, Inc.
1027 Sherman Avenue
Evanston, Illinois 60201
Attn: Seth Green, Executive Director

If to the City : City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: Wally Bobkiewicz, City Manager

With a copy to: City of Evanston
2100 Ridge Avenue
Evanston, IL 60201
Attn: W. Grant Farrar, Corporation Counsel

G. Effective Date. This Agreement shall be deemed dated and become effective on the date the last of the Parties signs as set forth below the signature of their duly authorized representatives ("Effective Date").

H. Counterparts. This Agreement may be executed simultaneously in two or more counterparts each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Y.O.U. and the City agree that the delivery of an executed copy of this Agreement by email shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered.

I. Captions. Paragraph and section headings used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

J. **Plurals; Genders.** Whenever used in this Agreement, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall be applicable to all genders.

[Signatures on Next Page(s)]

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be executed by their duly designated officials or officers, intending it to be effective as of the Effective Date.

City of Evanston

Youth & Opportunity United, Inc.

By: _____
Wally Bobkiewicz, City Manager

By: _____
Seth Green, Executive Director

Dated: _____

Dated: _____

EXHIBIT A

Dates and Times of City Parking Lot Use

Beginning on October 27, 2015 and until the Expiration Date or earlier termination of the Agreement:

Eight (8) City Reserved Spaces at all times during the year and at any time of day, except (j) during the "Teacher Institute Days" when the School District shall have the exclusive use of the entire Parking Lot between the hours of 8:00 a.m. and 5:00 p.m. (typically in the months of October and February during the school year), and (ii) during the hours of 8:00 a.m. and 5:00 p.m. during those days when the School District hosts the Boys' and Girls' Illinois High School Association State swim meet competitions (typically in even years and on Fridays and Saturdays), Y.O.U. shall provide notice to the City of the schedule in which the Reserved Spaces are not available within a reasonable time period.

it being understood and agreed by the City that in both of the instances described in clauses (i) and (ii), the School District shall have the sole right to use the City Reserved Spaces.

EXHIBIT B

Diagram of Parking Lot Showing Area for School District Reserved Spaces, City Reserved Spaces and Reserved Construction Spaces

[See Attached]