

**79-R-18**

**A RESOLUTION**

**Authorizing the City Manager to Negotiate and Execute a Parking Memorandum of Agreement with Youth & Opportunity United, Inc. (Y.O.U.)**

**WHEREAS**, 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

**WHEREAS**, in consideration, the City will let Y.O.U. use the Gibbs Morrison Cultural Center three times per year during the term of this Memorandum of Agreement for Y.O.U. meetings or events; and

**WHEREAS**, City staff will perform snow removal services for the parking lot and surrounding sidewalk, and perform four annual clean-ups to remove weeds and trim the plant material on the perimeter of the parking lot,

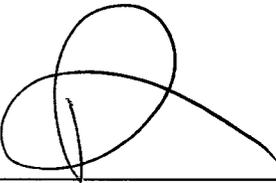
**NOW BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

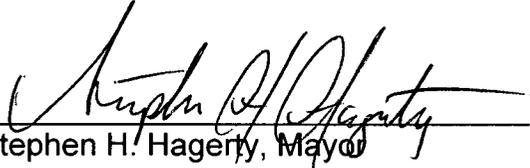
**SECTION 1:** The City Manager is hereby authorized to execute the Parking Memorandum of Agreement with Youth & Opportunity United (Y.O.U.), an

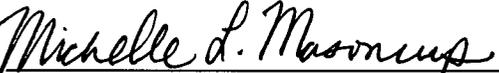
Illinois not-for-profit corporation, attached hereto as Exhibit 1, the terms are incorporated herein by reference.

**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:** This Resolution 79-R-18 shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.

Attest:   
\_\_\_\_\_  
Devon Reid, City Clerk

  
\_\_\_\_\_  
Stephen H. Hagerly, Mayor

Approved as to form:  
  
\_\_\_\_\_  
Michelle L. Masoncup, Corporation Counsel

Adopted: October 22, 2018

**EXHIBIT 1**

**Parking Memorandum of Agreement**

## MEMORANDUM OF AGREEMENT

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") enter into this Memorandum of Agreement to set forth the terms and conditions upon which they will collaboratively share the parking lot at 1623 Dodge Avenue.

### **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 B under the terms of this Memorandum of Agreement as provided in Exhibit A to this Agreement ("Usage Period"). Y.O.U. reserves the right to modify the Usage Period and will provide written notice in a reasonable time period to the City for times in which the parking spaces are not available for usage. These periods include, but are not limited to, summer and fall staff trainings, the dates of which will be provided to the City in advance.

Eight (8) spaces (but not the aisles adjoining such spaces) in the area shown on Exhibit B attached to this Memorandum of Agreement may be designated by the City for the sole use by the City Users during the Usage Period ("City Reserved Spaces"). The City shall have the right to identify the City Reserved spaces 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 Memorandum of Agreement.

**1. Other Uses of Parking Lot.** In addition to the foregoing provisions of Section I.B.1 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 exclusive rights to all other spaces in the lot. Y.O.U. reserves the right to permit the Parking Lot to be used by any party it so chooses.

**2.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 the following:

- Four annual clean-ups to remove weeds and trim the plant material on the perimeter of the parking lot.
- Snow removal services for the parking lot and surrounding sidewalk.
- Use the Gibbs Morrison Cultural Center three times per year during the Term of this Memorandum of 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.

**D. General 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.

## **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.

The City's indemnification obligations under this Memorandum of 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 Memorandum of 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 Memorandum of 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 Memorandum of 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 Memorandum of 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 Memorandum of Agreement.

### **III. Miscellaneous Provisions:**

**A. Partial Invalidity.** If any term or provision of this Memorandum of 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 Memorandum of 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 Memorandum of 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 Memorandum of 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 Memorandum of Agreement and to perform Y.O.U.'s obligations under this Memorandum of 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 Memorandum of Agreement without the prior express written consent of Y.O.U., which may be withheld in Y.O.U.'s sole discretion.



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 Memorandum of Agreement are for convenience of reference only and shall not affect the construction of any provision of this Memorandum of Agreement.

**J. Plurals; Genders.** Whenever used in this Memorandum of 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. **IN WITNESS WHEREOF**, the undersigned Parties have caused this Memorandum of Agreement to be executed by their duly designated officials or officers, intending it to be effective as of the Effective Date.

City of Evanston

By:

\_\_\_\_\_

Wally Bobkiewicz, City Manager

Dated: \_\_\_\_\_

Youth & Opportunity United, Inc.

By: *Marguerite Blinn DiNovi*

\_\_\_\_\_

Marguerite Blinn DiNovi, CEO

Dated: October 5, 2018

## **EXHIBIT A**

### **Dates and Times of City Parking Lot Use**

Beginning on October 1, 2018 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 (i) 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.

**City of Evanston Reserved Spaces**

