

# CITY OF WEST CHICAGO

WHERE HISTORY & PROGRESS MEET

## NOTICE

### PUBLIC AFFAIRS COMMITTEE

**Monday, December 18, 2023**  
**6:15 P.M. – Council Chambers**

### AGENDA

1. Call to Order, Roll Call, and Establishment of a Quorum
2. Approval of Minutes
  - A. Public Affairs Committee of November 20, 2023
3. Public Participation / Presentations
4. Items for Consent
  - A. Resolution No. 23-R-0099 - A Resolution Authorizing the Mayor to Execute a Contract Extension with Flock Group, Inc.
  - B. Resolution No. 23-R-0100 – A Resolution Terminating the Agreement between West Chicago Jules, LLC and SEB Palatine II, LLC (Oliver Square now Mosaic Crossing) and the City of West Chicago
  - C. Ordinance No. 23-O-0048 – Parking Regulations
5. Items for Discussion
6. Unfinished Business
7. New Business
8. Reports from Staff
9. Adjournment

## MINUTES

### PUBLIC AFFAIRS COMMITTEE

Monday, November 20, 2023 6:15 P.M.

**1. Call to Order, Roll Call, and Establishment of a Quorum.**

Chairman Chassee called the meeting to order at 6:15pm. Roll Call found Alderman Brown, Birch Ferguson and Short.

Alderman Smith joined the meeting at 6:27pm and Alderman Hallett joined the meeting at 6:29pm.

**2. Approval of Minutes.**

A. Public Affairs Committee Minutes of October 16, 2023. Alderman Brown made a motion, seconded by Alderman Birch Ferguson to approve the minutes of the Public Affairs Committee meeting. Voting Aye: Chairman Chassee, Alderman Brown, Hallett, Birch Ferguson, Smith and Short. Voting Nay: 0. Abstain: 0. Motion carried.

**3. Public Participation / Presentations.**

**4. Items for Consent.**

A. Resolution No. 23-O-0088 – A Resolution Approving the Master Services and Purchasing Agreement with Axon Enterprises, Inc. for the Axon Body Worn Camera System. Alderman Birch Ferguson made a motion, seconded by Alderman Brown to direct this item to City Council for approval. Voting Aye: Chairman Chassee, Alderman Brown, Hallett, Birch Ferguson, Smith and Short. Voting Nay: Abstain: 0. Motion carried.

**5. Items for Discussion**

A. Railroad Days 2024 – Committee gave direction for Staff to move forward with their changes.

**6. Unfinished Business.**

A. Alderman discussed the possibility of having a Stop sign put at the intersection of Bishop and Forest Street. Chief Fleury would discuss this possibility with Mehul Patel, Director of Public Works and come up with a solution or an alternative.

**7. New Business.**

**8. Reports from Staff.**

- A. West Chicago Police Department Monthly Report.
- B. Mexican Independence Day Festival Final Report – Alderman Birch Ferguson asked for better control with the candy falling out of the pinata.

**10. Adjournment.** Alderman Brown made a motion to adjourn, seconded by Alderman Short. The motion approved by voice vote, and the meeting adjourned at approximately 6:35pm.

Respectfully submitted,

*Yahaira Bautista*

Administrative Assistant to Chief of Police  
West Chicago Police Department

# CITY OF WEST CHICAGO

## PUBLIC AFFAIRS COMMITTEE AGENDA ITEM SUMMARY

**ITEM TITLE:** Resolution No. 23-R-0099

A Resolution Authorizing the Mayor to Execute a Contract Extension with Flock Group, Inc. for Five Years, Superseding the Existing Two year Contract for the Automatic License Plate Reader Program

**AGENDA ITEM NUMBER:** 4. A.

**FILE NUMBER:** \_\_\_\_\_

**COMMITTEE AGENDA DATE:** 12/18/2023

**COUNCIL AGENDA DATE:** 12/18/2023

**STAFF REVIEW:** Colin Fleury, Chief of Police

**APPROVED BY CITY ADMINISTRATOR:** Michael Guttman

**SIGNATURE** \_\_\_\_\_

**SIGNATURE**

On June 6, 2022, the Council approved Resolution No. 22-R-0028, allowing the City to enter into a 24-month Agreement with Flock Safety for 13 Automated License Plate Reader cameras for \$2,500 per camera. The final payment of \$35,000 on that contract is due June 8, 2024, allowing services to continue until June 8, 2025.

Flock Safety will be increasing the yearly cost of its cameras to \$3,000.00 beginning January 1, 2024. A new agreement with Flock Safety would allow the City to lock in the recurring cost of the program of \$35,000.00 annually, which includes all maintenance and upgrades to the software for five years ending in 2029. This extension would allow for savings of \$6,500 per year and \$32,000 over the life of the contract.

Flock Safety is a sole source system that securely captures images and utilizes proprietary software named "Vehicle Fingerprint Technology". This technology is able to analyze vehicle license plates, registration State of issue recognition, vehicle color, vehicle type, vehicle make and model, and objects (roof rack, bumper stickers, etc.) based on image analytics (not solely car registration data), as well as vehicles without plates. The Flock Safety ALPR Program has been an overwhelming success for the City. Since May 2023, vehicles have been flagged for such things as Missing Persons, Violent Persons, Sex Offenders, Stolen Vehicles, Warrants, and Protection Orders, to name a few. Our Officers have made seven apprehensions of such offenders in October alone due to these ALPR plate reads. Currently, the City shares access to over 3,500 ALPR cameras from 308 agencies across the United States, extending our investigative arm far outside our city and increasing our ability to solve crimes.

Please see the attached Flock Group Inc. Services Agreement.

**ACTIONS PROPOSED:**

Staff recommends approval of Resolution No. 23-R-0099

**COMMITTEE RECOMMENDATION:**

**RESOLUTION NO. 23-R-0099**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE CERTAIN  
AGREEMENT WITH FLOCK GROUP, INC.**

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that the Mayor is hereby authorized to execute and the Executive Office Assistant is authorized to attest certain Agreement with Flock Group, Inc., a five (5) year contract, superseding the existing two (2) year agreement for the Automatic License Plate Reader Program.

APPROVED this 18th day of December, 2023.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Mayor Ruben Pineda

ATTEST:

\_\_\_\_\_  
Executive Office Manager Valeria Perez

**Flock Safety + IL - City of West  
Chicago**

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Flock Group Inc.  
1170 Howell Mill Rd, Suite 210  
Atlanta, GA 30318

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MAIN CONTACT:  
Mike Hutton  
[michael.hutton@flocksafety.com](mailto:michael.hutton@flocksafety.com)  
8476090201

f'lock safety

# flock safety

## EXHIBIT A ORDER FORM

Customer: IL - City of West Chicago  
Legal Entity Name: IL - City of West Chicago  
Accounts Payable Email: areavley@westchicago.org  
Address: 475 Main Street West Chicago, Illinois 60185

Initial Term: 60 Months  
Renewal Term: 24 Months  
Payment Terms: Net 30  
Billing Frequency: Annual Plan - First Year Invoiced at Signing.  
Retention Period: 30 Days

### Hardware and Software Products

Annual recurring amounts over subscription term

Item	Cost	Quantity	Total
<b>Flock Safety Platform</b>			<b>\$35,000.00</b>
<b>Flock Safety Flock OS</b>			
FlockOS™	Included	1	Included
<b>Flock Safety LPR Products</b>			
Flock Safety Falcon®	Included	13	Included
<b>Flock Safety FlockOS Add Ons</b>			
Flock Safety Advanced Search	\$2,500.00	1	\$2,500.00

### Professional Services and One Time Purchases

Item	Cost	Quantity	Total
<b>One Time Fees</b>			

<b>Subtotal Year 1:</b>	\$35,000.00
<b>Annual Recurring Subtotal:</b>	\$35,000.00
<b>Discounts:</b>	\$37,500.00
<b>Estimated Tax:</b>	\$0.00
<b>Contract Total:</b>	\$175,000.00

## Billing Schedule

Billing Schedule	Amount (USD)
<b>Year 1</b>	
At Contract Signing	\$35,000.00
<b>Annual Recurring after Year 1</b>	\$35,000.00
<b>Contract Total</b>	\$175,000.00

\*Tax not included

## Discounts

Discounts Applied	Amount (USD)
Flock Safety Platform	\$32,500.00
Flock Safety Add-ons	\$5,000.00
Flock Safety Professional Services	\$0.00



## Product and Services Description

Flock Safety Platform Items	Product Description	Terms
Flock Safety Falcon ®	An infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint® technology to capture vehicular attributes.	The Term shall commence upon first installation and validation of Flock Hardware.

One-Time Fees	Service Description
Installation on existing infrastructure	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.
Professional Services - Standard Implementation Fee	One-time Professional Services engagement. Includes site and safety assessment, camera setup and testing, and shipping and handling in accordance with the Flock Safety Standard Implementation Service Brief.
Professional Services - Advanced Implementation Fee	One-time Professional Services engagement. Includes site & safety assessment, camera setup & testing, and shipping & handling in accordance with the Flock Safety Advanced Implementation Service Brief.

## FlockOS Features & Description

### Package: Essentials

FlockOS Features	Description
Community Cameras (Full Access)	Access to all privately owned Flock devices within your jurisdiction that have been shared with you.
Unlimited Users	Unlimited users for FlockOS
State Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the statewide Flock network.
Nationwide Network (LP Lookup Only)	Allows agencies to look up license plates on all cameras opted in to the nationwide Flock network.
Direct Share - Surrounding Jurisdiction (Full Access)	Access to all Flock devices owned by law enforcement that have been directly shared with you. Have ability to search by vehicle fingerprint, receive hot list alerts, and view devices on the map.
Time & Location Based Search	Search full, partial, and temporary plates by time at particular device locations
License Plate Lookup	Look up specific license plate location history captured on Flock devices
Vehicle Fingerprint Search	Search footage using Vehicle Fingerprint™ technology. Access vehicle type, make, color, license plate state, missing / covered plates, and other unique features like bumper stickers, decals, and roof racks.
Flock Insights/Analytics page	Reporting tool to help administrators manage their LPR program with device performance data, user and network audits, plate read reports, hot list alert reports, event logs, and outcome reports.
ESRI Based Map Interface	Flock Safety's maps are powered by ESRI, which offers the ability for 3D visualization, viewing of floor plans, and layering of external GIS data, such as City infrastructure (i.e., public facilities, transit systems, utilities), Boundary mapping (i.e., precincts, county lines, beat maps), and Interior floor plans (i.e., hospitals, corporate campuses, universities)
Real-Time NCIC Alerts on Flock ALPR Cameras	Alert sent when a vehicle entered into the NCIC crime database passes by a Flock camera
Unlimited Custom Hot Lists	Ability to add a suspect's license plate to a custom list and get alerted when it passes by a Flock camera

**By executing this Order Form, Customer represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms of Service located at <https://www.flocksafety.com/terms-and-conditions>**

The Parties have executed this Agreement as of the dates set forth below.

**FLOCK GROUP, INC.**

**Customer: IL - City of West Chicago**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

PO Number: \_\_\_\_\_

## Master Services Agreement

This Master Services Agreement (this “*Agreement*”) is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Road NW Suite 210, Atlanta, GA 30318 (“*Flock*”) and the entity identified in the signature block (“*Customer*”) (each a “*Party*,” and together, the “*Parties*”) on this the 18th day of December 2023. This Agreement is effective on the date of mutual execution (“*Effective Date*”). Parties will sign an Order Form (“*Order Form*”) which will describe the Flock Services to be performed and the period for performance, attached hereto as **Exhibit A**. The Parties agree as follows:

### RECITALS

**WHEREAS**, Flock offers a software and hardware situational awareness solution through Flock’s technology platform that upon detection is capable of capturing audio, video, image, and recording data and provide notifications to Customer (“*Notifications*”);

**WHEREAS**, Customer desires access to the Flock Services (defined below) on existing devices, provided by Customer, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, via the Flock Services;

**WHEREAS**, Customer shall have access to the Footage in Flock Services. Pursuant to Flock’s standard Retention Period (defined below) Flock deletes all Footage on a rolling thirty (30) day basis, except as otherwise stated on the *Order Form*. Customer shall be responsible for extracting, downloading and archiving Footage from the Flock Services on its own storage devices; and

**WHEREAS**, Flock desires to provide Customer the Flock Services and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations and evidence gathering for law enforcement purposes, (“*Permitted Purpose*”).

### AGREEMENT

**NOW, THEREFORE,** Flock and Customer agree that this Agreement, and any Order Form, purchase orders, statements of work, product addenda, or the like, attached hereto as exhibits and incorporated by reference, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

## 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 “*Anonymized Data*” means Customer Data permanently stripped of identifying details and any potential personally identifiable information, by commercially available standards which irreversibly alters data in such a way that a data subject (i.e., individual person or entity) can no longer be identified directly or indirectly.

1.2 “*Authorized End User(s)*” means any individual employees, agents, or contractors of Customer accessing or using the Services, under the rights granted to Customer pursuant to this Agreement.

1.3 “*Customer Data*” means the data, media and content provided by Customer through the Services. For the avoidance of doubt, the Customer Data will include the Footage.

1.4. “*Customer Hardware*” means the third-party camera owned or provided by Customer and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.

1.5 “*Embedded Software*” means the Flock proprietary software and/or firmware integrated with or installed on the Flock Hardware or Customer Hardware.

1.6 “*Flock Hardware*” means the Flock device(s), which may include the pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface, to provide the Flock Services as specifically set forth in the applicable product addenda.

1.7 “**Flock IP**” means the Services, the Embedded Software, and any intellectual property or proprietary information therein or otherwise provided to Customer and/or its Authorized End Users. Flock IP does not include Footage (as defined below).

1.8 “**Flock Network End User(s)**” means any user of the Flock Services that Customer authorizes access to or receives data from, pursuant to the licenses granted herein.

1.9 “**Flock Services**” means the provision of Flock’s software and hardware situational awareness solution, via the Web Interface, for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.

1.10 “**Footage**” means still images, video, audio and other data captured by the Flock Hardware or Customer Hardware in the course of and provided via the Flock Services.

1.11 “**Hotlist(s)**” means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e., NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.

1.12 “**Installation Services**” means the services provided by Flock for installation of Flock Services.

1.13 “**Retention Period**” means the time period that the Customer Data is stored within the cloud storage, as specified in the product addenda.

1.14 “**Vehicle Fingerprint™**” means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

1.15 “**Web Interface**” means the website(s) or application(s) through which Customer and its Authorized End Users can access the Services.

## 2. SERVICES AND SUPPORT

**2.1 Provision of Access.** Flock hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the Flock Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Authorized End Users to access and download via the Web Interface for the data retention time defined on the Order Form ("*Retention Period*"). Authorized End Users will be required to sign up for an account and select a password and username ("*User ID*"). Customer shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, including any acts or omissions of authorized End user which would constitute a breach of this agreement if undertaken by customer. Customer shall undertake reasonable efforts to make all Authorized End Users aware of all applicable provisions of this Agreement and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Flock Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage).

**2.2 Embedded Software License.** Flock grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as it pertains to Flock Services, solely as necessary for Customer to use the Flock Services.

**2.3 Support Services.** Flock shall monitor the Flock Services, and any applicable device health, in order to improve performance and functionality. Flock will use commercially reasonable efforts to respond to requests for support within seventy-two (72) hours. Flock will provide Customer with reasonable technical and on-site support and maintenance services in-person, via phone or by email at [support@flocksafety.com](mailto:support@flocksafety.com) (such services collectively referred to as "*Support Services*").

**2.4 Upgrades to Platform.** Flock may make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance the quality or delivery of Flock's products or services to its agencies, the competitive strength of, or market for, Flock's products or services, such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not diminish the quality of the services or materially change any terms or conditions within this Agreement.

**2.5 Service Interruption.** Services may be interrupted in the event that: (a) Flock's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("***Service Interruption***"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Customer, to provide updates, and to resume providing access to Flock Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Customer's direct actions or by the actions of parties associated with the Customer, the time will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day). For example, in the event of a Service Interruption lasting five (5) continuous days, Customer will receive a credit for five (5) free days at the end of the Term.

**2.6 Service Suspension.** Flock may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if (a) there is a threat or attack on any of the Flock IP by Customer; (b) Customer's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Customer or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Customer has violated any term of this provision, including, but not limited to, utilizing Flock Services for anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Customer's account ("***Service Suspension***"). Customer shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit. If the Service Suspension was not caused by Customer, the Term will be tolled by the duration of the Service Suspension.

**2.7 Hazardous Conditions.** Flock Services do not contemplate hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock

is to perform services under this Agreement, Flock shall have the right to cease work immediately.

### 3. CUSTOMER OBLIGATIONS

**3.1 Customer Obligations.** Flock will assist Customer Authorized End Users in the creation of a User ID. Authorized End Users agree to provide Flock with accurate, complete, and updated registration information. Authorized End Users may not select as their User ID, a name that they do not have the right to use, or any other name with the intent of impersonation. Customer and Authorized End Users may not transfer their account to anyone else without prior written permission of Flock. Authorized End Users shall not share their account username or password information and must protect the security of the username and password. Unless otherwise stated and defined in this Agreement, Customer shall not designate Authorized End Users for persons who are not officers, employees, or agents of Customer. Authorized End Users shall only use Customer-issued email addresses for the creation of their User ID. Customer is responsible for any Authorized End User activity associated with its account. Customer shall ensure that Customer provides Flock with up to date contact information at all times during the Term of this agreement. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Flock Services. Customer shall (at its own expense) provide Flock with reasonable access and use of Customer facilities and Customer personnel in order to enable Flock to perform Services (such obligations of Customer are collectively defined as "***Customer Obligations***").

**3.2 Customer Representations and Warranties.** Customer represents, covenants, and warrants that Customer shall use Flock Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of data, video, photo, or audio content.

### 4. DATA USE AND LICENSING

**4.1 Customer Data.** As between Flock and Customer, all right, title and interest in the Customer Data, belong to and are retained solely by Customer. Customer hereby grants to Flock a limited, non-exclusive, royalty-free, irrevocable, worldwide license to use the Customer Data and perform all acts as may be necessary for Flock to provide the Flock Services to Customer. Flock does not own and shall not sell Customer Data.



**4.2 Customer Generated Data.** Flock may provide Customer with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Customer (“**Customer Generated Data**”). Customer shall retain whatever legally cognizable right, title, and interest in Customer Generated Data. Customer understands and acknowledges that Flock has no obligation to monitor or enforce Customer’s intellectual property rights of Customer Generated Data. Customer grants Flock a non-exclusive, irrevocable, worldwide, royalty-free, license to use the Customer Generated Data for the purpose of providing Flock Services. Flock does not own and shall not sell Customer Generated Data.

**4.3 Anonymized Data.** Flock shall have the right to collect, analyze, and anonymize Customer Data and Customer Generated Data to the extent such anonymization renders the data non-identifiable to create Anonymized Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Customer hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right to use and distribute such Anonymized Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, and other Flock offerings. Parties understand that the aforementioned license is required for continuity of Services. Flock does not own and shall not sell Anonymized Data.

## 5. CONFIDENTIALITY; DISCLOSURES

**5.1 Confidentiality.** To the extent required by any applicable public records requests, each Party (the “**Receiving Party**”) understands that the other Party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s business (hereinafter referred to as “**Proprietary Information**” of the Disclosing Party).

Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Customer includes non-public data provided by Customer to Flock or collected by Flock via Flock Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own

proprietary information, but in no event less than commercially reasonable precautions, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public; or (b) was in its possession or known by it prior to receipt from the Disclosing Party; or (c) was rightfully disclosed to it without restriction by a third party; or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. At the termination of this Agreement, all Proprietary Information will be returned to the Disclosing Party, destroyed or erased (if recorded on an erasable storage medium), together with any copies thereof, when no longer needed for the purposes above, or upon request from the Disclosing Party, and in any case upon termination of the Agreement. Notwithstanding any termination, all confidentiality obligations of Proprietary Information that is trade secret shall continue in perpetuity or until such information is no longer trade secret.

**5.2 Usage Restrictions on Flock IP.** Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Customer acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Customer further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. Customer and Authorized End Users shall not: (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within the Flock Services or Flock IP; (vi) use the Flock Services for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or

otherwise transfer, convey, pledge as security, or otherwise encumber, Customer's rights. There are no implied rights.

**5.3 Disclosure of Footage.** Subject to and during the Retention Period, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to comply with a legal process, enforce this Agreement, or detect, prevent or otherwise address security, privacy, fraud or technical issues, or emergency situations.

## **6. PAYMENT OF FEES**

**6.1 Billing and Payment of Fees.** Customer shall pay the fees set forth in the applicable Order Form based on the billing structure and payment terms as indicated in the Order Form. If Customer believes that Flock has billed Customer incorrectly, Customer must contact Flock no later than thirty (30) days after the closing date on the first invoice in which the error or problem appeared to receive an adjustment or credit. Customer acknowledges and agrees that a failure to contact Flock within this period will serve as a waiver of any claim. If any undisputed fee is more than thirty (30) days overdue, Flock may, without limiting its other rights and remedies, suspend delivery of its service until such undisputed invoice is paid in full. Flock shall provide at least thirty (30) days' prior written notice to Customer of the payment delinquency before exercising any suspension right.

**6.2 Notice of Changes to Fees.** Flock reserves the right to change the fees for subsequent Renewal Terms by providing sixty (60) days' notice (which may be sent by email) prior to the end of the Initial Term or Renewal Term (as applicable).

**6.3 Late Fees.** If payment is not issued to Flock by the due date of the invoice, an interest penalty of 1.0% of any unpaid amount may be added for each month or fraction thereafter, until final payment is made.

**6.4 Taxes.** Customer is responsible for all taxes, levies, or duties, excluding only taxes based on Flock's net income, imposed by taxing authorities associated with the order. If Flock has the legal obligation to pay or collect taxes, including amount subsequently assessed by a taxing authority, for which Customer is responsible, the appropriate amount shall be invoice to and paid by Customer unless Customer provides Flock a legally sufficient tax exemption certificate and

Flock shall not charge customer any taxes from which it is exempt. If any deduction or withholding is required by law, Customer shall notify Flock and shall pay Flock any additional amounts necessary to ensure that the net amount that Flock receives, after any deduction and withholding, equals the amount Flock would have received if no deduction or withholding had been required.

## 7. TERM AND TERMINATION

**7.1 Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form (the "*Term*"). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "*Renewal Term*") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

**7.2 Termination.** Upon termination or expiration of this Agreement, Flock will remove any applicable Flock Hardware at a commercially reasonable time period. In the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period ("*Cure Period*"). Either Party may terminate this Agreement (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. In the event of a material breach by Flock, and Flock is unable to cure within the *Cure Period*, Flock will refund Customer a pro-rata portion of the pre-paid fees for Services not received due to such termination.

**7.3 Survival.** The following Sections will survive termination: 1, 3, 5, 6, 7, 8.3, 8.4, 9, 11.1 and 11.6.

## 8. REMEDY FOR DEFECT; WARRANTY AND DISCLAIMER

**8.1 Manufacturer Defect.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a “*Defect*”), Customer must notify Flock’s technical support team. In the event of a Defect, Flock shall make a commercially reasonable attempt to repair or replace the defective Flock Hardware at no additional cost to the Customer. Flock reserves the right, in its sole discretion, to repair or replace such Defect, provided that Flock shall conduct inspection or testing within a commercially reasonable time, but no longer than seven (7) business days after Customer gives notice to Flock.

**8.2 Replacements.** In the event that Flock Hardware is lost, stolen, or damaged, Customer may request a replacement of Flock Hardware at a fee according to the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>). In the event that Customer chooses not to replace lost, damaged, or stolen Flock Hardware, Customer understands and agrees that (1) Flock Services will be materially affected, and (2) that Flock shall have no liability to Customer regarding such affected Flock Services, nor shall Customer receive a refund for the lost, damaged, or stolen Flock Hardware.

**8.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of other causes beyond Flock’s reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**8.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 8.1 ABOVE IS CUSTOMER’S SOLE REMEDY, AND FLOCK’S SOLE LIABILITY, WITH RESPECT TO DEFECTS. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED “AS IS” AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 11.6.

**8.5 Insurance.** Flock will maintain commercial general liability policies as stated in Exhibit B.

**8.6 Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, pandemics (including the spread of variants), issues of national security, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, financial institution crisis, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions.

## **9. LIMITATION OF LIABILITY; INDEMNITY**

**9.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK, ITS OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR LOSS OF REVENUE, BUSINESS OR BUSINESS INTERRUPTION; (B) INCOMPLETE, CORRUPT, OR INACCURATE DATA; (C) COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY; (D) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (E) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION ONLY APPLIES TO THE EXTENT

ALLOWED BY THE GOVERNING LAW OF THE STATE REFERENCED IN SECTION 10.6. NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY (I) IN THE EVENT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) INDEMNIFICATION OBLIGATIONS.

**9.2 Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable for the torts of its own officers, agents, or employees.

**9.3 Flock Indemnity.** Flock shall indemnify and hold harmless Customer, its agents and employees, from liability of any kind, including claims, costs (including defense) and expenses, on account of: (i) any copyrighted material, patented or unpatented invention, articles, device or appliance manufactured or used in the performance of this Agreement; or (ii) any damage or injury to property or person directly caused by Flock's installation of Flock Hardware, except for where such damage or injury was caused solely by the negligence of the Customer or its agents, officers or employees. Flock's performance of this indemnity obligation shall not exceed the fees paid and/or payable for the services rendered under this Agreement in the preceding twelve (12) months.

## 10. INSTALLATION SERVICES AND OBLIGATIONS

**10.1 Ownership of Hardware.** Flock Hardware is owned and shall remain the exclusive property of Flock. Title to any Flock Hardware shall not pass to Customer upon execution of this Agreement, except as otherwise specifically set forth in this Agreement. Except as otherwise expressly stated in this Agreement, Customer is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Customer agrees and understands that in the event Customer is found to engage in any of the foregoing restricted actions, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination for material breach by Customer. Customer shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Customer default on any payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's

rights to any damages Flock may sustain as a result of Customer's default and Flock shall have the right to enforce any other legal remedy or right.

**10.2 Deployment Plan.** Flock shall advise Customer on the location and positioning of the Flock Hardware for optimal product functionality, as conditions and locations allow. Flock will collaborate with Customer to design the strategic geographic mapping of the location(s) and implementation of Flock Hardware to create a deployment plan ("***Deployment Plan***"). In the event that Flock determines that Flock Hardware will not achieve optimal functionality at a designated location, Flock shall have final discretion to veto a specific location, and will provide alternative options to Customer.

**10.3 Changes to Deployment Plan.** After installation of Flock Hardware, any subsequent requested changes to the Deployment Plan, including, but not limited to, relocating, re-positioning, adjusting of the mounting, removing foliage, replacement, changes to heights of poles will incur a fee according to the reinstall fee schedule located at (<https://www.flocksafety.com/reinstall-fee-schedule>). Customer will receive prior notice and confirm approval of any such fees.

**10.4 Customer Installation Obligations.** Customer is responsible for any applicable supplementary cost as described in the Customer Implementation Guide, attached hereto as Exhibit C ("***Customer Obligations***"). Customer represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the designated locations and to make any necessary inspections or maintenance in connection with such installation.

**10.5 Flock's Obligations.** Installation of any Flock Hardware shall be installed in a professional manner within a commercially reasonable time from the Effective Date of this Agreement. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Flock will continue to monitor the performance of Flock Hardware for the length of the Term. Flock may use a subcontractor or third party to perform certain obligations under this agreement, provided that Flock's use of such subcontractor or third party shall not release Flock from any duty or liability to fulfill Flock's obligations under this Agreement.

## 11. MISCELLANEOUS



**11.1 Compliance With Laws.** Parties shall comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s).

**11.2 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

**11.3 Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

**11.4 Entire Agreement.** This Agreement, together with the Order Form(s), the reinstall fee schedule (<https://www.flocksafety.com/reinstall-fee-schedule>), and any attached exhibits are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous or contemporaneous negotiations, discussions or agreements, whether written and oral, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Customer's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. Any mutually agreed upon future purchase order is subject to these legal terms and does not alter the rights and obligations under this Agreement, except that future purchase orders may outline additional products, services, quantities and billing terms to be mutually accepted by Parties. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail. Customer agrees that Customer's purchase is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written comments made by Flock with respect to future functionality or feature.

**11.5 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Parties do not have any authority of any kind to bind each other in any respect whatsoever. Flock shall at all times be and act as an independent contractor to Customer.

**11.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the state in which the Customer is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Customer is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**11.7 Special Terms.** Flock may offer certain special terms which are indicated in the proposal and will become part of this Agreement, upon Customer's prior written consent and the mutual execution by authorized representatives ("Special Terms"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**11.8 Publicity.** Flock has the right to reference and use Customer's name and trademarks and disclose the nature of the Services in business and development and marketing efforts.

**11.9 Feedback.** If Customer or Authorized End User provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency or Authorized End User hereby assigns to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**11.10 Export.** Customer may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign Customer or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the

terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

11.11 **Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

11.12 **Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

11.13 **Conflict.** In the event there is a conflict between this Agreement and any applicable statement of work, or Customer purchase order, this Agreement controls unless explicitly stated otherwise.

11.14 **Morality.** In the event Customer or its agents become the subject of an indictment, contempt, scandal, crime of moral turpitude or similar event that would negatively impact or tarnish Flock's reputation, Flock shall have the option to terminate this Agreement upon prior written notice to Customer.

11.15 **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt to the address listed on the Order Form (or, if different, below), if sent by certified or registered mail, return receipt requested.

11.16 **Non-Appropriation.** Notwithstanding any other provision of this Agreement, all obligations of the Customer under this Agreement which require the expenditure of funds are conditioned on the availability of funds appropriated for that purpose. Customer shall have the right to terminate this Agreement for non appropriation with thirty (30) days written notice without penalty or other cost.

FLOCK NOTICES ADDRESS:

1170 HOWELL MILL ROAD, NW SUITE 210

ATLANTA, GA 30318

ATTN: LEGAL DEPARTMENT

EMAIL: [legal@flocksafety.com](mailto:legal@flocksafety.com)

Customer NOTICES ADDRESS:

ADDRESS:

ATTN:

EMAIL:

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EXHIBIT B  
INSURANCE

**Required Coverage.** Flock shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the services under this Agreement and the results of that work by Flock or its agents, representatives, employees or subcontractors. Insurance shall be placed with insurers with a current A. M. Best rating of no less than "A" and "VII". Flock shall obtain and, during the term of this Agreement, shall maintain policies of professional liability (errors and omissions), automobile liability, and general liability insurance for insurable amounts of not less than the limits listed herein. The insurance policies shall provide that the policies shall remain in full force during the life of the Agreement. Flock shall procure and shall maintain during the life of this Agreement Worker's Compensation insurance as required by applicable State law for all Flock employees.

**Types and Amounts Required.** Flock shall maintain, at minimum, the following insurance coverage for the duration of this Agreement:

- (i) **Commercial General Liability** insurance written on an occurrence basis with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and product and completed operations coverage;
- (ii) **Umbrella or Excess Liability** insurance written on an occurrence basis with minimum limits of Ten Million Dollars (\$10,000,000) per occurrence and Ten Million Dollars (\$10,000,000) in the aggregate;
- (iii) **Professional Liability/Errors and Omissions** insurance with minimum limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate;
- (iv) **Commercial Automobile Liability** insurance with a minimum combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, death, and property coverage, including owned and non-owned and hired automobile coverage; and

(v) **Cyber Liability** insurance written on an occurrence basis with minimum limits of Five Million Dollars (\$5,000,000).

# CITY OF WEST CHICAGO

## PUBLIC AFFAIRS COMMITTEE AGENDA ITEM SUMMARY

**ITEM TITLE:** Resolution No. 23-R-0100

A Resolution Terminating the Agreement between West Chicago Jules, LLC and SEB Palatine II, LLC (Oliver Square now Mosaic Crossing) and the City of West Chicago

**AGENDA ITEM NUMBER:** 4.B.

**FILE NUMBER:** \_\_\_\_\_

**COMMITTEE AGENDA DATE:** December 18, 2023

**COUNCIL AGENDA DATE:** December 18, 2023

**PREPARED BY:** Colin Fleury, Chief of Police

**SIGNATURE** \_\_\_\_\_

**APPROVED BY:** Michael Guttman, City Administrator

**SIGNATURE** \_\_\_\_\_

**ITEM SUMMARY:**

On July 20, 2011, the City of West Chicago entered into an agreement via Resolution No. 11-R-0016 with West Chicago Jules, LLC and SEB Palatine II, LLC, authorizing the City to enforce parking laws on this private property, 1851-1935 N. Neltner Boulevard, West Chicago, IL 60185. At the time of the Agreement, the property was known as Oliver Square, but is now known as Mosaic Crossing. Staff is recommending that the City Council terminate this Agreement under Section 6, which states, "Notwithstanding any provision contained herein to the contrary, after this Agreement has been in effect for a term of one (1) year, this Agreement may be canceled upon the giving of thirty (30) days prior written notice by either party hereto."

The Agreement's current language sets unrealistic expectations by stating that "the City agrees to enforce ALL regulations in the parking area of the PROPERTY by use of assigned traffic enforcement personnel of the CITY and to issue citations to any and ALL violators of such regulations." The Police Department staff does not have the availability to monitor this area constantly and should be allowed discretion, which is not permitted in the current Agreement. The current towing agent for the OWNER has been placing immobilization devices on parking violators within the lot and charging tow fees to remove the devices. The tow and immobilization fees charged by the company are excessive: \$238 for cars, \$520 for medium trucks, and \$700 for heavy trucks. The City Code only allows for utilizing immobilization devices on vehicles whose owners have seven unpaid parking citations with a fee of \$75. The Illinois Commerce Commission allows the City to set the fee limit for vehicle immobilization on private property.

Staff suggests working with the owner and creating a new Agreement covering the stated issues and that the City maintain the current City Code vehicle immobilization regulations and not allow for private property immobilization. Terminating the present Agreement will not affect the Police Department staff's ability to enforce violations related to abandoned vehicles, fire lanes, or handicapped parking.

Please see the attached Agreement, Exhibit A.

**ACTIONS PROPOSED:**

Staff recommends approval of Resolution No. 23-R-0100

**COMMITTEE RECOMMENDATION:**

**RESOLUTION NO. 23-R-0099**

**A RESOLUTION TERMINATING THE AGREEMENT BETWEEN WEST CHICAGO JULES, LLC AND SEB PALATINE IL, LLC (OLIVER SQUARE NOW MOSAIC CROSSING) AND THE CITY OF WEST CHICAGO**

**WHEREAS**, on May 19, 2011, the City of West Chicago entered into an agreement with West Chicago Jules, LLC and SEB Palatine Il, LLC, authorizing the City to enforce parking laws on this private property, 1851-1935 N. Neltnor Boulevard, West Chicago, IL 60185; and

**WHEREAS**, since that time, the OWNER and its agents have engaged in the practice of placing immobilization devices on vehicles parked in violation of the posted parking signage in violation of City Code and Illinois Commerce Commission regulations; and

**WHEREAS**, it is in the best interest of the City to terminate the Agreement per Section 6, which reads, "Notwithstanding any provision contained herein to the contrary, after this Agreement has been in effect for a term of one (1) year, this Agreement may be canceled upon the giving of thirty (30) days prior written notice by either party hereto, except to the extent that the OWNER may be required to maintain this Agreement pursuant to any zoning relief granted by the CITY."

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF WEST CHICAGO, DUPAGE COUNTY, AN ILLINOIS MUNICIPAL CORPORATION** as follows:

SECTION 1: The City Council hereby consents to terminate the Agreement effective immediately.



SECTION 2: This Resolution shall be in full force and effect immediately.

APPROVED this 18<sup>th</sup> day of December, 2023.

AYES: \_\_\_\_\_

NAYES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

\_\_\_\_\_  
Mayor Ruben Pineda

ATTEST:

\_\_\_\_\_  
Executive Office Manager Valeria Perez

RESOLUTION NO. 11-R-0016

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CERTAIN PARKING ENFORCEMENT AGREEMENT WITH WEST CHICAGO JULES, LLC AND SEB PALATINE II, LLC (OLIVER SQUARE).

BE IT RESOLVED by the City Council of the City of West Chicago, in regular session assembled, that the Mayor is hereby authorized to execute a certain Parking Enforcement Agreement West Chicago Jules, LLC. And SEB Palatine II, LLC. A copy of the parking enforcement agreement and map of the site are attached hereto and incorporated herein in substantially the same form as Exhibit "A".

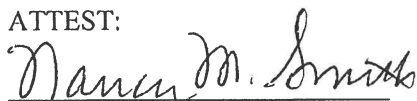
ADOPTED this 20<sup>th</sup> day of July 2011

AYES: 12  
NAYS: 0  
ABSTAIN: 0  
ABSENT: 2



Mayor

ATTEST:

  
Nancy M. Smith, City Clerk

AGREEMENT

AGREEMENT made and entered into this 19<sup>th</sup> day of May, 2010, by and between West Chicago Jules, LLC SEB Palatine II, LLC (hereinafter referred to as the "OWNER") and the CITY OF WEST CHICAGO, an Illinois municipal corporation (hereinafter referred to as the "CITY").

WITNESSETH

WHEREAS, OWNER is desirous of entering into an agreement with the CITY, pursuant to 625 ILCS 5/11-209 of the Illinois Compiled Statutes, 1994, as amended, for the purpose of providing for the regulation of traffic and parking within the property legally described on Exhibit "A" attached hereto which is, by this reference, made apart hereof (hereinafter referred to as the "PROPERTY").

NOW, THEREFORE, in consideration of the mutual covenants and obligations herein contained, IT IS AGREED by and between the parties hereto as follows:

1. Subject to the agreement of the parties, the CITY is hereby authorized to provide for:
  - A. The erection of stop signs, flashing signals, persons with disabilities parking area signs or yield signs, at specified locations and the adoption of appropriate regulations thereto pertaining, or the designation of any intersection as a stop intersection or as a yield intersection and the ordering of like signs or signals at one or more entrances to such intersection;
  - B. The prohibition or regulation of the turning of vehicles or specified types of vehicles at intersections or other designated locations;
  - C. The regulation of a crossing of any roadway in the parking area by pedestrians;
  - D. The designation of any separate roadway in the parking area for one-way traffic;

- E. The establishment and regulation of loading zones;
- F. The prohibition, regulation, restriction or limitation of the stopping, standing or parking of vehicles in specified areas;
- G. The designation of safety zones and fire lanes; and,
- H. Providing for the removal and storage of vehicles parked or abandoned in the parking area during snowstorms, floods, fires, or other public emergencies, or found unattended in the parking area, (a) where they constitute an obstruction to traffic, or (b) where stopping, standing or parking is prohibited, and for the payment of reasonable charges for such removal and storage by the owner or operator of any such vehicle.
- I. Causing the installation of parking signs in accordance with 625 ILCS 5/11-301 in areas where desired by the OWNER indicating that such parking spaces are reserved for persons with disabilities.
- J. Such additional reasonable rules and regulations with respect to traffic and parking as local conditions may require for the safety and convenience of the public or of the users of the parking area.

2. The CITY hereby agrees to enforce all regulations in the parking area of the PROPERTY by use of assigned traffic enforcement personnel of the CITY and to issue citations to any and all violators of such regulations.

3. There shall be appended to this Agreement as Exhibit "B" a letter signed by the Chief of Police of the CITY, or his designated representative, and the OWNER, or its designated representative, and the OWNER, or its designated representative, setting forth the specific locations within the various areas within the PROPERTY which shall, pursuant to the terms of this Agreement, be regulated, as well as a designation of the exact regulations to be imposed thereon. The Chief of Police of the CITY, or its designated representative, and the OWNER, or its designated representatives may, from time to time, agree to amend the aforesaid list, provided that in each such case, the list so amended shall be recorded in the Office of the Recorder of Deeds of DuPage County, Illinois, as required by statute.

4. OWNER agrees to erect signs, signals, etc. relating to the regulations provided for by this Agreement, at appropriate places on the PROPERTY in accordance with all applicable regulations and specifications promulgated by the State of Illinois.

5. The OWNER shall bear the costs and expenses of obtaining, erecting and maintaining any and all signs or other signals, etc., necessary for enforcement of the regulations agreed to by the parties herein.

6. This Agreement shall be in full force and effect from and after the date of its execution for a period of twenty (20) years of the date thereof, and may, by further agreement of the parties, be continued for additional periods of like duration. Notwithstanding any provision contained herein to the contrary, after this Agreement has been in effect for a term of one (1) year, this Agreement may be canceled upon the giving of thirty (30) days prior written notice by either party hereto, except to the extent that the OWNER may be required to maintain this Agreement pursuant to any zoning relief granted by the CITY.

7. The OWNER has a Comprehensive General Liability Insurance Policy. Said insurance shall be in the minimum amount of two (2) million dollars (\$2,000,000) combined single limit or in such amount acceptable to the CITY and shall be in such form and with such Company as shall be approved by the corporate authorities. The CITY shall be named as an additional insured on such policy.

The OWNER hereby agrees to keep said policy in full force and effect throughout the term of this Agreement. A mandatory written notice must be provided upon the cancellation of any policy as outlined under the Certificate of Insurance.

8. This Agreement shall be binding upon and inure to benefit the respective assigns, successors and personal representatives of each of the parties hereto.

9. This Agreement shall be governed by the laws of the State of Illinois.

10. the sole remedy available to the OWNER, upon any breach of this Agreement by the CITY, shall be the cancellation of the Agreement under its terms. It is of the essence of this Agreement that the CITY shall not be liable in money damages for any breach of this Agreement.

11. a fully executed copy of this Agreement, together with attachments, shall be recorded in the Office of the Recorder of Deeds of DuPage County, Illinois, and no regulations made pursuant to this Agreement shall be effective and enforceable until three (3) days after the contract or any amendment thereto is recorded, and after the posting of signs or signals as may be required pursuant hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first above written.

CITY OF WEST CHICAGO, an Illinois municipal corporation,

By: [Signature]  
Mayor

ATTEST:

[Signature]  
City Clerk

West Chicago Jules, LLC

(Petitioner:) [Signature]

By: DAVID PROSNER  
MANAGER

SEB Palatine II, LLC

[Signature]  
Sherwood Blitstein  
Manager

ATTEST:

[Signature]

**Legal Description**

**Exhibit A**

Parcel 1:

lots 8, 9, 11, 12, and 13 in Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat of said Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, recorded September 12, 2000 as Document R2000-141398, EXCEPT those parts take for road purposes under Condemnation Case Numbers 99ED-52, (more particularly bounded and described as follows, to-wit: The west 25.00 feet of Lot 1 lying north of a line that is 52.50 feet south of the southwest corner of Lot 4 (as measured along and perpendicular to the west line hereof) in K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.030 acres (1296 sq. ft.), more or less and 00ED-04, (more particularly bounded and described as follows, to-wit: The south 15.00 feet of the west 80.00 feet of the east 390.00 feet (as measured along and perpendicular to the southerly line thereof) of that part of Lot One in KMart Subdivision being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.064 acres, more or less.), (more particularly bounded and described as follows, to-wit: The south 15.00 feet of the west 50.00 feet of the east 72.50 feet (as measured along and perpendicular to the southerly line thereof) of that part of Lot One in K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.017 acres, more or less.) in Dupage County, Illinois.

Parcel 2:

lots 4 and 7 in the Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded July 19, 1989 as Document 89-086058 in Dupage County, Illinois.

Legal Description  
Exhibit A

Parcel 1:

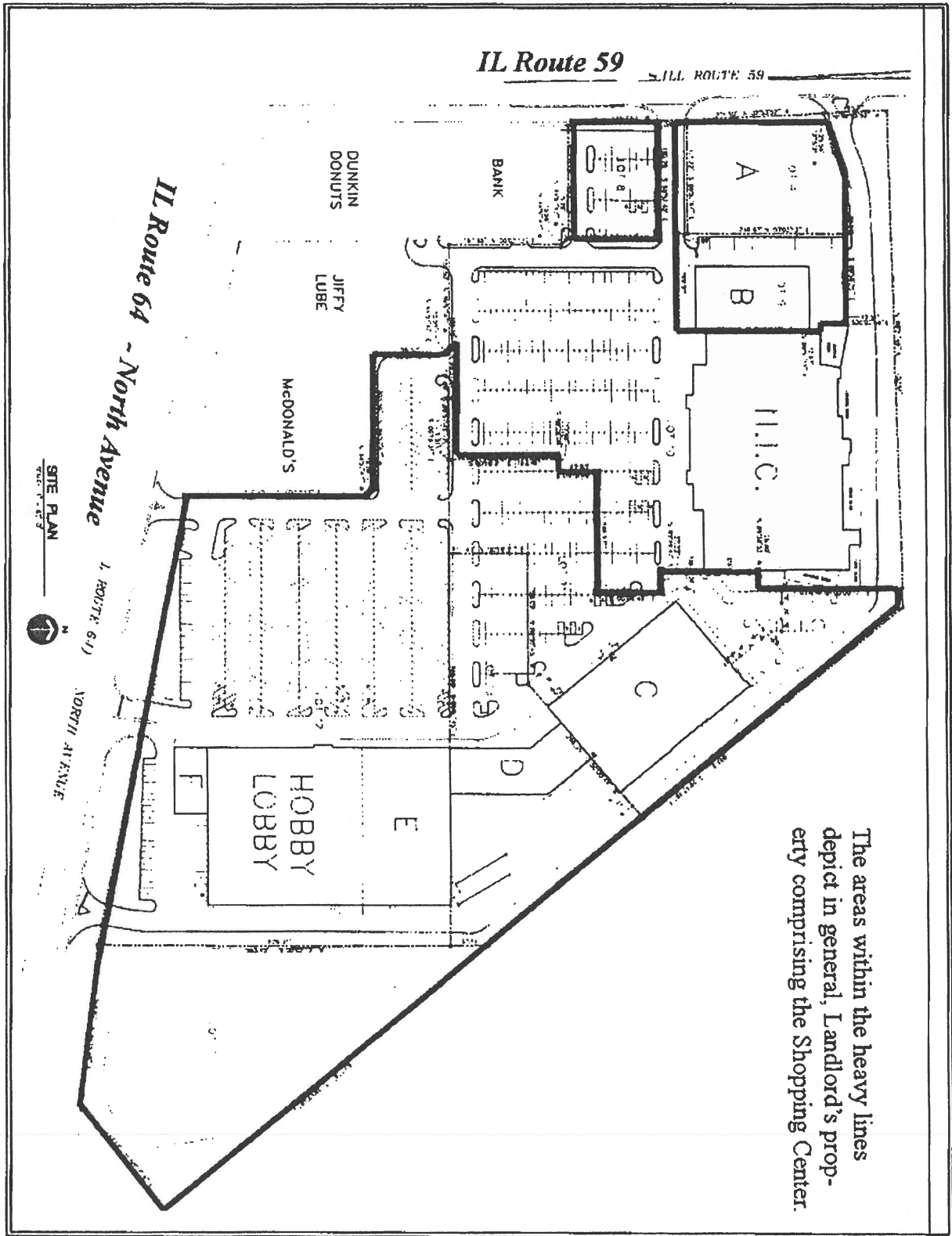
Lots 8, 9, 11, 12, and 13 in Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat of said Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, recorded September 12, 2000 as Document R2000-141398, EXCEPT those parts take for road purposes under Condemnation Case Numbers 99ED-52, (more particularly bounded and described as follows, to wit: The west 25.00 feet of Lot 1 lying north of a line that is 52.50 feet south of the southwest corner of Lot 4 (as measured along perpendicular to the west line thereof) in K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392 in DuPage County, Illinois. Said parcel contains 0.030 acres (1296 sq. ft.), more or less and 00ED-04, (more particularly bounded and described as follows, to-wit: The south 65.00 feet of the west 390.00 feet (as measured along and perpendicular to the southerly line thereof) of that part of Lot One in KMart Subdivision being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.064 acres, more or less), (more particularly bounded and described as follows, to-wit: The south 15.00 feet of the west 50.00 feet of the east of 72.50 feet (as measured along and perpendicular to the southerly line thereof) of that part of Lot One K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all Township 40 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.017 acres, more or less) in DuPage County, Illinois.

Parcel 2:

Lots 4 and 7 in the Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded July 19, 1989 as Document R89-086058 in DuPage County, Illinois.



EXHIBIT B  
Mosaic's Property



The areas within the heavy lines depict in general, Landlord's property comprising the Shopping Center.

STATE OF ILLINOIS     )  
COUNTY OF DU PAGE    )

***CERTIFICATE***

I, Nancy M. Smith, Certify that I am the duly elected and acting City Clerk of the City of West Chicago, DuPage County, Illinois.

I further certify that on July 20, 2011 the Corporate Authorities of such municipality passed and approved Resolution No. 11-R-0016 entitled:

---

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CERTAIN PARKING ENFORCEMENT AGREEMENT WITH WEST CHICAGO JULES, LLC AND SEB PALATINE II, LLC (OLIVER SQUARE)**

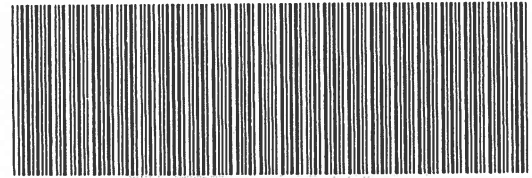
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Dated at West Chicago, Illinois, this 20<sup>th</sup> of July 2011.



*Nancy M. Smith*  
\_\_\_\_\_  
Nancy M. Smith, City Clerk

Submitted by / Return to:  
City of West Chicago  
475 Main Street  
West Chicago, IL 60185



**FRED BUCHOLZ**  
DUPAGE COUNTY RECORDER  
DEC.21,2011 11:15 AM  
OTHER 01-28-403-019  
**010 PAGES R2011-156541**

(Reserved for Recorder's Use Only)

STATE OF ILLINOIS        )  
COUNTY OF DU PAGE     )

**CERTIFICATE**

I, Nancy Smith, certify that I am the duly elected and acting City Clerk of the City of West Chicago, DuPage County, Illinois.

I further certify that on July 20, 2011 the Corporate Authorities of such municipality passed and approved Resolution 11-R-0016 entitled:

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**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CERTAIN  
PARKING ENFORCEMENT AGREEMENT WITH WEST CHICAGO JULES, LLC  
AND SEB PALATINE II, LLC (OLIVER SQUARE) -1851 -1935 N. NELTNOR  
BOULEVARD, WEST CHICAGO, IL 60185**

**Legal Description:**

Lots 8, 9, 11, 12, and 13 in Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat of said Replat of Lot 1 of the Amended and Restated Planned Unit Development of Kmart Subdivision, recorded September 12, 2000 as Document R2000-141398, EXCEPT those parts take for road purposes under Condemnation Case Numbers 99ED-52, (more particularly bounded and described as follows, to wit: The west 25.00 feet of Lot 1 lying north of a line that is 52.50 feet south of the southwest corner of Lot 4 (as measured along perpendicular to the west line thereof) in K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9, East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392 in DuPage County, Illinois. Said parcel contains 0.030 acres (1296 sq. ft.), more or less and 00ED-04, (more particularly bounded and described as follows, to-wit: The south 65.00 feet of the west 390.00 feet (as measured along and

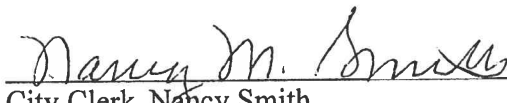
perpendicular to the southerly line thereof) of that part of Lot One in KMart Subdivision being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.064 acres, more or less), (more particularly bounded and described as follows, to-wit: The south 15.00 feet of the west 50.00 feet of the east of 72.50 feet (as measured along and perpendicular to the southerly line thereof) of that part of Lot One K-Mart Subdivision, being a subdivision of part of the Southeast 1/4 of Section 28, and part of the Southwest 1/4 of Section 27, and part of the Northwest 1/4 of Section 34, all Township 40 North, Range 9 East of the Third Principal Meridian, according to the plat thereof recorded September 20, 1990 as Document No. 90-125392, in DuPage County, Illinois. Said parcel contains 0.017 acres, more or less) in DuPage County, Illinois.

Lots 4 and 7 in the Kmart Subdivision, being a Subdivision of part of the Southeast Quarter of Section 28 and part of the Southwest Quarter of Section 27 and part of the Northwest Quarter of Section 34, all in Township 40 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded July 19, 1989 as Document R89-086058 in DuPage County, Illinois.

P.I.N.s: 01-28-403-019; 01-28-403-027; 01-28-403-028; 01-28-403-029; 01-28-403-030; 01-28-403-024

Copies of such ordinance are also available for public inspection upon request in the Office of the City Clerk.

Dated at West Chicago, Illinois, this 20<sup>th</sup> day of December 2011.

  
\_\_\_\_\_  
City Clerk, Nancy Smith



# CITY OF WEST CHICAGO

## PUBLIC AFFAIRS COMMITTEE AGENDA ITEM SUMMARY

**ITEM TITLE:**

Ordinance No. 23-O-0048 Parking Regulations

**AGENDA ITEM NUMBER:** 4.C.

**FILE NUMBER:** \_\_\_\_\_

**COMMITTEE AGENDA DATE:** December 18, 2023

**COUNCIL AGENDA DATE:** December 18, 2023

**PREPARED BY:** Colin Fleury, Chief of Police

**SIGNATURE** \_\_\_\_\_

**APPROVED BY:** Michael Guttman, City Administrator

**SIGNATURE** \_\_\_\_\_

**ITEM SUMMARY:**

Every October, the Sunny Acres Farm Pumpkin Patch holds its Fall Festival, which draws several thousand attendees. As a result, there is heavy parking on both sides of Saint Charles Road to the east of the entrance, resulting in roadway narrowing, on-road foot traffic, and illegal garbage disposal on Saint Charles Road from Prince Crossing Road to Klein Road. Nearby residents in the St. Andrew's Estate Subdivision lodged several complaints, and temporary parking restriction signs were erected. Attendees removed several signs, and most restriction signs were ignored.

More robust signs were erected by order of the Chief of Police with the intent of requesting that these parking restrictions become permanent, with no parking on the south and north sides of Saint Charles Road from North Prince Crossing Road, west to Klein Road.

Ordinance No. 23-O-0048 prohibits parking at all times on Saint Charles Road, on both sides, from North Prince Crossing Road, west to Klein Road.

**ACTIONS PROPOSED:**

Staff recommends adoption of Ordinance No. 23-O-0048

**COMMITTEE RECOMMENDATION:**

**ORDINANCE NO. 23-O-0048**

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE CITY OF WEST CHICAGO – CHAPTER 17 TRAFFIC, ARTICLE  
XVII, SCHEDULES OF DESIGNATED STREETS; DIVISION 6. PARKING  
PROHIBITED AT ALL TIMES; SECTIONS 17-191. DESIGNATED;  
COMPLIANCE REQUIRED**

BE IT ORDAINED by the City Council of the City of West Chicago, Illinois, in regular session assembled, as follows:

Section 1. That Chapter 17 TRAFFIC, ARTICLE XVII. SCHEDULES OF DESIGNATED STREETS; DIVISION 6. PARKING PROHIBITED AT ALL TIMES; Sections 17-191 (e) (Citywide Area) Designated; compliance required, of the Code of Ordinances of the City of West Chicago is hereby amended by adding thereto the following language:

*Saint Charles Road*, both sides, from Prince Crossing Road, west to Klein Road.

Section 2. That all ordinances and resolutions, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, expressly repealed.

Section 3. That this Ordinance shall be in full force and effect ten (10) days from and after its passage, approval and publication in pamphlet form as provided by law.

PASSED this 18<sup>th</sup> day of December 2023.

Alderman D. Beebe \_\_\_\_\_  
Alderman J. Sheahan \_\_\_\_\_  
Alderman A. Hallett \_\_\_\_\_  
Alderman M. Birch-Ferguson \_\_\_\_\_  
Alderman J. Smith, Jr. \_\_\_\_\_  
Alderman R. Stout \_\_\_\_\_  
Alderman J. Morano \_\_\_\_\_

Alderman L. Chassee \_\_\_\_\_  
Alderman H. Brown \_\_\_\_\_  
Alderman C. Dettmann \_\_\_\_\_  
Alderman S. Dimas \_\_\_\_\_  
Alderman C. Swiatek \_\_\_\_\_  
Alderman J. Short \_\_\_\_\_  
Ward 7 – Vacant \_\_\_\_\_

APPROVED as to form: \_\_\_\_\_  
Patrick K. Bond, City Attorney

APPROVED this 18<sup>th</sup> day of December, 2023.

\_\_\_\_\_  
Mayor Ruben Pineda

ATTEST:

\_\_\_\_\_  
Executive Office Manager Valeria Perez

PUBLISHED: \_\_\_\_\_