

ORDINANCE NO. O-2024-28

AN ORDINANCE AUTHORIZING THE EXECUTION OF A LEASE BETWEEN THE COUNTY OF DUPAGE AND THE CITY OF WHEATON FOR THE CITY'S USE OF COUNTY PROPERTY FOR DEPOSITING SNOW

WHEREAS, the City of Wheaton, Illinois, ("City") is an Illinois Home Rule Municipality pursuant to the provisions of Article VII, Section 6, of the Illinois Constitution of 1970; and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the County of DuPage, Illinois ("County") is a body politic and corporate of the State of Illinois; and

WHEREAS, the County and the City are units of local government as defined by Article VII, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, units of local government are enabled by Article VII, Section 10 of the Constitution of the State of Illinois to enter into agreements among themselves to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, both the County and the City are considered a "municipality" as defined in the Local Government Property Transfer Act, 50 ILCS 605/.01 *et seq.*; and

WHEREAS, the County owns and operates a campus of over 150 acres ("Campus"), part of which is located in the corporate boundaries of the City; and

WHEREAS, in the past the County has allowed the City to use a portion of the Campus to deposit snow, and the parties now desire to formalize that arrangement; and

WHEREAS, the corporate authorities of the City find that it is necessary or convenient for it to use or occupy a portion of the Campus held by the County for the public purpose of depositing snow thereon; and

WHEREAS, the corporate authorities of the City of Wheaton, DuPage County, Illinois find it reasonable, necessary and appropriate to enter into a lease with the County of DuPage for the use of a portion of the County's Campus for depositing snow.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule powers, as follows:

Section 1: The recitals above are hereby incorporated into this Section 1 as though fully set forth herein.

Section 2: The Mayor is hereby authorized to execute, and the City Clerk is hereby directed to attest to, the Lease between the County of DuPage and the City of Wheaton for the City's use of County Property for depositing snow; and that a copy of that certain Lease is on file with the City Clerk's office and is incorporated herein as if fully set forth as Exhibit A.

Section 3: All ordinances or parts of ordinances in conflict with these provisions are repealed.

Philip J. Suess
Mayor

ATTEST:

Andrea Rosedale

City Clerk

Roll Call Vote:

Ayes: Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller

Nays: None

Absent: None

Motion Carried Unanimously

Passed: October 21, 2024

Published: October 22, 2024

**LEASE BETWEEN THE COUNTY OF DUPAGE AND CITY OF WHEATON
FOR THE CITY'S USE OF COUNTY PROPERTY FOR DEPOSITING SNOW**

This Lease is made and entered into this 22nd day of OCTOBER, 2024, by and between the County of DuPage, a body politic and corporate of the State of Illinois (hereinafter "County") and the City of Wheaton, an Illinois Home Rule Municipality (hereinafter "City"), individually referred to at times as "Party" or collectively referred to as "Parties".

WHEREAS, every year the City plows all City streets during the winter season; and

WHEREAS, depending on the amount of snowfall there are occasions when there is no area to place the plowed snow from the City's rights-of-way and property; and as such, the City deposits said snow on land owned by the County ("Premises"); and

WHEREAS, the Premises used by the City for said snow deposit is part of a lease between the County and the DuPage County Fair Association, Inc. ("Fair Lease"); and

WHEREAS, paragraph 5.I. of the Third Amendment to the Fair Lease states that the County has the right to enter into a Lease with the City for the deposit of snow on the Premises with certain restrictions; and

WHEREAS, the Parties wish to enter into this Lease so that the City can continue to use the Premises uninterrupted; and

WHEREAS, this Lease is authorized, for both the City and the County, by the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*), Section 10 of Article VII of the Constitution of the State of Illinois and Section 3.1 of the Local Government Property Transfer Act (50 ILCS 605/3.1); and

WHEREAS, the County, as set forth in the Counties Code, 55 ILCS 5/1 – 1001, *et seq.* is authorized to enter into this Lease; and

WHEREAS, the City, by virtue of its powers as set forth in the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*), as well as its home rule authority, is authorized to enter into this Lease.

NOW, THEREFORE, based upon the considerations set forth herein and the recitals, the City and the County agree as follows:

1. **Recitals Incorporated.** The foregoing recitals are incorporated herein as if fully set forth as representing the intent of the Parties and as substantive provisions, conditions, and covenants.
2. **Lease, Term, Renewal and Termination.** In exchange for Ten Dollars (\$10.00) and other good and valuable consideration, the County hereby leases the Premises, depicted on Attachment A attached hereto, to the City for an initial term of 5 years, beginning on the date the last Party hereto executes this Lease. This Lease shall automatically be renewed for successive five-year terms, unless either Party provides written notice to the other Party of its intent to not renew this Lease no later than 90 days prior to the expiration of the then-current term. The County may terminate this Lease upon three

hundred and sixty-five 365 days' written notice to the City. The City may terminate this Lease upon thirty (30) days' written notice to the County.

3. **Use of Premises.** The City may use the Premises solely for depositing snow from November 15 to April 15 each season (the "Snow Season"). The City shall take measures to prevent snow melt runoff and City vehicles from damaging or eroding any area of the Premises.

4. **Access.** During the Snow Season, the County shall allow the City ingress and egress to the Premises through, on, over, and across County-owned property from Manchester Road to the Premises.

5. **Restoration of Premises.** At the end of each Snow Season, the City shall clean up, remove and sanitarily dispose of any rubbish, garbage and debris that may accumulate within the Premises no later than April 30 of each year. Upon expiration or termination of this Lease for any reason, the City agrees to promptly restore the Premises to a condition substantially similar to the condition of the area prior to the effective date of this Lease, including the correction of any erosion that may have occurred on the Premises.

6. **Premises "As-Is".** The City has examined the Premises and knows its condition. No representations as to the condition and repair thereof and no Lease to make any alterations, repairs or improvements in or about the Premises have been made by the County.

7. **Indemnification by City.** The City, to the greatest extent permitted by law, agrees to defend, save and hold harmless the County, its elected officials, officers, employees and agents (the "County Indemnitees") from any all claims, liabilities, causes of action, losses and damages that may, at any time, arise or be claimed by any third party as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected, directly or indirectly, with the City's use of the Premises. However, the obligation of the City hereunder shall not extend to negligent acts or omissions of the County Indemnitees.

8. **Damage to City Vehicles or Property.** The County shall not be liable or responsible for any damage to any vehicle, equipment, or personal property of the City while using the Premises, except such resulting from the negligence of the County, its officials, agents, servants or employees.

9. **No Waiver of Immunities.** Nothing in this Lease shall constitute a waiver by the City or the County of any right, privilege, immunities, or defenses, either may have, under statutory or common law, including, but not limited to, the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1-101, *et seq.*

10. **No Third-Party Beneficiaries.** This Lease is entered into solely for the benefit of the Parties and nothing in this Lease is intended, either expressly or by implication, to provide any right or benefit of any kind whatsoever to any person or entity who is not a Party to this Lease or to acknowledge, establish or impose any legal duty upon the City or the County to any third person or entity.

11. **No Assignment.** The City may not assign this Lease or sublet the Premises or any part thereof. The City shall not permit any transfer by operation of law of its interests herein.

12. **Access by County.** The County at all times shall have free and unrestricted access for its employees, agents, representatives, assigns or grantees to enter upon the Premises for any purpose of

the County; provided, however, the County may not interfere with the City's use of the Premises as allowed herein.

13. **Entire Lease.** This instrument contains the entire Lease made by and among the Parties relating to the rights and duties granted and assumed herein. Any oral representations or modifications concerning this instrument shall be of no force or effect and any modifications to this Lease must be in writing and lawfully approved and signed by all Parties to this Lease in order to be effective.

14. **Governing Law and Venue.** The laws of the State of Illinois shall govern the terms of this Lease as to both interpretation and performance. For any disputes arising out of this Lease, venue is only proper in the Eighteenth Judicial Circuit Court, DuPage County.

15. **Breach/Waiver.** The failure by the City or the County to seek redress for violation of or to insist upon the strict performance of any condition or covenant of this Lease shall not constitute a waiver of any such breach or subsequent breach of such covenants, terms, conditions, rights, and remedies. No provision of this Lease shall be deemed waived by the City or the County unless such provision is waived in writing.

16. **Notice.** All Notices shall be in writing and shall be served by one Party or attorney to the other Party or attorney. Notice to any one of a multiple-person Party shall be sufficient Notice to all. Notice shall be given in the following manner:

- a. By personal delivery of such Notice; or
- b. By mailing such Notice to the addresses recited herein by regular mail and by certified mail, return receipt requested. Except as otherwise provided herein, Notice served by certified mail shall be effective on the date of mailing; or
- c. By sending e-mail transmission. Notice shall be effective as of date and time of e-mail transmission, provided that the Notice transmitted shall be sent during Business Hours, and provided that the recipient computer acknowledges receipt of the transmission. In the event e-mail Notice is transmitted during non-business hours, the effective date and time of Notice is the first hour of the next Business Day after transmission; or
- d. By commercial overnight delivery (e.g., FedEx). This Notice shall be effective on the next Business Day following deposit with the overnight delivery company.

To the County:

DuPage County
421 N. County Farm Road
Wheaton, IL 60187
Attn: Director of Facilities Management

To the City:

City of Wheaton
303 W. Wesley Street
Wheaton, IL 60187
Attention: City Manager

17. **Partial Invalidity.** In the event that any term or provision of this Lease shall be held illegal, invalid or unenforceable as a matter of law, the remaining terms and provisions of this Lease shall not be

affected thereby, but each such term and provision shall be valid and shall remain in full force and effect unless the illegal, invalid or unenforceable determination renders enforcement of the Lease inconsistent with the primary purpose of one or more of the segment transfers.

18. **Drafting.** Each of the Parties hereto, by their execution of this Agreement, acknowledge that such Party has carefully read and fully understands the terms of this Agreement and has had the opportunity to obtain independent legal advice with respect to this Agreement. The Parties further agree that this Agreement was negotiated fairly between them and at arm's length, and that the final terms of this Agreement are the product of the Parties' negotiations. The Parties agree that this Agreement shall be deemed to have been jointly and equally drafted by each of them, and that the provisions of this Agreement therefore should not be construed against any Party on the grounds that such Party drafted, or was more responsible for drafting, any of the provisions hereof.

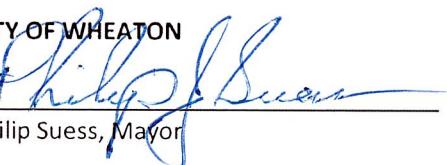
19. **Counterparts; E-Mail Signatures.** This Lease may be executed in multiple counterparts all of which taken together shall constitute one executed original. For purposes of executing this Lease, any signed PDF document transmitted by email transmission shall be considered as an original signature and shall have the same binding legal effect as an original document. At the request of any Party, any document transmitted by email shall be re-executed by the applicable Parties in an original form, it being agreed that the failure by any Party to so re-execute such document shall not affect the binding legal effect of such document.

20. **Amendments.** This Lease shall only be amended by a written instrument approved and signed by all Parties hereto. Such amendment shall take effect immediately upon its execution.

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

CITY OF WHEATON

Philip Suess, Mayor



COUNTY OF DUPAGE

Deborah A. Conroy
Chair, DuPage County Board



ATTESTATION:

Andrea Rosedale, City Clerk



ATTESTATION:

Jean Kaczmarek, County Clerk



Attachment A

