



COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT

1420 Miner Street
Des Plaines, IL 60016
P: 847.391.5380
desplaines.org

MEMORANDUM

Date: March 4, 2021

To: Michael G. Bartholomew, MCP, LEED-AP, City Manager

From: Michael McMahon, Community and Economic Development Director *mm*
Tim Oakley, Director of Public Works and Engineering *TO*

Subject: Non-Exclusive Easement Agreement for Water Transmission Main at 1600-1710 Sherwin Avenue (6th Ward)

Issue: On March 20, 2020 the City’s Building Division issued a building permit to construct a 164,125 square foot logistics facility with office space at 1600-1710 Sherwin Avenue (“**Subject Property**”). The building permit also included the construction of a new looped water transmission main on the Subject Property (“**Facilities**”).

Analysis: The new Facilities consist of 1,792 linear feet of 10-inch ductile iron pipe with five (5) fire hydrants and appurtenances. Once completed and inspected by the City’s Engineering Department, the Facilities will be dedicated to the City of Des Plaines by the owner, Sherwin Industrial I, LLC (“**Owner**”). Notwithstanding this dedication, the Owner will at its sole cost and expense, perpetually maintain the Facilities. In the event the City determines that the Facilities are not being properly maintained, the City may enter the easement and perform the required maintenance and charge the Owner for the cost of such work. The terms and conditions of the Owner’s maintenance responsibilities have been memorialized on a Non-Exclusive Easement Agreement prepared by General Counsel and approved by the City’s Engineering staff.

Recommendation: We recommend that the City Council adopt Resolution R-58-21 approving Non-Exclusive Easement Agreement for Water Transmission Main at 1600-1710 Sherwin Avenue.

Attachments:

Resolution R-58-21

Exhibit A: Non-Exclusive Easement Agreement for Water Transmission Main

CITY OF DES PLAINES

RESOLUTION R - 58 - 21

A RESOLUTION APPROVING A NON-EXCLUSIVE EASEMENT AGREEMENT FOR A WATER TRANSMISSION MAIN AGREEMENT WITH SHERWIN INDUSTRIAL I, LLC.

WHEREAS, Article VII, Section 10 of the 1970 Illinois Constitution and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, authorize and encourage intergovernmental cooperation; and

WHEREAS, the City is an Illinois home-rule municipal corporation authorized to exercise any power or perform any function pertaining to its government and affairs; and

WHEREAS, pursuant to Building Permit 2019-01200046 issued by the City of Des Plaines ("**City**") to Sherwin Industrial I, LLC ("**Owner**"), for the construction of a new 164,125 sq. ft warehouse building and associated offices at 1600-1710 Sherwin Ave, a new water transmission main ("**Facilities**") will be constructed service the building; and

WHEREAS, the new Facilities will consist of 1,729 linear feet ductile iron pipe, five (5) fire hydrants, and appurtenances; and

WHEREAS, the City Municipal Code requires that these new Facilitates be dedicated to the City but primarily maintained by the Owner; and

WHEREAS, the Owner will at its sole cost and expense, perpetually maintain the Facilities and in the event the City determines that the Facilities are not being properly maintained, the City may enter the easement and perform the required maintenance and charge the Owner for the cost of such work; and

WHEREAS, the City and the Owner desire to enter into a Non-Exclusive Easement Agreement for Water Transmission Main to memorialize these terms ("**Agreement**"); and

WHEREAS, the City Council has determined that it is in the best interest of the City to enter into the Agreement with the Owner;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Plaines, Cook County, Illinois, in the exercise of its home rule powers, as follows:

SECTION 1: RECITALS. The foregoing recitals are incorporated into, and made a part of, this Resolution as findings of the City Council.

SECTION 2: APPROVAL OF AGREEMENT. The City Council hereby approves the Agreement in substantially the form attached to this Resolution as **Exhibit A** and in a final form approved by the General Counsel.

SECTION 3: AUTHORIZATION TO EXECUTE AGREEMENT. The City Council hereby authorizes and directs the Mayor or City Manager to execute, and the City Clerk to seal, on behalf of the City, the final Agreement.

SECTION 4: EFFECTIVE DATE. This Resolution shall be in full force and effect from and after its passage and approval according to law.

PASSED this ____ day of _____, 2021.

APPROVED this ____ day of _____, 2021.

VOTE: AYES ____ NAYS ____ ABSENT ____

MAYOR

ATTEST:

Approved as to form:

CITY CLERK

Peter M. Friedman, General Counsel

This Document Prepared By and
After Recording Return to:

Jamie L. Romick
Mason, Wenk & Berman, L.L.C.
630 Dundee Road, Suite 220
Northbrook, IL 60062

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

NON-EXCLUSIVE EASEMENT AGREEMENT FOR WATER TRANSMISSION MAIN

(1600-1710 Sherwin Avenue, Des Plaines, Illinois)

THIS AGREEMENT is dated as of the ___ day of March, 2021 by and between the City of Des Plaines, an Illinois home rule municipal corporation (the "City") and Sherwin Industrial I, LLC, an Illinois limited liability company (the "Owner").

IN CONSIDERATION OF the mutual covenants and agreements set forth herein and pursuant to the City's home rule powers, the parties hereto agree as follows:

1. **BACKGROUND.**

- A. The Owner is the owner of certain real estate situated in 1600-1710 Sherwin Road, Des Plaines, County of Cook, State of Illinois, which real estate is legally described in *Exhibit A* (the "Subject Property").
- B. The Owner and the City have determined that it is in their respective best interests to enter into this Agreement in order to provide the City with a sufficient property interest in the Subject Property to fulfill the purposes described herein.

2. **GRANT AND USE OF EASEMENT.** The Owner grants, conveys, warrants, and dedicates to the City a perpetual easement in, at, over, along, across, through, upon, and under that portion of the Subject Property legally described in *Exhibit B* and depicted in *Exhibit C* (the "Easement Premises"), to operate, use, own, test, inspect, repair, remove, and replace or abandon in place 1,792 linear feet of ten (10) inch ductile iron pipe water transmission main with five (5) fire hydrants, and any appurtenances thereto (collective, the "***Facilities***"), together with all reasonable rights of ingress and egress over, along, across, and upon the Subject Property necessary for the exercise of the rights granted herein.

3. **CONSTRUCTION AND MAINTENANCE OF FACILITIES.** The Owner will, at its sole cost and expense, construct and maintain the Facilities in accordance with plans approved by the

City and the City's Engineering Standards and Specifications. After the completion of construction by the Owner and approval by the City of the Facilities, the Owner will dedicate the Facilities to the City. Notwithstanding this dedication, the Owner will, at its sole cost and expense, perpetually maintain the Facilities in good condition and conduct all necessary repairs and regular maintenance to ensure that the Facilities remain in good working condition and in compliance with all of the City's laws, codes, and regulations. In the event the City determines, in its sole and absolute discretion, that proper maintenance of the Facilities is not performed at any time, the City, after five (5) days prior written notice to the Owner, may, but shall not be obligated to, enter upon any or all of the Easement Premises, as well as all portions of the Subject Property necessary to provide access to the Easement Premises, for the purpose of performing maintenance work on and to the Facilities. In the event that the City shall cause to be performed any work pursuant to this Section 3, the City shall have the right to charge the Owner an amount sufficient to defray the entire cost of such work or action, including administrative costs, either before or after such cost is incurred. If the amount so charged is not paid by the Owner within thirty (30) days following a demand in writing by the City for such payment, such charge, together with interest and costs of collection, shall become a lien upon the Subject Property and the City shall have the right to collect such charge, with interest and costs, and to enforce such lien as in foreclosure proceedings as permitted by law.

4. **HOLD HARMLESS.** Except as specifically provided for in this Agreement, the Owner agrees to hold the City harmless from all claims, causes of action, suits, damages, or demands that arise directly from the operation of the Facilities on the Easement Premises except due to the gross negligence or willful misconduct of the City.
5. **RESERVED RIGHT.** The Owner reserves the right to use the Easement Premises in any manner that will not prevent or interfere in any way with the exercise by the City of the rights granted herein; provided, however, that the Owner shall not permanently or temporarily improve or obstruct the Easement Premises or cause any improvements or obstructions to be constructed on the Easement Premises that would impair the exercise by the City of the rights granted herein without the express prior written consent of the City Manager.
6. **ADDITIONAL EASEMENTS.** The Owner shall have the right to grant other non-exclusive easements over, along, across or upon the Easement Premises; provided, however, that any such other easements shall be subject to this Agreement and the rights granted hereby; and provided further, that the City Manager or other individual(s) authorized to consent on behalf of Owner shall have first consented in writing to the terms, nature, and location of any such other easements, which consent shall not be unreasonably withheld, conditioned or delayed.
7. **CITY RESTORATION.** In the event that the City is required to enter upon the Subject Property and/or the easement Premises to conduct restoration work, upon completion of such work the City agrees to (a) replace and grade any and all topsoil removed by the City; (b) restore to condition immediately preceding the installation any and all fences, roads, plantings, and improvements that are damaged or removed as a direct result of the Installation; (c) replace any and all sod removed with sod of like quality; and (d) replace any and all natural grass removed by seeding with a good quality seed; but all such restoration work shall be subject to the cost recovery provisions set forth in Section 3 above.

8. **COVENANTS RUNNING WITH THE LAND.** The easements and rights granted in this Agreement, the restrictions imposed by this Agreement, and the agreements and covenants contained in this Agreement shall be easements, rights, restrictions, agreements and covenants running with the land, shall be recorded against the Subject Property and shall be binding upon and inure to the benefit of the Owner and the City and their respective heirs, executors, administrators, successors, assigns, agents, licensees, invitees, and representatives, including, without limitation, all subsequent owners of the Subject Property, or any portion thereof, and all persons claiming under them. If any of the easements, rights, restrictions, agreements or covenants created by this Agreement would otherwise be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such easements, rights, restrictions, agreements or covenants shall continue only until 21 years after the death of the last survivor of the now living lawful descendants of the current Governor of the State of Illinois.
9. **RESERVED.**
10. **AMENDMENT.** This Agreement may be modified, amended, or annulled only by the written agreement of the Owner and the City.
11. **EXHIBITS.** Exhibits A through C attached to this Agreement are incorporated herein and made a part hereof by this reference.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the date above written.

OWNER:

SHERWIN INDUSTRIAL I, LLC, a Delaware limited liability company

By: PDC CHICAGO LLC, a Delaware limited liability company, Manager

By: _____
Name: JOHN PAGUET
Title: PARTNER

CITY:

CITY OF DES PLAINES, an Illinois home rule municipal corporation

By: _____
Name: _____
Title: _____

APPROVED AS TO FORM:



2/15/2021

General Counsel
City of Des Plaines

Date

ACKNOWLEDGEMENTS

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT John Pagliani, a Partner of Sherwin Industrial I, LLC, a Delaware limited liability company, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 20th of March, 2020.



Mary Mcgrath (Notary Public)

STATE OF ILLINOIS)
) SS
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, CERTIFY THAT _____, a _____ of The City of Des Plaines, an Illinois municipal corporation, known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this ___ of _____, 2020.

_____ (Notary Public)

EXHIBIT A

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

PARCEL 1:

LOT 2 IN C. W. PROPERTIES-CHICAGO, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28 AND ALSO PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 29, ALL IN TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

THAT PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS DESCRIBED AS FOLLOWS:

COMMENCING AT THE POINT OF INTERSECTION OF A LINE 51.0 FEET NORTH EASTERLY OF AND PARALLEL WITH THE NORTH EASTERLY LINE OF THE RIGHT OF WAY OF THE MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILROAD WITH THE WESTERLY EXTENSION OF A LINE DRAWN 1636.066 FEET SOUTH (AS MEASURED ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28 AFORESAID) OF THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 28; THENCE EAST ALONG THE LAST DESCRIBED PARALLEL LINE 892.0 FEET TO THE PLACE OF BEGINNING OF THE FOLLOWING DESCRIBED TRACT OF LAND; THENCE CONTINUING EAST ALONG SAID PARALLEL LINE TO A POINT ON THE EAST LINE OF THE WEST 651.21 FEET OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28 AFORESAID (AS MEASURED PERPENDICULARLY TO THE WEST LINE OF SAID WEST 1/2); THENCE NORTH 152.735 FEET ALONG THE EAST LINE OF THE WEST 651.21 FEET AFORESAID; THENCE NORTHWESTERLY 385.37 FEET MORE OR LESS ALONG THE ARC OF A CIRCLE OF RADIUS 287.94 FEET CONVEX TO THE NORTH EAST AND TANGENT TO THE EAST LINE OF THE WEST 651.21 FEET AFORESAID TO A POINT ON A LINE DRAWN 1196.048 FEET SOUTH OF (AS MEASURED ALONG THE EAST LINE OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28 AFORESAID) AND PARALLEL WITH THE NORTH LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 28; THENCE WEST 15.46 FEET MORE OR LESS ALONG SAID PARALLEL LINE TO A POINT ON A LINE PARALLEL WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 28 THROUGH THE HEREIN DESIGNATED PLACE OF BEGINNING; THENCE SOUTH TO THE HEREIN DESIGNATED PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 3:

THAT PART OF THE SOUTH 440.018 FEET OF THE NORTH 1636.066 FEET (BOTH AS MEASURED ALONG THE EAST LINE THEREOF) OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE EAST LINE OF THE WEST 783.21 FEET (AS MEASURED PERPENDICULARLY TO THE WEST LINE OF SAID SOUTHWEST 1/4) OF SAID WEST 1/2 AND LYING EASTERLY OF A LINE DESCRIBED AS FOLLOWS: COMMENCING AT A POINT OF INTERSECTION OF THE EAST LINE OF THE WEST 651.21 FEET (AS MEASURED PERPENDICULARLY TO THE WEST LINE OF SAID SOUTH WEST 1/4) OF SAID WEST 1/2 WITH THE SOUTH LINE OF THE NORTH 1636.066 FEET AFORESAID; THENCE NORTH ALONG SAID EAST LINE 152.735 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A CIRCLE OF RADIUS OF 287.94 FEET CONVEX TO THE NORTHEAST AND TANGENT TO

THE EAST LINE OF THE WEST 651.21 FEET AFORESAID, A DISTANCE OF 385.37 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF THE SOUTH 440.018 FEET OF THE NORTH 1636.066 FEET AFORESAID, ALL IN COOK COUNTY, ILLINOIS.

EXHIBIT B

LEGAL DESCRIPTION OF THE EASEMENT PREMISES

LEGAL DESCRIPTION - WATERMAIN EASEMENT

A STRIP OF LAND 10 FOOT IN WIDTH IN THAT PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 41 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY ILLINOIS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF LOT 2 IN C. W. PROPERTIES-CHICAGO, BEING A SUBDIVISION OF PART OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 28 AND ALSO PART OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 29, ACCORDING TO THE PLAT THEREOF RECORDED MAY 31, 1989 AS DOCUMENT NUMBER 89244954; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST ALONG THE SOUTH LINE OF SAID LOT 2 (BEING AN ASSUMED BEARING), ALSO BEING THE NORTH LINE OF SHERWIN AVENUE, A DISTANCE OF 17.82 FEET TO THE POINT OF BEGINNING; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST PARALLEL WITH THE WEST LINE OF SAID LOT 2, A DISTANCE OF 316.61 FEET; THENCE NORTH 42 DEGREES 54 MINUTES 17 SECONDS EAST 61.71 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 21.32 FEET; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST 10.00 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 10.00 FEET; THENCE SOUTH 02 DEGREES 05 MINUTES 43 SECONDS EAST 10.00 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 590.25 FEET; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST 8.96 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 10.00 FEET; THENCE SOUTH 02 DEGREES 05 MINUTES 43 SECONDS EAST 8.96 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 31.10 FEET; THENCE SOUTH 45 DEGREES 14 MINUTES 08 SECONDS EAST 47.43 FEET; THENCE SOUTH 00 DEGREES 14 MINUTES 22 SECONDS EAST 265.03 FEET; THENCE SOUTH 42 DEGREES 54 MINUTES 17 SECONDS WEST 18.76 FEET; THENCE SOUTH 87 DEGREES 54 MINUTES 17 SECONDS WEST 167.69 FEET; THENCE SOUTH 02 DEGREES 05 MINUTES 43 SECONDS EAST 47.48 FEET TO A POINT ON SAID NORTH LINE OF SHERWIN AVENUE; THENCE SOUTH 87 DEGREES 54 MINUTES 17 SECONDS WEST ALONG SAID NORTH LINE 10.00 FEET; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST 47.48 FEET; THENCE SOUTH 87 DEGREES 54 MINUTES 17 SECONDS WEST 89.64 FEET; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST 15.00 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 10.00 FEET; THENCE SOUTH 02 DEGREES 05 MINUTES 43 SECONDS EAST 5.00 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 240.57 FEET; THENCE NORTH 02 DEGREES 05 MINUTES 43 SECONDS WEST 7.58 FEET; THENCE NORTH 87 DEGREES 54 MINUTES 17 SECONDS EAST 10.00 FEET; THENCE SOUTH 02

DEGREES 05 MINUTES 43 SECONDS EAST 7.58 FEET; THENCE NORTH 87
DEGREES 54 MINUTES 17 SECONDS EAST 2.62 FEET; THENCE NORTH 42
DEGREES 54 MINUTES 17 SECONDS EAST 10.66 FEET; THENCE NORTH 00
DEGREES 14 MINUTES 22 SECONDS WEST 256.93 FEET; THENCE NORTH 45
DEGREES 14 MINUTES 08 SECONDS WEST 38.95 FEET; THENCE SOUTH 87
DEGREES 54 MINUTES 17 SECONDS WEST 290.98 FEET; THENCE SOUTH 02
DEGREES 05 MINUTES 43 SECONDS EAST 20.00 FEET; THENCE SOUTH 87
DEGREES 54 MINUTES 17 SECONDS WEST 10.00 FEET; THENCE NORTH 02
DEGREES 05 MINUTES 43 SECONDS WEST 20.00 FEET; THENCE SOUTH 87
DEGREES 54 MINUTES 17 SECONDS WEST 353.23 FEET; THENCE SOUTH 42
DEGREES 54 MINUTES 17 SECONDS WEST 53.42 FEET; THENCE SOUTH 02
DEGREES 05 MINUTES 43 SECONDS EAST 245.68 FEET; THENCE NORTH 87
DEGREES 54 MINUTES 17 SECONDS EAST 18.56 FEET; THENCE SOUTH 02
DEGREES 05 MINUTES 43 SECONDS EAST 10.00 FEET; THENCE SOUTH 87
DEGREES 54 MINUTES 17 SECONDS WEST 18.56 FEET; THENCE SOUTH 02
DEGREES 05 MINUTES 43 SECONDS EAST 56.78 FEET TO A POINT ON SAID
NORTH LINE OF SHERWIN AVENUE; THENCE SOUTH 87 DEGREES 54 MINUTES
17 SECONDS WEST ALONG SAID NORTH LINE 10.00 FEET; TO THE POINT OF
BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

CONTAINING 0.40 ACRES OR 17323 SQUARE FEET MORE OR LESS.

