



Office of the City Clerk



O2013-1773

Office of the City Clerk

City Council Document Tracking Sheet

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| Meeting Date: | 3/13/2013 |
| Sponsor(s): | Emanuel, Rahm (Mayor) |
| Type: | Ordinance |
| Title: | Acquisition of property in conjunction with proposed Orange Line extension southward to Ford City shopping mall |
| Committee(s) Assignment: | Committee on Housing and Real Estate |

ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government by virtue of the provisions of the Constitution of the State of Illinois of 1970, and as such, may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City constructed the Orange Line rapid transit system in the 1990's; and

WHEREAS, the City of Chicago, acting through its Department of Transportation ("CDOT"), is interested in extending the Orange Line southward to Ford City shopping mall (the "Project"); and

WHEREAS, in furtherance of the Project, the City requires the acquisition of additional right-of-way; and

WHEREAS, The Belt Railway Company of Chicago, an Illinois corporation ("BRC"), is the owner of a 133 foot wide railroad right-of-way situated approximately 166 feet east of South Knox Avenue between West 63rd Street on the north and West Marquette Road on the south; and

WHEREAS, CDOT has offered to purchase the west 70 feet of BRC's right-of-way, and BRC has agreed to sell the west 70 feet of its right-of-way (the "Right-of-Way") to the City for the sum of \$1,767,500.00 for use in connection with the Project; and

WHEREAS, the Federal Transit Administration has approved CDOT's request for an administrative settlement in the amount of \$1,767,500.00; and

WHEREAS, BRC owns additional right-of-way that CDOT is interested in purchasing for use in connection with the expansion of the Orange Line, provided that the FTA grants the funds necessary for such purchase; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The City hereby finds that the primary benefit of the transaction is to the City, and approves the purchase of the Right-of-Way legally described on **Exhibit A** for the sum of \$1,767,500.00.

SECTION 2. The Commissioner of the Department of Transportation (the "Commissioner") or his designee is authorized, subject to the approval of the Corporation Counsel as to form and legality, to execute a Real Estate Sale Agreement substantially in the form attached hereto as **Exhibit B**, and such other documents that may be necessary or appropriate to carry out and comply with the provisions of this Ordinance.

SECTION 3. The Commissioner is authorized to accept on behalf of the City, a deed from BRC conveying the Right-of-Way to the City, subject to a reservation of a temporary easement across that portion of the Right-of-Way legally described on **Exhibit A** for the sole purpose of securing BRC's access to its right-of-way north of Marquette Road.

SECTION 4. The Commissioner or his designee is authorized, subject to the approval of the Corporation Counsel as to form and legality, to negotiate, execute and deliver a real estate sale agreement between the City and BRC for the purchase of additional right-of-way legally described and identified on **Exhibit A** as Parcels C and D, for use in connection with the

expansion of the Orange Line, provided that the FTA approves the amount of the purchase price and provides the funds necessary to effectuate the acquisition. The Commissioner is further authorized to accept on behalf of the City, a deed from BRC conveying the additional right-of-way to the City.

SECTION 5. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the other provisions of this ordinance.

SECTION 6. This ordinance shall take effect upon its passage and approval.

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT-OF-WAY

THE WEST 70 FEET OF THE EAST 133 FEET OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Index No. 19-22-500-001 (pt.)

LEGAL DESCRIPTION OF TEMPORARY EASEMENT

THE NORTH 110 FEET OF THE SOUTH 143 FEET OF THE WEST 70 FEET OF THE EAST 133 FEET OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Index No. 19-22-500-001 (pt.)

LEGAL DESCRIPTION OF ADDITIONAL RIGHT-OF-WAY

Parcel C:

THE SOUTH 684.19 FEET OF THE WEST 50 FEET OF THE EAST 183 FEET OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY,

Property Index No. 19-15-303-006

Parcel D:

THE WEST 70 FEET OF THE EAST 133 FEET OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 15, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, EXCEPTING THEREFROM THE NORTHERLY 1,043 FEET THEREOF, ALSO EXCEPTING THE WEST 8 FEET OF THE NORTHERLY 282.5 FEET THEREOF.

Property Index No. 19-15-500-003 (pt.)

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT-OF-WAY

THE WEST 70 FEET OF THE EAST 133 FEET OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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Property Index No. 19-15-500-003 (pt.)

EXHIBIT B

REAL ESTATE SALE AGREEMENT

REAL ESTATE SALE AGREEMENT

This **REAL ESTATE SALE AGREEMENT** is made on or as of _____, by and between **THE BELT RAILWAY COMPANY OF CHICAGO**, an Illinois corporation (the "BRC"), 6900 South Central Avenue, Bedford Park, Illinois 60638, and the **CITY OF CHICAGO**, an Illinois municipal corporation (the "City"), having its principal offices at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602.

RECITALS

WHEREAS, the BRC is the owner of a 133 foot wide railroad right-of-way situated approximately 166 feet east of South Knox Avenue between West 63rd Street on the north and West Marquette Road on the south; and

WHEREAS, the City has offered to purchase the west 70 feet of the BRC's right-of-way legally described on Exhibit A attached hereto (the "Right-of-Way"), for use in connection with the expansion of the Orange Line Rapid Transit; and

WHEREAS, the BRC has agreed to sell the Right-of-Way to the City upon the terms and conditions described in this Agreement;

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties, each of them hereby covenants and agrees with the other as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES.

A. Representations and Warranties of the BRC. To induce the City to execute this Agreement and perform the obligations of the City hereunder, the BRC hereby represents and warrants to the City, based upon its knowledge, as follows:

1. No litigation or proceedings are pending or threatened against the BRC or any party controlling or controlled by the BRC which could affect the ability of the BRC to perform his obligations in accordance with the terms of this Agreement.
2. The execution, delivery and performance by the BRC of this Agreement have not constituted, or will not constitute, a breach or default under any other agreement which may affect the Right-of-Way to which the BRC or any party controlling or controlled by the BRC is a party, or a violation of any law or court order which may affect the Right-of-Way or any interest therein or the use thereof.
3. The BRC has full power and authority to execute and deliver this Agreement and to perform his obligations set forth herein.

4. The BRC has no knowledge of, nor has received any notice that the current use of the Right-of-Way violates: (a) any statute, law, regulation, rule, ordinance or executive or judicial order of any kind (including, without limitation, zoning and building laws, ordinances, codes or approvals and environmental protection laws or regulations; or (b) any building permit, restriction of record or any agreement affecting the Right-of-Way.
5. Except for mortgages and other liens, if any, which can be satisfied by the payment of money at the Closing, and except for real estate taxes and assessments not yet due and owing, the BRC has not: (a) granted, suffered or permitted any lien, claim or encumbrance upon the Right-of-Way; (b) permitted or suffered any levy, attachment, claim or restraint to be made affecting the Right-of-Way; or (c) executed any leases for the Right-of-Way which will not be terminated on or before the Closing Date.

B. Representations and Warranties of the City. To induce the BRC to execute this Agreement and to perform the obligations of the BRC hereunder, the City hereby represents and warrants to the BRC as follows:

1. To the best of the City's knowledge, the performance by the City of its obligations hereunder will not violate any other agreement to which the City is a party, or any court order or decree by which the City is bound.
2. To the best of the City's knowledge, there is no litigation pending against the City that could prevent the City from performing its obligations in accordance with the terms of this Agreement.

C. Survival of Representations and Warranties. The parties agree that all of their respective representations and warranties set forth in this Section 1 or elsewhere in this Agreement are true as of the date of this Agreement and will be true at all times hereafter, except with respect to matters that have been disclosed in writing to and approved by the other party. The continued accuracy of the representations and warranties shall be a condition precedent to the obligation of the parties to close the transaction contemplated by this Agreement.

SECTION 2. SALE AND PURCHASE PRICE.

Subject to the terms, covenants and conditions of this Agreement, the City agrees to purchase the Right-of-Way from the BRC, and the BRC agrees to sell the Right-of-Way to the City for the sum of \$1,767,500.00 ("Purchase Price").

SECTION 3. CONVEYANCE OF PROPERTY.

A. Form of Deed. The BRC shall convey fee simple title to the Right-of-Way to the City by warranty deed ("Deed"), subject to covenants, conditions and easements of record. The Deed shall be duly executed and acknowledged by the BRC and in proper form for recording.

B. Reservation of Easement. The Deed from the BRC to the City shall contain a reservation of a temporary easement on, over and across that portion of the Right-of-Way legally

described on Exhibit A for the sole purpose of securing BRC's access to its right-of-way north of Marquette Road. The BRC is expressly prohibited from permanently or temporarily placing any structure on, over or across the easement. The City shall provide the BRC with 30-days' notice of the termination of this easement, and shall further record a Termination of Temporary Easement with the office of the Cook County Recorder of Deeds. Prior to the termination of the temporary easement, the City shall provide the BRC with truck access to its right-of-way either by a curb cut on the north curb of Marquette Road west of the BRC's grade crossing at the City's expense, or on such other terms as are mutually agreeable to the parties.

C. The Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place at Wheatland Title Guaranty Company ("Title Company") within fourteen days after the City has obtained the funds necessary to complete the purchase of the Property.

D. Escrow. The Right-of-Way shall be conveyed by the BRC to the City in accordance with the provisions described in the usual form of deed and money escrow instructions used by the Title Company, with such special instructions as may be required to conform such instructions with this Agreement. In the event of any conflict between the escrow instructions and this Agreement, the terms of this Agreement shall govern. The City shall pay the cost of the escrow and all other closing costs and recording fees.

E. Title Insurance. The City shall pay the cost of the title commitment and title insurance policy, including endorsements.

F. Survey. The City shall pay the cost of any survey it deems necessary.

G. Real Estate Taxes. The BRC shall be responsible for all general real estate taxes and special assessments, if any, levied against the Right-of-Way until the date of closing.

H. PIN Division. The City agrees to file a petition for PIN Division after the Closing at the City's sole cost and expense. The BRC agrees to execute the petition and otherwise cooperate with the City regarding the filing of the petition.

I. Possession. The BRC shall deliver possession of the Right-of-Way to the City on the closing date.

J. Brokers. The parties represent and warrant to each other that no person or entity has been engaged, utilized, or dealt with that would be entitled to a broker's commission or finder's fee in connection with the sale of the Right-of-Way. In the event that any claim is asserted for such commission or fee, the party deemed to be responsible for such claim shall indemnify, defend and hold the non-responsible party harmless from and against any such claim.

K. Compliance with Applicable Laws. The parties shall comply with all applicable federal, state and local laws and regulations governing the sale of the Right-of-Way.

SECTION 4. CONDITIONS TO CLOSING.

The obligation of the City to consummate the transaction contemplated in this Agreement is subject to the following conditions, any of which may be waived by the City on or before the closing date.

A. The Right-of-Way has not been adversely affected in any material way as a result of any fire, flood, act of God or the public enemy, condemnation, unavoidable cause, accident or other casualty.

B. There has not been any administrative action, litigation or other governmental proceedings of any kind pending or threatened against the BRC or the Right-of-Way that would adversely affect the value of the Right-of-Way.

C. No material adverse change has occurred to any aspect of the Right-of-Way unless the change is contemplated by this Agreement. It is understood that the Right-of-Way is conveyed in its present condition. The BRC makes no representation as to the condition or suitability of said Right-of-Way.

D. This Agreement has not been terminated by either party in accordance with the terms hereof.

E. The BRC has performed all of the obligations and covenants undertaken by the BRC to be performed prior to the Closing.

SECTION 5. CITY'S RIGHT TO ENTER THE PROPERTY.

The BRC shall permit the City or its authorized representatives, agents and contractors to enter upon the Right-of-Way from time to time, upon notice from the City to BRC, so long as any such entry does not disturb the use of the Right-of-Way by the BRC or any occupant of the Right-of-Way and is made during reasonable business hours for the purpose of performing tests, environmental audits, engineering studies and surveys on the Right-of-Way as the City shall reasonably deem necessary. The City shall require any party hired by the City to perform such inspections and tests to maintain liability insurance in amounts and coverages reasonably acceptable to the BRC. The City shall not enter the Right-of-Way until said insurance coverage is in place. The City shall promptly repair and restore the Right-of-Way to the same condition as existed immediately prior to such entry if such entry resulted in any damage thereto.

SECTION 6. CASUALTY.

Loss or damage to any improvements located on the Right-of-Way by fire, casualty or act of God shall be at the sole risk of the BRC until the conveyance of the Right-of-Way to the City. In the event of damage or casualty to all or any portion of the Right-of-Way prior to the Closing, the BRC shall promptly send written notice thereof to the City. The City may, within thirty days following receipt of such notice, elect to terminate this Agreement by sending written notice thereof to the BRC. Upon such termination, all documents and monies deposited with the escrowee shall be promptly returned to the party depositing such document or monies. If the City

chooses to proceed with the transaction, the Purchase Price shall be equitably adjusted. Any insurance proceeds received from such damage or casualty shall be the sole property of the BRC.

SECTION 7. REMEDIES.

A. Time is of the Essence. The parties agree that time is of the essence in the performance of their obligations under this Agreement and every provision hereof in which time is an element. No extension of time for the performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act. If any date for performance falls on a Saturday, Sunday or legal holiday, then the time of such performance shall be extended to the next business day.

B. Breach. In the event of a default by a party in the performance of its obligations under this Agreement, such party upon written notice from the other shall immediately proceed to cure or remedy such default. In the event of a default by the BRC that has not been cured within a reasonable time, the City may terminate this Agreement by giving written notice thereof to the BRC, or may institute such proceedings at law or in equity as may be desirable in its sole discretion to remedy the default, including but not limited to, proceedings to compel specific performance. In the event of a default by the City that has not been cured within a reasonable time, the BRC may terminate this Agreement.

C. Waiver and Estoppel. Any delay by either party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights shall not operate as a waiver of such rights or operate to deprive said party of or limit such rights in any way. No waiver made by either party with respect to any specific default by the other party shall be construed, considered or treated as a waiver of the rights of said party with respect to any other defaults of the other party.

SECTION 8. CONFLICT OF INTEREST; CITY'S REPRESENTATIVES NOT INDIVIDUALLY LIABLE.

No agent, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement; nor shall any such agent, official or employee participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested. No agent, official or employee of the City shall be personally liable to the BRC or any successor in interest in the event of any default or breach by the City.

SECTION 9. HEADINGS.

The headings of the various sections of this Agreement have been inserted for convenient reference only and shall not in any manner be construed as modifying, amending or affecting in any way the express terms and provisions thereof.

SECTION 10. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the parties and supersedes and replaces any prior agreements between the parties with respect to the subject matter hereof. This Agreement shall not be modified or amended in any manner other than by supplemental written agreement executed by the parties.

SECTION 11. SEVERABILITY.

If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word, or the application thereof, is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included herein and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

SECTION 12. NOTICES.

Any notice, demand or communication required or permitted to be given hereunder shall be given in writing at the addresses set forth below by any of the following means: (a) personal service; (b) fax transmission; (c) overnight courier; or (d) registered or certified first class mail, postage prepaid, return receipt requested:

If to the BRC: The Belt Railway Company of Chicago
6900 South Central Avenue
Bedford Park, Illinois 60638
Fax: (708) 496-2608

with a copy to: Timothy E. Coffey, Esq.
6900 South Central Avenue
Bedford Park, Illinois 60638
Fax: (708) 496-2608

If to the City: Chicago Department of Transportation
30 North LaSalle Street
5th Floor
Chicago, Illinois 60602
Attn: Keith Privett
Fax: (312) 744-1200

with a copy to: Corporation Counsel's Office
121 North LaSalle Street
Chicago, Illinois 60602
Suite 600
Attn: Real Estate Division
Fax: (312) 742-0277

Any notice, demand or communication given pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon transmission by fax, respectively, provided that the fax transmission is confirmed as having occurred prior to 5:00 p.m. on a business day. If the fax transmission occurred after 5:00 p.m. on a business day or on a non-business day, it shall be deemed to have been given on the next business day. Any notice, demand or communication given pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier. Any notice, demand or communication sent pursuant to clause (d) shall be deemed received two business days after mailing. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, demands or communications shall be given.

SECTION 13. AMENDMENTS.

This Agreement may only be amended by the parties in writing. Such amendment shall become effective upon its execution by the parties.

SECTION 14. SUCCESSORS AND ASSIGNS.

The terms of this Agreement shall be binding upon the City and the BRC, and their respective legal representatives, successors and assigns. Prior to the Closing, neither party may assign its rights hereunder without the prior written consent of the other party, except that the City shall have the right to assign its rights and obligations under this Agreement to the Chicago Transit Authority without the prior written consent of the BRC. The City will provide BRC with prompt notice should said assignment occur.

SECTION 15. OTHER ACTS.

The parties agree to perform such other acts, and to execute, acknowledge and deliver such other instruments, documents and materials as may be reasonably to consummate the transaction contemplated in this Agreement.

SECTION 16. AGREEMENT SURVIVES CLOSING.

The terms and provisions of this Real Estate Sale Agreement shall survive the closing.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Agreement to be executed as of the date first above written.

{SIGNATURES APPEAR ON THE FOLLOWING PAGE}

THE BELT RAILWAY COMPANY OF CHICAGO,
an Illinois corporation

By: _____
Patrick J. O'Brien
President

CITY OF CHICAGO,
an Illinois municipal corporation

By: _____
Gabe Klein
Commissioner of Transportation

Approved as to form and legality:

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Gabe Klein, personally known to me to be the Commissioner of Transportation of the City of Chicago, a municipal corporation, and 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 being first duly sworn by me acknowledged that as such Commissioner, he signed and delivered the instrument, pursuant to authority given by the City of Chicago, as his free and voluntary act and as the free and voluntary act of the City, for the uses and purposes set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2013.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Patrick J. O'Brien, personally known to me to be same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and being first duly sworn by me acknowledged that he signed and delivered the instrument as his free and voluntary act and as the free and voluntary act of the corporation for the uses and purposes set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 2013.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF RIGHT-OF-WAY

THE WEST 70 FEET OF THE EAST 133 FEET OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 22, TOWNSHIP 38 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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