



City of Chicago



O2010-6993

Office of the City Clerk

Tracking Sheet

Meeting Date:	12/8/2010
Status:	Introduced
Sponsor(s):	Fioretti, Bob
Type:	Ordinance
Title:	Public Way Easement Agreement with Roosevelt University for pedestrian overpass
Committee(s) Assignment:	Committee on Transportation and Public Way

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, Roosevelt University,, a not-for-profit corporation organized and existing under and by virtue of the statutes of the State of Illinois ("Grantee") is the owner of the properties commonly identified as 50 East Congress Parkway and 421-425 South Wabash Avenue, Chicago, Illinois ("Property"); and

Whereas, Grantee has proposed the development of a pedestrian overpass (the "Pedestrian Overpass") to bridge the public right-of-way located in the north-south alley that separates the 400 block of south Wabash Avenue and the 400 block of south Michigan Avenue ("Alley"), between the Auditorium Theater Building and the thirty-two story academic and student housing facility collectively the "University Buildings"; and

Whereas, the Pedestrian Overpass will promote public health, safety and welfare by allowing students, staff, and visitors to traverse between the University Buildings protected from weather and from vehicular traffic in the Alley; and

Whereas, the Grantee will expend substantial sums in constructing the Pedestrian Overpass and related construction to facilitate the interconnection between the University Buildings; and

Whereas, the Pedestrian Overpass will require the use of the public right-of-way, specifically the air rights above the Alley;

WHEREAS, the Department of Transportation has determined that the Pedestrian Overpass will not interfere with the City's traffic infrastructure and will benefit the citizen's of the City of Chicago; and

WHEREAS, the City is willing to give the Grantee an easement on substantially the same terms and conditions set forth in the Public Way Easement Agreement attached hereto and incorporated herein as Exhibit A ;

Now, Therefore, Be It Ordained by the City Council of the City of Chicago:

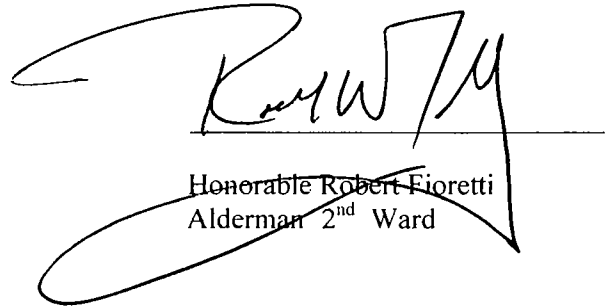
SECTION 1. The forgoing recitals are hereby incorporated herein and adopted as the findings of the City Council.

SECTION 2. The Commissioner of the Department of Transportation (the "Commissioner") or a designee of the Commissioner is each hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver an easement agreement between the Owner and the City substantially in the form attached hereto as Exhibit A and made a part hereof (the "Public Way Easement Agreement"), and such other supporting documents as may be necessary or appropriate to carry out and comply with the provisions of the Easement Agreement, with such changes, deletions and insertions as shall be approved by the persons executing the Easement Agreement.

SECTION 3. 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 4. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

SECTION 5. This ordinance shall take effect upon its passage and publication.



Honorable Robert Fioretti
Alderman 2nd Ward

EXHIBIT A

Public Way Easement Agreement.

This Agreement (the "Agreement") is entered into as of this ____ day of ____ 2010, by and between the City of Chicago, an Illinois home rule municipal corporation (the "City") and Roosevelt University, a not-for-profit corporation organized and existing under and by virtue of the statutes of the State of Illinois ("Grantee").

Witnesseth:

Whereas, the Grantee is the owner of two (2) parcels of real estate, as follows: (1) one parcel located at 50 E. Congress Parkway, Chicago, Illinois, and improved with a building commonly known as the Auditorium Theater building (the "Auditorium Theater"); and (2) one parcel located at 421 – 425 South Wabash Avenue, Chicago, Illinois on which Grantee is constructing a 32 story academic and student housing facility (the Student Center and together with the Auditorium Theater, the "University Buildings"); and

Whereas, the Grantee has proposed the development of a pedestrian overpass to bridge the public right-of-way located in the north-south alley that separates the 400 block of south Wabash Ave and the 400 block of south Michigan Ave. ("Alley") between the University Buildings ("Pedestrian Overpass"); and

Whereas, the Pedestrian Overpass will promote public health, safety and welfare by allowing students to traverse between the University Buildings protected from the weather; and

Whereas, the Grantee will expend substantial sums in constructing the Pedestrian Overpass and related construction to facilitate the interconnection between the University Buildings; and

Whereas, the Pedestrian Overpass will require the use of the public right-of-way, specifically the air rights above the Alley;

Now, therefore, in consideration of the above preambles, the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1) Grant of Easement Area. The City hereby grants to Grantee an easement ("Easement") to use and occupy, in accordance with this Agreement, the air rights in the Alley right-of-way identified and legally described on Exhibit A (the "Easement Area") for the installation, operation, maintenance, repair and replacement of the Pedestrian Overpass.

The parties may, by agreement, substitute revised legal descriptions for those set forth in Exhibit A, attached hereto and incorporated herein.

2) Terms. The following terms and conditions apply to the Easement:

- a) The Easement is an easement in gross granted solely in favor of Roosevelt University.
- b) The Easement is granted in perpetuity provided that the owner, or the tenant pursuant to a long term lease, of the University Buildings, or any substantial portion thereof is recognized by the Federal Government as a not-for-profit entity.
- c) The Easement shall burden the Easement Area as the servient tenement.
- d) Grantee warrants to the City that it is the owner of the University Buildings (and will be the owner of the University Buildings and the Pedestrian Overpass upon their completion) at the area of interconnection to the Pedestrian Overpass and that the Grantee has sufficient title and interest to enter into this Agreement.
- e) The Public Way Easements granted pursuant to this Agreement constitute a contemporaneous grant of interests in real property and are not executory in nature.

3) Grantee's Obligations.

- a) The Grantee, at its own cost and expense, shall design, construct and diligently pursue completion of the Pedestrian Overpass substantially in accordance with the plans contained in Exhibit B, attached hereto and incorporated herein.
- b) Prior to the commencement of the construction of the Pedestrian Overpass, the Grantee shall develop and deliver to the Commissioner of the Department of Transportation for his review and approval proposed plans and specifications for the Pedestrian Overpass which will be in substantial compliance with Exhibit B. The Grantee expressly warrants that the Pedestrian Overpass shall be designed and constructed in compliance with all federal, state and local laws and regulations. The Grantee expressly warrants that the Pedestrian Overpass shall be designed and constructed in compliance with accessibility standards, including, but not limited to: (1) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., and the regulations promulgated thereunder; (2) the Illinois Environmental Barriers Act (410 ILCS 25/ 1 et seq. (1996)); (3) "The Illinois Accessibility Code", 71 Ill. A. Code 400; (4) ordinances of and codes used by the City of Chicago.
- c) The Grantee shall be responsible for obtaining approvals of and paying for any and all removals, relocations, alterations, additional maintenance and restorations of or to any utility or public service structures or facilities, or any structures or facilities located in or adjacent to the Easement Area which are owned by the City, including pavements, bridges, poles and other facilities and utilities, which are or may be necessary or appropriate to facilitate construction of or work related to the Pedestrian

Overpass. The Grantee shall be responsible for obtaining the consent of and making suitable arrangements with all entities owning and having an interest in such structures and facilities, including any department of the City.

d) The Grantee shall secure all necessary building and other permits.

4) Uses Within the Easement Area.

a) The Pedestrian Overpass shall be open for use by the public at such times that both University Buildings are open to the public. The Grantee may not authorize any use of the Pedestrian Overpass for any purpose that will substantially interfere with the use of the Pedestrian Overpass by the public.

b) The Grantee may utilize the Pedestrian Overpass for exhibits, displays and the like that shall not substantially interfere with the public's use described in this section.

c) Grantee may establish reasonable rules and regulations related to the use by the public of the Pedestrian Overpass. Grantee may at its sole discretion control the use of and access to the University Buildings.

d) Grantee may from time to time replace, remodel or demolish all or any portion of the Pedestrian Overpass, so long as the Grantee secures the prior written approval of the Commissioner of the Department of Transportation (or any successor department) for alterations that may affect the public right-of-way and the prior written approval of the Commissioner of the Department of Housing and Economic Development (or any successor department) before making alterations to the exterior of the Pedestrian Overpass that would change the appearance from the depiction provided at Exhibit B.

5) Not For Profit. The Grantee covenants that it is a not-for-profit concern. In the event of a change in the Grantee's not-for-profit status, the Easement will immediately terminate and the new owner of the University Buildings must apply for an Easement or promptly remove the Pedestrian Overpass.

6) Removal and Restoration. Grantee shall have the right to terminate this Easement at any time. Upon termination of the Easement granted by this Agreement the Grantee, without cost or expense to the City, shall promptly remove the Pedestrian Overpass from the Easement Area, and all other structures and facilities related to the Pedestrian Overpass as may be located in the affected public way, and shall restore the public way to the extent altered or disturbed by the installation, construction, use, operation, inspection, maintenance, repair, replacement or removal of the Pedestrian Overpass, and all work related thereto, to a proper condition under the supervision and to the satisfaction of the Commissioner of Transportation and in accordance with the Municipal Code of Chicago.

- 7) Indemnity. Except with respect to the negligent or wrongful intentional acts of City (to the extent the same are the cause of an injury or loss to a third person), Grantee hereby indemnifies and agrees to hold harmless and defend City from and against any and all claims, demands, damages, lawsuits, legal proceedings, losses, liens, liabilities, judgments, orders or decrees, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, court costs, and other reasonable expenses related to litigation), arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to any natural person, or the property of any person, arising out of, or occurring in any manner relating to the Easement Area or the Pedestrian Overpass. In the event any legal action is taken against City or its agents or any claim is made relating to the Easement Areas or the Pedestrian Overpass, the City may elect to tender said defense to Grantee which shall and must defend such action or claim at Grantee's own expense and City shall cooperate with Grantee in the defense thereof. City shall have the right to join Grantee as a party defendant in any such legal action. This indemnity shall not be the exclusive remedy of the City, and City shall maintain whatever other right of indemnity it may have under common law, by statute, or by ordinance.
- 8) Maintenance.
- a) The Grantee shall maintain the Pedestrian Overpass at its expense.
 - b) The Grantee shall maintain the Pedestrian Overpass so that the improvement does not unduly interfere with any use of the public way by the City, the public, or any person or entity authorized to use or occupy the public way.
 - c) The Grantee shall maintain the Pedestrian Overpass in neat, clean and usable condition consistent with the public use required by this Agreement.
 - d) The Grantee shall cooperate with the City concerning the coordination of uses of the public way, including prompt responses to inquiries, attending meetings and site visits, and providing complete disclosure of information concerning the Pedestrian Overpass.
 - e) The Grantee shall pay for all utility expenses incurred with respect to the operation of the Pedestrian Overpass within the Easement Area.
- 9) City Has No Operational Duties. The Grantee acknowledges that City is not responsible for the operation, maintenance, repair of or security in the Pedestrian Overpass, and City has no obligations with respect thereto (other than the provision of City services available to all similarly situated improvements).
- 10) Insurance.
- a) The Grantee shall procure and maintain, at all times prior to commencement of construction of the Pedestrian Overpass and longer to the extent that any contractor is required to return to complete or correct construction of the Pedestrian Overpass

("Work"), all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations of this Agreement, whether performed by the Grantee or its contractor or subcontractors ("Contractor"). Until the Pedestrian Overpass is removed and the public way is restored, the Grantee shall procure and maintain, or shall cause to be procured and maintained, all of the types and coverages of insurance specified below, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Agreement, whether performed by the Grantee or its Contractor.

b) The kinds and amounts of insurance required are as follows:

i) Workers' Compensation and Occupational Disease Insurance. Workers' Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who are to provide Work under this Agreement. Employers' liability coverage with limits of not less than One Million Dollars (\$1,000,000) each accident, illness or disease.

ii) Commercial Liability Insurance (Primary and Umbrella).

Commercial General Liability Insurance, or equivalent, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage liability. All premises and operations, products/completed operations, independent contractors, explosion, collapse, underground, pollution (if commercially available), separation of insureds, defense and contractual liability coverages are to be included. The City is to be named as an additional insured on a primary non-contributory basis for any liability related directly or indirectly to this Agreement.

Contractors performing work for Grantee must maintain limits of not less than \$2,000,000 with the same terms herein.

iii) Automobile Liability Insurance. (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with Work to be performed, the Grantee provide or caused to be provided, Automobile Liability Insurance with limits of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury and property damage. The City is to be named as an additional insured on a primary, non-contributory basis.

Contractor performing work for Grantee must maintain limits of not less than \$1,000,000 with the same terms herein.

c) Additional Requirements

The Grantee must provide and cause its contractor to provide the City of Chicago, Department of Transportation, 30 North LaSalle Street, Room 600, Chicago, Illinois 60602-2570, original Certificates of Insurance, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Grantee and contractor is not a waiver by the City of any requirements for the Grantee to obtain and maintain the specified coverages. The Grantee and contractor must advise all insurers of the Agreement provisions regarding insurance. Non-conforming insurance does not relieve Grantee and contractor of the obligation to provide insurance as specified herein. Non-fulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work until proper evidence of insurance is provided.

Grantee agrees to make commercially reasonable efforts to obtain from its insurers, when and if available in the industry, a certificate providing that such coverage shall not be suspended, voided, canceled, non-renewed, or reduced in scope or limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Grantee and contractor.

The Grantee hereby agrees and will cause its contractor to agree that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Grantee and contractor in no way limit the Grantee's and contractor's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Grantee and contractor under the Agreement.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Grantee or contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Grantee must require the contractor to provide the insurance required herein. All contractors are subject to the same insurance requirements of Grantee unless otherwise

specified in this Agreement.

- 11) Default. Either party to this Agreement may, upon breach of any of the terms and provisions of this Agreement by the other party, send such other party written notice of such breach. In the event any breach is not cured within sixty (60) days after receipt of such notice of breach, then the party causing such breach shall be deemed in default in its obligations under this Agreement, and the non-defaulting party shall have such rights and remedies as shall be available to it at law or in equity; provided that in the event a default cannot reasonably be cured within sixty (60) days after written notice and the defaulting party is proceeding diligently to cure the default, the defaulting party shall have such additional time as may be reasonably necessary to cure said default.
- 12) Compliance With Law. The Grantee agrees that the Easement Areas shall be used and the Pedestrian Overpass shall be constructed, installed, used, operated, inspected, maintained, repaired and replaced in complete compliance with all applicable laws, statutes and ordinances.
- 13) Partial Invalidity. If any clause, sentence or other portion of this Agreement shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portion hereof shall remain in full force and effect.
- 14) Notices. Any and all notices or other communications required or permitted pursuant hereto shall be in writing and shall be deemed to have been given if and when personally delivered or on the next following business day if transmitted by reputable overnight carrier. Notices shall be addressed to Grantee and City at their respective addresses set forth below, or to such substitute address as Grantee or City may have designated by notice in accordance herewith:

If to City, at:

Commissioner of Transportation
30 North LaSalle Street, Room 1100
Chicago, Illinois 60602

With a copy to:

Corporation Counsel
121 North LaSalle Street, Room 600
Chicago, Illinois 60602

If to Grantee:

Roosevelt University
430 South Michigan Avenue
Chicago, IL 60605-1394
Attn: _____

15) Illinois Law. This Agreement has been negotiated, executed and delivered at Chicago, Illinois and shall be construed and enforced in accordance with the laws of Illinois, including the law of public trust with respect to the use and occupation of the public way.

16) Effective Upon Execution And Delivery. This Agreement shall be effective only upon the execution and delivery hereof by Grantee and City.

17) No Third-Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit solely of Grantee and City and their respective successors, assigns, licensees and legal representatives. This document and the terms hereof are intended solely for the benefit of the parties hereto and their successors, licensee and assigns, as expressly referred to herein. No other person shall have any rights, responsibilities or obligations hereunder nor may such person enforce any of the terms or be entitled to any of the benefits hereof.

18) Recordation Permitted. Either party, at its sole expense, may, without the consent of the other party, record this document.

19) Authority and Validity. Each party represents and warrants to the other party that (i) this Agreement has been duly authorized, executed and delivered by it and (ii) this Agreement constitutes the legal, valid and binding obligation of it, enforceable against it in accordance with its terms.

In Witness Whereof, Grantee and City have caused this Agreement to be executed by their duly authorized officers, as of the day and year first written above.

Roosevelt University,
an Illinois not-for-profit corporation

By: _____

Name: _____

Title: _____

City of Chicago, a municipal corporation

By: _____

Name: _____

Title: _____

Approved As To Form And Legality:

By: _____

Name: _____

Title: Assistant Corporation Counsel