



Office of the City Clerk

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Legislation Text

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CITY COUNCIL

City of Chicago

COUNCIL CHAMBER

City Hall-Second Floor 121 North LaSalle Street Chicago, Illinois 60602 Telephone 312-744-4096 FAX: 312-744-8155

COMMITTEE MEMBERSHIPS

Transportation & Public Way (Chairman)

Budget and Government Operations

Committees, Rules and Ethics Education and Child Development

Finance Public Safety

ANTHONY A. BEALE

Alderman, 9th Ward 34 East 11 2th Place Chicago, Illinois 60628 telephone: (773) 785-1100
Fax: (773) 785-2790 e-mail: ward09@cityofchicago.org <mailto:ward09@cityofchicago.org>

January 6, . 2016

To the President and Members of the City Council:

Your Committee on Transportation and Public Way begs leave to report and recommend that Your Honorable Body pass Proposed ordinance requesting the Illinois Department of Transportation to grant a permit to use off-street locations for highway coach bus passenger boarding. This ordinance was referred to the Committee on December 9, 2015.

This recommendation was concurred unanimously by a viva voce vote of the members of the Committee with no dissenting vote.

(Ward)

Respectfully submitted,

/y
Anthony
-Beale,
Chairman

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL

MAYOR

December 9, 2015

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY
OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance authorizing the execution of a right-of-way agreement with Megabus.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

ORDINANCE

WHEREAS, the City of Chicago ("City") is a home rule unit of government under Article VII, Section 6 (a) of the Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the Illinois Department of Transportation ("IDOT") owns and controls property under the Congress Parkway elevated highway structure 432-498 South Clinton Street ("Site"), as depicted on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the City's Department of Transportation ("CDOT") has requested an IDOT permit to use the Site as an off-street location for highway coach bus passenger boarding and alighting activity that currently takes place curbside on streets near Union Station; and

WHEREAS, IDOT has expressed its intention to issue to CDOT the requested permit in substantially the form of Exhibit B which attached hereto and made a part hereof ("IDOT Permit"); and

WHEREAS, upon issue of the IDOT Permit, CDOT will pass along all rights and obligations under the IDOT Permit to Megabus USA, LLC, a Delaware limited liability company licensed to transact business in Illinois ("Megabus"), pursuant to the terms and conditions of an Agreement for Use of the State Highway Right of Way ("Agreement") allowing Megabus to improve the Site with bus terminal facilities, as shown on Exhibit C which is attached and incorporated, as authorized by the IDOT Permit and subject to plans and specifications approved by CDOT, including the Office of Underground Coordination., at Megabus' sole cost and expense

and to utilize the Site for a five (5) year period with four (4) automatic five (5) year renewals (a total of 25 years) corresponding to renewals of the IDOT Permit, now therefore,

Be It Ordained by the City Council of the City of Chicago.

SECTION 1. The foregoing recitals are hereby adopted as the findings of the City Council.

SECTION 2. The Commissioner of CDOT ("Commissioner") or her designee is authorized to execute an Agreement for Use of the State Highway Right of Way between the City and Megabus for a five (5) year period with four (4) automatic five (5) year renewals (a total of 25 years) corresponding to renewals of the IDOT Permit, substantially in the form attached hereto as Exhibit D and made a part hereof, and such other documents as may be necessary for Megabus' use and improvement of the Site, and including, without limitation, the IDOT Permit and any agreements by Megabus to hold the City of Chicago harmless for any personal injury or property damage arising from the use of the Site; to obtain plan approval by the Commissioner prior to commencing work; to comply with construction, maintenance and utility provisions imposed by the Commissioner; and to provide proof of liability and other insurance as reasonably required by the City's Risk Manager, as may be necessary or appropriate to carry out and comply with the provisions of this ordinance, subject to the approval of the Corporation Counsel of the City as to form and legality.

SECTION 3. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

Exhibit B - Permit

Illinois Department of Transportation

Permit for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities

Route	1-290 (Eisenhower Expressway)	Project	Jane Byrne (Circle) Interchange @ Congress Pky
Section	Between Tilden & Congress Pkv	Job No.	R-90-999-90 / D-91-227-13
County	Cook	Parcel	OLP0159
		Unit	J

The Illinois Department of Transportation, Division of Highways ("Department") hereby grants permission to ("Permittee") a unit of local government to use property situated under an elevated highway structure or adjacent to highway facilities which property is highlighted as Bay 1 on the attached Exhibit "A" for the following purpose(s) only:

For use by the City of Chicago Department of Transportation to assist them in their effort to improve the traffic circulation in the South Loop area

This permit is subject to the following terms and conditions:

1. This permit is valid for a period of five (5) years from the date of issuance unless revoked or terminated under paragraph 2 or 3.
2. This permit is revocable at will by the Department upon thirty (30) days written notice to the Permittee. This permit may be revoked immediately by the Department upon written notice to the Permittee for any breach by Permittee of the terms and conditions of this permit or in the event the Permittee ceases to use or abandons the premises.
3. Permittee may terminate this permit upon written notice to the Department.
4. Upon revocation or termination or upon expiration of this permit, Permittee agrees to immediately yield possession of said premises to the Department and, at Permittee's sole cost and expense, to restore said premises to a condition satisfactory to the Department and to remove from the premises, all improvements, and appurtenances thereto, or any other property of any name or nature, utilized, owned or controlled by said Permittee or anyone claiming under it, except for surfacing and column guards. Any such property not removed from premises within thirty (30) days after revocation or termination of said permit may be removed and disposed of by the State of Illinois, its agents, employees, or contractors, in any manner it sees fit, at the sole cost and expense of the Permittee, or the Department, in its discretion, may elect to declare the same the property of the Department whereupon all rights, title and interest of the Permittee therein shall terminate immediately.

LA 6109 (04/25/11) (Replaces LA 5109 Template)

5. The Permittee shall submit to the Department, for approval, a plan of operation specifically detailing the intended development, occupation and use of said premises, including the installation and location of any improvements to be situated thereon. No work shall commence until approval is received by the Permittee. The cost of plan preparation as well as any improvements shall be the sole obligation of the Permittee. The plans shall include the installation and maintenance for the duration of the permit of protective shielding meeting Department standards for structure adequacy; and such plans shall be designed, signed and sealed by a licensed structural engineer to entirely cover the area to be occupied under this permit. All pavement, sidewalk, lighting and other items necessary to occupy the facility, including any modifications that may be needed as part of future roadway work to either the expressway or the city street shall be at the Permittee's cost signed by a licensed P.E., not by the State. The State commits to careful review of the plans to avoid or limit, if possible, any future changes due to the planned work for the upcoming Jane Byrne (Circle) Interchange reconstruction project.
6. If the premises will be used by Permittee for the purpose of parking motor vehicles, the plan of operation must give proper consideration to the need for the following:
 - a. Parking design or arrangement to assure orderly and functional parking.
 - b. Plantings or other screening measures to improve the esthetics and appearance of the area.
 - c. Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.
 - d. Access for fire protection and firefighting equipment.
7. The Permittee shall be responsible for ascertaining the correct location of property lines in connection with this permit.

8. The premises shall not be occupied or used by the Permittee for other than the purpose(s) specified herein and as shown in the approved plan of operation without the written approval of the Department.
9. No representations as to the condition, repair or suitability of the premises have been made to the Permittee by the Department, its agents or employees.
10. Any improvement made to the premises by Permittee shall be fire resistant in accordance with the provisions of local applicable building codes. The premises shall not be used for the manufacture or storage of flammable material, explosive or hazardous material, nor for any occupation which is deemed by the Department or the Federal Highway Administration to be a hazard to highway or non-highway users, nor for the conduct of any business or occupation causing the emission of fumes, vapors, odors, drippings, droppings, or discharges which are deemed by the Department to adversely affect the highway facility or the use thereof.
11. The premises shall be maintained by Permittee so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event Permittee fails to fulfill its maintenance obligations, the Department may enter the premises to perform the maintenance at the expense of the Permittee.
12. The Department and the Federal Highway Administration shall have the right to enter, inspect and view the premises at all times without advance notification, if necessary, and shall have
 - the right to take possession thereof in case of national or other emergency.
13. This permit is a temporary use permit subject to termination when transportation needs make it necessary to terminate the permit, e.g., maintenance, reconstruction, and emergency repairs. Termination of this permit would not create any real property rights or any relocation rights or benefits for the Permittee under the federal Uniform Relocation Assistance Act.

LA 6109 (04/25/11) (Replaces LA 5109 Template)

The user of the permitted area shall insure protection of any existing, proposed or temporary structures within or adjacent to the permitted area (such as shoring or other structures) from any damages or tampering. Planned work for the Department's Jane Byrne (Circle) Interchange project will require access to this area by contractors working for the Department. Some work may be able to be accomplished without the need for the Permittee to vacate, but other work may require full closure of the area. Every effort will be made to develop plans which will limit the amount of time allowed for the contractor to fully close permitted area to minimize disruption to its use. The contractor will be required to provide written notification twice for each closure; such notices shall be provided no less than 30 days and again no less than 14 days in advance of any planned closures. This notification will include the date and time the contractors work will begin and the estimated number of days needed to complete the work so occupancy can be adjusted as necessary.

This permit shall not relieve the Permittee from obtaining any license or permit as may be required by any other public body.

Permittee shall not transfer, assign, or convey its interests under this permit without prior written approval of the Department. If the Department approves such a transfer, assignment or conveyance, the terms and provisions of this permit shall extend to and be binding upon and inure to the benefit of any approved successor of the Permittee.

Permittee shall not erect or allow to be erected any signs on the premises except as approved, in writing, by the Department. Only signs pertaining to the use of the premises by the Permittee shall be approved.

The Permittee assumes liability for all losses, expenses, costs, actions, causes of action, demands, damages and claims in connection with or arising out of any injuries, or claimed or alleged injury (including, but not

limited to, death) to any person, or any damage or claimed or alleged damage to any property of any person sustained, or claimed, or alleged to have been sustained in connection with, or to have arisen out of or to have resulted from, whether directly or indirectly, the occupation and use of the premises by Permittee, or by any one or more of its contractors, agents, servants or employees including, but not limited to, losses, costs, expenses or damages sustained by the Department itself; and Permittee agrees to indemnify and hold harmless Department, its agents, servants and employees, from any and all such losses, expenses, costs, actions, causes of action, demands, damages and claims and agrees to defend any suit or action brought against any one or more of them based on any such alleged injury or damage, and to pay all damages, costs, losses and expenses incurred, including but not limited to, attorney's fees, in connection therewith or resulting therefrom.

The Permittee will bear all costs necessary to ensure that access is restored to provide reasonable public street ingress/egress to the remaining lease area for the Department's existing tenant, Protected Parking, Inc. The Department believes that the required access will be provided by Permittee's building the approved plan described and delineated in paragraph 5 above; provided, however, that if, after construction and installation of the approved plan, the Department determines that further modifications are needed to ensure the required reasonable access is provided to the remaining lease area, Permittee will cause such modifications to be constructed or installed and shall bear the cost of those modifications.

No fees or rentals of any kind (except for permit fees and reimbursements of City costs required thereby) shall be charged by the City to any third party that City may permit to use all, or any part, of the space covered by this Permit.

LA 6109 (04/25/11) (Replaces LA 5109 Template)

ISSUED:

ACCEPTED:

Chicago Department of Transportation

Date

**ILLINOIS DEPARTMENT OF
TRANSPORTATION DIVISION OF
HIGHWAYS**

Regional Engineer

LA 6109 (04/25/11) (Replaces LA 5109 Template)

Exhibit C - Facilities

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Exhibit D - Agreement

Agreement for Use of State Highway Right of Way - Megabus

This Agreement ("Agreement") is made and entered into as of the _____ day of _____, 20_ ("Effective Date") by and between the **CITY OF CHICAGO** ("City"), a home rule municipality pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and MEGABUS USA, LLC, a Delaware limited liability company ("Grantee").

RECITALS

WHEREAS, on _____, 2015, the Illinois Department of Transportation ("IDOT") issued to City a Permit for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities ("IDOT Permit") copy of which is attached to and incorporated into this Agreement as Exhibit A, granting the City use of a portion of State highway right of way situated under an elevated highway structure at 432-498 S Clinton Street, Chicago, Illinois, which property is described in the IDOT Permit ("Right of Way"); and

WHEREAS, on _____, 2015, the City Council of the City of Chicago approved the grant to Grantee of permission and authority to occupy the Right of Way for bus terminal purposes as provided in this Agreement pursuant to which the City agreed to pass along all rights and obligations under the IDOT Permit to Grantee to allow Grantee to utilize the Right of Way for a five (5) year period with four five

(5) year automatic renewals (for a total of twenty-five years) ("City Permit"); and

WHEREAS, Grantee wishes to further improve the Right of Way with bus terminal facilities and the IDOT Permit and City Permit both authorize such improvements,

NOW, therefore, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

SECTION 1. Grant.

Permission and authority are hereby granted to Grantee, upon the terms and subject to the conditions of this Agreement and the IDOT Permit, to construct, install, locate, establish, use, operate, maintain, repair, replace, reconstruct, and remove bus terminal improvements ("Facility") on the Right of Way at its sole cost and expense in accordance with the IDOT Permit and with Exhibit B which is attached and incorporated, together with such accessory improvements as shall be approved by the Commissioner of Transportation. Such City Permit is hereby granted without the requirement of paying compensation for such rights.

SECTION 2. Consent of Affected Property Owners

The Permit is subject to the condition that the Grantee will be responsible at all times for obtaining the consent of any land owner whose legal rights in the Right of Way, including rights of access, ingress, egress, light, air, view or reversion, have been or will be damaged by the Facility, or its use or operation, or any work to construct, install, locate, use, operate, maintain, repair, replace, reconstruct, and remove the Facility ("Work").

SECTION 3. Term.

A. Expiration. The City Permit is given and granted for a period of 5 years from and after the date of the issue of the IDOT Permit. In addition, subject to renewal of the IDOT Permit, the City agrees that the City Permit shall be deemed automatically renewed 4 times for 5 years for each renewal subject to a) renewal of the IDOT Permit by IDOT and b) Grantee's compliance with this Agreement, all as provided in this Section.

B. Renewal. Upon receipt of notice of renewal of the IDOT Permit, if the City Permit is to be renewed, the City will forward the IDOT notice to the Grantee with a notification of the renewal of the City Permit.

B. Early termination, non-renewal. Promptly upon receipt of a notice of termination or of non-renewal of the IDOT Permit, or if the City determines, in its sole discretion, to terminate or not renew the City Permit, then the City will forward a notice of the termination or nonrenewal of the City Permit to Grantee, stating the effective date thereof, and shall include a copy of any such IDOT notice received. If based on the termination or non-renewal of the IDOT Permit, the City Permit shall be deemed terminated or expired on the same day as the IDOT Permit. Prior to the effective date of the termination, or the expiration of the IDOT Permit that is not being renewed, the Grantee shall complete the removal of the Facility and restoration of the Right of Way as required by the IDOT Permit. Should the Grantee desire to terminate the Permit prior to its expiration or termination as provided herein, Grantee agrees to provide the City with not less than thirty (30) days notice and agrees to complete the removal and restoration of the Right of Way as is required by the IDOT Permit prior to the effective date of the termination.

SECTION 4. Construction.

Prior to undertaking any Work for the construction or installation of the Facility the Grantee shall deliver to the City's Commissioner of Transportation ("Commissioner") for review and approval proposed Plans for the Facility. Grantee shall obtain at its sole cost and expense appropriate construction-related permits (including those required for the temporary closing of any portion of the Right of Way) from the Commissioner, as well as the City's Commissioner of Buildings and Commissioner for the Department of Construction and Permits for any and all Work undertaken in or adjacent to the Right of Way. The obligations of Grantee under this Agreement will be deemed to be terms and conditions of such permits. Grantee will not permit the Facility or any Work to interfere in any way with any use of the Right of Way, except as provided in such permits. The City agrees to diligently cooperate in the processing of any such permit application submitted by Grantee or its Contractor.

SECTION 5. Maintenance.

At all times during the term of this Agreement and until removal of the Facility and the restoration of the Right of Way in accordance with this Agreement, Grantee will maintain and use the Facility in accordance with all applicable laws, including the laws of the State of Illinois, the ordinances of the City of Chicago, this Agreement, and the lawful directions of IDOT and the Commissioner of Streets and Sanitation and the Commissioner of Transportation regarding the use of the Right of Way. Grantee will maintain the Facility in a clean and orderly condition, with lighting and other amenities in a state of good repair and operation, all surfaces free from

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graffiti, and all areas of the Right of Way free from accumulated snow, litter and refuse. Grantee shall ensure that neither the Facility nor the Grantee's use of the Right of Way shall interfere in any way with the lawful use of the Right of Way by or portions of the public rights of way or City or IDOT property adjacent to the Right of Way. In addition, Grantee will cooperate with the City and IDOT, or any other person or entity holding permission and authority to use and occupy the Right of Way, concerning the coordination of uses of the Right of Way or the public rights of way adjacent thereto, including prompt responses to inquiries, attending meetings and site visits, and providing complete disclosures of information concerning the Facility and its potential involvement in any proposed or existing use of the Right of Way. In the event of failure, neglect or refusal of the Grantee to perform any of his or her obligations, the City may, at its option, either (i) perform such work and charge the cost to said Grantee, or (ii) determine what the cost of the work shall be and bill the Grantee in advance of performing the work for the cost of the work, or combine the two methods. Immediately upon receipt of notice of such costs, the Grantee shall pay the City such amount.

SECTION 6. Superior rights of the public in and to the Right of Way.

In addition to the terms and conditions of the IDOT Permit and in accordance with the law of public trust, in the event that the Right of Way is reasonably required for a lawful public purpose, the permission and authority granted in this Agreement is subject to amendment, modification or revocation pursuant to an order issued by either the Mayor or the Commissioner of Transportation of the City at his or her discretion, at any time without the consent of Grantee. Prior to issuing such an order, the City agrees to meet with the Grantee and discuss the proposed public use and its impact upon the Facility and the Work. The City agrees to exercise its discretion in a reasonable manner to minimize the impact upon the Facility and the Work and to assist the Grantee in finding an alternative location for its Facility or portion thereof, including available portions of City Property other than the Right of Way. In accordance with the order, Grantee will remove, relocate, shore, adjust, or alter the Facility or any portion of the Facility at its sole cost and expense, to the extent and within the time reasonably designated in the order. Grantee shall also have the option of completely removing the Facility, restoring the Right of Way, and terminating the permission and authority, all in accordance with this Agreement within the time set forth in the order. In the event that the Grantee fails or refuses to either comply

with the order or remove and restore as provided in this Agreement, then the City may perform such work and the Grantee will reimburse the City, for all actual costs incurred in performing such work, within ten days of receipt of an invoice describing such work and demanding payment.

SECTION 7. Utilities.

Grantee will 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 City or State owned structures or facilities located in or adjacent to the Right of Way including pavement, bridges, subways, tunnels, vaults, sewers, water mains, conduits, pipes, poles and other facilities and utilities, which are or may be necessary or appropriate on account of the Facility or the Work. Grantee will be responsible for obtaining the consent of and making suitable arrangements with all entities owning or having an interest in such structures and facilities, including but not limited to IDOT and any department of the City.

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SECTION 8. Restoration.

Upon partial or complete termination of the IDOT Permit or the City Permit, by expiration without renewal or termination, Grantee, without cost or expense to the City of Chicago, will promptly remove the Facility and any equipment, structures or facilities located in the affected portion of Right of Way and will restore such portion of the Right of Way to the extent altered or disturbed by the Work or the Facility to a proper condition under the supervision and to the satisfaction of the Commissioner of Transportation, in accordance with the IDOT Permit, and in accordance with the Municipal Code of Chicago. However, in no event will the Grantee be required to construct a street or related improvements where they did not exist prior to Grantee's occupation of the Right of Way.

SECTION 9. Insurance

At all times until the removal of the Facility from and the restoration of the Right of Way in accordance with this Agreement, Grantee shall procure and maintain, or shall cause to be procured and maintained, all of the types and coverages of insurance specified in this Section with insurance companies authorized to do business in the State of Illinois, covering the Facility and its use and operation and all Work under this Agreement:

a. Worker's Compensation and Occupational Disease Insurance

Worker's Compensation and Occupational Disease Insurance, in statutory amounts, covering all employees who provide Work. Employer's liability coverage with limits of not less than \$500,000 each accident or illness shall be included.

b. Commercial Liability Insurance (Primary and Umbrella)

Commercial Liability Insurance, or equivalent, with limits of not less than \$2,000,000 per occurrence, combined single limit, for bodily injury, personal injury, and property damage liability. Products/completed operations, independent contractors, explosion, collapse, underground, pollution (if commercially available),

and contractual liability coverages are to be included. The City is to be named as an additional insured on a primary noncontributory basis for any liability related directly or indirectly to this Agreement.

c. Automobile Liability Insurance

When any motor vehicle is used in connection with Work performed, Grantee shall provide Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence combined single limit, for bodily injury and property damage. The City is to be named as an additional insured.

Grantee will deliver to the City original certificates of Insurance evidencing the required coverage to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, in the event of expiration or cancellation occurring during the term of the permission and authority granted by this Agreement.

The insurance specified in paragraph b must be carried at all times. The insurance specified in

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paragraphs a and c must be carried with respect to all Work performed. The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed. Grantee agrees that any insurance coverages and limits furnished by it shall in no way limit its liabilities and responsibilities under this Agreement by law, or in equity.

(d) The City of Chicago shall be named as an additional insured with respect to such coverage on a primary, non-contributory basis.

Grantee shall deliver, or cause its contractors or subcontractors to deliver, to City certificates of insurance and any/all endorsements required hereunder. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements set forth herein. The failure of the City to obtain certificates or other evidence of insurance from Grantee (or its contractors or subcontractors as applicable) shall not be deemed to be a waiver by the City of the insurance requirements set forth herein. Grantee shall advise all insurers of the insurance requirements set forth herein. Nonconforming insurance, or failure to submit a Certificate of Insurance evidencing such coverages, shall not relieve Grantee of the obligation to provide insurance as specified herein. City may terminate this Agreement for non-fulfillment of the insurance conditions, and retains the right to stop work until proper evidence of insurance is provided.

Grantee (or its contractors or subcontractors as applicable) shall be responsible for any and all deductibles or self-insured retentions. Grantee agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, and representatives. Grantee expressly understands and agrees that any coverages and limits furnished by it (or its contractors or subcontractors as applicable) shall in no way limit Grantee's liabilities and responsibilities specified in this Agreement or by law. Grantee expressly understands and agrees that its insurance (or that of its contractors or subcontractors as applicable) is primary and any insurance or self-insurance programs maintained by the City shall not contribute with insurance provided by Grantee (or its contractors or subcontractors as applicable) under this Agreement. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

Grantee shall require all contractors and subcontractors to maintain the above-described coverage, or Grantee may provide such coverage for its contractors and subcontractors. If Grantee or any contractor or subcontractor wants additional coverage, such party shall be responsible for the acquisition and cost of such additional protection. City shall have no responsibility to provide insurance or security for the property, material, supplies, or equipment to be used by Grantee or any of its contractors or subcontractors in connection with the Facility.

The City of Chicago, Department of Finance, Office of Risk Management, maintains the right to modify, delete, alter or change these requirements.

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SECTION 10. Indemnification.

Grantee agrees to indemnify, defend, and hold harmless the City, IDOT, and their respective elected officials, officers, agents and employees, from and against any and all liabilities, losses, suits, claims, judgments, fines or demands of every kind and nature (including all reasonable costs for investigation, reasonable attorneys' fees, court costs and expert fees) arising by reason of injury or death of any person or damage to property arising out of or incident to the permission and authority granted in the IDOT Permit or this Agreement, Grantee's use of the Right of Way, and the performance or non-performance of any of Grantee's obligation under this Agreement or the enforcement thereof, including the enforcement of this indemnification provision, or the acts or omissions of Grantee's officers, agents, employees, contractors, subcontractors, licensees or invitees. Upon notice from the City or IDOT of any claim or liability which the City believes to be covered under this provision, Grantee will appear and defend all suits brought upon such claims and lawsuits and shall pay all costs and expenses incidental thereto, but the City shall have the right, at its option, to participate in the defense of any suit, without relieving Grantee of any of its obligations hereunder. This paragraph shall survive expiration or termination of the IDOT Permit, the City Permit, or this Agreement.

SECTION 11. Reporting.

On or before the 15th day of April of each year after the Effective Date of this Agreement, the Grantee will provide to the Commissioner of Transportation a report of activity that has taken place at the Facility during the preceding calendar year including: (a) total bus vehicle arrivals by route by month, (b) total bus vehicle departures by route by month, (c) total bus passenger boardings by bus route by month, and (d) total bus passenger alightings by route by month. This annual report will also include a summary of any and all activities performed by the. Grantee at the Facility related to Sections 4, 5, 6, 7, and 8 of this Agreement during the reporting period.

SECTION 12. Notice.

Notices provided for herein, unless expressly provided for otherwise in this Agreement, shall be in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: Commissioner

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

with a copy to:

Department of Law
Room 600, City Hall 121 North LaSalle Street Chicago,
Illinois 60602 Attention: Deputy Corporation Counsel
Real Estate and Land Use Division

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Megabus USA, LLC

[Megabus address]

Attention:

Megabus USA, LLC

[Megabus address]

Attention:

All notices shall be deemed effective upon receipt. The addresses stated herein may be revised without need for modification or amendment of this Agreement, provided written notification is given in accordance with this Section.

Assignment.

All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns; provided, however, that Grantee agrees that neither the IDOT Permit, nor the City Permit, nor any right or obligation under this Agreement is assignable or transferrable except with the consent of both IDOT and the City. Any attempt to transfer or assign the rights or obligations under this Agreement in violation of this Section will be void.

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IN WITNESS WHEREOF the parties have executed this Agreement as of the date stated above.

CITY OF CHICAGO

By:

Commissioner of Transportation

Approved as to form and legality

By:

Special Assistant Corporation Counsel

MEGABUS USA, LLC

By:

Its

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STATE OF ILLINOIS)
)
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO
HEREBY CERTIFY that _____ personally known to me
to be the _____ of _____, an Illinois
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
acknowledged that as such _____, he/she signed and delivered the said instrument,
as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

STATE OF ILLINOIS))
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY
that Rebekah Scheinfeld, personally known to me to be the Commissioner of Transportation of the City of
Chicago, who is 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 as such Commissioner, she signed
and delivered the said instrument, as the free and voluntary act of such City, for the uses and purposes
therein set forth.

GIVEN under my hand and notarial seal this _____ day of _____, 20____.

Notary Public

EXHIBIT A IDOT PERMIT

Illinois Department of Transportation

Permit for Use of Surface Area Under Elevated Highway Structures or Adjacent to Highway Facilities

Route 1-290 (Eisenhower Expressway) Project Jane Byrne (Circle) Interchange @ Congress Pky
Section Between Tilden & Congress Pkv Job No. R-90-999-90 / D-91-227-13
County Cook Parcel OLP0159 Unit _J

The Illinois Department of Transportation, Division of Highways ("Department") hereby grants permission to ("Permittee") a unit of local government to use property situated under an elevated highway structure or adjacent to highway facilities which property is highlighted as Bay 1 on the attached Exhibit "A" for the following purpose(s) only:

For use by the City of Chicago Department of Transportation to assist them in their effort to improve the traffic circulation in the South Loop area

This permit is subject to the following terms and conditions:

1. This permit is valid for a period of five (5) years from the date of issuance unless revoked or terminated under paragraph 2 or 3.
2. This permit is revocable at will by the Department upon thirty (30) days written notice to the Permittee. This permit may be revoked immediately by the Department upon written notice to the Permittee for any breach by Permittee of the terms and conditions of this permit or in the event the Permittee ceases to use or abandons the premises.
3. Permittee may terminate this permit upon written notice to the Department.
4. Upon revocation or termination or upon expiration of this permit, Permittee agrees to immediately yield possession of said premises to the Department and, at Permittee's sole cost and expense, to restore said premises to a condition satisfactory to the Department and to remove from the premises, all improvements, and appurtenances thereto, or any other property of any name or nature, utilized, owned or controlled by said Permittee or anyone claiming under it, except for surfacing and column guards. Any such property not removed from premises within thirty (30) days after revocation or termination of said permit may be removed and disposed of

by the State of Illinois, its agents, employees, or contractors, in any manner it sees fit, at the sole cost and expense of the Permittee, or the Department, in its discretion, may elect to declare the same the property of the Department whereupon all rights, title and interest of the Permittee therein shall terminate immediately.

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5. The Permittee shall submit to the Department, for approval, a plan of operation specifically detailing the intended development, occupation and use of said premises, including the installation and location of any improvements to be situated thereon. No work shall commence until approval is received by the Permittee. The cost of plan preparation as well as any improvements shall be the sole obligation of the Permittee. The plans shall include the installation and maintenance for the duration of the permit of protective shielding meeting Department standards for structure adequacy; and such plans shall be designed, signed and sealed by a licensed structural engineer to entirely cover the area to be occupied under this permit. All pavement, sidewalk, lighting and other items necessary to occupy the facility, including any modifications that may be needed as part of future roadway work to either the expressway or the city street shall be at the Permittee's cost signed by a licensed P.E., not by the State. The State commits to careful review of the plans to avoid or limit, if possible, any future changes due to the planned work for the upcoming Jane Byrne (Circle) Interchange reconstruction project.
6. If the premises will be used by Permittee for the purpose of parking motor vehicles, the plan of operation must give proper consideration to the need for the following:
 - a. Parking design or arrangement to assure orderly and functional parking.
 - b. Plantings or other screening measures to improve the esthetics and appearance of the area.
 - c. Surfacing, lighting, fencing, striping, curbs, wheel stops, pier protection devices, etc.
 - d. Access for fire protection and firefighting equipment.
7. The Permittee shall be responsible for ascertaining the correct location of property lines in connection with this permit.
8. The premises shall not be occupied or used by the Permittee for other than the purpose(s) specified herein and as shown in the approved plan of operation without the written approval of the Department.
9. No representations as to the condition, repair or suitability of the premises have been made to the Permittee by the Department, its agents or employees.
10. Any improvement made to the premises by Permittee shall be fire resistant in accordance with the provisions of local applicable building codes. The premises shall not be used for the manufacture or storage of flammable material, explosive or hazardous material, nor for any occupation which is deemed by the Department or the Federal Highway Administration to be a hazard to highway or non-highway users, nor for the conduct of any business or occupation causing the emission of fumes, vapors, odors, drippings, droppings, or discharges which are deemed by the Department to adversely affect the highway facility or the use thereof.
11. The premises shall be maintained by Permittee so as to assure that the structures and the area within the highway right-of-way boundaries will be kept in good condition, both as to safety and appearance. Such maintenance will be accomplished in a manner so as to cause no unreasonable interference with highway use. In the event Permittee fails to fulfill its maintenance obligations, the Department may enter the premises to perform the maintenance at the expense of the Permittee.
12. The Department and the Federal Highway Administration shall have the right to enter, inspect and view the premises at all times without advance notification, if necessary, and shall have the right to take possession thereof in case of national or other emergency.

13. This permit is a temporary use permit subject to termination when transportation needs make it necessary to terminate the permit, e.g., maintenance, reconstruction, and emergency repairs. Termination of this permit would not create any real property rights or any relocation rights or benefits for the Permittee under the federal Uniform Relocation Assistance Act.

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The user of the permitted area shall insure protection of any existing, proposed or temporary structures within or adjacent to the permitted area (such as shoring or other structures) from any damages or tampering. Planned work for the Department's Jane Byrne (Circle) Interchange project will require access to this area by contractors working for the Department. Some work may be able to be accomplished without the need for the Permittee to vacate, but other work may require full closure of the area. Every effort will be made to develop plans which will limit the amount of time allowed for the contractor to fully close permitted area to minimize disruption to its use. The contractor will be required to provide written notification twice for each closure; such notices shall be provided no less than 30 days and again no less than 14 days in advance of any planned closures. This notification will include the date and time the contractors work will begin and the estimated number of days needed to complete the work so occupancy can be adjusted as necessary.

This permit shall not relieve the Permittee from obtaining any license or permit as may be required by any other public body.

Permittee shall not transfer, assign, or convey its interests under this permit without prior written approval of the Department. If the Department approves such a transfer, assignment or conveyance, the terms and provisions of this permit shall extend to and be binding upon and inure to the benefit of any approved successor of the Permittee.

Permittee shall not erect or allow to be erected any signs on the premises except as approved, in writing, by the Department. Only signs pertaining to the use of the premises by the Permittee shall be approved.

The Permittee assumes liability for all losses, expenses, costs, actions, causes of action, demands, damages and claims in connection with or arising out of any injuries, or claimed or alleged injury (including, but not limited to, death) to any person, or any damage or claimed or alleged damage to any property of any person sustained, or claimed, or alleged to have been sustained in connection with, or to have arisen out of or to have resulted from, whether directly or indirectly, the occupation and use of the premises by Permittee, or by any one or more of its contractors, agents, servants or employees including, but not limited to, losses, costs, expenses or damages sustained by the Department itself; and Permittee agrees to indemnify and hold harmless Department, its agents, servants and employees, from any and all such losses, expenses, costs, actions, causes of action, demands, damages and claims and agrees to defend any suit or action brought against any one or more of them based on any such alleged injury or damage, and to pay all damages, costs, losses and expenses incurred, including but not limited to, attorney's fees, in connection therewith or resulting therefrom.

The Permittee will bear all costs necessary to ensure that access is restored to provide reasonable public street ingress/egress to the remaining lease area for the Department's existing tenant, Protected Parking, Inc. The Department believes that the required access will be provided by Permittee's building the approved plan described and delineated in paragraph 5 above; provided, however, that if, after construction and installation of the approved plan, the Department determines that further modifications are needed to ensure the required reasonable access is provided to the remaining lease area, Permittee will cause such modifications to be constructed or installed and shall bear the cost of those modifications.

No fees or rentals of any kind (except for permit fees and reimbursements of City costs required thereby) shall be charged by the City to any third party that City may permit to use all, or any part, of the space covered by this Permit.

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ISSUED:

ACCEPTED:

Chicago Department of Transportation

Date

**ILLINOIS DEPARTMENT OF
TRANSPORTATION DIVISION OF
HIGHWAYS**

Regional Engineer

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EXHIBIT B FACILITY

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

SECTION 5. This ordinance takes effect upon passage and approval.