



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

File #: O2011-1394, Version: 1

RICHARD M. DALEY  
MAYOR  
OFFICE OF THE MAYOR  
CITY OF CHICAGO  
March 9, 2011

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

Ladies and Gentlemen:

At the request of the Commissioner of Cultural Affairs and Special Events, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with the Chicago Transit Authority regarding decorative panels for the Fullerton elevated train station.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

### ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the Chicago Transit Authority (the "CTA") is a municipal corporation of the State of Illinois; and

WHEREAS, several years ago, the Hayes Healy gymnasium of DePaul University was purchased by the CTA and demolished to create adequate space for a new Fullerton Avenue station house for the CTA's elevated commuter train system; and

WHEREAS, the CTA salvaged six athletics-themed limestone relief panels (the "Blocks") from the gymnasium building's facade before demolition and now wishes to install them at the entrance to the historic Fullerton station house (the "Historic Fullerton Station House") as an act of historical artifact preservation and a reference to the history of the Lincoln Park community, McCormick Theological Seminary and DePaul University; and

WHEREAS, the City's Department of Cultural Affairs and Special Events ("DCASE") is sufficiently staffed to provide and/or contract for the cleaning and repairing of the Blocks, sealing them with a protective coating for long term display, installing them in iron frames, moving them to a location adjacent to the Historic Fullerton Station House, and mounting them on steel poles installed on both sides of the main stairway thereof (the "Project"); and

WHEREAS, 43d Ward Alderman Vi Daley wishes to use a portion of the aldermanic menu funds available to her office, which funds are derived from the City's Year 2003 and Year 2004 General Obligation Bonds, to assist in the financing of the Project, and

WHEREAS, the City proposes to pay for and perform the Project as a grant of in-kind services to the CTA, for a total cost not to exceed \$67,000 (the "City Contribution"); and

WHEREAS, the parties propose to enter into an intergovernmental agreement ("Agreement") authorizing and setting conditions on providing the City Contribution for the Project; and •

WHEREAS, the parties propose to enter into the Agreement under the provisions of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, on December 15, 2010, the Chicago Transit Board enacted an ordinance authorizing the CTA to enter into the Agreement; now, therefore,

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

SECTION 1. The above recitals are incorporated by reference as if fully set forth herein.

SECTION 2. Subject to the approval of the Corporation Counsel as to form and legality, the Acting

Commissioner of DCASE ("Commissioner") or his or her delegate is hereby authorized to execute and deliver the Agreement with the CTA in substantially the form attached hereto as Exhibit A, with such changes therein as the Commissioner may approve,

provided that such changes do not amend any essential terms of the Agreement (execution of the Agreement by the Commissioner or his or her delegate constituting conclusive evidence of such approval), and to enter into and execute all such other agreements and instruments and to perform any and all acts as shall be necessary or advisable in connection with the implementation of the Agreement.

SECTION 3. To the extent that any current ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. 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.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

#### EXHIBIT A

#### Agreement

[see attached]

#### INTERGOVERNMENTAL AGREEMENT

#### BETWEEN THE CITY OF CHICAGO AND CHICAGO TRANSIT AUTHORITY

This Intergovernmental Agreement (the "Agreement") is entered into as of

\_\_, 2011 (the "Closing Date") by and between the City of Chicago,

a municipal corporation (the "City"), acting through its Department of Cultural Affairs and Special Events (the "DCASE"), and the Chicago Transit Authority ("CTA"), an Illinois municipal corporation duly organized and existing under the laws of the State of Illinois.

#### RECITALS:

WHEREAS, the City is a home rule unit of government under Article VII, Section 6(a) of the Illinois Constitution of 1970, and

WHEREAS, the Chicago Transit Authority (the "CTA") is a municipal corporation of the State of Illinois; and

WHEREAS, several years ago, the Hayes Healy gymnasium of DePaul University was purchased by the CTA and demolished to create adequate space for a new Fullerton Avenue station house for the CTA's elevated commuter train system; and

WHEREAS, the CTA salvaged six athletics-themed limestone relief panels (the "Blocks") from the gymnasium building's facade before demolition and now wishes to install them at the entrance to the historic Fullerton station house (the "Historic Fullerton Station House") as an act of historical artifact preservation and a reference to the history of the Lincoln Park community, McCormick Theological Seminary and DePaul University; and

WHEREAS, DCASE is sufficiently staffed to provide and/or contract for the cleaning and repairing of the Blocks, sealing them with a protective coating for long term display, installing them in iron frames, moving them to a location adjacent to the Historic Fullerton Station House, and mounting them on steel poles installed on both sides of the main stairway thereof (the "Project"); and

WHEREAS, 43d Ward Alderman Vi Daley wishes to use a portion of the aldermanic menu funds available to her office, which funds are derived from the City's Year 2003 and Year 2004 General Obligation Bonds (the "Bonds"), to assist in the financing of the Project, and

WHEREAS, the City proposes to pay for and perform the Project as a grant of in4<ind services to the CTA, for a total cost not to exceed \$67,000 (the "City Contribution"); and

WHEREAS, the parties propose to enter into this intergovernmental agreement ("Agreement") authorizing and setting conditions on providing the City Contribution for the Project; and

WHEREAS, the parties propose to enter into the Agreement under the provisions of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, on December 15, 2010, the Chicago Transit Board enacted an ordinance authorizing the CTA to enter into the Agreement; and

WHEREAS, on [\_, 2011,] the City Council of the City enacted an ordinance published in the Journal of Proceedings of the City Council for said date at pages \_\_ to \_\_ (the "Authorizing Ordinance"), authorizing the execution of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **SECTION 1. RECITALS**

The foregoing recitals are hereby incorporated into this Agreement by reference.

### **SECTION 2. RATIFICATION OF PRIOR ACTIVITIES**

The parties hereby ratify and verify:

- (i) that the design of the steel framework system for the Blocks, and the design of the installation of the Blocks at a location adjacent to the Historic Fullerton Station House, as set forth on Exhibit A attached hereto and incorporated herein, is approved by the CTA; and
- (ii) that the budget for the Project, as set forth on Exhibit B attached hereto and incorporated herein, is approved;
- (iii) that the temporary possession of the Blocks by the City and its contractors is approved by the CTA; and
- (iv) that the Blocks are now and shall at all times during the Term of this Agreement remain the property of the CTA.

### **SECTION 3. PROJECT PERFORMANCE. FUNDING OF GRANT**

**-2-**

3.1 The parties affirm that they have already cooperated and agree on the design and performance parameters of the Project.

3.2 The City shall undertake the Project as set forth in this Agreement and on Exhibit A, including but not limited to:

- 1) general cleaning of the Blocks;
- 2) applying a protective coating to the Blocks;
- 3) fabricating iron or steel frames for the Blocks and trimming the Blocks as necessary to fit therein;
- 4) installing the Blocks in the frames;
- 5) moving the mounted Blocks to a location adjacent to the Historic Fullerton Station House;
- 6) providing and installing steel poles at a location adjacent to the Historic Fullerton Station House with custom-designed steel frames for mounting the Blocks; and
- 7) mounting the Blocks permanently onto the steel poles.

3.3 The City shall perform the Project with the same level of skill that it utilizes for similar projects undertaken by the City.

3.4 The CTA hereby grants to the City such rights of access to the Blocks and temporary possession of the Blocks as may be necessary or useful to allow the City to perform the Project.

3.5 If the Project is not completed within three (3) years following the Closing Date of this Agreement, the parties agree to mutually consider amending this Agreement as necessary at that time.

3.6 The Project is being undertaken as an in-kind grant of services to the CTA, and shall not exceed \$67,000 in value. The City shall utilize the City Contribution as it sees fit for the purpose of providing the in-kind grant herein, and shall not pay any portion of the City Contribution directly over to the CTA.

3.7 If the performance of the Project appears likely to exceed \$67,000 in value (as determined by the City in its sole discretion), the City shall timely notify the CTA that its grant is nearly fulfilled and shall coordinate with the CTA for either the delivery of the Blocks to the CTA or any other mutually satisfactory arrangement. If the Project is completed to the satisfaction of the parties, but at a value that is less than \$67,000, the CTA shall have

no claim on such surplus funds or in-kind services.

3.8 The City shall generate records of its or its contractors' activities performed in connection with the Project, and at the conclusion of the Project shall provide a copy of such records to the CTA.

**-3-**

3.9 The City makes no covenant, representation or warranty to the CTA as to the environmental conditions or circumstances of the Project. The City makes no covenant, representation or warranty as to the suitability of the Project for any public rapid transit use whatsoever.

3.10 The CTA hereby covenants that:

- it owns the Blocks and the Historic Fullerton Station House
- it presently uses the Historic Fullerton Station House for public transit purposes
- it will continue to use the Historic Fullerton Station House for public transit purposes after the Blocks are installed therein

3.11 (a) Notwithstanding the Term of this Agreement, the CTA shall not assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the City. Subject to the terms and conditions of the bond indentures for the Bonds, such consent will not be unreasonably withheld. The City reserves the right to assign all or any part of its interest hereunder. In the event of any assignment, all of the terms and provisions of the Agreement shall be binding upon and inure to the benefit of the respective legal representative, successors, transferees and assigns of the parties hereto.

(b) Notwithstanding the foregoing paragraph, the CTA may, subject to the bond indentures for the Bonds, contract with one or more third parties for all or a part of the maintenance and operation of the Historic Fullerton Station House and the Blocks; provided, however, such contracting shall not release the CTA from any of its obligations under this Agreement.

#### **SECTION 4. TERM; TERMINATION**

4.01 Unless earlier terminated pursuant to other parts of this Agreement, the term ("Term") of this Agreement shall commence on the date of its execution and shall terminate three years later.

4.02 Except as specified elsewhere in this Agreement, either party may terminate this Agreement for cause or without cause upon 60 days prior written notice to the other party.

#### **SECTION 5. INSURANCE**

5.1 The City shall procure, pay for and maintain, and shall require any contractors that perform work for the City under this Agreement to procure, pay for and maintain, at all times during the term of this Agreement, the types of insurance specified below:

##### **Workers Compensation and Employers Liability**

**-4-**

Workers Compensation and Occupational Disease Insurance in accordance with the laws of the State of Illinois covering all employees who are to provide a service under this Agreement and Employers Liability Coverage with limits of not less than \$100,000 for each accident or illness.

##### **Commercial General Liability (Primary and Umbrella)**

Commercial Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage liability.

##### **Automobile Liability**

When any motor vehicles (owned, non-owned and hired) are used in connection with the PDA Services to be performed, the City shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

"5.2 The CTA acknowledges that the City is self-insured for the insurance requirements set forth above that apply to the City.

#### **SECTION 6. COOPERATION, DELAY AND DISPUTE RESOLUTION**

The City and the CTA shall, during the term of this Agreement, cooperate with each other as well as any other City, State and Federal agencies, and companies and individuals working on other aspects of the Project so as to

not delay, interfere with or hinder the progress or completion of work. In the event a dispute arises, the City and CTA agree to negotiate in good faith to resolve any issues. If the parties cannot agree on a resolution, then the parties shall promptly report any such disagreement to the Commissioner of DCASE and the CTA's Chief Infrastructure Officer. The Commissioner of DCASE and the CTA's Chief Infrastructure Officer shall endeavor to resolve any such disagreement promptly and in good faith.

#### **SECTION 7. INDEMNIFICATION**

(a) Except for the CTA's own negligence or wrongful acts, the City shall release, indemnify and hold harmless, to the maximum extent permitted by law, the CTA and its Board, directors, officers, employees and agents (the "CTA Indemnitees") from and against any and all claims, suits, liabilities, losses and damages, including court costs and attorneys' fees and expenses incidental thereto, of whatever nature, arising out of or in connection with the City's failure of performance or negligent or wrongful performance concerning the Project, or any contractor or subcontractor for the City concerning the Project, and their respective officers, agents or employees, including, but not limited to, claims for damage to property, and/or injury to or death of any person or persons.

(b) Except for the City's own negligence or wrongful acts, the CTA shall release, indemnify and hold harmless, to the maximum extent permitted by law, the City and its officials, employees and agents (the "City Indemnitees") from and against any and all claims, suits, liabilities, losses and damages, including court costs and attorneys' fees and expenses incidental thereto, of whatever nature, arising out of or in connection with the CTA's failure of performance or negligent or wrongful performance concerning the Project, or any contractor or subcontractor for the CTA concerning the Project, and their respective officers, agents or employees, including, but not limited to, claims for damage to property, and/or injury to or death of any person or persons.

#### **SECTION 8. NOTICES**

(a) All notices and demands by the CTA to the City shall be in writing and shall be delivered personally or sent by United States mail or reputable overnight or same day courier service, postage prepaid, addressed to the City as specified below, or to such other address as the City may from time to time designate by notice to CTA hereunder:

-6-

To the City: City of Chicago  
Department of Cultural Affairs and Special Events  
Attention: Commissioner  
78 East Washington Street  
Chicago, Illinois 60602  
(312) 744-8924  
fax: (312)744-1616  
With a copy to: City of Chicago  
Department of Law  
Attention: Finance and Economic Development Division  
City Hall, Room 600  
121 N. LaSalle Street  
Chicago, Illinois 60602  
(312)744-0200  
(312) 744-8538 (Fax)

(b) All notices and demands by the City to the CTA shall be in writing and shall be delivered personally or sent by United States mail or reputable overnight or same day courier service, postage prepaid, addressed to CTA as specified below, or to such other address as the CTA may from time to time designate by notice to the City hereunder:

To the CTA: Chicago Transit Authority  
Attention: Christopher Bushell, Chief Infrastructure Officer 567 W. Lake Street - 9<sup>th</sup> Floor Chicago, IL 60661

With a copy to: Chicago Transit Authority  
Office of the General Counsel 567 W. Lake Street - 6<sup>th</sup> Floor Chicago, IL 60661

#### **SECTION 9. GENERAL PROVISIONS**

(a) This Agreement constitutes the entire understanding of the parties with respect to the Project, and no representations or promises have been made that are not fully set forth herein. The parties understand and agree that no modification of this Agreement shall be binding unless duly accepted and executed by both parties in writing.

(b) This Agreement will be governed in all respects in accordance with the laws of the State of Illinois. A court located in Chicago, Illinois, will hear any disputes which arise hereunder.

(c) Any headings of this Agreement are for convenience of reference only and do not define or limit the provisions of this Agreement. Words of any gender will be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document will be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms hereof and thereof. All references to any person or entity will be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms of this Agreement.

(d) The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

(e) This Agreement may be executed in one or more counterparts, and all such counterparts will constitute one and the same Agreement.

[the remainder of this page is intentionally blank]

**-8-**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, through duly authorized representatives, as of the date set forth at the beginning of this Agreement.

CITY OF CHICAGO, a municipal corporation, by and through its Department of Cultural Affairs and Special Events

Katherine LaMantia Acting Commissioner

CHICAGO TRANSIT AUTHORITY, a municipal corporation of the State of Illinois that was established pursuant to the Metropolitan Transit Authority Act, 70 ILCS 3605/1, et seq.

Terry Peterson Chairman

,

#### **Exhibit A Description of Project**

The Hayes Healy gymnasium of DePaul University was purchased and demolished by the CTA in order to create space for the new Fullerton stationhouse. In response to community concerns about the loss of this historic structure and at the request of Alderman Vi Daley, the CTA salvaged carved limestone relief panels from the building facade.

As an in-kind gift of services to the CTA, the City, through DCASE, will restore six of the panels, each measuring approximately 25" x 25", and depicting various athletes (skater, football player, wrestler, etc) and will permanently install them adjacent to the historic Fullerton Station House, which has been refurbished by the CTA for use as an auxiliary entrance on the north side of Fullerton Avenue. The relief panels will be cleaned, repaired, sealed with a protective coating for long term display and installed in a steel framework system. The six panels will be mounted to steel poles installed on either side of the main stairway of the stationhouse (three panels per side). The panels will be visible to customers as they ascend and descend the stairway, yet out of reach to deter touching or vandalism.

The total value of the in-kind gift of services for the fabrication, delivery and installation of the panels shall not exceed \$67,000. .

Preliminary design fee Design and fabrication Installation Pick-up and delivery Contingency

TOTAL Costs

Exhibit B

Budget

\$ 900.00 \$ 56,200.00 \$ 8,290.00 \$ 667.00 \$ 943.00

\$67,000.00