



City of Chicago



O2022-2993

Office of the City Clerk

Document Tracking Sheet

Meeting Date: 9/21/2022

Sponsor(s): Lightfoot (Mayor)

Type: Ordinance

Title: Intergovernmental agreement between City, through Department of Assets, Information and Services (AIS), and Commuter Rail Division of Regional Transportation Authority to accept Metra donation of historic rail car for conditional use at City's Joint Public Safety Training Campus

Committee(s) Assignment: Committee on Public Safety

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OFFICE OF THE MAYOR
CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

September 21, 2022

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

Ladies and Gentlemen:

At the request of the Commissioner of Assets, Information and Services, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with Metra for the donation of a rail car and trackpanels to the City.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

A handwritten signature in black ink that reads "Lori E. Lightfoot".

Mayor

ORDINANCE

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

WHEREAS, the Commuter Rail Division of the Regional Transportation Authority (the "Metra") is a division of the Regional Transportation Authority, a municipal corporation and body politic of the State of Illinois, duly established in accordance with the applicable provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01/et seq. (the "Act") and, as such is deemed a special district of the State of Illinois; and

WHEREAS, Pursuant to Sections 3B.09 and 2.20(a)(iv) of the Act, Metra has the power to donate real and personal property as it deems appropriate in the exercise of its general powers; and

WHEREAS, Metra desires to donate a historic rail car (the "Metra Rail Car Donation") to the City for \$1.00 and no/100 to be included in the City's Joint Public Safety Training Campus located at 4443 W. Chicago Avenue, Chicago, Illinois 60651 (the "Property") and the City, through its Department of Assets, Information and Services (the "AIS"), desires to accept the Metra Rail Car Donation; and

WHEREAS, the City and Metra desire to place the Rail Car on the Property for long-term use by the City for instructional purposes (the "Project"); and

WHEREAS, the parties propose to enter into an intergovernmental agreement ("Agreement") authorizing and setting conditions on providing the Metra Rail Car Donation 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.; 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. AIS is authorized to accept the Metra Rail Car Donation for \$1.00 and no/100. Subject to the approval of the Corporation Counsel, the Commissioner or Acting Commissioner of AIS ("Commissioner") or his or her designee is hereby authorized to execute and deliver the Agreement with Metra in substantially the form attached hereto as Exhibit A, with such changes therein as the Commissioner or Acting Commissioner may approve, provided that such changes do not amend any essential terms of the Agreement (execution of the Agreement by the Commissioner or Acting Commissioner or his or her designee 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 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

Intergovernmental Agreement

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF CHICAGO
AND COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION
AUTHORITY**

This Intergovernmental Agreement (the “Agreement”) is made and entered into as of this _____th day of _____, 2022 (“Effective Date”) by and between the City of Chicago, a municipal corporation (the “City”), through its Department of Assets, Information and Services (“AIS”) and Commuter Rail Division of the Regional Transportation Authority (“Metra”), a body politic and a unit of local government under Article VII, Section 1 of the 1970 Constitution of the State of Illinois.

RECITALS

A. The City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois and, as such, may exercise any power and perform any function pertaining to its government and affairs.

B. Metra is a division of the Regional Transportation Authority, a municipal corporation and body politic duly established in accordance with the applicable provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01/et seq. (the “Act”) and, as such is deemed a special district of the State of Illinois. Pursuant to Sections 3B.09 and 2.20(a)(iv) of the Act, Metra has the power to donate real and personal property as it deems appropriate in the exercise of its general powers.

C. The Intergovernmental Cooperation Act, ILCS 220/1 et. seq., authorizes units of local government, municipalities and special districts in Illinois to exercise jointly with any other public agency or special district, any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of government services, activities and undertakings.

D. Metra desires to donate a historic rail car (the “Rail Car”) to the City to be included in the City’s Joint Public Safety Training Campus located at 4443 W. Chicago Avenue, Chicago, Illinois 60651 (the “Property”).

E. The City and Metra desire to place the Rail Car on the Property for long-term use by the City for instructional purposes as described on Exhibit A to this Agreement (the “Project”); and

F. Pursuant to an ordinance adopted by the City Council of the City (the “City Council”) _____ the City desires to accept the Rail Car from Metra for the Project.

NOW THEREFORE, the City and Metra agree as follows:

SECTION 1. DONATION

Effective upon the delivery of the Rail Car, for One Dollar (\$1.00), and in consideration of the benefits to the City from the development of the Project, Metra hereby transfers, assigns, and conveys to the City all of Metra's right, title and interest in and to the Rail Car. A complete description of the Rail Car is attached as Exhibit B to this Agreement. A site map for the placement of the donated Rail Car at the Property is attached as Exhibit to this Agreement.

1. THE CITY IS RECEIVING THE RAIL CAR "AS IS, WHERE IS" AND "WITH ALL FAULTS," AND METRA DISCLAIMS ANY AND ALL WARRANTIES OR REPRESENTATIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF QUALITY, PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

2. The City will have inspected the Rail Car prior to delivery and will accept title to the Rail Car "as is," "where is" in its present condition and Metra makes no representation as to whether or not an environmentally hazardous condition or hazardous material contamination, as such are defined or regulated under any federal, state, or local laws, rules or regulations ("Hazardous Conditions") may presently exist or in the future exist with respect to the Equipment. Commencing at the time that City, its agent(s) or contractor(s) takes physical possession of the Equipment ("Receipt") at its respective pick-up locations within the Yards, or any other pick-up location which may be required by Metra, and to the fullest extent that Metra, the RTA, their officers, directors, and employees (cumulatively "Indemnitees"), would be responsible by law for the existence and remediation of Hazardous Conditions with respect to the Equipment, City shall defend, indemnify, and hold Indemnitees harmless from any and all liabilities, actions (including strict liability), demands, penalties, losses, costs, expenses (including, without limitation, court costs and reasonable attorneys' fees and remedial costs), suits, costs of any settlement or judgement, and claims of any and every kind whatsoever which may now or in the future be incurred or suffered by or asserted against Indemnitees or by any person or entity or governmental entity or the City for, with respect to, or as a direct or indirect result of, the escape, seepage, leakage, spillage, discharge, emission, or release from the Rail Car of any Hazardous Condition, any remediation, or removal therefrom, or which arises out of or results from the environmental condition of the Rail Car, or the applicability of any governmental requirement relating to Hazardous Conditions on or about the Rail Car, including without limitation, any so called federal, state, or local "Superfund" or "Superlien" laws, ordinances, rules, orders or decrees, regardless of whether or not caused by or within the control of Indemnitees.

SECTION 2. COVENANTS, REPRESENTATIONS AND WARRANTIES

The City represents, warranties and covenants:

(a) The City will accept the donation of the Rail Car from Metra and use it solely for the City's instructional purposes related to the Project. Subject to Section 4 herein, if the City disposes of the Rail Car, (i) the City shall comply with all applicable laws (ii) the City will not

export the Rail Car or any part or item thereof without first obtaining the necessary export licenses and approvals, and (iii) the City warrants that it will not sell, transfer or export the Rail Car or any part or item thereof in violation of any laws, regulations, transaction or export controls or economic sanctions imposed by the United States government regarding any other country, government or political entry.

(b) The City shall be solely responsible for payment of any and all international, federal, state and local sales, use value-added and excise taxes, any other taxes or duties or any nature whatsoever assessed upon or with respect to the Rail Car or otherwise arising from this Agreement and the transactions contemplated hereby.

(c) The City shall have to sole responsibility for maintenance and care of the Rail Car after the transfer has been made.

(d) The City agrees that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.

(e) The City has full power and authority to enter into and perform its obligations under this Agreement, and the signing and delivery of this Agreement and the performance of its obligations under this Agreement have been duly authorized by all requisite action (if applicable).

SECTION 3. LIMITATION OF LIABILITY; INDEMNIFICATION

TO THE MAXIMUM EXTENT ALLOWED BY LAW, UNDER NO CIRCUMSTANCES WILL METRA BE LIABLE FOR ANY DAMAGES OF ANY KIND, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE, EVEN IF THEY WERE FORESEEABLE AND/OR EVEN IF THE CITY HAS INFORMED METRA OF THEIR POTENTIAL, ARISING IN ANY WAY OUT OF THE RAIL CAR OR THIS AGREEMENT.

The City will indemnify and defend Metra, its officials, agents and employees (the "Metra Indemnitees") against any and all losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including, without limitation, attorneys' and expert witnesses' fees and court costs) the Metra Indemnitees suffer or incur arising from or in connection with: (a) any violation or alleged violation of any applicable laws by the City in connection with this Agreement; (b) any claims relating to the packing, removal, handling, shipping, use, possession, transfer, sale, donation or other disposal of Rail Car; or (c) the City's breach of this Agreement. This defense and indemnification obligation survives any termination or expiration of this Agreement.

SECTION 4. RIGHT OF FIRST REFUSAL

If the City determines that it wants to sell, trade or transfer rights, title or interest in the Rail Car to any person, or private or public body, Metra has the right of first refusal to regain

rights, title and interest to the Rail Car before the transfer can proceed. In the event that Metra exercises its right to regain the rights, title and interest to the Rail Car, then the City shall be responsible for the de-installation and transportation of the Rail Car from the City to Metra.

SECTION 5. DEFAULT

In the event that either party shall fail to comply with any of the obligations to be performed by that party hereunder, then the other party shall have all rights and remedies available to it at law and/or in equity to seek additional damages and/or to strictly enforce the terms of this Agreement.

SECTION 6. NOTICES

Unless otherwise specified, any notice, demand or request required under this Agreement must be given in writing at the addresses set forth below, by any of the following means: (a) personal service, (b) overnight courier or (c) first class mail.

IF TO THE CITY: City of Chicago Department of Assets, Information and Services
2 N. LaSalle Street, Suite 200
Chicago, Illinois 60620
Fax: (312) 745-3880
Attention: Asset Management Bureau

With a copy to: City of Chicago
Department of Law
City Hall, Room 600
121 N. LaSalle Street
Chicago, Illinois 60602
(312) 744-0200
Attention: Finance and Economic Development
Division

IF TO METRA: Commuter Rail Division
d/b/a Metra
547 West Jackson Blvd.
Chicago, Illinois 60661
Attention: Kevin McCann,
Deputy Executive Director - Operations

With a copy to: Sue-Ann Rosen
General Counsel
547 West Jackson Blvd, 15th Floor
Chicago, Illinois 60661

Attention: General Counsel

These addresses may be changed by notice to the other party given in the same manner provided above. Any notice, demand or request given by personal service or overnight courier is considered received when delivered and if given by first class mail is considered received two business days following deposit in the mail with sufficient first class postage affixed. Refusal of delivery has the same effect as receipt.

SECTION 7. MISCELLANEOUS

- (a) This Agreement may only be amended in writing signed by the authorized representatives of the City and Metra.
- (b) The Recitals set forth above is incorporated into and made a part of this Agreement by reference.
- (c) This Agreement constitutes the entire agreement between the City and Metra regarding the donation of the Rail Car and supersedes all prior agreements, negotiation and discussion between them.
- (d) No waiver by either party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, either party in any case will, of itself, entitle that party to any further notice or demand in similar or other circumstances.
- (e) Nothing contained in this Agreement nor any act of the City creates or is intended to imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture.
- (f) The paragraph and section headings contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.
- (g) This Agreement may be executed in several counterparts, each of which is considered an original and all of which constitute one and the same agreement.
- (h) If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application of this Agreement, in any circumstance, is held invalid, this Agreement is to be construed as if the invalid part were never included in this Agreement, and the remainder of this Agreement remains valid and enforceable to the fullest extent permitted by law.
- (i) This Agreement is governed by and construed under Illinois law.

(j) Metra and its subcontractors, consultants, successors and assignees will not charge any official, employee or agent of either party personally with any liability or expenses of defense or seek to hold him or her personally liable under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement.

(k) Neither party is entitled to assign this Agreement, or any portion of it without the prior written consent of the other.

SECTION 8. NO BUSINESS RELATIONSHIPS THAT CREATE FINANCIAL INTERESTS WITH ELECTED OFFICIALS

Pursuant to Section 2-156-030(b) of the Municipal Code of Chicago, it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected official has a business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a Financial Interest. Violation of Section 2-156-030(b) by any elected official with respect to this Agreement shall be grounds for termination of this Agreement.

SECTION 9. INSPECTOR GENERAL AND LEGISLATIVE INSPECTOR GENERAL

It is the duty of Metra and any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of Metra and any such bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Metra represents that Metra understands and will abide by all provisions of Chapter 2-56 of the Municipal Code and that Metra will inform subcontractors of this provision and require their compliance.

*[The remainder of this page is intentionally blank.
Signatures appear on the following page.]*

SIGNED:

CITY OF CHICAGO

By: _____
Sandra Blakemore, Acting Commissioner
Department of Assets, Information and
Services

**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY**

By: _____
James M. Derwinski
CEO/Executive Director

EXHIBIT A

PROJECT DESCRIPTION

Metra will donate the Rail Car to the City. Additionally, future plans call for the Chicago Transit Authority (“CTA”) to donate two “L” commuter cars and the Union Pacific Railroad (“UP”) to donate a tanker car and an enclosed freight car (collectively, the Rail Car, two “L” cars, tanker, and freight car are referred to as the “**Donated Rail Cars**”). The City will position the Donated Rail Cars on the designated sites on the Property in order to fulfill the purposes of the Project.

City Responsibilities

1. The City will prepare the Sites for placement of the Donated Rail Cars by grading the areas shown on Exhibit C. The areas will be graded per standard track placement and railcar specification.
2. The City will notify Metra in writing that the areas on the Site Map has been graded as described in section 1 above.
3. The City will reimburse or pay for any fees that are incurred by Metra for the use of the UP track to deliver the Donated Rail Cars to the Property.
4. The City will provide and pay for the cost of the crane any other equipment needed to lift the Donated Rail Cars and/or any fees assessed from the UP for use of the UP track to deliver the Donated Rail Cars to the designated sites.

Metra Responsibilities

1. Metra will identify one rail car for donation to the City, the specifications of which have been provided to the City and are attached herein as Exhibit B.
2. Within 30 days after receiving written notice from the City (email notification is acceptable) that the designated area on the Property is ready to receive the Rail Car,
3. Metra will:
 - (a) Deliver ballast to the Property in the areas identified on the Site Map and place the ballast and any other equipment on the Property in the designated area to allow for the proper placement of trackpanels on top of the ballast.
 - (b) Deliver and set an amount of trackpanels in a manner that will allow the Donated Rail Cars to be placed on the track on the prepared sites.

EXHIBIT B

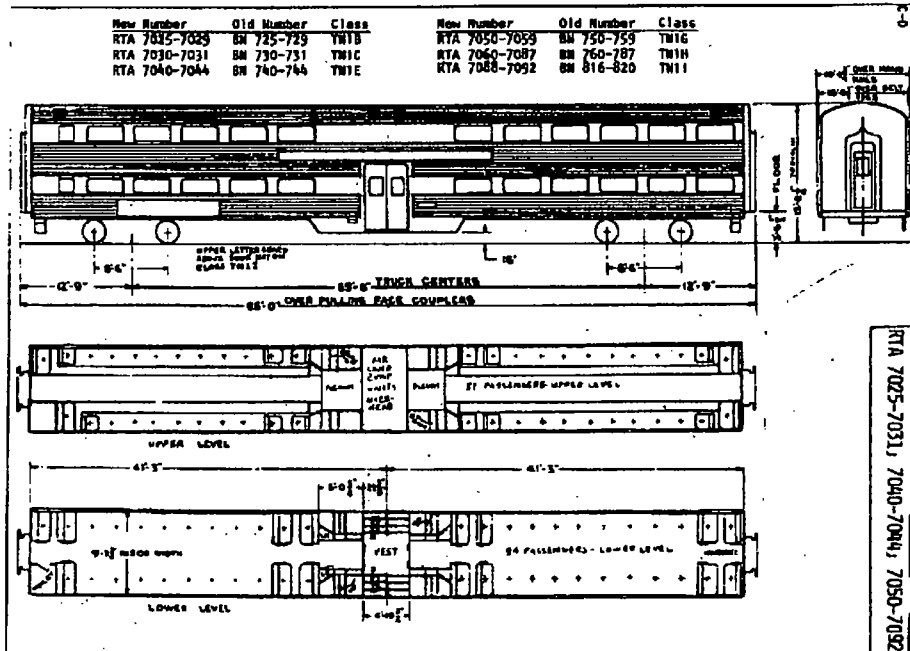
DESCRIPTION OF METRA RAIL CAR



BUDD

GENERAL ARRANGEMENT

725-744, 750-787, 816-820



REFERENCE DATA

LENGTH (OVER COUPLER FACES)	85 FEET
HEIGHT	15 FEET 8 1/4 INCHES
WIDTH (OVER HANDHOLDS)	10 FEET 4 3/4 INCHES
WEIGHT	725-744—122,000 POUNDS 750-787—122,000 POUNDS 816-820—115,000 POUNDS
SEATING CAPACITY	732-739—148 740-744, 750-787, 816-820—145

EXHIBIT C

SITE MAP

