

## **SUBSTITUTE**

### **ORDINANCE ESTABLISHING THE CHICAGO INFRASTRUCTURE TRUST AND PROVIDING FOR CERTAIN RELATED MATTERS**

WHEREAS, infrastructure is a vital and foundational element in the future competitiveness of the City of Chicago (the “City”) and the City’s municipal infrastructure assets including, without limitation, mass transit, surface and highway transportation, freight rail, air and maritime ports, education (elementary, secondary and community college) facilities, water and sewer and other services and facilities require significant and on-going improvement and upgrades; and

WHEREAS, the City’s status as a leading global city relies in part on its ability to be at the forefront of implementation of energy efficiency programs and initiatives; and

WHEREAS, savings from these energy efficiency initiatives can be significant and sufficient to pay for the upfront capital investment needed initially to finance these initiatives; and

WHEREAS, financing upgrades, improvements and expansions of the City’s infrastructure assets will be challenging, given competing demands for capital that can be raised in the municipal finance markets as well as budget and financial constraints that often result in moneys being allocated to shorter term initiatives and operational expenditures; and

WHEREAS, infrastructure funding from the State and Federal governments has been inconsistent and unpredictable, with demand for funding clearly exceeding the resources available as states and municipalities compete for inevitably limited funding; and

WHEREAS, a range of private investors and organizations, including without limitation foundations, labor unions, public sector and private sector pension funds, private equity funds, mutual funds and sovereign wealth funds have demonstrated a growing interest in low-risk, long-term infrastructure investments and it is in the best interest of the City to work collaboratively with such investors and organizations in a transparent and strategic manner to arrange required financing for a range of transformative infrastructure projects for the benefit of the City and its residents; and

WHEREAS, the City needs to diversify its options and alternatives for financing of infrastructure projects, including financing arrangements that are predictable and attractive to a broad range of investors, all in a manner that is fully transparent and on terms and conditions that benefit the City and its residents; and

WHEREAS, it is in the best interest of the City to establish a professionally managed and governed infrastructure fund (the “Chicago Infrastructure Trust” or the “Trust”) that will serve the following purposes and objectives: provide funding and credit support to qualifying transformative infrastructure projects; play an important coordinating and facilitative role in attracting private investment for these infrastructure projects; have associated grant-making capabilities for select infrastructure projects; facilitate funding of infrastructure projects affecting

one or more co-ordinate units of local government that will enable the sharing of labor, resources and knowledge between and among such units of local government; and establish high standards of transparency regarding the types of capital and investments received, the infrastructure projects funded, the investment returns on such projects and other information that will be easily accessible to the public and subject to rigorous oversight and audit; and

WHEREAS, the Trust will be capitalized by a combination of moneys appropriated by the City Council of the City and capital provided by a range of third-party investors and organizations; and

WHEREAS, examples of infrastructure funds and banks exist across the world, including Canada's P3C Fund, the European Infrastructure Bank and the recently announced infrastructure banks in the United Kingdom; and the United States Department of Transportation's Transportation Infrastructure Financing and Innovation Act (TIFIA) Program has similar objectives on a national level although limited to surface transportation projects; and

WHEREAS, the Trust will be among the first of its kind for any city or local government in the United States; and

WHEREAS, it is intended that all assets of the Trust shall be held in trust solely for the purposes and objectives described in this Ordinance; and

WHEREAS, any project undertaken by the City with funding received from or provided by the Trust will comply with City procurement rules and policies; and

WHEREAS, repayment of any moneys provided by the Trust to finance or support any infrastructure project will not be a general obligation of the City and will not be secured by the City's full faith and credit.

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

#### **SECTION 1. Organization and Qualification of the Chicago Infrastructure Fund.**

The Chief Financial Officer of the City, the City Comptroller of the City and the Corporation Counsel of the City are each authorized and directed to take such steps as may be necessary to enable the Trust to become duly organized and qualified as an Illinois not-for-profit organization. (If, at any time, no person is appointed to serve in the position of Chief Financial Officer, then, for all purposes of this Ordinance, the term "Chief Financial Officer" shall mean the City Comptroller.)

#### **SECTION 2. Composition and Appointment of Board Of Directors.**

(a) The Board of Directors of the Trust shall consist of five (5) voting members ("Voting Members") appointed by the Mayor of the City (the "Mayor") with the approval of the City Council. Four of these Voting Members shall have expertise in one or more of the following areas: financing and development of infrastructure; capital markets; and municipal finance, and one of these Voting Members shall be a member of the City Council. If at any time the City Council Voting Member shall cease to be a member of the City Council, his or her term

as a Voting Member shall also cease and a member of the City Council shall be appointed to serve the remainder of this term.

The Voting Members initially appointed pursuant to this sub-section (a) will serve for the following terms: one member for a term commencing with the incorporation of the Trust and ending on December 31, 2013, two members for a term commencing with the incorporation of the Trust and ending on December 31, 2014; and two members for a term commencing with the incorporation of the Trust and ending on December 31, 2015.

Thereafter, each Voting Member appointed pursuant to this sub-section (a) will serve for a term of three years. Each Voting Member appointed pursuant to this sub-section (a) will serve until his or her successor is duly qualified and appointed. Any appointment and associated City Council approval of Voting Members subsequent to the appointment of the initial Voting Members shall occur within one year of any vacancy created.

Voting Members appointed pursuant to this sub-section (a) will be subject to removal for cause by the Mayor.

Any Voting Member who has a financial interest in any entity that is being considered by the Trust to perform work for the Trust or for the City, to receive funds from the Trust or from the City, or to provide funds to or otherwise make an investment in the Trust, shall recuse himself or herself from any vote of the Board of Directors regarding said entity. For purposes of this paragraph, the term "financial interest" shall be defined as provided in Chapter 2-156, as amended from time to time of the Municipal Code of Chicago, (the "Municipal Code"). Pursuant to this paragraph, all Voting Members owe the Trust a fiduciary duty, and accordingly are strictly prohibited from making decisions or recommendations on behalf of the Trust for personal financial gain.

(b) Non-voting, advisory members shall be appointed to the Board of Directors of the Trust as follows:

(i) Three non-voting, advisory members may be appointed by the Mayor. These non-voting, advisory members shall be either commissioners, officials or employees of the City or of the following units of government: the Public Building Commission of Chicago, the Chicago Transit Authority, the Chicago Board of Education, Community College District Number 508, the Chicago Park District and the Chicago Housing Authority (collectively, the "Co-Ordinate Units of Government") or board members of the Co-Ordinate Units of Government. Each non-voting advisory member appointed pursuant to this clause (i) shall serve *ex-officio* while also serving in his or her respective position as a , commissioner, official, employee or board member of the City or of the respective Co-Ordinate Unit of Government.

(ii) Three non-voting advisory members may be appointed by the Voting Members. Each non-voting advisory member appointed pursuant to this clause (ii) shall each serve for a term of two years from the date of his or her respective appointment. Non-voting advisory members appointed pursuant to this clause (ii) will be subject to removal for cause by a majority of the Voting Members of the Trust.

(c) The Chair of the Board of Directors of the Trust will be appointed by the Mayor from among the Voting Members. Other officers of the Board of Directors will be selected by the Voting Members.

(d) The Board of Directors of the Trust will not receive a salary and will be compensated only for reasonable out-of-pocket expenses in accordance with procedures approved by the Board.

### **SECTION 3. Staffing and Personnel; Professional Services.**

(a) Subject to the availability of funds duly appropriated, it is hereby directed that for the period from the effective date of this Ordinance and ending on December 31, 2012, an amount not to exceed \$200,000 may be transferred to the Trust for professional services and otherwise to assist the Trust in accomplishing its purposes and objectives as described in this Ordinance.

(b) For the period through December 31, 2012, the Office of the Chief Financial Officer and the Department of Finance are each authorized to provide such staff support to the Trust as may be required to accomplish their respective purposes and mission, including, without limitation, operations and administration of the Trust prior to hiring of an Executive Director and/or other staff.

(c) The Chief Financial Officer and the City Comptroller (each an "Authorized Officer") are each authorized to negotiate: (i) grant agreement(s) with the Trust that set forth the terms and conditions pursuant to which funding authorized by sub-section (a) will be provided to the Trust; and (ii) agreement(s) with the Trust that set forth the terms and conditions pursuant to which staff support authorized by sub-section (b) will be provided to the Trust.

### **SECTION 4. Grant of Funds for Infrastructure Projects.**

Subject to the availability of funds duly appropriated, it is hereby directed that an amount not to exceed \$2,500,000 be transferred to the Trust in one or more grants to support infrastructure projects to be financed and supported by the Trust in furtherance of the purposes and objectives as described in this Ordinance. The Authorized Officers are each authorized to negotiate agreement(s) with the Trust that set forth the terms and conditions of any such grant(s).

### **SECTION 5. Conditions to Receipt of City Grants.**

As a condition to the execution and delivery of any grant agreement(s) authorized by Sections 3 and 4 of this Ordinance, such agreements will provide for the following, all determined or established to the reasonable satisfaction of the applicable Authorized Officer:

(a) The Trust will, consistent with the purposes and objectives as described in this Ordinance, establish criteria for all investments and other moneys received by the Trust from third parties and will develop financing structures for all infrastructure projects submitted to the Trust by the City or by a Co-Ordinate Unit(s) of Government.

(b) The Trust shall have no power to pledge the full faith and credit of the City nor shall any obligation issued by the Trust (or any entity sponsored by the Trust) in connection with any infrastructure project be a general obligation of the City.

(c) The Trust will require full disclosure from investors on all projects and will require completion of disclosure statements that will be substantially similar to the economic disclosure statements required of third parties for transactions with the City. The Trust will make each such disclosure statements available online for public review.

(d) The Trust will be responsible for overseeing preparation and auditing of its financial statements, including full compliance with applicable generally accepted accounting principles.

(e) The Trust will provide public notice of its meetings and conduct its meetings in accordance with the Illinois Open Meetings Act, 5 ILCS 120/1 et seq., as now enacted or as hereafter amended. The Trust will post and maintain online, for public review, the minutes of its meetings.

(f) The Trust will provide public access to books, records, minutes and documents, in accordance with the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., as now enacted or as hereafter amended ("FOIA").

(g) The Trust will cooperate with the City with respect to compliance with the requirements of FOIA concerning any public documents or records that are in the possession of the Trust but are nonetheless subject to the City's obligation to provide public access under FOIA.

(h) Commencing in 2013 and for each year thereafter, the Trust shall, on or about April 1 of each such year, prepare annual reports for public review detailing the activities and accomplishments of the Trust for the prior year, including, without limitation, investments received by the Trust; infrastructure projects financed or supported by the Trust; articles of incorporation, by-laws and rules and regulations adopted or amended by the Trust; and the Trust's annual financial statements. A copy of each annual report shall be presented to the Mayor and the City Council.

(i) The Trust will comply with all applicable City procurement rules and requirements, including, without limitation, Article IV (Minority-Owned and Women-Owned Business Enterprise Procurement Program) and Article VI (M.B.E./W.B.E Construction Program) of Chapter 2-92, as amended, of the Municipal Code.

#### **SECTION 6. Power and Authority of City Council.**

The prior approval of the City Council shall be required for any transaction to be undertaken by the Trust that seeks to utilize present or anticipated funds, revenues, assets or properties of the City. Nothing in this Ordinance supersedes, limits or otherwise affects the power and authority of the City Council with regard to any projects or financing transactions involving the Trust.

**SECTION 7. Severability.**

If any section, paragraph, clause or provision of this Ordinance shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions hereof.

**SECTION 8. Ordinance Controlling.**

To the extent that any ordinance, resolution or order of the City is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall be controlling. This Section 8 does not preclude the application of Section 2-8-035 (“Sale or lease of city assets - Ordinance requirements”) of the Municipal Code.

**SECTION 9. Performance Provisions.**

The Mayor, the Authorized Officers and the City Clerk, for and on behalf of the City shall be, and each of them hereby is, authorized and directed to do any and all things necessary to effect the performance of all obligations of the City under and pursuant to this Ordinance and are hereby further authorized, empowered and directed for and on behalf of the City, to execute and deliver all papers, documents, certificates and other instruments that may be required to carry out the authority conferred by this Ordinance or to evidence said authority.

**SECTION 10. Effective Date.**

This Ordinance shall be in full force and effect upon its passage and approval.