

**A RESOLUTION BY
COMMUNITY DEVELOPMENT/ HUMAN RESOURCES COMMITTEE**

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE NORFOLK SOUTHERN CORPORATION TO RELOCATE THE SAMUEL SPENCER STATUE FROM THE HARDY IVY PARK TO THE DAVID R. GOODE BUILDING; AND FOR OTHER PURPOSES.

WHEREAS, Samuel Spencer, the first President of Southern Railways, now named Norfolk Southern Corporation ("NSC"), is memorialized by a bronze sculpture created by renowned American sculptor Daniel Chester French; and

WHEREAS, the Samuel Spencer statue ("Statue") was originally located at Atlanta's downtown passenger train station and rededicated to the Brookwood Station in 1970; and

WHEREAS, the Statue was relocated again by the Corporation for Olympic Development of Atlanta to downtown's Hardy Ivy Park ("Park") in 1996; and

WHEREAS, NSC is interested in moving the Statue from the Park to the David R. Goode Building, located at 1200 Peachtree Street

WHEREAS, an arrangement between the City of Atlanta ("City") and NSC will provide for the relocation of the statue, including it's base and associated lamp posts from the Park to the Goode Building; and

WHEREAS, it is in the best interest of the City to enter into a Memorandum of Understanding with NSC to define the cooperative relationship between the two parties, and to establish the role and obligations of each party in that relationship.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, AS FOLLOWS:

SECTION 1:

The Mayor is hereby authorized, on behalf of the City, to enter into a Memorandum of Understanding that is substantially similar to Exhibit A attached hereto ("MOU"), with the Norfolk Southern Corporation. The MOU shall stipulate, at a minimum, that:

- a) NSC shall arrange for the relocation of the statue from the Park to the Goode Building at NSC's sole expense, and a representative, designated by NSC, shall coordinate the relocation with the Commissioner of the Department of Parks, Recreation and Cultural Affairs. The statue shall be displayed outdoors in front of the Goode Building, with adequate night-time lighting and public right of access at all times.

- b) NSC shall leave the foundation of the former site of the Statue in the Park for the City to use for placement of other artwork.
- c) Ownership of the Statue shall remain with the City, but the City shall not have the rights to relocate the statue from the Goode Building provided NSC adheres to its maintenance obligations.
- d) The NSC shall make a contribution to the Atlanta Public Arts Legacy Fund in the amount of one hundred thousand dollars (\$100,000.00) for purposes of continuing public art in the City of Atlanta.

SECTION 2:

The City Attorney or her/his designee is hereby authorized to prepare the MOU for execution by the Mayor, and the MOU shall be approved as to form by the City Attorney or her/his designee.

SECTION 3:

The MOU shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder, until the same has been signed by the Mayor and delivered to the Norfolk Southern Corporation.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview: Community Development/ Human Resources Committee

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE NORFOLK SOUTHERN CORPORATION TO RELOCATE THE SAMUEL SPENCER STATUE FROM THE HARDY IVY PARK TO THE DAVID R. GOODE BUILDING; AND FOR OTHER PURPOSES.

Council Meeting Date: March 2, 2009

Requesting Dept.: Department of Public Works

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to enter into a Memorandum of Understanding (M.O.U.) with Norfolk Southern Foundation to relocate the Samuel Spencer statue, including the statue's base and associated lamp posts from the Hardy Ivy Park to the David R. Goode Building, 1200 Peachtree Street, Atlanta, Georgia

2. Please provide background information regarding this legislation.

Norfolk Southern is the product of Norfolk and Southern Railways. The historic bronze sculpture by renowned American sculptor Daniel Chester French is a memorial to Samuel Spencer, Southern Railway's first president. Commissioned in 1909 by Southern Railway employees, the sculpture and its ornate granite base were originally located at Atlanta's downtown passenger train station. After the terminal was demolished in 1972, the sculpture was rededicated on July 3, 1970 at Brookwood Station. Relocated again in 1996 by CODA (the Corporation for Olympic Development in Atlanta), the sculpture is the centerpiece of downtown's Hardy Ivy Park located at the northern termination of Peachtree Street before it turns northeastward at Baker Street.

Materials: Bronze, marble

Dimensions: Sculpture 5'-2' w X 6'-2" d X 6' h

Pedestal 5'-2" w X 6'-2" d X 12' h

Base 8'-7" w X 8'-11" d X 7" h

Light poles (2) 30" w X 30" d X 15'- 6" h

3. If Applicable/Known:

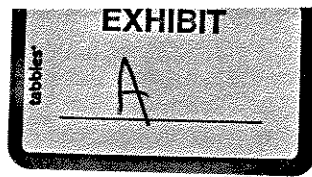
- (a) Contract Type (e.g. Professional Services, Construction Agreement, etc): N/A
- (b) Source Selection: N/A
- (c) Bids/Proposals Due: N/A
- (d) Invitations Issued: N/A
- (e) Number of Bids: N/A
- (f) Proposals Received: N/A
- (g) Bidders/Proponents: N/A
- (h) Term of Contract: N/A
- (i) Fund Account Center: N/A

5. Source of Funds: N/A

6. Fiscal Impact: N/A

7. Method of Cost Recovery: N/A

This Legislative Request Form Was Prepared By:



AGREEMENT

This Agreement ("Agreement") is dated as of _____, 2009 by and between Norfolk Southern Corporation, a Virginia corporation ("NSC"), Norfolk Southern Foundation, a Virginia non-profit corporation (the "NS Foundation"), and the City of Atlanta, Georgia (the "City") (collectively the "Parties"). The Parties wish to provide for the relocation of a statue of Samuel Spencer, including the statue's base and associated lamp posts (the "Statue") from Hardy Ivy Park in Atlanta, Georgia (the "Park") to the David R. Goode Building, 1200 Peachtree Street, Atlanta Georgia (the "Goode Building") on the terms and conditions set forth below.

In consideration of the foregoing and for other good and valuable consideration, the Parties hereby agree as follows:

1. NSC shall arrange for the relocation of the Statue from the Park to the Goode Building at NSC's sole cost and expense. NSC shall designate a representative who will coordinate the relocation with the Commissioner of the Department of Parks, Recreation and Cultural Affairs or her designee ("Commissioner"), and NSC will retain Patricia Kerlin as a Technical Consultant on this relocation project to cover services as outlined in attached Scope of Services, Exhibit A dated 23 December 2008. The Commissioner hereby grants NSC and its contractors reasonable access to the Park for purposes of the removal of the Statue.
2. NSC shall leave the foundation of the former site of the Statue in the Park for the City to use for placement of other artwork. Placement of other artwork in the Park, once the Statue is removed by NSC, will be at sole expense of the City.
3. NSC shall be responsible for any damages to Hardy Ivy Park, any existing amenities, and any existing infrastructure resulting from NSC's work, and/or the work of their contractors or subcontractors in removing the Statue. The Commissioner shall reasonably determine what, if any, remediation is required. The remediation work shall not be deemed complete until it is approved by the Commissioner, and said approval shall not be unreasonably withheld.
4. The Statue shall be displayed outdoors in front of the Goode Building according to plans mutually approved by NSC and the Commissioner, with adequate night-time lighting and public right of access at all times. NSC shall assume responsibility for maintaining the Statue, at its sole cost and expense, in a manner customary for similar public statues.
5. Ownership of the Statue shall remain with the City, but the City shall not have the right to move the Statue from in front of the Goode Building provided NSC complies with its maintenance obligations. If the Commissioner believes that NSC is derelict in its maintenance obligations, the Commissioner shall give NSC notice thereof and a reasonable opportunity to cure the alleged problem. If NSC does not cure the alleged problem, then the sole remedy shall be for the City to remove the Statue from NSC's premises.

6. The NS Foundation shall make a contribution to the Atlanta Public Arts Legacy Fund in the amount of \$100,000 for the purpose of continuing public art in the City of Atlanta. The contribution shall be made in two installments of \$50,000 each, with the first installment paid within 30 days of the date of this Agreement and the remaining installment paid when the Statue has been relocated to the Goode Building.
7. NSC hereby certifies to act as a self-insurer of its general liability and property exposures to a level substantially in excess of the limits normally required per the attached "Certificate of Self-Insurance". The attached "Certificate of Self-Insurance" has been reviewed and approved by the City's Risk Management Department.

This Agreement shall be governed by the laws of Georgia without regard to its otherwise applicable principles of conflicts of laws. The undersigned have executed this Agreement as of the date set forth above.

NORFOLK SOUTHERN CORPORATION

By: _____
Name:
Title:

NORFOLK SOUTHERN FOUNDATION

By: _____
Name:
Title:

CITY OF ATLANTA, GEORGIA

By: _____
Name:
Title:

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Debra F. Harris

Contact Number: (404) 817-6795

Originating Department: Parks, Recreation and Cultural Affairs


Committee(s) of Purview: Community Development/ Human Resources

Chief of Staff Deadline: February 10, 2009

Anticipated Committee Meeting Date(s): February 24, 2009

Anticipated Full Council Date: March 2, 2009

Legislative Counsel's Signature: Robin Shahar 

Commissioner Signature: Riane Hannell 

Chief Procurement Officer Signature: _____

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH THE NORFOLK SOUTHERN CORPORATION TO RELOCATE THE SAMUEL SPENCER STATUE FROM THE HARDY IVY PARK TO THE DAVID R. GOODE BUILDING; AND FOR OTHER PURPOSES.

FINANCIAL IMFACT (if any)

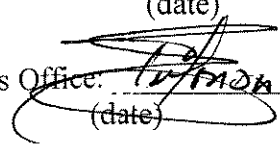
Mayor's Staff Only

Received by CPO: _____

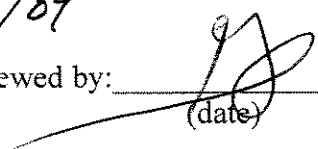
(date)

Received by LC from CPO: _____

(date)Received by

Mayor's Office: 

(date)

Reviewed by: 

(date)

Submitted to Council: _____

(date)