



AGENDA ITEM # 10A

AGENDA ITEM EXECUTIVE SUMMARY

Village Board Meeting

April 12, 2021

Item Title: Pipeline License Agreement

Staff Contact: Jason M. Bielawski, Assistant Village Administrator

VILLAGE BOARD ACTION

Adopt a resolution approving a pipeline license agreement between the Village of Roselle and the Commuter Rail Division of the Regional Transportation Authority (Metra).

Executive Summary:

Attached is a Pipeline License Agreement with Metra that sets forth the terms and conditions of the construction, installation, and maintenance of a watermain located in Metra property in the vicinity of the Roselle train station. The installation of the watermain is necessary to facilitate the Metro 19 redevelopment project. The developer will be responsible for constructing and installing the watermain and upon acceptance by the Village, this public improvement will be maintained by the Village. The one-time fee of \$2,500 will be paid by the Village. The term of the Agreement is perpetual unless otherwise terminated by either party.

Implications:

Is this item budgeted? The fee will be charged to the East Irving Park TIF Fund.

Any other implications to be considered? n/a

Attachments:

Resolution

Pipeline License Agreement

RESOLUTION NO. 2021-

A RESOLUTION APPROVING A PIPELINE LICENSE AGREEMENT BETWEEN THE VILLAGE OF ROSELLE AND THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY (METRA)

WHEREAS, the Village of Roselle ("Village") wishes to obtain a license from Metra for the installation, construction, and ongoing maintenance of a watermain that will serve a proposed high-end Transit Oriented Development; and

WHEREAS, the Village and Metra have memorialized and are prepared to enter into a Pipeline License Agreement (hereinafter Agreement) to establish the terms, conditions, and mutual understandings of the installation of a pipeline.

NOW, THEREFORE, be it resolved by the Mayor and Board of Trustees of the Village of Roselle, DuPage and Cook Counties Illinois as follows:

Section 1: The Pipeline License Agreement attached to this Resolution as Exhibit 1 is hereby approved.

Section 2: The Village Administrator is hereby authorized to execute the Agreement which attached to this Resolution as Exhibit 1.

Section 3. Village staff and Village Attorney are authorized and directed to undertake any and all other tasks necessary, or in furtherance of, the Pipeline License Agreement.

Section 4. This resolution shall become effective immediately upon its adoption.

ADOPTED this 12th day of April, 2021

AYES:
NAYS:
ABSTAIN:
ABSENT:

Andrew J. Maglio, Mayor

ATTEST:

Patricia Burns, Village Clerk

PIPELINE LICENSE

Prepared by:

Commuter Rail Division
547 West Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate and
Contract Management
Phone: (312) 542-8189

After recording return to:

Village of Roselle
31 S Prospect Street
Roselle, Illinois 60172
Attn: Kristin Mehl
Phone: (630) 671-2375

PIN: 02-02-504-001-0000
(DuPage County)

(Above Space for Recorder's Use Only)

PIPELINE LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made by and between the Commuter Rail Division of the Regional Transportation Authority whose address is 547 West Jackson Boulevard, Chicago, Illinois 60661 (“**Metra**”) and the Village of Roselle, a municipality of Illinois, with offices located at 31 S. Prospect Street, Roselle, Illinois 60172 (“**Licensee**”).

NOW, THEREFORE, for and in consideration of payments to be made to Metra by Licensee, as hereinafter set forth, and also of the covenants and agreements hereinafter stated, Metra hereby grants to Licensee a non-exclusive license (“**License**”), being five (5) feet in width for the right to install one (1) eight (8)-inch water main fire loop, in a sixteen (16)-inch casing for the purpose of fire protection (“**Pipeline**”), and no other purpose, along, across and underneath the right of way and tracks (or track, as the case may be) owned or controlled by Metra located at the Roselle Commuter Station, north of the track and west side of Parking Lot #1, GPS coordinates 41.982293, -88.069417, (MP 24.0) in Roselle, Illinois, on Metra’s Milwaukee District West Line, as delineated on **Exhibit “A”** (“**License Premises**”) attached to and made a part of this Agreement, together with the right of reasonable access thereto for the purpose of exercising the rights and privileges granted in this Agreement. Thereafter to maintain, operate and renew the same during the continuance of this License, across, underneath or along the Premises.

THIS LICENSE is granted upon the following express conditions, terms and covenants to be observed, kept and performed by Licensee:

1. (a) As one of the considerations for this License, Licensee agrees to pay to Metra the sum of \$2,500 for the cost of preparing this License, payable in advance.

2. Said Pipeline shall be installed and constructed in accordance with the specifications and notes set forth on Exhibit "A." The installation of said Pipeline, including the digging and filling of any trench and the time and manner of doing all of the work or of any maintenance, repairs, replacements or renewals upon the Premises, shall be as directed by Metra's authorized representatives. All of said work shall be done at Licensee's sole cost and expense, in a good and workmanlike manner, and in accordance with plans, specifications, and profiles to be prepared by Licensee and submitted for approval to Metra's authorized representatives, and until such approval is given, said work upon the Premises shall not be commenced by Licensee.

3. Upon completion of the initial installation and construction of the Pipeline, and upon completion of any subsequent installation, reconstruction, maintenance, repair or replacement of the Pipeline, Licensee, at its own cost and expense, shall remove any debris and restore, or cause to be restored to the reasonable satisfaction of Metra, the Premises and any other portion of Metra's property ("**Property**") that may be affected, as nearly as may be possible, to the same or better condition than that which existed immediately prior to commencement of such activities by Licensee. In the event Licensee fails to cause the Premises and the Property to be restored to the reasonable satisfaction of Metra as provided for herein, Metra shall have the right to restore the Premises and the Property and Licensee shall reimburse Metra for all costs and expenses incurred by Metra in its performance of the obligations imposed upon Licensee hereunder.

4. Metra shall permit Licensee reasonable right of entry to the Premises for the purpose of routine maintenance and operation of said Pipeline. Licensee's contractor(s) will be required to enter into a Right of Entry Agreement with Metra prior to any access to the Premises for the purpose(s) of installation, construction, reconstruction, repair, replacement, or removal of said Pipeline. An application for a Right of Entry Agreement can be found at Metra's website: <https://metrarail.com/about-metra/metra-business/real-estate-leasing>, or by contacting Metra's Right of Way Administrator at 312-542-8189. Licensee shall contact Metra's Right of Way Administrator prior to performing any construction, revision, or action to the Pipeline or on the Premises or Property beyond that which would be reasonably considered routine maintenance and/or operation of the Pipeline. Said construction, revision, or action may require railroad flagging protection and/or revised insurance requirements depending on the scope of the work to be performed and the proximity of said work to the live tracks.

5. Any rights to the Premises not specifically granted to Licensee herein are reserved to Metra and its successors and/or assigns. The Pipeline shall be installed, constructed, repaired, maintained and operated in a manner so as not to interfere with efficient rail operations or any other business operations or activities being conducted by Metra or Metra's tenants or permittees on the Premises and so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees for the purpose(s) to which the Premises

is now, or may hereafter be committed by Metra. Metra shall have the right to retain the existing tracks and other improvements at the location of this Pipeline on or adjacent to the Premises and also shall have the right at any and all times in the future to construct, maintain and operate over, under, across or parallel to said Pipeline such additional track or tracks as it may from time to time elect. Nothing shall be done or caused to be done by Licensee that will in any manner impair the usefulness or safety of the tracks and other improvements of Metra, or such track or tracks and other improvements as Metra may in the future construct or cause to be constructed over, under, across, or parallel to said Pipeline. This License is expressly subject to the rights of third parties to maintain utility and other improvements permitted by Metra on the Premises and the Property. Metra reserves the exclusive right to grant future licenses over, under, across or parallel to the said Pipeline, provided such licenses do not interfere with the Pipeline and the rights granted Licensee pursuant to this Agreement, as determined by Metra in its sole discretion.

6. Licensee agrees that it will bear and pay the entire cost of constructing, maintaining, repairing, replacing and operating said Pipeline. Licensee shall install, construct, maintain, repair, replace, and operate the Pipeline in accordance with all applicable federal, state and local municipal laws, ordinances, rules and regulations promulgated by governmental authorities. Licensee shall not commence work upon the Premises until Metra shall have approved Licensee's plans, specifications and profiles, such approval not to be unreasonably withheld or delayed. Metra's approval of Licensee's plans, specifications and profiles, shall not relieve Licensee of the duty to verify that the plans, specifications and profiles, and all amendments thereto, are in compliance with the requirements of this paragraph.

7. Licensee shall not place, keep, store or otherwise permit to be placed, kept or stored any equipment or materials on the Premises or the Property except during such time as Licensee's employees, agents or contractors are physically present and conducting activities permitted under the terms of this License. Licensee agrees that it shall not operate or cause to be operated any vehicle of any kind on the Premises, on any track or on the Property without prior authorization from Metra's authorized representative; provided, however, that Licensee shall not be prohibited from operating Licensee's vehicles and equipment on any public crossing of Metra's tracks and rights of way. If deemed necessary by Metra, a flagman will be provided by Metra, the cost of such services to be paid by Licensee.

8. Licensee agrees that it will, immediately upon receipt of a statement showing the amount thereof, pay all costs of any and all work performed upon the right of way and tracks of Metra which shall be made necessary by the construction, maintenance, repair, replacement, renewal, or presence thereon of said Pipeline.

9. Licensee agrees that before and during the installation, construction, replacement, repair, maintenance, or operation of said Pipeline, or at any other time, Metra shall have the right to provide such safe and temporary structures as it may deem necessary for safely caring for and preserving its tracks, buildings or other improvements and Licensee agrees to pay to Metra the entire cost of putting in or removing such temporary structures and of restoring the Premises and the Property as near as may be to the same condition that existed before the commencement of said work.

10. Licensee agrees that should the construction, maintenance, operation, repair or presence of the Pipeline necessitate any change or alteration in the location or arrangement of any other pipelines, appurtenances or other improvements located on the Premises or the Property, the cost of such change or alteration shall be paid by Licensee within thirty (30) days of presentation of a bill by Metra.

11. Licensee shall at all times install, construct, replace, repair, maintain and operate said Pipeline in a secure, safe and sanitary condition and in accordance with all applicable laws, ordinances, rules and regulations. Licensee shall take all reasonable safety precautions to adequately secure the Premises, warn of risks and ensure the safety of the public during periods of construction, reconstruction, replacement, repair, maintenance and operation of the Pipeline. If the manner of installing, constructing, repairing, maintaining, replacing or operating said Pipeline shall at any time be in violation of any applicable law, ordinance, rule, or regulation promulgated by governmental authority, then Licensee shall, at no cost or expense to Metra, upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction over the Premises, make such changes or repairs as shall be necessary. Failure or refusal of Licensee to make the required changes or repairs within the time prescribed by said agency shall terminate this Agreement, and Licensee's rights and interest shall revert to Metra; provided, however, that this Agreement shall not terminate as long as Licensee, in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations or so long as Licensee is diligently pursuing compliance..

12. To the fullest extent permitted by law, Licensee hereby assumes and agrees to release, acquit and waive any rights against and forever discharge Metra, the Regional Transportation Authority ("RTA") and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, or on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with, the use of the Premises or the Property for the purposes set forth in this Agreement, or which may occur to or be incurred by Licensee, its employees, officers, agents and all other persons, firms and corporations acting on Licensee's behalf or with Licensee's authority while on the Premises or the Property, or arising from the condition of the Premises or the Property during the term of this Agreement, whether or not such injuries or damages are caused by the actions, omissions or negligence of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this License to the contrary, the releases and waivers contained in this paragraph shall survive termination of this License.

13. To the fullest extent permitted by law, the Licensee agrees to indemnify, defend and hold harmless Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all injuries, liabilities, losses, damages, costs, payments and expenses of every kind and nature (including, without limitation, court costs and attorneys' fees) for claims, demands, actions, suits, proceedings,

judgments, settlements arising out of or in any way relating to or occurring in connection with: (i) the activities permitted under the terms and provisions of this Agreement; (ii) the condition of the Premises or Property; (iii) the failure to investigate claims; or (iv) which may occur to or be incurred, by the Licensee, its employees, officers, agents, and all other persons acting on its behalf while on the Premises or Property, whether or not such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the actions, omissions or negligence of Metra, the RTA or the NIRCRC. Metra agrees to notify the Licensee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. Licensee further agrees to defend Metra, the RTA, the NIRCRC, their respective directors, administrators, officers, agents and employees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision provided, however, that Metra, the RTA and the NIRCRC, may elect to participate in the defense thereof at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents or employees. The Licensee shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of Metra, the RTA and the NIRCRC, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement.

14. Prior to entering upon the Premises, Licensee agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-7093) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department. During all periods that Licensee or those persons authorized by or acting on behalf of Licensee are on the Premises to perform or cause to be performed any installation, construction, maintenance, or repair with respect to the Pipeline, Licensee shall cause the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and any other railroads operating on Metra property and/or other railroads as required are named as additional insured on all insurance policies relating to the Premises. At a minimum, Licensee shall obtain and keep in force the insurance coverages, kinds, and amounts, relating to the Premises as listed below (Metra may change said insurance requirements from time to time). The total cost of the premium for such insurance shall be at the expense of Licensee or its contractors and/or sub-contractor(s):

- (a) **Worker's Compensation Insurance** (Coverage A) in an amount no less than required under State law. Additionally, **Employer's Liability** (Coverage B) in an amount no less than One Million Dollars (\$1,000,000 – each accident, \$1,000,000 – each disease and \$1,000,000 policy limit-disease);
- (b) **Business Automotive Liability Insurance** with coverage of no less than One Million Dollars (\$1,000,000) combined single limit;

(c) **Commercial General Liability Insurance** with coverage of no less than Two Million Dollars (\$2,000,000) per occurrence; and Four Million Dollars (\$4,000,000) aggregate. The Commercial General Liability insurance policy shall not include any exclusion for leakage, seepage or pollution emanating from the pipeline(s).

(d) **Railroad Protective Public Liability Insurance** (AAR-AASHTO form) in the name of The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and any other railroads operating on Metra property and/or other railroads as required are named as additional insured, providing for a limit of no less than Five Million Dollars (\$5,000,000) single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Licensee will furnish such insurance with an aggregate of no less than Ten Million Dollars (\$10,000,000) for all damages as a result of more than one occurrence.

15. Licensee or its contractor(s) shall not commence any work until it has obtained and provided the required insurance and has received approval of same by Metra. All policies must be in full force at the time of submission and shall not be canceled, modified, limited or allowed to expire without having given Metra thirty (30) days prior written notice of such. Notice must be sent via certified mail to: Metra, Attention: Director, Risk Management, 15th Floor, 547 West Jackson Boulevard, Chicago, Illinois 60661.

16. This License may be terminated by Metra effective immediately upon notice to Licensee if the Premises, or any portion thereof, are needed for any Metra or railroad purposes as determined by Metra in its sole discretion or Licensee ceases to operate or maintain the Pipeline or violates any of the terms, conditions or provisions set forth in this License. In case of termination, Licensee shall remove from the Premises said Pipeline and shall restore said Premises to the same or better condition than that which existed prior to the construction and installation of said Pipeline; or upon failure, neglect or refusal of Licensee to do so, Metra may make or cause to be made such removal and restoration, and the total cost hereof shall be paid by Licensee; or, if Metra shall so elect, it may treat the said Pipeline as abandoned by Licensee and may make such disposition thereof as it may see fit. This License shall be perpetual unless terminated in accordance with the terms.

17. This License and all of the terms, conditions, rights and obligations herein contained shall inure to and be binding upon the parties, their respective legal representatives, lessees, permittees, successors and/or assigns whether hereinabove so stated or not; but it is distinctly agreed that Licensee shall not assign its rights under this License without first having received the prior written consent of Metra.

18. All payments required to be made by Licensee to Metra under the terms; conditions or provisions of this License shall be made within sixty (60) days of Licensee's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 ½%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

19. All notices, demands and elections required or permitted to be given or made by either party upon the other under the terms of this License or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, or hand delivered to the respective addresses shown below or to such other party or address as either party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, or on the day of delivery if hand delivered.

(a) Notices to Metra shall be sent to:

Metra
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Real Estate & Contract Management, Director
Phone: (312) 542-8189

(b) Notices to Licensee shall be sent to:

Village of Roselle
31 S Prospect Street
Roselle, Illinois 60172
Attn: Kristin Mehl
Phone: (630) 671-2375

20. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the parties. No waiver of any obligation or default of Licensee shall be implied from omission by Metra to take any action on account of such obligation or default and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This License constitutes the entire agreement between the parties with respect to the subject matter hereof.

LICENSEE ACKNOWLEDGES THAT INSTRUMENTS OF RECORD, COURT DECISIONS, OR THE LAWS OF THE STATE IN WHICH THE LICENSE PREMISES ARE LOCATED MAY LIMIT THE QUALITY OF METRA'S TITLE. LICENSEE FURTHER ACKNOWLEDGES THAT LICENSEE PURCHASES THE LICENSE SUBJECT TO THESE POSSIBLE LIMITATIONS ON THE TITLE AND ASSUMES ALL RESPONSIBILITY FOR INVESTIGATING THE TITLE TO THE LICENSE PREMISES AND THE APPLICABLE LAWS OF THE STATE.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of this _____ day of _____, 2021.

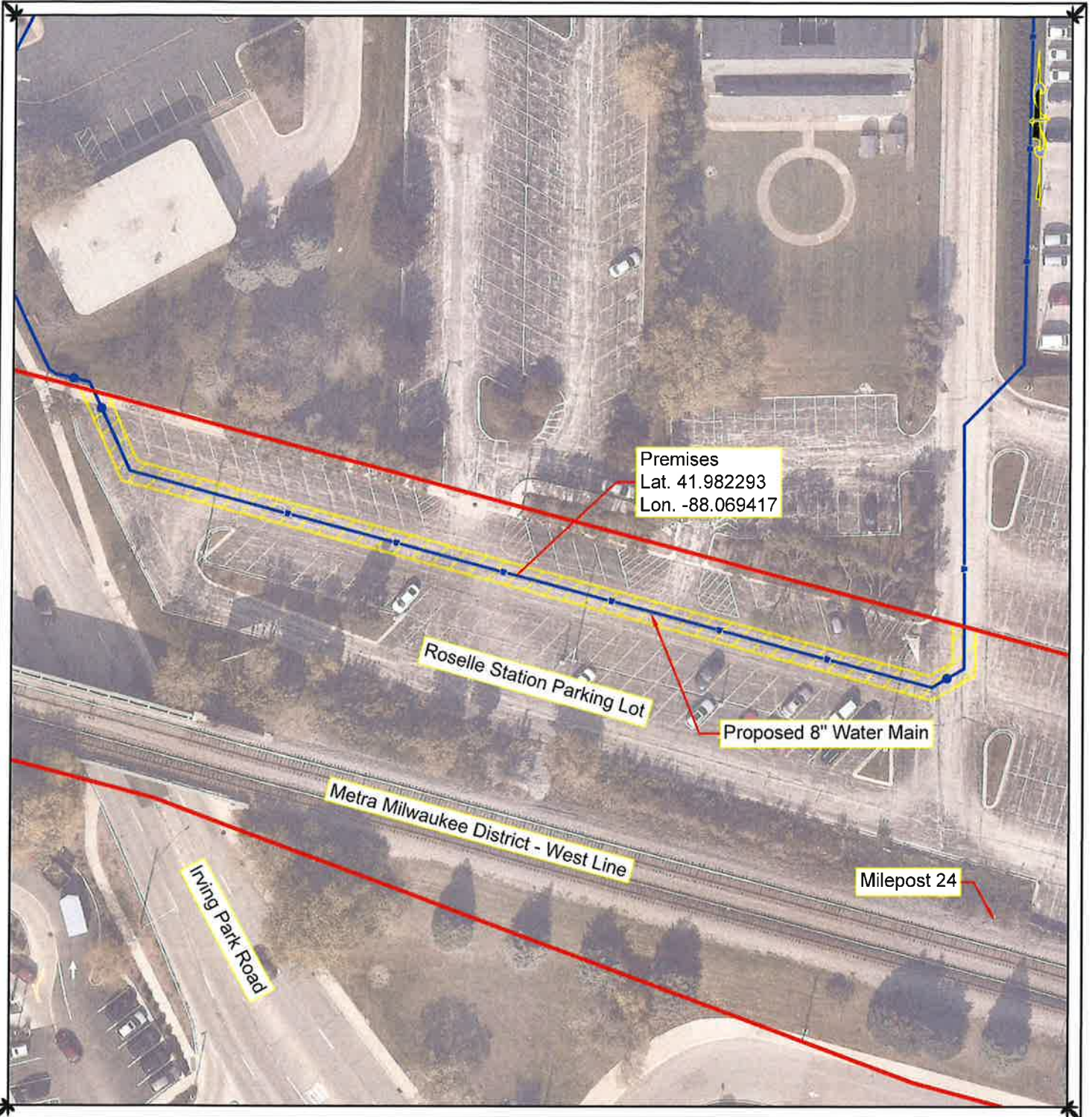
**COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION
AUTHORITY d/b/a METRA:**

**LICENSEE,
VILLAGE OF ROSELLE:**

By: _____
James M. Derwinski
CEO/Executive Director

By: _____
Name: _____
Title: _____

Exhibit A



License agreement with the Village of Roselle to install an 8" water main on Metra right of way.

EXHIBIT "A"



547 W. JACKSON BLVD.
CHICAGO, IL 60661

