



AGENDA ITEM #8F

**AGENDA ITEM EXECUTIVE SUMMARY
Village Board Meeting
9/13/2022**

Item Title: Rodenburg Road Easement Agreement with Metra

Staff Contact: Kristin Mehl, Assistant Director of Public Works

CONSENT

VILLAGE BOARD ACTION:

Adopt a Resolution authorizing the Mayor to execute an Easement Agreement Between the Village of Roselle and the Commuter Rail Division of the Regional Transportation Authority for Rodenburg Road.

Executive Summary:

The Rodenburg Road Improvements between Central Avenue and the Village Limits include the reconstruction of the roadway north of Timberleaf Circle and continue across the railroad tracks into the Village of Schaumburg. Additionally, a new bikepath will be constructed across the tracks with new pedestrian crossing gates. The work will occur within property owned by the Commuter Rail Division of the Regional Transportation Authority (Metra). Metra is requiring both Villages to enter into separate Easement Agreements to allow the roadway to be improved and bikepath constructed within their right-of-way. Attached is the agreement that must be executed and recorded in order for the project to proceed. Additionally, Metra requires a \$2,500 payment to assist with the preparation and processing of the easement agreement.

Implications:

Is this item budgeted? The project is budgeted using Rebuild Illinois Funds and is slated for construction in 2023.

Estimated cost: \$2,500

Any other implications to be considered?

Strategic Priority:

Reliable Infrastructure

Attachments:

Resolution
Agreement

THE VILLAGE OF ROSELLE
DUPAGE AND COOK COUNTIES, ILLINOIS

RESOLUTION

NUMBER _____

A RESOLUTION
APPROVING AND AUTHORIZING
THE EXECUTION OF AN EASEMENT AGREEMENT
BY AND BETWEEN
THE VILLAGE OF ROSELLE AND
COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION AUTHORITY

DAVID PILESKI, Mayor
AMANDA HAUSMAN, Village Clerk

BRUCE BERKSHIRE
WAYNE D. DOMKE
CHERYL LENISA
TOM DELLA PENNA
TOM PIORKOWSKI
LEE TREJO

Village Board

Published in pamphlet form by authority of the
Mayor and the Board of Trustees of the Village of Roselle
on this the 13th day of September, 2022

RESOLUTION NO. _____

**A RESOLUTION
APPROVING AND AUTHORIZING
THE EXECUTION OF AN EASEMENT AGREEMENT
BY AND BETWEEN
THE VILLAGE OF ROSELLE AND
COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION AUTHORITY**

WHEREAS, the Village of Roselle is a municipal corporation organized pursuant to the laws of the State of Illinois possessing certain powers and perform certain functions pertaining to its local government and affairs as provided for by and through the Illinois Constitution of 1970, Illinois Municipal Code and Illinois Statute;

WHEREAS, the Village of Roselle (hereinafter referred to as "Village") upon approval of the corporate authorities may enter into an agreement with another party pursuant to Illinois Statute;

WHEREAS, the Commuter Rail Division of the Regional Transportation Authority (hereinafter referred to as "Metra") is the owner of certain real estate on and along Rodenburg Road in Roselle, Illinois more accurately described as being a portion of PIN 02-04-504-001, located on Metra's Milwaukee District West Line right of way GPS coordinates, 41.989533,-88.109894 (hereinafter referred to as the "Subject Property");

WHEREAS, the Village desires to obtain a non-exclusive easement for certain planned improvements of Rodenburg Road which will include the addition of a multi-use path with gates;

WHEREAS, the Village and Metra have agreed to certain terms and conditions relating to an easement in and on the Subject Property and desire to enter into an easement agreement setting forth the responsibilities of the respective parties relative to the grant of easement; and

WHEREAS, the Corporate Authorities of the Village of Roselle have determined that it is in the best interests of the health, welfare and safety of the residents of the Village of Roselle to approve the easement agreement with the Commuter Rail Division of the Regional Transportation Authority for the purposes referenced herein.

NOW, THEREFORE, BE IT RESOLVED, in open meeting assembled, by the Mayor and Board of Trustees of the Village of Roselle, DuPage and Cook Counties, Illinois, as follows:

Section One – Recitals

The Corporate Authorities hereby find that all of the recitals hereinbefore stated as contained in the preamble to the resolution are full, true and correct and do hereby, by reference, incorporate and make them part of this resolution as legislative findings.

Section Two – Approval of Easement Agreement

The Village hereby approves the Easement Agreement (hereinafter referred to as the “Agreement”) substantially in the form attached hereto and made a part hereof as Exhibit A.

Section Three – Authorization and Direction

The Mayor is hereby authorized to execute, Agreement, substantially in the form of such agreement attached hereto as Exhibit A, with such changes therein as shall be approved by the Village Attorney and the officials of the Village executing the same, their execution thereof to constitute exclusive evidence of their approval to any and all changes or revisions therein from and after the execution and delivery of such agreements.

Section Four - Other Actions Authorized

The officers, employees and/or agents of the Village shall take all actions necessary or reasonably required to carry out and give effect to the intent of this resolution and otherwise to consummate the transactions contemplated herein and shall take all actions necessary in conformity therewith including, without limitation, the execution and delivery of all documents required to be delivered in connection with the transaction contemplated herein.

Section Five - Acts of Village Officials

That all past, present and future acts and doings of the officials of the Village that are in conformity with the purpose and intent of this resolution are hereby, in all respects, ratified, approved, authorized and confirmed.

Section Six – Effective Date

This resolution shall be in full force and effect from and after its passage, approval and publication as provided by law.

Section Seven - Publication

This resolution shall be published in book or pamphlet form as provided by the Illinois Municipal Code.

Section Eight – Conflict Clause

All resolutions, parts of resolutions or board actions in conflict herewith are hereby repealed to the extent of such conflict.

Section Nine – Saving Clause

If any section, paragraph, clause or provision of this resolution is declared by a court of law to be invalid or unconstitutional, the invalidity or unconstitutionality thereof shall not affect the validity of any other provisions of this resolution which are hereby declared to be separable.

Section Ten – Recording

This resolution shall be entered into the minutes and upon the journals of the Board of Trustees of the Village of Roselle.

DECIDED pursuant to a Roll Call Vote:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

PASSED AND APPROVED by the Village of Roselle Board of Trustees on the 13th day of September, 2022:

David Pileski
Mayor

ATTEST:

Amanda Hausman
Village Clerk

STATE OF ILLINOIS)
) SS
 COUNTIES OF DUPAGE AND COOK)

CLERK’S CERTIFICATION

I, Amanda Hausman hereby certify that I am the duly appointed and qualified Village Clerk in and for the Village of Roselle, DuPage and Cook Counties, Illinois; that I am the keeper of the files, records, and seal of said Village, and that the following is a true and correct copy of Resolution No. _____

**A RESOLUTION
 APPROVING AND AUTHORIZING
 THE EXECUTION OF AN EASEMENT AGREEMENT BY AND BETWEEN
 THE VILLAGE OF ROSELLE AND COMMUTER RAIL DIVISION OF
 THE REGIONAL TRANSPORTATION AUTHORITY**

adopted and approved by the Mayor and the Board of Trustees at an official meeting held on September 13, 2022 and that the vote on the motion for adoption was as follows:

	YES	NO	ABSENT	PRESENT
Bruce Berkshire				
Wayne D. Domke				
Cheryl Lenisa				
Tom Della Penna				
Tom Piorkowski				
Lee Trejo				
David Pileski				
TOTAL				

I do further certify that the deliberations of the Board on the adoption of said resolution were conducted openly, that the vote on the adoption of said resolution was taken openly, that said meeting was called and held at a specified time and place convenient to the public, that notice of said meeting was duly given to all of the news media requesting such notice, that said meeting was called and held in strict compliance with the provisions of the Open Meetings Act of the State of Illinois, as amended, and with the provisions of the Village Code of the Village of Roselle, as amended, and that the Board has complied with all of the provisions of said Act and said Code and with all of the procedural rules of the Board.

I further state that this Certification is issued under my hand and the seal of the Village of Roselle as required in the Illinois Compiled Statues 65 ILCS 5/1-2-4.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Corporate Seal of said Village of Roselle, DuPage and Cook Counties, Illinois on the date set forth herein.

 Amanda Hausman, Village Clerk

(SEAL)

Exhibit A
Easement Agreement

DRAFT

EASEMENT AGREEMENT

Prepared by:

Metra
547 West Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate and
Contract Management
Phone: (312) 322-8006

After recording return to:

Village of Roselle
31 South Prospect Street
Roselle, Illinois 60172
Attn: Village Manager
Phone: (630) 980-2000

PIN: (portion of) 02-04-504-001
(DuPage County)

(Above Space for Recorder's Use Only)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**”) between the Commuter Rail Division of the Regional Transportation Authority a division of an Illinois municipal corporation whose address is 547 West Jackson Boulevard, Chicago, Illinois 60661 (“**Metra**”) and the Village of Roselle, an Illinois municipal corporation whose address is 31 South Prospect Street, Roselle, Illinois 60172 (“**Grantee**”).

NOW, THEREFORE, Metra hereby grants to Grantee a non-exclusive easement for the additional Metra property required for the planned improvements of Rodenburg Road including the addition of a multi-use path with gates, within Roselle (the “**Easement**”). Said Easement allows Grantee to use certain of Metra’s property in Roselle, being a portion of PIN 02-04-504-001, located on Metra’s Milwaukee District West Line (“**MD-W**”) right-of-way (Milepost 26.17) GPS coordinates, 41.989533, -88.109894, for the uses and purposes of a vehicular roadway (“**Roadway**”) and multi-use path (“**Path**”) which, when re-constructed and improved, will cross the MD-W right of way and tracks as delineated and described on **Exhibit A** (“**Premises**”). This Easement is granted upon the following express conditions, terms, and covenants to be observed, kept, and performed by Grantee:

1. As one of the considerations for this Easement, Grantee agrees to pay to Metra the sum of \$2,500 for the cost of preparing this Easement, payable in advance.

2. Grantee or its contractor will be required to coordinate with Metra in order to minimize any interruption of commuter train movement and use of the Roadway through the grade crossing during the re-construction and improvements of Rodenburg Road.

3. The Roadway and Path contemplated on the Premises are to be installed and constructed exclusively, to the extent possible, above the surface of the ground for the uses and purposes of a Roadway and Path (“**Permitted Use**”). Except for periods of construction, maintenance, repair, replacement, or removal of the Roadway and Path, Grantee shall not permit any equipment to be placed, or remain on or around the Premises or other of Metra’s property (the “**Property**”). Following periods of maintenance, repair, replacement, or removal of the Roadway and Path Grantee, at its own cost and expense, shall remove any debris and restore, or cause to be restored the Premises and the Property to a state satisfactory to Metra. In the event Grantee fails to cause the Premises and the Property to be restored to the reasonable satisfaction of Metra, Metra may restore the Premises and Property and Grantee shall reimburse Metra for all costs and expenses incurred by Metra for said restoration.

4. The interests conveyed herein shall be subject to all other existing or future third-party uses of the Premises permitted by Metra. Metra reserves the exclusive right to allow other uses over, under, across, parallel with, or within the Premises, provided that such uses do not unreasonably interfere with Grantee’s Permitted Use.

5. Metra shall have the right to retain existing improvements at the location of the Premises and also shall have the right at any and all times in the future to construct and maintain additional improvements as Metra may from time to time elect over, under, across, parallel with, or within the Premises, provided that such uses do not unreasonably interfere with Grantee’s Permitted Use. Nothing shall be done or suffered to be done by Grantee that will in any manner impair the usefulness or safety of the existing improvements of Metra or of such improvements as Metra may construct or allow to be constructed in the future.

6. To the fullest extent permitted by law, Grantee hereby assumes and agrees to release, acquit, and waive any rights against and 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, and on account of damage to or destruction of property arising from any accident or incident which may occur to or be incurred by Grantee, its employees, officers, agents, and all other persons acting on its behalf while on the Premises or the Property or 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 Easement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Easement.

7. To the fullest extent permitted by law, Grantee 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 court costs and attorneys’ fees)

as a result of claims, demands, actions, suits, proceedings, judgments, or settlements, arising out of or in any way relating to or occurring in connection with Grantee's use of or the condition of the Premises or 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 Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. Grantee 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, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; 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. Grantee shall not enter into any compromise, or settlement of any such claims, suits, actions, or proceedings without the consent of Metra, 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.

8. Grantee shall obtain, provide proof to Metra of, and keep in force at all times insurance coverages in the types and amounts approved by Metra's Risk Management Department (312-322-1455) as outlined below. Further, Grantee shall cause the 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, the Regional Transportation Authority, an Illinois municipal corporation, the Canadian Pacific Railroad/Soo Line Railroad, a Minnesota corporation, and any other railroads operating on Metra's Milwaukee District West Line, and/or other railroads as maybe required,

are named as additional insured on all insurance policies relating to the Premises. At a minimum, Grantee 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 Grantee 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.

- (d) **Railroad Protective Public Liability Insurance** (AAR-AASHTO form) 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. Grantee 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.

9. Once completed, Grantee shall pay the cost of repairing, replacing, maintaining, and operating said Roadway and Path on the Premises in Roselle, in accordance with: (a) all applicable federal, State, and local laws, ordinances, rules, and regulations; and (b) the plans and specifications, approved by Metra. Metra shall be responsible for maintaining the tracks; the crossing surface materials; signal equipment; bells; lights; and gates.

10. Metra reserves the right to have a representative present during any construction on or adjacent to the Premises, but in no way waives any rights by failing to have said representative present.

11. Grantee agrees that it will 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 maintenance, repair, replacement, removal, or presence thereon of said Roadway and Path. To the extent that in the reasonable opinion of Metra or its designee, flagging and supervisory services are deemed necessary by reason of the repair, renewal, replacement, alteration, or removal of said Roadway and Path, Grantee shall, upon receipt of a bill or invoice therefor, reimburse Metra or its designee for the reasonable cost and expense of furnishing such flagging and supervisory services.

12. Any rights to the Premises not specifically granted to Grantee are reserved to Metra. All rights and interest in and to said Premises shall revert to Metra if Grantee vacates, abandons, or ceases to use the Premises for a period of 12 consecutive months. In such event, Grantee shall, upon Metra's request, execute appropriate documents releasing Grantee's interests.

13. Grantee shall not suffer any mechanics,' laborers,' or materialmen's lien to be filed against the Premises, or any interest therein by reason of any work, labor, services, or materials performed at or furnished to, or claimed to have been performed at or furnished to, the Premises, by, or at the direction of sufferance of, Grantee, or anyone holding the Premises through or under Grantee. In the event such lien is filed against the Premises, shall promptly satisfy, and discharge such lien upon notice thereof.

14. All notices, demands and elections required or permitted to be given or made by either Party upon the other under the terms of this Easement 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. Notices sent by certified or registered mail shall be deemed

delivered three (3) days after deposited in the U.S. mail. Notices sent by overnight carrier shall be deemed delivered on the day delivered. Notice to parties shall be delivered as follows:

(a) If to the Grantee:

Village of Roselle
31 South Prospect Street
Roselle, Illinois 60172
Attn: Village Manager
Phone: (630) 980-2000

(b) If to Metra:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate & Contract Management
Phone: (312) 322-8006

15. This Easement may be terminated by Metra effective sixty (60) days after giving notice to Grantee if Grantee ceases to operate or maintain the Roadway and Path.

16. This Easement Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. No waiver of any obligation or default of Grantee shall be implied from omission by Metra to take any action on account of such obligation or default. 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. This Easement shall be interpreted under the laws of the State of Illinois. All actions or proceedings arising directly or indirectly or otherwise in connection with, out of or from this Agreement shall be litigated only in a court having a situs within the County or Counties of the State of Illinois that the Premises is located. Grantee hereby consents and submits to the jurisdiction of any local, state, or federal court located within said County or Counties and State and hereby waives any right it may have to transfer or change the venue of any litigation arising directly or indirectly or otherwise in connection with, out of, or from this Agreement.

GRANTEE ACKNOWLEDGES THAT INSTRUMENTS OF RECORD, COURT DECISIONS, OR THE LAWS OF THE STATE IN WHICH THE PREMISES ARE LOCATED MAY LIMIT THE QUALITY OF METRA'S TITLE. GRANTEE FURTHER ACKNOWLEDGES THAT THE EASEMENT IS SUBJECT TO THESE POSSIBLE LIMITATIONS.

(Signature Page to Follow)

IN WITNESS WHEREOF, this instrument is executed and enforceable as of the later signature below.

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

VILLAGE OF ROSELLE:

By: _____

By: _____

Name: James M. Derwinski

Name: _____

Title: CEO/Executive Director

Title: _____

Date: _____

Date: _____

Exhibit A

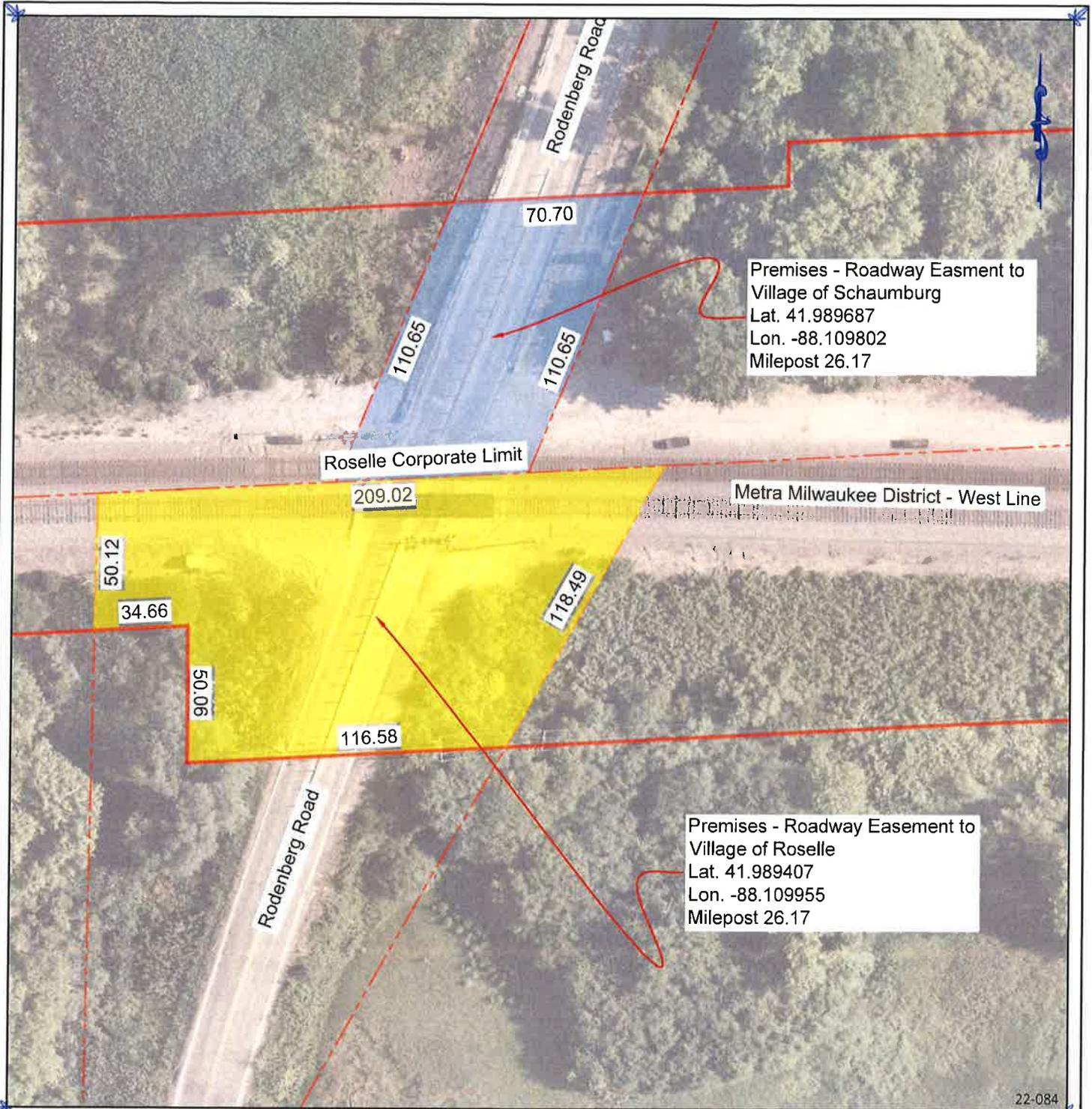


Exhibit to accompany Rodenburg Road grade crossing easement agreement with the village of Roselle.

EXHIBIT "A"



547 W. JACKSON BLVD.
CHICAGO, IL. 60661

