



**AGENDA ITEM #19**

**AGENDA ITEM EXECUTIVE SUMMARY  
Village Board Meeting  
1/9/2023**

**Item Title:** Metra Station Operation and Maintenance Agreement

**Staff Contact:** Brian Joanis, Assistant Village Administrator

NEW BUSINESS

**VILLAGE BOARD ACTION:**

**Provide direction to staff in regard to an agreement for the operation and maintenance of a commuter rail facility in the Village of Roselle.**

**Executive Summary:**

The Village's twenty (20) year lease agreements for operation and maintenance of the commuter station facility and commuter parking lots are set to expire in March 2023. Over the past several months, staff has negotiated a new proposed agreement with Metra based upon decreased ridership revenue and increased maintenance costs due to current and future expected economic conditions. Below is a list of the key tenants of the proposed agreement with requested direction from staff:

**Term**

The proposed agreement increases the term to a forty (40) year term from twenty a (20) year term. Termination of the agreement requires 180 days' notice increased from 90 days.

**Staff recommendation/Board direction:** *Staff recommends a term of twenty (20) years with termination requiring 180 days' notice. Metra has no objection to these terms.*

**Commuter Spaces/Parking lots**

Pursuant to the Property Exchange Agreement approved by the Village Board in January 2021, the Village must guarantee 162 commuter spaces within the Metro-19 parking garage (TOD). The Village is also required to provide 80 additional commuter spaces upon verifiable field counts by Metra establishing the need for additional parking spaces. The Village has up to one year from the notice to provide the additional 80 commuter spaces. Metro-19 ordinances are included as exhibits in the new agreement.

**Staff recommendation/Board direction:** Staff recommends adopting these terms which is the same language already approved in the redevelopment agreement for the Metro-19 development.

### **Station Maintenance**

The Village is responsible for routine maintenance including janitorial services of floors and windows, painting, plumbing fixtures, all utilities located inside the station, and snow removal of sidewalks and commuter parking lots. The Village is not responsible for any snow removal from the platforms, ramps and stairwells, utilities located on or along the ramps, platforms or stairwells, repairing any structural members, columns, floors, roof, heating plant and foundation.

The current agreement includes a maintenance threshold of any single item needing repair in excess of \$2,000 is the responsibility of Metra. The amount of any single item in need of repair decreased by \$50 each year on the anniversary date of the agreement. The current amount of any one item being the responsibility of Metra to repair is \$1,000. The new agreement proposes any single item in excess of \$2,000 will be Metra's responsibility. The new threshold will *increase* by \$150 after the third anniversary date of the agreement, and by \$100 each anniversary date thereafter. At the end of the agreement period, any single item in need of repair of \$3,850 or more will be Metra's responsibility. Any single item under that amount will be the Village's responsibility – provided it is not any structural component of the station.

**Staff recommendation/Board direction:** Staff negotiated the threshold from \$3,250 to \$2,000 with the first increase of \$150 after year three of the agreement, and \$100 every year thereafter. The negotiated final year threshold amount reduced from \$4,250 to \$3,850. Staff recommends the approval of the maintenance threshold amount and escalator.

### **Metra Station Maintenance Requests**

Metra may provide written request for replacement, maintenance or repairs to be performed by the Village on Metra's behalf. No obligation for Metra to pay for any costs arising from work performed prior to receiving or falling outside the restrictions or scope of the notice to proceed. No language for Village to refuse the request for work to be performed on Metra's behalf.

**Staff recommendation/Board direction:** Staff believes the maintenance of the station is most efficient when both parties communicate to effectively take care of issues as quickly as possible. The ability to perform work on Metra's behalf saves processing time and also prevents issues from impacting maintenance items the Village is responsible for. Staff recommends adopting this language.

### **Implications:**

**Is this item budgeted?** Yes, the FY2023 Budget includes \$23,320 in the Parking Lot Operating fund for expenditures specific to the operation and maintenance of the Metra station.

**Estimated cost:** N/A

**Any other implications to be considered?** Depending on the direction received from the Board, staff will prepare a final agreement for Board adoption at a future meeting.

**Strategic Priority:**

Financial Stewardship

**Attachments:**

Draft Metra agreement

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF  
A COMMUTER RAIL FACILITY IN THE VILLAGE OF ROSELLE**

**THIS AGREEMENT** is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”) and the Village of Roselle, an Illinois municipal corporation (“**Municipality**”). Metra and Municipality are hereinafter sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties.**”

**RECITALS**

A. The Parties have recently exchanged equally valued properties within the vicinity of Metra’s Roselle Commuter Station and Parking Facilities in support of a planned Transit Oriented Development (“**TOD**”), this Agreement is designed to redistribute the various responsibilities between the Parties regarding maintenance and repair of the Station and Parking Facilities, as defined below.

B. Metra owns the depot building, warming shelter, and related appurtenances, including without limitation, the platforms, ramps, stairs, and sidewalks (collectively referred to as “**Station**” or “**Station Facility**”) and portions of the adjacent Metra owned Lot No.1 and Lot No. 2 (sometimes referred to as “**Parking**” or “**Parking Facility**”), constructed by Metra or funded by Metra with State, federal or Metra funds, on the real property owned by Metra, identified as permanent index number(s) portions of 02-02-304-001 and 02-02-504-001 delineated on **Exhibits A & B** attached to and made a part of this Agreement (“**Premises**”). The Station Facility and Parking Facility are hereinafter sometimes jointly referred to as the “**Commuter Facility.**”

C. Metra desires to grant to Municipality the right to manage, operate, and maintain the Commuter Facility on the Premises.

D. The Parties hereto have determined that the operation and maintenance of the Commuter Facility on the Premises is in the best interests of the public and serves a valid public purpose.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, and the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, Metra does hereby grant to Municipality the right to manage, operate, and maintain the Commuter Facility subject to and in accordance with the following terms covenants and conditions:

1. **TERM.** Municipality’s obligations and right to use the Commuter Facility under the terms and provisions of this Agreement shall commence on the day and year first written above and shall continue in force and effect for a period of ~~twenty forty~~ (2040) years from said date (“**Use Term**”) unless otherwise terminated as provided under the terms and conditions of this Agreement.

Either Party may at any time terminate this Agreement by giving the other Party one hundred eighty (180) days prior written notice of its intention to so terminate.

## 2. PURPOSE OF USE.

(a) The Parties agree that the purpose of this Agreement is to ensure that the Premises is protected, maintained and operated as a Commuter Facility with daily rates for public parking. Municipality desires to control access to said Premises and operate and maintain the Commuter Facility pursuant to the terms and conditions of this Agreement.

(b) At or near the completion of the TOD, the Village agrees to assure there will be no less than 162 commuter parking spaces made available for commuter parking on a permanent basis within the TOD. Attached to and made a part of this Agreement, Exhibit A-1 and Exhibit A-2 are intended for illustrative purposes only, as a reference for the approximate location of the aforementioned 162 commuter parking spaces within the TOD. Additionally, Metra and the Village have agreed that after the completion of the TOD, upon written notice from Metra, the Village shall provide 80 additional commuter spaces to serve the Station Facility, at a location or locations approved by Metra. Metra shall provide this notice upon verifiable field counts by Metra establishing the need for the additional 80 spaces. The Village will have up to one year after receiving notice from Metra, to provide additional parking spaces.

(c) Parking lot fees set and collected by Municipality shall be standardized for all patrons of the Parking Facility and Municipality shall under no circumstances discriminate against non-residents of the Municipality in setting parking fees. The Parking Facility shall be operated as a daily fee parking lot with spaces available on a first come, first served basis. Metra reserves the right, at any time, to review and approve the amount of the parking fees charged by Municipality, which approval shall not be unreasonably withheld provided, however, that the proposed increase is consistent with regional standards for Metra parking lots.

(d) Municipality may, upon the prior written consent of Metra, sublicense to third-parties space for commercial and related commuter services, such as vending and concession operations (collectively, “**Third-Party Services**”). Metra's written consent shall not be unreasonably withheld, and if not received by Municipality within ten (10) days of a request for consent shall be deemed as granted. All revenue derived from Municipality's use of the Premises for Third-Party Services shall first be utilized for Municipality Routine Maintenance Obligation, as described below, and administrative expenses incurred from the operation of the Station Facility. Any Third-Party Services shall not interfere with or hinder commuters' use of the Station Facility in any way. Any sublicense for Third-Party Services shall be subject to and subordinate to the terms of this Agreement.

3. **USE BY METRA AND PUBLIC.** Metra further reserves unto itself, its successors and assigns, permittees, and licensees the right to use said Premises in the general conduct of its railroad business including endeavors for the convenience of its commuters and the public including without limitation, such services as coin operated vending machines and automated teller machines. Municipality shall not interfere with or infringe upon Metra’s or the public’s lawful use

of the said Premises so reserved. Municipality further agrees that Municipality and Municipality's employees and invitees in and about said Premises shall be subject to the oversight of Metra relating to the operation of Metra commuter facilities and to Metra's railroad operations. Metra reserves the nonexclusive right to regulate and control the people who enter said Premises and their conduct and reserves the right to enter upon said Premises at any time and to eject therefrom any disorderly person or persons.

#### 4. MAINTENANCE, ACCESS, AND RELOCATION.

(a) **Maintenance of the Station Facility.** Except as otherwise provided herein, Municipality, shall manage the Station Facility and shall be responsible throughout the Use Term to maintain and repair the Station Facility and all fixtures and appurtenances thereon and shall keep all of the same, and any area used in the future for commercial development, in a good state of repair, appearance and order (including, but not limited to, janitorial maintenance of floors and windows, painting, plumbing fixtures, broken glass, all utilities inside the Station Facility, and snow removal from sidewalks (leading to ramps, platforms and/or stairwells and the providing of scavenger service)), corresponding to standards that apply to Municipality's other public buildings and facilities ("**Routine Maintenance**"), except Municipality **shall not** be responsible for: (i) the snow removal from the platforms, ramps, and stairwells, (ii) any utilities located on or along the ramps, platforms or stairwells, or (iii) repairing or replacing any structural portion of the Station Facility (including, but not limited to, support walls, structural members, columns, floors, roof, heating plant and foundation). Metra shall repair and/or replace the structural portion of the Station Facility which has come into such a state of disrepair as to require repair or replacement. Municipality shall be responsible for notifying Metra, in writing, within thirty (30) days of the need for replacements or repairs which are to be the responsibility of Metra. For the purpose of determining what items shall be the responsibility of Municipality or Metra hereunder it is hereby agreed that any single item costing Two Thousand Three Thousand Two Hundred Fifty Dollars (\$2,000.00~~\$3,250.00~~) or more, to repair or replace, shall be the responsibility of Metra ("**Metra Repair**"), and all other maintenance and repair expenses shall be the responsibility of Municipality, unless said item to be replaced or repaired is part of the structural portion of the Station Facility, in which case Metra shall be solely responsible for its replacement or repair regardless of the cost of said replacement or repair. The threshold amount to qualify as a Metra Repair shall increase One Hundred Fifty Dollars (\$150.00) on the third each year from the anniversary date of this Agreement. After the third anniversary date, the threshold amount shall increase One Hundred Dollars (\$100.00) each subsequent anniversary date of this Agreement. Metra authorizes Municipality to submit bundled repairs which are the responsibility of Municipality provided therefore that the submitted repairs are a group of identical items at or near failure. Submittal of bundled repairs shall be authorized at the discretion of Metra Direct Supervisor. The maintenance obligations as stated herein are further delineated on **Exhibit C**, attached to and made a part of this Agreement.

(b) Municipality shall inspect the Station at least monthly pursuant to the Maintenance Checklist attached to and made a part of this Agreement as **Exhibit D**. Municipality shall be responsible for filling out the Maintenance Checklist, maintaining copies and submitting the completed forms to Metra's Senior Director, Engineering Maintenance, on at least a semi-

annual basis (no later than the 1st of February and 1st of July of each year), pursuant to the Notice provisions listed in Section 21.

(c) Metra may, from time to time, request the Municipality to perform Metra's obligations regarding maintenance, replacements, or repairs ("**Work**") on Metra's behalf. Only upon receipt of a written request from Metra, Municipality may, at its option, affect such Work, provided that Metra shall have prior written notice of Municipality's intention to so perform and Municipality **shall not** begin any Work until it receives a written notice to proceed ("**Notice to Proceed**") from Metra. Said Notice to Proceed shall contain any restrictions that may be necessary regarding work to be performed, plan approval and any procedures required for reimbursement of funds for the cost of any Work performed on behalf of Metra. It is further agreed that Metra shall be under no obligation to pay for any costs arising from Work performed prior to receiving, or falling outside the restrictions or scope of, the Notice to Proceed. All such Work shall be done lien-free and in a good and workmanlike manner consistent with the quality of labor and materials used in originally constructing such improvements and in accordance with all applicable laws and Railroad requirements and regulations to be advised by Metra.

(d) **Maintenance of the Parking Facility.** Municipality, at its own cost and expense, shall manage the Parking Facility and shall be responsible for the performance of "**Routine Maintenance**" throughout the Use Term. Routine Maintenance shall include but shall not be limited to snow removal, salting, insurance, lighting upkeep, sealing and patching pavement, restriping as needed (but, no less than every five years), repairing and replacing parking signage, and payment of utility expenses associated with the operation of the Parking Facility on the Premises. Municipality shall also be responsible for capital improvements to the Parking Facility including but not limited to major rehabilitation, excavation, demolition of structures, new construction, and light standard placement or replacement necessitated by damage to a structure.

(e) Municipality, at its own cost and expense, shall be responsible for the "**Standard Maintenance**" of all landscaping on and along the Premises. For purposes of this Agreement, Standard Maintenance shall include without limitation watering, weeding, mowing, trimming, mulching as dictated by the specific plantings on the Premises and Parking Facility, and the replacement or removal of dead shrubs and trees pursuant to municipal ordinances regarding landscaping.

(f) In the event Municipality fails to manage, operate or maintain the Commuter Facility in accordance with the terms and provisions of this Agreement, Metra may provide, or cause to be provided, such management, operation and maintenance services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra.

(g) Municipality accepts the Premises subject to rights of any party, including Metra, in and to any existing roadways, easements, permits, or licenses. Municipality agrees to provide access to the Premises to Metra and the public over and through the existing roadways and easements should such access be deemed necessary by Metra. Municipality further agrees that

Metra shall not be responsible for the care or maintenance (including snow removal) of said roadways.

(h) Metra reserves the right to relocate the Commuter Facility or any portion thereof onto other Metra property, at its own cost and expense, in the vicinity of the Premises with no liability for damages to Municipality's interest in the Commuter Facility resulting from such relocation; provided, however, that Metra shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Commuter Facility or portion thereof.

5. **RAIL SERVICE.** Metra makes no warranties or representations, expressed or implied, as to continued rail service to the Premises.

6. **REVENUES.**

(a) All Parking fees, fines, or other revenue derived from Municipality's use of the Commuter Facility ("**Revenues**") shall first be utilized for Routine Maintenance, Standard Maintenance and administrative expenses incurred from the operation of the Commuter Facility. The remainder shall be deposited in a capital improvement account, designated specifically for the Commuter Facility, to be used for future renovation or rehabilitation of the Commuter Facility. Upon termination of this Agreement, Municipality shall deliver all remaining Revenues, including, without limitation, those on deposit in such capital improvement account, to Metra.

(b) Municipality shall establish and maintain adequate accounting records of all Revenues collected and expenses incurred based on generally accepted accounting principles consistent with the manner Municipality maintains records of its other accounts in order to ensure compliance with this Agreement. Municipality shall permit and shall require its contractors to permit Metra, the Regional Transportation Authority ("**RTA**"), the Northeast Illinois Regional Commuter Railroad Corporation ("**NIRCRC**") or any other agency authorized to perform such audit and inspection, to inspect all work, material and other data and records with regard to the Revenues collected and to audit the books and accounts of Municipality and its contractors with respect to said Revenues. Municipality shall submit to Metra an annual audit of its records relating to the Revenues collected and shall make its records available to Metra at mutually convenient times. Furthermore, Municipality shall immediately notify Metra if the Commuter Facility is to be used in a manner substantially different from that intended by this Agreement. At the option of Metra, Metra and Municipality shall conduct a yearly joint inspection of the Premises to assure compliance with the terms of this Agreement.

7. **LICENSE TO OPERATE.** Municipality shall pay for the cost of any licenses, permits, or fees required by federal, state or local rule, regulation, ordinance or law necessary to manage, operate and maintain the Commuter Facility.

8. **SIGNS.**

(a) Municipality shall not post or place any signs on the Premises without having first received Metra's approval of the content, design and location of the sign, which



approval shall not be unreasonably withheld, provided, however, that no signs shall be permitted on or about the exterior facade of the Station Facility.

(b) Metra reserves the right to post or place or to have posted or placed on the Premises, informational signs relative to the operations of Metra.

(c) Metra, by or through its advertising agent and, as applicable, its carriers, shall be entitled to place advertising sign structures along the railroad right-of-way, provided that such sign structures do not create a safety hazard, comply with applicable state and federal railroad regulations and are not placed in such a way so as to impede pedestrian traffic.

(d) The Municipality shall permit Metra, by or through its advertising agent, to place banners from light poles located on the Parking Facility for the advertising of local and regional businesses.

(e) The Municipality shall not cause any tax or fee to be assessed against the signs or be required of Metra or Metra's contractor(s) for the installation and maintenance of the sign structures described in this Section.

#### 9. COMPLIANCE (LEGAL AND INSURANCE).

(a) Municipality shall not use or permit upon the Premises anything that will invalidate any policies of insurance held by Metra or Municipality now or hereinafter carried on or covering the Premises, the Commuter Facility or any improvements thereon. Municipality shall manage, operate, maintain, and use the Premises and the Parking Facility in compliance with the requirements of all local, state, and federal ordinances, laws, rules, and regulations in effect during the Use Term.

(b) Throughout the Use Term, Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-1455) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and when required, railroad protective liability insurance coverage as stated on **Exhibit E** attached to and made a part of this Agreement ("**Insurance Requirements**"). To the extent permitted by law, said insurance shall show *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*, as additional insureds and shall be endorsed to assume the contractual obligations of Municipality as set forth in this Agreement. A duplicate copy of such insurance policy or a certificate of insurance and signed copy of a report showing established insurable value shall be furnished to Metra and must show on the insurance policy or

the certificate of insurance that Metra will be properly notified in writing at least thirty (30) days prior to any modification or cancellation of such policy.

(c) Municipality and its agents shall not permit the existence of any nuisance on the Premises or during the operation of the Commuter Facility; shall not create dangerous or hazardous conditions on the Premises, nor allow dangerous, explosive, flammable, or combustible materials on the Premises which would increase or tend to increase the risk of fire; and further, the Municipality or its agent shall keep, observe and comply with all federal, state and local rules, regulations, ordinances, and laws having jurisdiction over the Premises or the Commuter Facility. If, as a result of the Municipality's occupancy of the Premises hereunder, any such rule, regulation, ordinance or law is violated, the Municipality shall protect, hold harmless, defend, and indemnify Metra, RTA, and NIRCRC from and against any and all losses, penalties, fines, costs, damages, or expenses, including court costs and attorneys' fees, caused by, resulting from, or connected with such violation or violations.

(d) Municipality and its agents agree to use their reasonable best efforts to prevent the occurrence of contamination, hazardous materials or any related environmental damage or condition on the Premises during the Use Term. Should any contamination or other environmental condition occur or result from Municipality's use or occupancy of the Premises, Municipality will be responsible for all costs associated with its mitigation, cleanup and any related liability. Municipality specifically agrees to indemnify, defend and hold harmless Metra, RTA and NIRCRC from all such loss, damages, costs or liabilities, including court costs and attorneys' fees, arising from Municipality's use or occupancy of the Premises.

(e) Municipality's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Metra, the RTA or the NIRCRC as additional insureds shall not, at any time, operate as a waiver to Metra's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement.

(f) During the Use Term, Metra may make commercially reasonable increases in the amount of insurance required by Municipality or its contractor(s) and/or sub-contractor(s) under the terms and provisions of this Agreement.

## 10. **WAIVER AND INDEMNIFICATION.**

(a) To the fullest extent permitted by law, the Municipality hereby assumes and agrees to release, acquit and waive any rights which Municipality may have against and forever discharge Metra, the RTA and the 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 out of or in any way relating to or occurring in connection with the activities permitted under the terms and provisions of this Agreement or which may occur to or be incurred by the Municipality, its employees, officers, agents and all other persons acting on the Municipality's behalf while on the Premises, or arising from the condition of the Premises during

the term of this Agreement, except to the extent such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

(b) To the fullest extent permitted by law, the Municipality 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; (iii) the failure to investigate claims; or (iv) which may occur to or be incurred, by the Municipality, its employees, officers, agents, and all other persons acting on its behalf while on the Premises, or, except to the extent such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence or willful misconduct of Metra, the RTA or the NIRCRC. Metra agrees to notify the Municipality in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Municipality 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 Municipality 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.

(c) Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement

## **11. CONTRACTOR INDEMNIFICATION AND INSURANCE.**

(a) In all contracts executed by Municipality for maintenance of the Premises (including snow removal) or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the Premises, or to be located on such Premises, Municipality will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend Metra, RTA, and the NIRCRC, their directors, employees, agents, licensees, successors and assigns from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees.

(b) Municipality will further cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance,

insuring contractor, Metra, RTA and NIRCRC, their directors, employees, agents, successors and assigns from and against any and all risks, liabilities, claims, demands, losses and judgments, including court costs and attorneys' fees, arising from, growing out of or in any way related to the work performed or to be performed by such contractor(s), whether or not any such liability, claim, demand, loss or judgment is due to or arises from the acts, omissions or negligence of such contractor(s), or their officers, employees, agents or subcontractors and their agents or employees.

12. **IMPROVEMENTS.** Municipality shall not make any improvements to the Premises without having first obtained the prior written consent of Metra. Municipality shall submit to Metra all plans and specifications for improvements on or to any portion of the Premises and the Commuter Facility (improvements shall not include such items of Routine Maintenance and Standard Maintenance as described in section 4 of this Agreement). Metra reserves the right to require Municipality's contractors to enter into a Right of Entry Agreement prior to commencing work on the CPF, the Premises, or any other Metra property. Metra further reserves the right to have its employees, agents or independent contractors perform such work set forth in the plans and specifications it approves, and Municipality agrees to pay the cost of all such improvements performed by or on behalf of Metra, whether by Metra's employees, agents or independent contractors.

13. **LIENS.** Municipality agrees not to suffer or permit any lien of mechanics or materialmen to be placed against any portion of the Premises or Commuter Facility, and in case of any such lien attaching to the Premises or Commuter Facility, Municipality shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Metra sufficient to discharge such lien and any interest accrued thereon. It is further agreed by the Parties hereto that Municipality has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Municipality, operation of law, or otherwise, to attach to or to be placed upon Metra's title or interest in the Parking Facility, and any and all liens and encumbrances created or suffered by Municipality or its tenants shall attach to Municipality's interest only.

14. **TAXES.** Municipality shall be responsible for payment of all real estate taxes and special assessments, if any, assessed against the Premises, including but not limited to real estate taxes assessed as a result of Municipality's assignment or license of all or any portion of the Premises to a third party. Municipality shall protect, indemnify, defend and forever save and keep harmless Metra, RTA, NIRCRC, and their directors, employees and agents licensees, successors and assigns against and from, and to assume all liability and expense, including court costs and attorneys' fees, for failure to pay real estate taxes or special assessments assessed against the Premises on or before the date payments of such taxes are due. Metra represents that the Premises is currently exempt from real estate taxes and Metra shall use its reasonable best efforts not to take any actions during the Use Term that would result in the loss of the tax exempt status of the Premises; provided, however, that nothing in this Agreement shall be construed to prohibit the lease or license of the Premises, or any portion thereof, to a third party as long as such third party is responsible for the payment of all real estate taxes assessed against the leased or licensed premises.

15. **CAUSE FOR BREACH.** If Municipality defaults in any of Municipality's undertakings or obligations of this Agreement and Municipality receives written notice of such default from Metra, then such event or action shall be deemed to constitute a breach of this Agreement and if such default remains uncured for thirty (30) days after notice in writing, this Agreement and Municipality's use of the Premises shall automatically cease and terminate unless such cure period is extended in writing by Metra.

16. **WAIVER OF REMEDIES.** No waiver of any default of Municipality shall be implied from omission by Metra to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. No receipt of money by Metra from Municipality (a) after any default by Municipality, (b) after the termination of Municipality's use, (c) after the service of any notice or demand, (d) after the commencement of any suit, or (e) after final judgment for possession of the Premises, shall waive such default or reinstate, continue or extend the Use Term or affect in any way such notice or suit, as the case may be.

17. **SURRENDER OF PREMISES.** Upon the termination of this Agreement or Municipality's use of the Premises by any manner, means, or contingency whatsoever, Municipality shall, if required by Metra, remove all of Municipality's improvements and/or property from the Premises, fill all excavations that have been made by Municipality and deliver possession of the Premises to Metra in as good a condition than that which existed immediately prior to the commencement of the Use Term, ordinary wear and tear excepted. Should the Municipality fail to perform such removal or restoration, then Metra, at its election, may either remove the Municipality's improvements and property and restore the Premises to its former state at the sole expense of Municipality or may retain the Municipality's improvements and property as Metra's sole property. Should Municipality retain possession or use of the Premises or any part thereof after the termination of Municipality's use by Metra or as otherwise provided for in this Agreement, any such holding over shall not constitute an extension of Municipality's use and Municipality shall pay Metra all damages, incidental or consequential as well as direct, sustained by Metra, RTA and NIRCRC and their respective directors, employees, agents and licensees by reason of such retention of possession or use. The provisions of this Section 17 do not exclude Metra's rights of reentry or any other rights to recover use and possession of the Premises afforded Metra by law.

18. **REENTRY.** If Municipality shall breach or default in any of the terms of this Agreement and if such breach or default is not cured as provided in Section 15 above, or if Municipality's use of the Premises shall expire or terminate in any manner, it shall be lawful for Metra then or at any time thereafter to reenter the Premises and take possession thereof, with or without process of law, and to use any reasonable or necessary force for regaining possession of the Commuter Facility; provided, however, that Municipality shall have the right to remove certain of Municipality's property as hereinabove provided and to use its property in any manner that does not reasonably interfere with Metra's property rights. No termination of Municipality's use shall release the Municipality from any liability or obligation that accrued prior to said termination. If the Premises is required for railroad purposes, Metra shall have the right to partially or entirely reenter and terminate this Agreement in whole or in part upon ninety (90) days' prior written notice.

19. **CUMULATIVE RIGHTS.** All rights and remedies of Metra shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

20. **SALE OR ASSIGNMENT.** Any assignment or transfer of this Agreement or the Premises by Municipality without the written consent of Metra its successors and assigns shall be void. Unless specifically released in writing by Metra, Municipality shall remain primarily liable to Metra regardless of Metra's consent to an assignment or sublicense by Municipality. No act of Metra, including acceptance of money by Metra from any other party, shall constitute a waiver of this provision.

21. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered, or sent by regular mail by the sending Party at 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, 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: Director of Real Estate & Contract Management  
Phone: (312) 542-8189

(b) Notices to Municipality shall be sent to:

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

22. **USE RESTRICTIONS.** All rights not specifically granted to Municipality under the terms and conditions of this Agreement are hereby reserved in and to Metra. Municipality agrees that none of the Premises will be used, nor will Municipality permit them to be used, for parking within twenty (20) feet of the centerline of any trackage. Any portion of the Premises within twenty (20) feet from the nearest rail of any trackage shall be used only for the construction, maintenance, repair and renewal of platforms and other railroad improvements located within the railroad right of way (subject to legal clearance requirements and Metra's clearance requirements) and for no other purpose whatsoever. Any construction, rehabilitation or repair work performed by or on behalf of the Municipality occurring within the railroad right-of-way will require flagging protection provided by Metra at Municipality's sole cost and expense. Municipality and/or its

contractors shall also purchase and keep in full force and effect railroad protection liability insurance during the performance of any such work.

23. **ENTIRE AGREEMENT.** All of the representations and obligations of Metra are contained herein. Metra and Municipality agree that no change or modification to this Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both Parties and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred as a consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement.

**(Signature Page to Follow)**

**IN WITNESS WHEREOF**, this Agreement is entered into by and between the Parties hereto as of the date and year first above written.

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

VILLAGE OF ROSELLE:

By: \_\_\_\_\_  
James M. Derwinski, CEO/Executive Director

By: \_\_\_\_\_

Its: \_\_\_\_\_