

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF
A COMMUTER STATION FACILITY IN ROMEOVILLE**

THIS AGREEMENT (“**Agreement**”) is entered into as of 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 Romeoville, 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. Municipality has created plans and specifications, approved by Metra and the Illinois Central Railroad Company, dated, _____, in order to establish a new Metra commuter facility in Romeoville, Illinois (the “**Project**”).

B. Metra has requested that the Illinois Central Railroad Company grant Metra an easement to use certain of its right of way located on the Heritage Corridor Commuter Line (“**HC**”) west of New Avenue and south of Romeo Road, on real property identified by PIN 11-04-02-503-001 (“**Easement**”) as delineated on **Exhibit A**, attached to and made a part of this Agreement (“**Premises**”).

C. The Project calls for the Premises to be utilized for the construction, operation and maintenance of commuter railroad platforms on the east and west sides of the HC tracks including a pedestrian crosswalk between the two platforms (“**Platforms**”) as well as an eight foot (8’) tall, PVC coated chain-link fence on the Premises located behind each of the Platforms and the planned commuter station (“**Fence**”).

D. Additionally, the Project includes the construction of a commuter station of brick and block walls, windows, doors, and a trussed roof to be located on the east Platform, (“**Depot**”) (combined, the Platforms, Fence, Depot, and all appurtenances to be located on the Premises are the “**Station Facility**”).

E. Metra desires to grant to Municipality the right to construct, operate and maintain the Depot on the Premises.

F. The Parties have determined that the construction, operation and maintenance of the Station Facility on the Premises is in the best interests of the public and serves a valid public purpose.

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 construct the Depot and to manage, operate, and maintain the Depot subject to and in accordance with the following terms covenants and conditions:

1. **FEE AND TERM.** Municipality covenants and agrees to pay Metra the sum of Ten Dollars (\$10.00) as a use fee for the Station Facility. Municipality's obligations and right to use the Station Facility under the terms and provisions of this Agreement shall commence on the day and year first above written and shall continue in force and effect for as long as Metra is providing commuter service to the Station Facility.

2. **PURPOSE OF USE.** The Parties agree that the purpose of this Agreement is to allow Municipality to construct the Depot on the Premises and to ensure that the Premises is protected, maintained and operated as a dedicated commuter railroad station. Municipality shall have the right to control access to said Premises and operate and maintain the Depot pursuant to the terms and conditions of this Agreement. Municipality further agrees to provide Metra with a full set of as-built plans when the Project is completed and updates to the plans anytime that there are changes made to the improvements on the Premises.

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. 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 general rules and regulations 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) Except as otherwise provided herein, Municipality, shall manage the Depot and shall be responsible throughout the Use Term for all repairs and maintenance of the Depot and shall keep all of the same in a good state of repair, appearance and order corresponding to standards that apply to Municipality's other public buildings and facilities (including, but not limited to, any and all major capital improvements and repairs, janitorial maintenance of floors, windows, and doors, painting, plumbing fixtures, broken glass, all utilities inside the Depot, snow removal from sidewalks, and the providing of scavenger service.

(b) Metra shall be responsible for the maintenance and repair of the Fence, Platforms and the crosswalk between the Platforms including all lighting, fixtures, and other appurtenances on the Platforms (except the Depot) as well as snow removal from the Platforms.

(c) In the event Municipality fails to manage, operate, or maintain the Depot in accordance with the terms and provisions of this Agreement, Metra may, after having given the Municipality sixty (60) days prior written notice of and an opportunity to cure such failure, terminate this Agreement and Municipality's rights hereunder, or 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.

(d) Municipality accepts the Premises subject to rights of any party, including Metra, in and to any existing easements, permits, or licenses. Municipality agrees to provide access to the Premises to Metra and the public.

(e) Metra reserves the right to relocate the Station Facility or any portion thereof at its own cost and expense, with no liability for damages to Municipality's interest in the Station 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 Station Facility or portion thereof.

(f) Metra reserves the right to terminate this Agreement if it loses its easement interest in the Premises, or the Premises is required for railroad purposes.

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

6. **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 Station Facility.

7. **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 Station Facility or any improvements thereon. Municipality shall manage, operate, maintain, and use the Depot in compliance with the requirements of all local, state, and federal ordinances, laws, rules, and regulations.

(b) Throughout the Use Term, Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-7093) 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 coverages as stated on **Exhibit B** 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, and the Illinois Central Railroad Company, a Delaware 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 Station 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 Station 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, the Regional Transportation Authority ("RTA"), the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC") and the Illinois Central Railroad Company ("IC") 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, the RTA, the NIRCRC, and the IC 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, the NIRCRC, and the IC 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.

8. 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, the NIRCRC, and the IC, 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 of Metra, the RTA, the NIRCRC, or the IC. 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, the NIRCRC, and the IC, 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, except to the extent such injuries or damages are caused by the negligence of Metra, the RTA, the NIRCRC, or the IC. 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, and the IC, 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, the NIRCRC, and the IC, 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 the IC, 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, the NIRCRC, and the IC, 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.

9. CONTRACTOR INDEMNIFICATION AND INSURANCE.

(a) In all contracts executed by Municipality for maintenance of the Premises 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, the RTA, the NIRCRC, and the IC, 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, the RTA, the NIRCRC, and the IC, 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.

10. **IMPROVEMENTS.** Municipality shall not make any further 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 Station Facility.

11. **LIENS.** Municipality agrees not to suffer or permit any lien of mechanics or materialmen to be placed against any portion of the Premises, and in case of any such lien attaching to the Premises, 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 interest in the Premises, and any and all liens and encumbrances created or suffered by Municipality or its tenants shall attach to Municipality's interest only.

12. **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, the RTA, the NIRCRC, and the IC, 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.

13. **REENTRY.** 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 Station Facility; provided, however, that Municipality shall have the right to remove certain of Municipality's property.

14. **SALE OR ASSIGNMENT.** Any assignment or transfers 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.

15. **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 facsimile transmission, with proof of successful transmission sent by regular mail by Metra or Municipality 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.

(a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate and Contract Management
Phone: (312) 322-8006
Fax: (312) 322-7098

(b) Notices to Municipality shall be sent to:

Village of Romeoville
1050 W. Romeo Road
Romeoville, Illinois 60446
Attn: Village Manager
Phone: 815/886-7200
Fax: _____

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 or on the first business day after successful transmission if sent by facsimile transmission.

16. **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 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 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.

17. **MISCELLANEOUS PROVISIONS.**

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties, and their respective successors or assigns.

(b) The captions of the Sections of this Agreement are for convenience and are not to be interpreted as part of this Agreement.

(c) 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.

(d) 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.

(e) This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

18. **SEVERABILITY.** Metra and Municipality agree that if any provision of this Agreement is held to be invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the terms, purposes and requirements of applicable law and does not represent a material change to the rights or obligations of the Parties.

19. **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:**

By: _____
Donald A. Orseno, Executive Director/CEO

VILLAGE OF ROMEOVILLE:

By: _____

Its: _____

Exhibit A
Premises, Depot, Fence and Platforms

EXHIBIT B
Insurance Requirements
COMMUTER STATION OPERATION AND MAINTENANCE AGREEMENT
VILLAGE OF ROMEOVILLE

Commercial General Liability Insurance (ISO Broad Form) of the type that normally provides coverage for general liability, or other liability insurance in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate combines single limits for bodily injury or death to person or persons and property damage per occurrence. The CGL policy shall include the following coverage limits:

Workers Compensation Insurance of the type that normally provides statutory coverage in a minimum amount of \$1,000,000.

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 shall be designated as Additional Insured on said policies.

