
EASEMENT FOR EXPANSION OF WINCHESTER ROAD

The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”) whose address is 547 West Jackson Boulevard, Chicago, Illinois 60661, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration in hand paid, does hereby grant unto The Lake County Division of Transportation (“**Grantee**”), with offices located at 600 West Winchester Road, Libertyville, Illinois 60048 , a non-exclusive easement (“**Easement**”) of two thousand nine hundred forty-three (2943) square feet of Metra’s Milwaukee District North Line right-of-way for the expansion of Winchester Road (“**Improvements**”) and for no other purpose whatsoever, on Metra’s Milwaukee District North Line Right of Way located south of the at-grade crossing at Winchester Road in Libertyville, Illinois, delineated on **Exhibit A** attached to and made a part of this Agreement (“**Easement Premises**”).

Grantee’s use of the Easement Premises is made subject to the following terms and conditions which are deemed covenants and shall run with the land:

1. As one of the considerations for this Easement, Grantee agrees to pay to Metra the sum of \$1,500.00 for the cost of preparing this Easement, payable in advance.
2. The Improvements contemplated herein shall be installed and constructed on the Easement Premises pursuant to plans and specifications submitted to and approved in advance by Metra. Upon completion of the initial installation and construction of the Improvements, and upon completion of any subsequent installation, reconstruction, maintenance, repair or replacement of the Improvements, Grantee, at its own cost and expense, shall remove any debris and restore, or cause to be restored to the reasonable satisfaction of Metra, the Easement Premises and any other affected portion of Metra’s property (“**Property**”) as nearly as may be, to the same or better condition than that which existed immediately prior to commencement of such activities by Grantee. In the event Grantee fails to cause the Easement Premises and the Property to be restored to the reasonable satisfaction of Metra as provided for herein, Metra shall have the right to restore the Easement Premises and the Property and Grantee shall reimburse Metra for all costs and expenses incurred by Metra in its performance of the obligations imposed upon Grantee hereunder.
3. The interests conveyed herein shall be subject to all other previous grants, easements, utilities, or uses of the Easement Premises. Metra shall have the right to retain existing improvements at the location of the Easement Premises and also shall have the right at any and all times in the future to install, construct, maintain, operate, and use over, under, across, parallel

with, or within said Easement Premises such additional improvements as Metra may from time to time elect. 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 in the future. Metra reserves the exclusive right to grant future rights, privileges, easements or licenses over, under, across, parallel with, or within the Easement Premises, provided that such grants do not unreasonably interfere with Grantee's permitted usage.

4. Metra, its successors or assigns, may require, at Metra's sole discretion, that the placement of the Improvements or the location of the Easement Premises be relocated at other locations along Metra's property. In the event any relocation of the Easement Premises or the Improvements is required by Metra, Grantee shall be responsible for performing said relocation and will assume all reasonable costs or expenses associated with or arising out of said relocation. Any and all plans and specifications for said relocation must be submitted to Metra for review and approval, which approval shall not be unreasonably withheld or delayed. Should Grantee fail to perform said relocation within sixty (60) days of Metra's approval of said plans and specifications, or such other time period agreed to by Metra, Metra shall perform or cause to be performed said relocation at Grantee's sole cost and expense. Metra shall be reimbursed by Grantee for said relocation within thirty (30) days of receipt of the bill by Grantee.

5. Metra shall permit Grantee reasonable right of entry for the purpose of installing; constructing, maintaining, repairing, replacing and operating said Improvements. Metra may, however, restrict the location of entry points or access on or over the Easement Premises.

6. Before and during the installing, constructing, maintaining, repairing, replacing and operating of said Improvements, or at any other time, Metra shall have the right, in connection with the performance of such work by Grantee or any other party or parties acting on behalf of or with the authority of Grantee, to provide such safe and temporary structures as Metra may deem necessary to provide for the safety and protection of its buildings or other improvements whether now existing or hereafter constructed on, under, above, about or adjoining the Easement Premises, and Grantee agrees to pay to Metra the entire reasonable cost of constructing and removing such temporary structures and of restoring Metra's property to substantially the same condition in which it was prior to said installation, construction, maintenance, repair, replacement operation, or use activities.

7. To the fullest extent permitted by law, the Grantee hereby assumes and agrees to release, acquit and waive any rights which Grantee 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 Grantee, its employees, officers, agents and all other persons acting on the Grantee's behalf while on the Premises or arising from the condition of the Premises during the term of this

Agreement, whether or not 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.

8. To the fullest extent permitted by law, the 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, 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 Grantee, its employees, officers, agents, and all other persons acting on its behalf while on the Premises, whether or not 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 Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The 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 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 Grantee shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of Metra, the RTA and the NIRCRC, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement and the indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence or willful misconduct of Metra, the RTA or the NIRCRC with respect to any construction work performed by the Grantee or those performing on behalf of or with the authority of the Grantee in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

9. Grantee agrees, prior to entry into the Easement Premises and at all times during initial installation and construction of the Improvements, and upon completion of any subsequent installation, reconstruction, maintenance, repair, replacement, or use of the Improvements, to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-7073) 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 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*, 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. Metra reserves the right to make reasonable changes in the kinds and amounts of insurance required for continued occupancy of the Premises.

10. Grantee shall pay the entire cost of installing; constructing, maintaining, repairing, replacing and operating said Improvements. Grantee shall install, construct, maintain, repair, replace, and operate the Improvements in accordance with all applicable federal, state and local municipal laws, ordinances, rules and regulations promulgated by governmental authorities; and the plans, specifications and profiles, specifically including date of commencement of work, to be prepared by Grantee and submitted for approval to Metra.

11. Grantee shall not commence work upon the Easement Premises until Metra shall have approved Grantee’s plans, specifications and profiles, such approval not to be unreasonably withheld or delayed. Metra’s approval of Grantee’s plans, specifications and profiles, shall not relieve Grantee of the duty to verify that the plans, specifications and profiles, and all amendments thereto, are in compliance with the requirements of this paragraph.

12. Metra reserves the right to have a representative present during the construction of the Improvements, but in no way waives any rights by failing to have said representative present. If the manner of installing, constructing, replacing, repairing, maintaining, operating, or using said Improvements shall at any time be in violation of any applicable law, ordinance, rule or regulation promulgated by governmental authority, then Grantee shall, at no cost or expense to Metra, upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction in the Easement Premises make such changes or repairs as shall be necessary. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed by said agency shall terminate this Agreement, and Grantee’s rights and interest shall revert to Metra; provided, however, that this Agreement shall not terminate as long as Grantee in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules or regulations or so long as Grantee is diligently pursuing compliance.

13. Grantee shall construct any appurtenances and/or other fixtures as may be deemed necessary, in such a manner so as not to interfere with Metra’s railroad operations. Following installation of the Improvements, Grantee shall provide Metra with a copy of “as built” plans. Should the installation, construction, maintenance, operation, use, or presence of said

Improvements necessitate any change or alteration in the location or arrangement of any wires or appurtenances owned, possessed, or allowed by Metra, or should it, for reasons of safety, become necessary to repair or change the location or method of construction of said Improvements, Grantee shall do such work upon receipt of a written request to do so from Metra.

14. Grantee agrees that it will, immediately upon receipt of a statement showing the amount thereof, pay all costs of any and all work performed upon the right of way and tracks of Metra which shall be made necessary by the installation, construction, maintenance, repair, replacement, renewal, operation, use, or presence thereon of said Improvements. To the extent that in the reasonable opinion of Metra or its designee, flagging and supervisory services are deemed necessary by reason of the installation, construction, repair, renewal, alteration or removal of said Improvements, Grantee shall, upon receipt of a bill or invoice therefore, reimburse Metra or its designee for the reasonable cost and expense of furnishing such flagging and supervisory services.

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

16. Grantee shall not suffer any mechanics', laborers' or materialmen's lien to be filed against the Easement 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 Easement Premises, by, or at the direction or sufferance of, Grantee, or anyone holding the Easement Premises through or under Grantee. In the event such lien is filed against the Easement Premises, Grantee shall promptly satisfy and discharge such lien upon notice thereof.

17. All notices herein required shall be in writing and shall be served on the parties at the addresses shown herein by the mailing of a notice by registered or certified mail, return receipt requested, or by delivery by a nationally recognized overnight carrier.

(a) Notices to the Commuter Rail Division shall be sent to:

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

(b) Notices to County shall be sent to:

Lake County Division of Transportation
600 West Winchester Road

Libertyville, Illinois 60048-1381
Attn: County Engineer
Phone: (847) 377-7400

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.

18. This Easement may be terminated by Metra effective sixty (60) days after giving notice to Grantee if the Premises, or any portion thereof, is needed for any Metra or railroad purposes as determined by Metra in its sole discretion or effective immediately upon notice to Grantee if Grantee ceases to operate or maintain the Improvements or violates any of the terms, conditions or provisions set forth in this Agreement. In case of termination, Grantee shall remove from the Premises the Improvements and shall restore said Premises to the same or better condition than that which existed prior to the construction and installation of the Improvements; or upon failure, neglect or refusal of Grantee to do so, Metra may make or cause to be made such removal and restoration, and the total cost hereof shall be paid by Grantee; or, if Metra shall so elect, it may treat the Improvements as abandoned by Grantee and may make such disposition thereof as it may see fit.

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

20. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. Grantee hereby acknowledges that this Agreement has been delivered after Grantee has made full investigation of the Easement Premises, neither party relying upon any statement or representation made by the other not embodied in this Agreement. 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 and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day. This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without regard to the conflicts of laws principles thereof. 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 Easement 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.

21. This Easement inures to the benefit of and shall be binding upon the Grantee and its successors and assigns.

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

IN WITNESS WHEREOF, this instrument is hereby executed by the Parties on this ____ day of _____, 20__.

THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY ("METRA")

Executed this ____ day of _____, 20 ____.

By: _____
Donald A. Orseno, Interim Executive Director

Attest: _____
Secretary

COUNTY OF LAKE ("GRANTEE")

Executed this ____ day of _____, 20 ____.

By: _____
Chairman of the Board

Attest: _____
County Clerk

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On the date above noted, before me, the undersigned, a Notary Public in and for the county and state aforesaid, does hereby certify that Alexander D. Clifford, personally known to me to be the Executive Director/CEO of the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation and _____, personally known to me to be the Assistant Secretary of said Corporation and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Executive Director/CEO and Assistant Secretary of said Corporation, they executed such instrument, pursuant to authority given by the said Corporation as their free and voluntary act, and as the free and voluntary act and deed of said Corporation for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

On the date above noted, before me, the undersigned, a Notary Public in and for the county and state aforesaid, does hereby certify that _____, personally known to me to be the _____ of _____, an Illinois _____ and _____ of said _____ and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in _____ of said _____, they executed such instrument, pursuant to authority given by said _____, as their free and voluntary act, and as the free and voluntary act and deed of said _____ for the uses and purposes therein set forth.

Given under my hand and seal this _____ day of _____, 20__.

Notary Public

My Commission Expires: _____

Exhibit A

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METRA EASEMENT LEGAL DESCRIPTION

THAT PART OF THE NORTHEAST QUARTER OF SECTION 17, TOWNSHIP 44 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHERLY LINE OF WINCHESTER ROAD AND THE NORTHEASTERLY LINE OF THE NORTHEAST ILLINOIS RAIL CORPORATION (METRA) (FORMERLY CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD); THENCE NORTH 61 DEGREES 01 MINUTES 38 SECONDS WEST ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 24.55 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 25 MINUTES 15 SECONDS WEST, A DISTANCE OF 202.75 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID NORTHEAST ILLINOIS RAIL CORPORATION (METRA); THENCE NORTH 61 DEGREES 01 MINUTES 38 SECONDS WEST ALONG SAID SOUTHWESTERLY LINE, A DISTANCE OF 31.52 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 32 SECONDS EAST, A DISTANCE OF 206.39 FEET TO A POINT ON SAID NORTHEASTERLY LINE; THENCE SOUTH 61 DEGREES 01 MINUTES 38 SECONDS EAST ALONG SAID NORTHEASTERLY LINE, A DISTANCE OF 27.34 FEET TO THE POINT OF BEGINNING, IN LAKE COUNTY, ILLINOIS.

Prepared by:
Manhard Consulting, Ltd.
900 Woodlands Parkway
Vernon Hills, Illinois 60061
Phone: 847.634.5550
Fax: 847.634.0095

EXHIBIT B
Insurance Requirements
**The Lake County Division of Transportation Winchester Road Expansion for Use
and Maintenance only**

Commercial General Liability Insurance (ISO Broad Form) \$1,000,000 per occurrence for bodily injury or death to persons or persons and/or property damage with a \$2,000,000 aggregate and \$2,000,000 products/completed operations aggregate and remove 50 foot railroad exclusion from definition of insured contract.

Automobile Liability Insurance for any auto with limits of not less than \$1,000,000 combined single limit for bodily injury or death to person or persons and property damage per occurrence.

Workers' Compensation Insurance – Statutory amounts
Employers' Liability - \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 policy limit

All policies must be on a Primary and Non-Contributory basis.

Provide Waiver of Subrogation for the Additional Insured in all policies including WC.

Provide the following Additional Insured wording in all policies including ongoing operations and products/completed operations for GL.

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 other railroads operating on Metra's property.