

## **DONOR AGREEMENT**

### **LAKE COUNTY PARTNERS – UNIVERSAL CROSSOVER**

#### **Public-Private Partnership**

#### **DRAFT**

This Donor Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ by The County of Lake, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board (hereinafter referred to as "Donor"), whose address is 18 N County Street Waukegan, IL 60085, and Lake County Partnership for Economic Development, Inc., a not-for-profit charitable entity whose address is One Overlook Point, Suite 280, Lincolnshire, Illinois 60069 ("Lake County Partners").

WHEREAS, the Commuter Rail Division of the Regional Transportation Authority ("METRA") has proposed a Public-Private Partnership project (the "Project") to improve service and reliability on METRA's Milwaukee North Train Line;

WHEREAS, the purpose of the Project is to improve public transit train service to Lake County, Illinois, which will assist Lake County companies and units of local government in their efforts to recruit top talent from the greater Chicago-land area;

WHEREAS, the Project anticipates the public and private shared investment of capital to establish a pilot program to gauge ridership potential of increased services to Lake County, for data sharing to determine the demand for the service, and to install a universal crossover switch and make track and signal improvements on the Milwaukee District North Train Line which would allow METRA to increase service to certain areas;

WHEREAS, Lake County Partners is a 501(c)(3) economic development corporation that works to maintain economic vitality and quality of life in Lake County, Illinois by attracting, retaining and expanding businesses, creating and retaining quality jobs, stimulating capital investment, pursuing economic diversity and improving the County's business climate;

WHEREAS, Lake County Partners believes the Project would be beneficial to the economic development of Lake County, and is therefore willing to assist in obtaining public and private sector funding for the Project through donations from local businesses and units of local government, administering the Project fund ("Fund") and expending donations made to the Fund for the Project pursuant to a grant agreement ("Grant Agreement") to be negotiated and entered into by and between METRA and Lake County Partners on behalf of those certain private donors, and various units of local governments;

WHEREAS, the total cost for the Project, including the pilot program and track improvements and administration of the Fund, is currently estimated to be Six Million Three Hundred Thousand Dollars (\$6,300,000.00), with the private sector funding comprising Three Million Six Hundred Thousand Dollars (\$3,600,000), funding from various units of local

governments comprising One Million Dollars (\$1,000,000.00), and funding from transit agencies comprising One Million Seven Hundred Thousand Dollars (\$1,700,000) of said amount;

WHEREAS, the Project is anticipated to take forty-two months to complete and shall be rolled out in three phases, with the first phase to be comprised of a pilot program, which will feature an enhanced METRA train schedule on the Milwaukee District North line, to commence on or about January 1, 2019, at an estimated public and private sector donation-funded cost of approximately Three Hundred Fifty Thousand Dollars (\$350,000.00) per year for up to 24 months, the second phase to include the installation of a universal crossover switch north of the Lake Forest Telegraph Road Train Station, and a third phase to implement a final train schedule for the Milwaukee District North line to close gaps in service and optimize the existing express service;

WHEREAS, Lake County Partners is willing to accept donations from various private businesses located in Lake County, Illinois, and local units of government, including but not limited to Donor, for the creation of the Fund and funding of the Project; and

WHEREAS, Donor desires to donate up to Five Hundred Thousand Dollars (\$500,000.00) to Lake County Partners in furtherance of the Project on the conditions provided herein.

Donor and the Lake County Partners hereby agree as follows:

1. Donor Commitment and Purpose of Donation. Within thirty(30) days of execution of this Agreement by both parties, Donor shall deliver to Lake County Partners the sum of Fifty Thousand Dollars (\$50,000.00) (the "Donation"), which shall be used for costs and expenses incurred and to be incurred with respect to the first phase of the Project, including, but not limited to, reasonable attorneys' fees, accounting fees, and other reasonable costs and expenses incurred by Lake County Partners in furtherance of the Project and in the negotiation, administration and implementation thereof. The second payment of Fifty Thousand Dollars (\$50,000) shall occur on or before January 1, 2020 so long as the parties to the project agree to continue with year two of the first phase of the project.

A request for the third and final payment of Four Hundred Thousand Dollars (\$400,000) will be considered by the Donor following completion of the first phase and will be conditioned upon a general consensus of all parties to proceed with the second phase of the project and Lake County Partners having entered into the necessary agreement with Metra to construct the universal crossover.

2. Use of the Gift. The Donation shall be used in the following manner:

(a) Pending use and disbursement into the Fund, the Donation shall be held and invested by Lake County Partners in accordance with its policies. Donor acknowledges that the Donation may be commingled with other amounts received by Lake Country Partners that are to be used in furtherance of the Project.

(b) Lake County Partners shall disburse the Donation to support the Project in such manner and at such times as determined to be reasonable and appropriate by Lake County Partners to fulfill obligations under the Grant Agreement and/or to assist in the implementation, administration or funding of the Project.

(c) Subject to Section 2(e), in the event that Lake County Partners and METRA do not enter into a Grant Agreement on or before December 31, 2018, then the unexpended balance of the Donation shall be returned to Donor within fifteen (15) business days thereof. In the event the Project does not proceed past the first phase on or before December 31, 2021, then the unexpended balance of the Donation shall be returned to Donor within fifteen (15) business days thereof. Thereafter, in the event that the Project either (i) is not expected to be completed as reasonably determined by both parties, or (ii) is not actually completed by December 31, 2023, the unexpended proceeds of the Donation shall be returned to the Donor within thirty (30) days of the determination.

(d) If all donations received by Lake County Partners, when taken together with any funding received from transit agencies, private corporations, state agencies and other local governments for the Project, exceed the total costs of the Project, including the administrative fee assessed pursuant to Section 2(e) and the reimbursement of reasonable attorneys' fees, accounting fees, and other reasonable costs and expenses incurred by Lake County Partners in furtherance of the Project and in the negotiation, administration and implementation thereof, a portion of the Donation shall be returned to Donor within sixty (60) days following completion of the Project. Such returnable portion shall equal Donor's pro-rata share of the excess donations received by Lake County Partners from public or private sector donors for the Project as determined by the proportion of the Donation to the total amount received from donors for the Project.

(e) Notwithstanding Section 2(c), Lake County Partners shall retain a non-refundable amount equal to one percent (1.00%) of the Donation to compensate Lake County Partners as an administrative fee to support the operations and advancement of Lake County Partners. In addition, Lake County Partners shall be entitled to use the Fund, and the proceeds thereof, to pay and/or reimburse itself for the payment of, all reasonable attorneys' fees, accounting fees, and other reasonable costs and expenses incurred by Lake County Partners in furtherance of the Project and in the negotiation, administration and implementation thereof.

3. Reports. On a regular basis, not less often than quarterly, or upon reasonable request of Donor, Lake County Partners shall provide a written report to Donor regarding the overall progress of the Project, the manner in which the Fund is expended, Fund balances and uses, and the Donation balances and uses. The reporting obligation shall cease six (6) months after completion of the Project.

4. Publicity. Lake County Partners may publicize the Donation in a manner that encourages other Lake County businesses and units of local governments to make donations to support the Project, provided that Lake County Partners obtains the prior written consent of Donor to the form of any such publicity or promotional messaging.

5. Tax-Exempt Status. Lake County Partners confirms that it is a charitable 501(c) (3) organization recognized as tax-exempt under the Internal Revenue Code and that contributions to Lake County Partners are deductible for federal income tax purposes.

6. Termination. If the agreements between Lake County Partners and Metra as referenced herein are not executed and donations are returned to the donors as set forth in paragraph 2.(c), then this Donor Agreement is terminated and all rights and obligations are thereby extinguished.

7. Governing Law and Venue: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois. For the purposes of all claims, suits, or actions brought under this Agreement, each of the parties to this Agreement hereby irrevocably submits to the exclusive jurisdiction of the Nineteenth Judicial Circuit Court, County of Lake, Illinois.

8. Record Keeping: Lake County Partners shall keep and maintain accurate books of record and account, in accordance with sound accounting principles, of all expenditures made and all costs, liabilities and obligations incurred in relation to the Project and all papers, files, accounts, reports, cost proposals with backup data and all other material relating to the Project, and shall make all such materials available at the office of the Donor at any reasonable time during the term of this Agreement and for the length of time established by law or for five (5) years after the termination of this Agreement, whichever is longer, for audit, inspection and copying upon Donor's request.

9. Miscellaneous. This Agreement may not be assigned by either party without the written consent of the other party. Donor acknowledges that Lake County Partners is relying on the undertakings of Donor, and that the fundraising and other activities of Lake County Partners are affected by the promises and undertakings of Donor. This Agreement constitutes the entire agreement among Donor and Lake County Partners relating to the subject matter hereof, and there are no understandings or agreements of any kind except as expressly set forth herein. The provisions of this Agreement are severable. If any provision, paragraph, section, subdivision, clause, phrase or word of this Agreement is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of this Agreement. This Agreement will be governed by, and interpreted and enforced in accordance with, the laws of the State of Illinois, without regard to its principles of conflicts of laws. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the parties. No party hereto may assign, transfer, sell, grant, convey, deed, cede or otherwise give over, in any manner or form, any of its duties, obligations and/or responsibilities as heretofore set forth in the Agreement without first obtaining the expressed written consent and permission of the other party, except as provided for in this Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures of the parties transmitted by facsimile or via PDF format will be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the parties to this Agreement have affixed their signatures as of the date set forth above:

LAKE COUNTY PARTNERSHIP FOR  
ECONOMIC DEVELOPMENT, INC.

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

Kevin Considine, President & CEO

RECOMMENDED FOR EXECUTION

\_\_\_\_\_  
Shane E. Schneider, P.E.  
Director of Transportation/ County Engineer  
Lake County

COUNTY OF LAKE

ATTEST:

By: \_\_\_\_\_  
Clerk  
Lake County Date

\_\_\_\_\_  
Interim Chairman  
Lake County Board

Date: \_\_\_\_\_