



Office of the City Clerk



O2013-858

Office of the City Clerk

City Council Document Tracking Sheet

Meeting Date:	2/13/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Intergovernmental agreement for Tax Increment Financing Funding for Metra Pedestrian Access Project
Committee(s) Assignment:	Committee on Finance

ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule municipality as described in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the Commuter Rail Division of the Regional Transportation Authority ("Metra") is a division of a municipal corporation of the State of Illinois; and

WHEREAS, the Chicago Park District (the "Park District") is a body politic and corporate organized and existing under the Chicago Park District Act, 70 ILCS 1505/0.01 et seq., with authority to exercise control over and supervise the operation of all parks within the corporate limits of the City; and

WHEREAS, the City is authorized, under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended (the "Act"), to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects; and

WHEREAS, in accordance with the provisions of the Act, and pursuant to three ordinances adopted on June 10, 1998 and published at pages 70368 through 70499 of the Journal of Proceedings of the City Council (the "Journal") of such date, the City Council of the City ("City Council"): (i) approved a certain redevelopment plan and project (the "Kinzie Plan") for the Kinzie Industrial Corridor Redevelopment Project Area (the "Kinzie Area") within the City; (ii) designated the Kinzie Area as a redevelopment project area; and (iii) adopted tax increment allocation financing (the "Kinzie TIF Adoption Ordinance") for the Kinzie Area; and

WHEREAS, under the Act and the Kinzie TIF Adoption Ordinance, certain ad valorem taxes are allocated and, when collected, are paid to the Treasurer of the City for deposit by the Treasurer into the Kinzie TIF Fund established to pay redevelopment project costs incurred in the Kinzie Area, which taxes may be used to pay all or a portion of the costs of construction of public improvements within the Kinzie Area that are incurred or that are to be incurred in furtherance of the objectives of the Kinzie Plan, to the extent the municipality by written agreement accepts and approves such costs; and

WHEREAS, in accordance with the provisions of the Act, and pursuant to three ordinances adopted on June 9, 1999 and published at pages 3704 through 3886 of the Journal of such date, the City Council: (i) approved a certain redevelopment plan and project (the "Pulaski Plan") for the Pulaski Corridor Redevelopment Project Area (the "Pulaski Area") within the City; (ii) designated the Pulaski Area as a redevelopment project area; and (iii) adopted tax increment allocation financing (the "Pulaski TIF Adoption Ordinance") for the Pulaski Area; and

WHEREAS, under the Act and the Pulaski TIF Adoption Ordinance, certain ad valorem taxes are allocated and, when collected, are paid to the Treasurer of the City for deposit by the Treasurer into the Pulaski TIF Fund established to pay redevelopment project costs incurred in the Pulaski Area, which taxes may be used to pay all or a portion of the costs of construction of public improvements within the Pulaski Area that are incurred or that are to be incurred in furtherance of the objectives of the Pulaski Plan, to the extent the municipality by written

agreement accepts and approves such costs; and

WHEREAS, the City is in the process of constructing a bicycle/pedestrian trail and park (the "Trail") on a former elevated rail line along Bloomingdale Avenue, approximately 1800 North in the City, extending from Ashland Avenue, 1600 West, to Ridgeway Avenue, 3732 West, and the City desires to create a pedestrian access at the westerlymost end of the planned Trail upon certain railroad right-of-way that is Metra's property ("Metra's Property"); and

WHEREAS, Metra currently uses Metra's Property for two purposes – rail car storage and maintenance, and as a spur for the exchange of rail cars used to supply foodstuffs to a nearby commercial bakery; and

WHEREAS, Metra is willing to grant the City an easement (the "Pedestrian Access Easement") over Metra's Property for the City's use as and construction thereon of a western access point to the Trail (the "Pedestrian Access Project"); and

WHEREAS, the City owns the certain property (the "City's Property") upon which it operates "Chicago Auto Pound #6," one of its vehicle storage areas, which is located south of and adjacent to the Metra Milwaukee District Rail Line between Campbell Avenue and Sacramento Boulevard; and

WHEREAS, the City is willing to grant Metra an easement over part of the City's Property for Metra's use as and construction thereon of a Maintenance of Way and Storage Facility (the "Facility") for rail car storage and maintenance purposes; and

WHEREAS, the City is willing to pay for or reimburse Metra's costs (i) to construct the Facility and (ii) to construct a rail spur on property Metra owns (the "Bakery Spur") that is adjacent to a commercial bakery, and all ancillary costs thereto (the Facility and the Bakery Spur, collectively, the "Project"); and

WHEREAS, the Facility is located within the Kinzie Area, and the Bakery Spur is located within the Pulaski Area; and

WHEREAS, Metra has requested tax increment allocation financing funds assistance (the "City Contribution") from the City's Department of Housing and Economic Development ("HED") to pay the cost of the Project, and the City desires to provide such assistance; and

WHEREAS, the parties propose to enter into an intergovernmental agreement ("Agreement") authorizing and setting conditions on providing the City Contribution for the Project; and

WHEREAS, the parties propose to enter into the Agreement under the provisions of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, the Commuter Rail Board of Metra is deliberating an ordinance that, if enacted, will authorize Metra to enter into the Agreement; and

WHEREAS, upon the completion of the Pedestrian Access Project, the City wishes to assign or otherwise grant an interest in the Pedestrian Access Easement to the Park District, and the Park District wishes to accept such assignment or grant for a period of twenty-five (25) years, all to be memorialized in an intergovernmental agreement ("Park District Agreement") between the City and the Park District as such Park District Agreement is described, and the City's authority to execute and deliver same is granted, in that certain companion ordinance enacted by the City Council this day concerning the Trail; now, therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. The above recitals are incorporated by reference as if fully set forth herein.

SECTION 2. Subject to the approval of the Corporation Counsel as to form and legality, the Commissioner of HED ("HED Commissioner") or a designee of the HED Commissioner, the Commissioner of the Department of Transportation ("CDOT Commissioner") or a designee of the CDOT Commissioner, and the Commissioner of the Department of Fleet and Facility Management ("2FM Commissioner") or a designee of the 2FM Commissioner are each hereby authorized to execute and deliver the Agreement with Metra in substantially the form attached hereto as Exhibit A, including, without limitation, indemnification by and of the City, with such changes therein as the Commissioners may approve, provided that such changes do not amend any essential terms of the Agreement (execution of the Agreement by the Commissioners or their designees constituting conclusive evidence of such approval), and to enter into and execute all such other agreements and instruments and to perform any and all acts as shall be necessary or advisable in connection with the implementation of the Agreement.

SECTION 3. To the extent that any current ordinance, resolution, rule, order or provision of the Municipal Code of Chicago, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause, or provision shall not affect any of the other provisions of this ordinance.

SECTION 4. This ordinance shall be in full force and effect from and after the date of its passage and approval.

APPROVED
Stephen R. Pitt
CORPORATION COUNSEL

APPROVED
Richard E. Mansueti
3/18/13 Mayor

EXHIBIT A

Agreement

[see attached]

**THIS DOCUMENT PREPARED
BY AND AFTER RECORDING
RETURN TO:**

John J. Zimmermann, Esq.

TRESSLER, LLP

22 South Washington Avenue
Park Ridge, Illinois 60068

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**AN INTERGOVERNMENTAL AGREEMENT
and
GRANT OF EASEMENTS
BETWEEN THE CITY OF CHICAGO AND METRA
PERTAINING TO THE BLOOMINGDALE TRAIL PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT AND GRANT OF EASEMENTS is made and entered into as of the _____ day of _____, 2013, by and between the CITY OF CHICAGO (herein also "**the City**" or "**Chicago**"), acting by and through its Department of Housing and Economic Development, its Department of Fleet and Facility Management and its Department of Transportation; and the COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY (herein "**Metra**"); and, in consideration of their mutual promises and covenants herein contained, it is agreed as follows:

I. RECITALS.

A. As a home rule unit the City may exercise any power and perform any function pertaining to its government and affairs.

B. Under the provisions of the Act, the City is authorized to finance projects that eradicate blight conditions and conservation factors that could lead to blight through the use of tax increment allocation financing for redevelopment projects.

C. On June 10, 1998, as published at pages 70368 through 70499 of the Journal of such date and in accordance with the provisions of the Act, the City Council adopted: (i) an ordinance initially approving a certain redevelopment plan and project, which plan was amended and is herein the "Kinzie Plan" for the Kinzie Area; (ii) an ordinance designating the Kinzie Area as a redevelopment project area; and (iii) the Kinzie TIF Adoption Ordinance.

D. Under the Act and the Kinzie TIF Adoption Ordinance, certain taxes are allocated and, when collected, are paid to the Treasurer of the City for deposit by the Treasurer into the

Kinzie TIF Fund established to pay redevelopment project costs incurred in the Kinzie Area, which taxes may be used to pay all or a portion of the costs of construction of public improvements within the Kinzie Area that are incurred or that are to be incurred in furtherance of the objectives of the Kinzie Plan, to the extent the City by written agreement accepts and approves such costs.

E. On June 9, 1999, as published at pages 3704 through 3886 of the Journal of such date and in accordance with the provisions of the Act, the City Council adopted: (i) an ordinance approving the Pulaski Plan for the Pulaski Area; (ii) an ordinance designating the Pulaski Area as a redevelopment project area; and (iii) the Pulaski TIF Adoption Ordinance.

F. Under the Act and the Pulaski TIF Adoption Ordinance, certain taxes are allocated and, when collected, are paid to the Treasurer of the City for deposit by the Treasurer into the Pulaski TIF Fund established to pay redevelopment project costs incurred in the Pulaski Area, which taxes may be used to pay all or a portion of the costs of construction of public improvements within the Pulaski Area that are incurred or that are to be incurred in furtherance of the objectives of the Pulaski Plan, to the extent the City by written agreement accepts and approves such costs.

G. Pursuant to the Kinzie Plan and the Pulaski Plan, certain TIF-funded City programs and redevelopment agreements and certain TIF-backed bonds have been established by the City Council as of the closing date on the sale of the bonds, which programs and agreements pledge portions of the respective TIF Funds.

H. The City is in the process of constructing a bicycle/pedestrian trail and park (herein "Trail") on a former elevated rail line along Bloomingdale Avenue, approximately 1800 North in the City; extending from Ashland Avenue, 1600 West, to Ridgeway Avenue, 3732 West.

I. The City desires to create a Pedestrian Access at the westerlymost end of the planned Trail upon certain railroad right-of-way which is Metra's Property.

J. In accordance with the statute establishing the Regional Transportation Authority, comprehensive and coordinated regional public transportation is essential to the public health, safety and welfare, and is essential to economic well-being, maintenance of full employment, conservation of sources of energy and land for open space and reduction of traffic congestion and for providing and maintaining a healthful environment for the benefit of the present and future generations in the metropolitan region.

K. Metra desires to cooperate with the City in making Metra's Property available for use as a western access point to the Trail and thereby aid the City in providing an additional source of conservation of energy and land for open space and reduction of traffic congestion, and for providing and maintaining a healthful environment for the benefit of the present and future generations in the metropolitan region.

L. City acknowledges that Metra is currently using Metra's Property for storage of materials, such as railroad ties and ballast, and for railroad operations, whether for Metra or its tenant; and from time to time permits its use for the exchange of hopper cars in connection with deliveries to and from a nearby business known as Newly Weds commercial bakery.

M. The City owns the City's Property upon which it operates "Chicago Auto Pound #6," one of its vehicle storage areas, which is located south of and adjacent to the Metra Milwaukee District Rail Line between Campbell Avenue and Sacramento Boulevard.

N. Metra is willing to allow the City to use Metra's Property for use as a western access point to the Trail in exchange for the City allowing Metra to use part of the City's Property as a Maintenance of Way Storage Facility (as that term is hereinafter defined) for storage and maintenance purposes — all in accordance with the terms of this Agreement.

O. As an inducement to Metra to grant its easement as set forth in this Agreement, the City will reimburse Metra for Metra's Expenses from the following sources:

1. Available taxes in the fund established pursuant to the Kinzie TIF Adoption Ordinance or from any other funds selected by the City in order to reimburse Metra for Metra's Expenses in connection with construction of Metra's Maintenance of Way Storage Facility, including but not limited to the preparation of a new railbed and installation of spur track and signal equipment on the Maintenance of Way Storage Facility Parcel (as that term is hereinafter defined); and

2. Available taxes in the fund established pursuant to the Pulaski TIF Adoption Ordinance or from any other funds selected by the City in order to reimburse Metra for Metra's Expenses in connection with construction of the Newly Weds Spur (as that term is hereinafter defined), including but not limited to the preparation of a new railbed and installation of spur track and signal equipment.

P. The construction of the Maintenance of Way Storage Facility and the Newly Weds Spur projects are types of public improvements that are contemplated by the Kinzie Plan and the Pulaski Plan, and therefore Metra's Costs qualify as "Redevelopment Project Costs" under the Plans, as defined in Section 5/11-74.4-3(q) of the Act.

Q. Metra's Property and the City's Property are real properties that have been developed for considerable periods of time, uses of which may have created, caused or contributed to the risk of environmental contamination. It is the intent of the Parties that, as of the date of the establishment of the Easements created in this Agreement, the City is to be responsible for any such pre-existing environmental contamination at the City's Property and Metra is to be responsible for any such pre-existing environmental contamination at Metra's Property.

R. But for this Agreement, the City could not construct and/or operate and maintain the Pedestrian Access Project (as that term is hereinafter defined) in its proposed location.

S. Intergovernmental cooperation between and among Illinois units of local government is authorized and encouraged, including but not limited to entering into intergovernmental agreements such as this Agreement, which are specifically provided for and authorized by Section 10 of Article VII of the *Illinois Constitution*, Section 3 of the *Illinois Intergovernmental Cooperation Act* (5 ILCS 220/1 *et seq.*), Section 6 of the *Local Land Resources Management Planning Act* (50 ILCS 805/1 *et seq.*), and Sections 8-1-7 (e) and 11-12-13 of the *Illinois Municipal Code* (65 ILCS 5/1-1-1 *et seq.*).

T. The City Council adopted an ordinance authorizing the execution of this Agreement

on _____, 2013.

U. The Commuter Rail Board adopted an ordinance authorizing the execution of this Agreement on _____, 2013.

II. RULES OF CONSTRUCTION AND DEFINITIONS.

A. The language in this Agreement shall be interpreted in accordance with the following rules of construction: (a) The word "may" is permissive and the word "shall" is mandatory; and (b) except where the context reveals the contrary: The singular includes the plural and the plural includes the singular, and the masculine gender includes the feminine and neuter.

B. When the first letter or letters of the following words in bold font are used in this Agreement in the upper case, such words shall have the following meanings:

1. **Act.** The Tax Increment Allocation Redevelopment Act, as found in the Illinois Compiled Statutes at 65 ILCS 5/11-74.4-1 *et seq.*, as amended.

2. **Agreement** or **Intergovernmental Agreement** or **IGA.** This intergovernmental contract.

3. **Appraisal.** A report written by an Illinois certified real estate appraiser concluding that the value of the land that will be servient to the Easement upon the Maintenance of Way Facility Parcel is equal to or greater than the value of the land that will be servient to the Easement upon Metra's Property.

4. **Approval** or **Approve.** The formal, official written acceptance as satisfactory executed by the accepting Party's representative having the power and authority to sign a document evidencing such acceptance.

5. **Authority** or **Regional Transportation Authority** or **RTA.** An Illinois unit of local government, body politic, political subdivision and municipal corporation; the financial and oversight body of Metra, including its officers and employees.

6. **Baseline.** Assembled by the City's environmental consultant approved by Metra, the data regarding the environmental condition and history of the Maintenance of Way Storage Facility Parcel, the Driveway and Metra's Property sites as of the date of the creation of the Easements, including but not limited to a current Phase 1 Environmental Site Assessment as well as data resulting from soil and groundwater sampling and hydro-geological characterization of the sites as well as information showing the nature and extent of any existing contamination at each respective site and information regarding the uses and materials used or that have been at each such site.

7. **Bloomingtondale Rail Line.** Located approximately 1800 North and along Bloomingtondale Avenue in the corporate limits of the City, an abandoned elevated railroad right-of-way upon an approximately three mile length of which the City will construct the Trail.

8. **Chicago** or **the City** or **City of Chicago.** An Illinois municipal corporation and home rule unit as described in the *Constitution of the State of Illinois*, including its several departments and including its officers and employees.

9. **Chicago Auto Pound #6 or City's Property.** Located on land owned by the City and lying immediately south of and adjacent to the Metra Milwaukee District Rail Line between Campbell Avenue and Sacramento Boulevard, a facility currently operated by the City as a location for the storage of motor vehicles.

10. **City Council.** The City Council of the City of Chicago.

11. **City Plans.** The plans and specifications for the Pedestrian Access Project, including but not limited to the wrought iron fence separating the Pedestrian Access Project from Metra's vehicular roadway adjacent to Metra's Property and the Decorative Fence to be constructed on Metra's Property, including but not limited to engineering and design plans and a site plan delineating the locations and identifying dimensions of each.

12. **Commuter Rail Board.** A service board of the RTA, the governing body of Metra.

13. **Damages.** As used in this Agreement, any and all loss, liability, expenses, actions, causes of action, lawsuits, claims, demands, costs and/or expenses of whatever nature, and other deficiencies, including but not limited to injury to persons (including death) or property, interest, penalties, and Legal Fees.

14. **Decorative Fence.** The minimum six foot (6') high fence to be erected by the City at the westerlymost end of Metra's Property as part of the Pedestrian Access Project, the plans for which are attached hereto as an Exhibit.

15. **Default.** Any breach by a Party of the covenants contained in this Agreement, including the failure of any Party to perform any obligation required of it to be performed by any provision of this Agreement and the performance by any Party of an act or acts prohibited or not explicitly permitted by any provision of this Agreement.

16. **Driveway.** Owned by the City, that part of the Chicago Auto Pound #6 which is the servient real estate described legally and in detail on the Plat of Easement therefor attached as an Exhibit hereto upon which is imposed the Easement granted in this Agreement by the City to Metra as and for a vehicular right-of-way, which traverses a portion of the Chicago Auto Pound #6, affording access to and egress from the Maintenance of Way Storage Facility and the Maintenance of Way Storage Facility Parcel.

17. **Easements.** The self-perpetuating continuing perpetual privileges, rights and authorizations, severally conveyed and granted by this Agreement in, upon, across and over and running with the lands described on the Plats of Easement attached as Exhibits hereto, each conditioned upon the terms of this Agreement.

18. **Effective Date.** The date of Metra's Notice of Approval set forth in Subsection C of Section III of this Agreement, given after this Agreement has been signed by the Parties following authorization and Approval hereof by ordinances adopted by their respective City Council and Commuter Rail Board.

19. **Emergency.** In the sole judgment of the Party affected thereby, an event requiring immediate action to be taken.

20. **Engineering Fees.** All costs and fees associated with: Planning, designing, construction and construction management; engineering consultants and review of other engineers' services, including but not limited to designing, surveying, structural and

geotechnical services, and/or incorporation of those services into the Work; meeting attendance; preparation of costs estimates; drafting and preparation of drawings and exhibits, large photocopying projects and/or those which require the use of a copying service; large or unusual deliveries/shipments and messenger/overnight couriers; and/or any other labor of engineers incurred by Metra in connection with the Work.

21. **Exhibits.** The several attachments to this Agreement, each identified by a different letter of the alphabet in the upper case preceded by the word "Exhibit," all of which by specific reference thereto in the text hereof are made a part of this Agreement.

22. **Force Majeure.** Labor strikes and/or disputes, lockouts or other industrial disturbances, unavailability of materials, unavailability of permits issued by governmental entities other than either or both of the Parties, fire, casualties, acts of God, acts of public enemy, orders of any agency or agencies of the Government of the United States or of the State of Illinois, insurrections, riots, terrorism, acts of terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, civil disturbances, explosions, breakage or accidents to machinery, pipelines, railroad track or tunnels, partial or entire failure of water supply, and/or other events not within the reasonable control of either of the Parties.

23. **Hazardous Materials.** Materials perilous to or that could adversely affect the life and/or health of persons, including but not limited to hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*, and Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.*, and petroleum and petroleum products.

24. **Insufficiency.** To be paid by the City into the Escrow from time to time from any City revenue source in connection with reimbursement of Metra, the dollar amount difference between the estimate of Metra's Expenses set forth herein and the actual amount necessary to reimburse Metra the full amount of Metra's Expenses at any given time during the term hereof.

25. **Joint Order Escrow or Escrow.** With the Title Company as escrowee, the escrow trust established jointly by the Parties to guarantee the payment of Metra's Expenses and the filing of the several Easements with the Cook County, Illinois, Recorder of Deeds for recordation, the form of which is attached hereto as an Exhibit.

26. **Journal.** The Journal of Proceedings of the City Council.

27. **Kinzie Area.** The Kinzie Industrial Corridor Redevelopment Project Area within the corporate limits of the City as described in the Kinzie Plan.

28. **Kinzie Plan.** That certain redevelopment plan and project approved by ordinance adopted by the City Council on June 10, 1998, as amended by an ordinance adopted on May 12, 2010, and published at pages 89655 through 89664 of the Journal of such date for the Kinzie Area.

29. **Kinzie TIF Adoption Ordinance.** The ordinance establishing tax increment allocation financing for the Kinzie Area in accordance with the Act.

30. **Legal Fees.** Attorneys fees, legal assistant and paralegal costs and fees, court costs, filing fees, expert witness fees, costs of large photocopying projects or those which require the use of an outside copying service, costs of large or an unusual

delivery/shipment, service charges for electronic research and messenger/overnight courier charges; and any and all of the foregoing incurred by Metra in connection with the preparation, negotiation or interpretation of this Agreement and/or to enforce the provisions of this Agreement or as a cost of Metra's defense.

31. **Maintenance of Way Storage Facility.** Located upon the Maintenance of Way Storage Facility Parcel, the improvement to be constructed by Metra in accordance with this Agreement for use by Metra for storage of maintenance of way equipment and material and for other Metra purposes as Metra deems necessary to replace the loss of certain track and storage area on Metra's Property currently used for this purpose.

32. **Maintenance of Way Storage Facility Parcel.** Owned by the City, the approximately 53,276 square feet of the Chicago Auto Pound #6 which is the servient real estate described legally and in detail on the Plat of Easement therefor attached as an Exhibit hereto upon which land is imposed the Easement granted in this Agreement by the City to Metra as and for the Maintenance of Way Storage Facility.

33. **Metra or Commuter Rail Division of the Regional Transportation Authority.** The operating division of the Authority responsible for providing public transportation by railroad, including its several departments and including its officers and employees.

34. **Metra's Expenses.** Any and all costs for labor and materials incurred by Metra, whether arising out preparation and negotiation of this Agreement or arising as a result of having entered into this Agreement, including but not limited to additives, overhead and all other costs and expenses incurred by Metra to perform or in the performance of the Work, Metra's Engineering Fees and Legal Fees, whether incurred "in house" or with independent contractors, as well as the bills of all individuals or firms performing Work at the request of Metra; and also including but not limited to costs associated with assembling the Baseline of the environmental condition of the land servient to the easements granted herein, including any and all evaluation, sampling and analysis, excavation, health and safety planning and execution, transportation and reporting, and disposition of materials including disposal and remediation, if any.

35. **Metra's Property.** Owned by Metra, the approximate length of a city block commencing at the west right-of-way line of Lawndale Avenue and continuing west to the west right-of-way line of Ridgeway Avenue, currently used by Metra for storage of materials and as a repair center for its rolling stock, the servient real estate described legally and in detail on the Plat of Easement therefor attached as an Exhibit hereto upon which land is imposed the public Easement granted in this Agreement by Metra to the City, being ; which land is to be the site of the Pedestrian Access Project to be undertaken by the City as part of the Trail subject to the terms of this Agreement.

36. **Newly Weds Spur.** The track being constructed in accordance with this Agreement by Metra on and within the confines of approximately 750 linear feet of Metra-owned land adjacent to the Milwaukee District Rail Line from approximately West Wrightwood Avenue to West Fullerton Avenue in the corporate limits of the City, approximately 650 linear feet of new rails to create a new spur track for the use of the Canadian Pacific Railroad in providing freight service to the factory known as "Newly Weds Bakery" and to replace the loss of certain track on the Bloomingdale Rail Line currently used for this purpose.

37. **Notice.** A written notification from one Party to the other Party, given in the manner set forth in Section X of this Agreement.

38. **Parties.** The City and Metra who have entered into and made this Agreement as of the Effective Date.

39. **Pedestrian Access Project.** Including the portion of the trail on Metra's Property, the Work the City will undertake on Metra's Property that will provide public access to the Trail.

40. **Plat of Easement.** Attached as an Exhibit hereto and referencing this Agreement on the face thereof, the survey (containing the legal description and PIN) of a given Easement conveyed by this Agreement, duly Approved and executed by the respective Party conveying such Easement.

41. **Preconstruction Activities.** Overseen by Metra's engineers, the make-ready labor undertaken by the City at its sole cost and expense on the Maintenance of Way Storage Facility Parcel following the execution of this Agreement and prior to the creation of the Baseline thereon and prior to Metra's performing any Work on the City's Property and/or the Maintenance of Way Storage Facility Parcel in connection with the Driveway and the construction of the Maintenance of Way Storage Facility; which make-ready labor shall include but not be limited to: (i) clearing and grubbing of existing trees along the fence line; (ii) removal of light poles or certain containers (used as bollards); (iii) fence relocation; (iv) grading and excavation to a grade approximately thirteen inches (13") below top of tie of Metra's main line track No. 3, as necessary; (v) elevation survey for final subgrade, which survey shall include and identify both the City-granted easement on the Maintenance of Way Storage Facility Parcel for the location of the Maintenance of Way Storage Facility and the Driveway and its appurtenant cyclone-type chain link six foot (6') high fence and gate on the City's Property.

42. **Public Utility Third Party Right.** Granted by a Party to any third party not a Party to this Agreement, any lease, license, easement or other right through, under, over or across all or any portion of any land servient to any of the Easements granted or conveyed pursuant to the terms of this Agreement.

43. **Pulaski Area.** The Pulaski Corridor Redevelopment Project Area within the corporate limits of the City as described in the Pulaski Plan.

44. **Pulaski Plan.** The certain redevelopment plan and project approved by ordinance adopted on June 9, 1999.

45. **Pulaski TIF Adoption Ordinance.** The ordinance establishing tax increment allocation financing for the Pulaski Area in accordance with the Act.

46. **Right of Entry Agreement.** In those instances required in this Agreement, the form of contract attached and incorporated in this Agreement as an Exhibit which shall be entered into between a Party and any third party not a Party to this Agreement (including but not limited to public utilities that have been granted a Public Utility Third Party Right, contractors and subcontractors) prior to such third party entering upon any land that is subject to an Easement granted and/or conveyed in this Agreement.

47. **Title Company.** Jointly, Chicago Title Insurance Company and Chicago Title and Trust Company, the escrowee of the Joint Order Escrow.

48. **Title Insurance Policies.** Following the filing of a fully executed original hereof and each of the Plats of Easement with the Cook County Recorder of Deeds for recordation, the several policies issued by the Title Company insuring fee title in the owners of the land which is servient to the several Easements granted herein and reflecting the existence of those easements.

49. **Track Materials.** Currently existing on the Effective Date, the rail tracks, installed ballast and ties on Metra's Property.

50. **Trail.** The approximately three mile long bicycle/pedestrian path and park to be constructed by the City on the former Bloomingdale Rail Line from Ashland Avenue, 1600 West, extending westward to Ridgeway Avenue, 3732 West.

51. **Work.** Other than Preconstruction Activities, any and all construction and construction-related effort contemplated in this Agreement, whether to be undertaken or actually undertaken by Metra or the City, including but not limited to the engineering, design and construction of any and all of the following: The Maintenance of Way Storage Facility, the Driveway, the Pedestrian Access Project (including removing the track from Metra's Property), the Newly Weds Spur and/or the erection of fencing.

III. GRANTS OF EASEMENT; PERMITS FOR CONSTRUCTION.

A. Conditioned upon the terms of this Agreement and effective as of the City's completion of its Preconstruction Activities, the City hereby grants and conveys the following to Metra: An exclusive easement to construct and thereafter operate, maintain and repair, as Metra deems necessary in its sole discretion, the Maintenance of Way Storage Facility in, over, upon, across and through the Maintenance of Way Parcel legally described and reflected on **Exhibit A [Plat of Easement upon the Maintenance of Way Storage Facility Parcel]** and constructed and laid out as shown on **Exhibit B [Site Plan for the Maintenance of Way Storage Facility]**; as well as an exclusive easement for the Driveway in, over, upon, across and through a portion of the City's Property legally described and reflected on **Exhibit C [Plat of Easement for the Driveway]** and improved with fencing and a gate as shown on **Exhibit D [Site Plan for the Driveway]**.

1. Prior to its signing this Agreement, the City has reviewed and Metra has submitted as the City deems necessary engineering or other plans not made a part of this Agreement. If the City has determined that zoning or other ordinances are affected by Metra's plans, at the City's sole cost and expense Metra will apply for any and all permits in order that the City will issue to Metra all such building permits and zoning classifications, if any, necessary for Metra to construct and thereafter operate and maintain the Maintenance of Way Storage Facility on the Maintenance of Way Storage Facility Parcel as shown on Exhibit B as well as the improvement of the Driveway and the construction and location of its appurtenant cyclone-type chain link six foot (6') high fence and gate on the City's Property as shown on Exhibit D.

2. Notwithstanding anything to the contrary contained in this Agreement, it is understood that the City will give Metra Notice of its commencement of the Preconstruction Activities in order to allow Metra's engineers to oversee the Preconstruction Activities and to assure that a sufficient and proper surface area will be created for the laying of new track and to otherwise make ready the Maintenance of Way

Storage Facility Parcel for Metra's construction of the Maintenance of Way Storage Facility on the Maintenance of Way Storage Facility Parcel.

3. During the term of this Agreement, the City shall not grant any Public Utility Third Party Right to the Maintenance of Way Storage Facility Parcel and/or the Driveway except Public Utility Third Party Rights granted in connection with the provision of public utilities that do not interrupt, diminish, interfere with or otherwise affect Metra's rights in and use of the Maintenance of Way Storage Facility Parcel and/or the Driveway pursuant to the terms of this Agreement and provided such public utility provider shall be required by the City to enter a Right of Entry Agreement with Metra as a condition precedent to the Public Utility Third Party Right becoming effective.

B. Conditioned upon the terms of this Agreement and effective as of (i) Metra's completion of its Work of constructing the Newly Weds Spur and the Maintenance of Way Storage Facility, (ii) Metra's removing its equipment and supplies (other than its railroad tracks and ties) from Metra's Property, and (iii) Metra's Expenses having been reimburse in full: Metra hereby grants and conveys to the City an exclusive easement to construct and operate the Pedestrian Access Project for the use of the City and the general public over, upon, across and through Metra's Property legally described and reflected on **Exhibit E [Plat of Easement upon Metra's Property]**.

1. As shown on **Exhibit F [Plan of the Pedestrian Access Project]** and as part of its construction of the Trail, the City shall construct and erect at the westerlymost end and southerly line of Metra's Property, a Decorative Fence and also construct the Pedestrian Access, both meeting the Approval of Metra. As part of the Pedestrian Access Project, in order to separate the pedestrian access from Metra's vehicular roadway adjacent to and south of Metra's Property, it is understood that the City will erect a wrought iron fence aligned east to west to the west right-of-way line of Lawndale Avenue, which fence shall continue along the said west line of Lawndale for a distance as shown on Exhibit F. The City shall also erect a stop sign for bicyclists exiting the Trail at Lawndale.

2. It is understood that, except for its use of Metra's Property and construction of the Pedestrian Access Project and Decorative Fence thereon, the City shall not undertake any activity that in any manner moves or disturbs any of the adjacent properties of Metra or appurtenances thereto whether or not such movement or disturbance is accomplished in connection with the City's prosecution of the Work.

3. During the term of this Agreement, Metra shall not grant any Public Utility Third Party Right to Metra's Property except Public Utility Third Party Rights granted in connection with the provision of public utilities that do not interrupt, diminish, interfere with or otherwise affect the City's rights in and use of Metra's Property pursuant to the terms of this Agreement and provided such public utility provider shall be required by Metra to enter a Right of Entry Agreement with the City as a condition precedent to the Public Utility Third Party Right becoming effective.

C. It is understood that, while the Parties' respective enabling ordinances authorizing the execution of this Agreement may be adopted and the Agreement may be signed by the respective Parties without all of the Exhibits attached hereto, this Agreement is subject to the following conditions subsequent and will not be deposited in the Escrow until: (i) all of the

Exhibits shall be attached hereto; and (ii) Metra gives Notice of Approval to the City that it is in receipt of: (a) title insurance commitments issued by the Title Company for the Title Insurance Policies revealing that the City is the owner and titleholder of record of the City's Property and the Maintenance of Way Storage Facility Parcel, and that Metra is the owner and titleholder of record of Metra's Property; and (b) the Appraisals.

1. If within sixty (60) days of the date of the Metra enabling ordinance the aforesaid Exhibits are not attached to this Agreement and Metra has not given the above Notice of Approval to the City that the title insurance commitments and Appraisals have been received and Approved by Metra, Metra's enabling ordinance and this Agreement will become void and be of no further force or effect.

2. Following the execution of this Agreement by the Parties and Metra's giving the above Notice of Approval to the City, the City and Metra will cause fully executed originals of the following documents to be deposited into the Escrow with the Title Company for filing with the Cook County, Illinois, Recorder of Deeds for recordation at the sole cost and expense of the City in the following order: The text of this Agreement (without its Exhibits attached), the Plat of Easement upon the Maintenance of Way Storage Facility Parcel (See Exhibit A hereto), the Plat of Easement for the Driveway (See Exhibit C hereto), and the Plat of Easement upon Metra's Property (See Exhibit E hereto).

IV. CONSTRUCTION.

A. Construction to be Undertaken by Metra.

Prior to the City's commencing Work on Metra's Property and following the City's completion of its Preconstruction Activities and creation of the Baseline as well as the City's initial \$2,908,886.00 deposit into the Escrow with the Title Company, Metra will construct at the sole cost and expense of the City:

1. The Maintenance of Way Storage Facility and Driveway. The grant of Easements set forth in Section III includes giving Metra the right to enter the City's Property and the Maintenance of Way Storage Facility Parcel as necessary to perform this Work. Accordingly:

a. The Maintenance of Way Storage Facility will be constructed for Metra's sole use and for the storage of maintenance of way equipment and for storage of materials in order to provide for the continued operation and maintenance of Metra's existing facilities. The Maintenance of Way Storage Facility will be located on the Maintenance of Way Storage Facility Parcel and the Driveway will be improved along with the construction and location of its appurtenant cyclone-type chain link six foot (6') high fence and gate on the City's Property as shown on Exhibit D. As part of this Work on the Maintenance of Way Storage Facility Parcel, Metra will construct a six foot (6') high cyclone-type chain link fence as well as a berm (if such fence and berm are not theretofore constructed by the City as part of its Preconstruction Activities), using soil it must move in order to locate and build its new rail spur, which is an integral part of the Maintenance of Way Storage Facility – all as shown on Exhibit A, Exhibit B, Exhibit C and Exhibit D. At all times while Metra is undertaking its Work (i) erecting the six foot (6') high

cyclone-type chain link fence and gate on and around and otherwise improving the Driveway and (ii) constructing the Maintenance of Way Storage Facility on the Maintenance of Way Storage Facility Parcel, Metra will secure the Driveway area and the Maintenance of Way Storage Facility Parcel to the same extent the City secures Chicago Auto pound # 6.

b. Such Work may involve the excavation and disposition of soil. It is understood that this relocation of soil may: (i) Require Metra to utilize additional land currently comprising certain portions of the City's Property, which relocated soil the City will accept; and (ii) expose environmentally contaminated soil, for which the City will bear responsibility as set forth in Section IX hereof, which includes a health and safety plan for persons constructing the Work. In addition and as set forth above, if hazardous conditions are encountered by Metra while prosecuting the Work on the City's Property and/or on the Maintenance of Way Storage Facility Parcel, Metra will have the right to stop its Work and obtain all additional funds that may be necessary from the City to allow Metra to continue the Work, the amount of which funds shall include the cost of the removal of any contaminated soil to a suitable off-site location, if required by law.

c. Metra shall complete the Work on the Driveway and the Maintenance of Way Storage Facility Parcel in a good and workmanlike manner, in accordance with all applicable federal, state and local laws, rules, regulations, orders, ordinances and code provisions.

2. The Newly Weds Spur. Metra will construct the Newly Weds Spur in accordance with the plans therefor contained on **Exhibit G [Plans for the Newly Weds Spur]**.

B. Construction to be Undertaken by Chicago.

1. For a period not to extend past July 30, 2014, Metra shall leave the Track Materials in place on Metra's Property, which Track Materials may be used by the City and its contractors and subcontractors to transport construction materials and debris along the line during the construction of the Trail and the Pedestrian Access Project. The City will use its own or its contractors' and subcontractors' vehicles, flatbed carts, gondolas, rail cars and other equipment.

a. When such Track Materials are no longer needed by the City, the City shall remove such Track Materials and transport them to the west end of Metra's Property for pick-up by Metra.

b. The City shall give Notice to Metra when such Track Materials are available for Metra's pick-up and removal from Metra's Property, and Metra shall use commercially reasonable efforts to pick-up and remove such Track Materials within 90 days after the date of the Notice.

c. It is understood that Metra is interested in ties that are in good condition and the rails; so, if such pick-up and removal does not occur within 90 days after the date of the Notice, then the City may deem those Track Materials that remain on Metra's Property to be abandoned by Metra and after such 90 day period, the City may thereafter dispose of the Track Materials at the City's expense, and retain any salvage proceeds. Metra may elect to abandon or donate any or all of the Track

Materials by Notice to the City, in which case the City shall retain any salvage proceeds.

2. Provided Metra's Expenses have been paid in full for its Work performed, as soon as Metra has completed construction of the Maintenance of Way Storage Facility and Driveway as well as the Newly Weds Spur, Metra will give Notice of such completion to the City. The City will then undertake construction of the Pedestrian Access Project, provided the City is in receipt of Metra's Notice giving written consent to the plans and specifications therefor.

a. The City shall submit the City Plans to Metra for Metra's review and comments.

b. Upon receipt of the proposed City Plans, Metra shall provide detailed comments and will act reasonably in any determination it makes to deny or withhold its consent to the City Plans and will not deny or withhold its consent for reasons that are contrary to the purposes for which this Agreement is entered into.

c. Upon Metra's Approval of the City Plans, the City Plans shall be deemed to be incorporated into this Agreement. The City shall be solely responsible for obtaining all permits and Approvals legally required for the City Work. The City shall complete the City Work in a good and workmanlike manner, in accordance with all applicable federal, state, and local law, rules, regulations, orders, ordinances, code provisions, and the Metra-Approved City Plans.

C. Coordination of Activities.

1. The Parties will act reasonably to coordinate their respective Work as set forth herein in order to provide for the continued uninterrupted operation and maintenance of Metra's existing facilities.

2. The City understands and covenants that if additional area of the City's Property will be required by Metra in the relocation of soil from the Maintenance of Way Storage Facility Parcel onto Chicago Auto Pound #6, the City will make such land (part of the City's Property) available for such Work and that, when such soil is relocated onto the City's Property, such soil shall remain as a berm in such location for the duration of the Easement for the Maintenance of Way Storage Facility on the Maintenance of Way Storage Facility Parcel. At all times the City shall allow such of the City's Property to be used as is necessary for the performance of Metra's Work and for the maintenance of minimum clearances not less than the existing vertical and lateral clearances, with reference to Metra's existing and proposed railroad tracks and as required for Metra's Work.

3. Except in an Emergency, not less than seven (7) days prior to entering upon Metra's Property or any other Metra property for the purposes set forth in this Agreement, City contractors and subcontractors performing Work thereon will execute and deliver to Metra's Real Estate and Contract Management Department, or successor thereof, a Right of Entry Agreement in the form attached and incorporated in this Agreement as **Exhibit H [Form of Right of Entry Agreement]** along with evidence of insurance required by such form.

4. Within six (6) months of the final completion of the Work and at the City's

sole cost and expense, the City shall provide Metra a set of "as-built" drawings of the City's Work upon Metra's Property and Metra shall provide the City a set of "as-built" drawings of Metra's Work upon the City's Property as well as the Maintenance of Way Storage Facility Parcel.

V. REIMBURSEMENT OF METRA'S EXPENSES.

A. No Cost to Metra. Notwithstanding anything to the contrary contained in or implied from any provision of this Agreement, it is understood that the City will reimburse Metra for all of Metra's Expenses, as well as costs incurred by Metra following prosecution of the Work associated with the environmental condition of the soil of Metra's Property servient to the Easement granted the City herein, including evaluation, sampling and analysis, excavation, health and safety planning and execution, transportation and reporting, and disposition of materials including disposal and remediation, if any, unless such has been paid by the City directly to Metra's independent contractors at Metra's request.

1. Within the first thirty (30) days after the Effective Date of this Agreement and utilizing \$1,792,234.00 of funds produced as a result of the Pulaski TIF Adoption Ordinance as well as \$1,116,652.00 of funds produced as a result of the Kinzie TIF Adoption Ordinance, the City shall deposit the estimate of Metra's Expenses in the amount of \$2,908,886.00 into the Joint Order Escrow, under an escrow agreement in form substantially the same as that set forth in the attached **Exhibit I [Form of Joint Order Escrow]**.

a. Such amount shall be used to reimburse Metra for Metra's Expenses, which shall be paid to Metra in accordance with the terms of the Joint Order Escrow. In addition, a portion of such funds shall be utilized by the Title Company to cover the cost of the Joint Order Escrow and the Title Insurance Policies. In the event the Joint Order Escrow is placed into an interest-bearing account, all interest shall accrue in favor of and be paid to the City at the termination of the Joint Order Escrow.

b. In addition, wherever in this Agreement the phrase "sole cost and expense" is used, it is understood that such cost and expense has not been included by Metra in Metra's \$2,908,886.00 estimate of Metra's Expenses nor has the cost of Metra's review of Right of Entry Agreements entered into with City contractors and subcontractors performing Work on Metra's Property.

2. Whenever during the term of this Agreement there exists an Insufficiency in the funds in the Escrow to reimburse Metra the full amount of Metra's Expenses and pay the Title Company its charges, Metra will send the City a Notice containing the amount of such Insufficiency. Within 90 days after such Notice of insufficiency, the City shall deposit the amount of such Insufficiency into the Joint Order Escrow. Thereafter, whenever an Insufficiency of funds on deposit in the Joint Order Escrow exists, this procedure shall be repeated as often as necessary during the term of this Agreement until Metra's Expenses have been reimbursed in full. During the period of any such Insufficiency, all Work being undertaken by Metra shall cease. When the Work has been completed and all of Metra's Expenses have been paid in full, the Parties' attorneys shall direct the Title Company to disperse the remaining funds and terminate the Escrow.

B. Interest incurred by late payment. Any payment due and unpaid after ninety (90) days shall bear interest in accordance with the Illinois Prompt Payment Act in effect as of the Effective Date, whether or not the Illinois Prompt Payment Act has heretofore or will be hereafter abrogated by the City through the exercise of its home rule power.

C. No Recapture and No Contribution. In addition to the foregoing, whether through any Illinois statute or amendment thereof or use of its home rule authority (whether by tax increment or other scheme of taxation or fees), the City will not seek to recapture from or to force any contribution from Metra any of the costs of the Work or to include Metra or any land owned, used and/or controlled by Metra for financing the Pedestrian Access Project or any other improvement or Work called for in this Agreement to be made.

D. Audit. At any time upon reasonable Notice the City may audit, in accordance with Generally Accepted Accounting Principles (GAAP) applied on a consistent basis, Metra's expenses for which Metra has been reimbursed by or for which Metra seeks reimbursement from the City. Upon such Notice, Metra must provide all documentation, which is necessary or appropriate to complete such audit. Within thirty (30) days after the completion of the audit, the City will provide Metra with a copy of the audit report. In the event of an underpayment, the City will make full payment of any additional amounts that should have been reimbursed to Metra within thirty (30) days after the date of the audit report. In the event of an overpayment by the City, Metra must re-pay any amounts that should not have been paid to it promptly upon receipt of a copy of the audit report and a written Notice from the City requesting repayment by Metra to the City. Metra shall not be bound by the result of the audit, and Metra reserves its right to contest the results of any audit. Metra agrees to maintain copies of all required documentation concerning Metra's Expenses for a period of three (3) years following the date of the Notice of completion of Metra's Work or the date of Notice termination of this Agreement, whichever date first occurs. Metra's covenant in the preceding sentence shall survive the expiration or termination of this Agreement.

VI. CLAIMS FOR LABOR AND MATERIAL.

Notwithstanding provisions of the law forbidding the liening of government land, the City shall fully pay for all materials joined or affixed to and labor performed upon Metra's Property in connection with the Work, and shall not permit or suffer any costs that would otherwise be in the nature of mechanic's or materialman's liens of any kind or nature to be enforced against Metra and/or the Escrow during the term of this Agreement.

VII. INDEMNITY; INSURANCE.

A. Except to the extent set forth in Section IX concerning environmental liabilities and except for the negligent acts or omissions or the willful or malicious misconduct of Metra, the City hereby undertakes to indemnify and save harmless Metra from Damages that:

1. Arise from: (a) injury to or death of persons whomsoever and property damage; and/or (b) injury to or loss or destruction of any and all components of or disruption of Metra's operations and facilities, and appurtenances thereto of any nature whatsoever; and/or (c) loss of revenue; and

2. Are due to or arise from the prosecution of any Preconstruction Activities undertaken by the City on the City's Property as well as the Maintenance of Way Storage Facility Parcel; or

3. Are due to or arise from the prosecution of the Work undertaken by the City and/or, the existence, operation, repair and/or maintenance of the Pedestrian Access Project by the City including claims made by the general public.

B. The City shall not have or seek recourse against Metra or recovery or contribution from Metra for (i) any claim or cause of action for alleged, actual or other Damages, including but not limited to consequential Damages, to any person or firm or corporation using or at the Pedestrian Access Project, or as a consequence of the existence of the Pedestrian Access Project; or (ii) any act or omission of the City as a consequence of the existence of the Pedestrian Access Project.

C. Except to the extent set forth in Section IX concerning environmental liabilities and except for the negligent acts or omissions or the willful or malicious misconduct of the City, Metra hereby undertakes to indemnify and save harmless the City from Damages that:

1. Arise from (i) injury to or death of persons whomsoever and property damage; and/or (ii) injury to or loss or destruction of any and all components of the City's operations and facilities, and appurtenances thereto of any nature whatsoever, including disruption of the City's operations; and/or (iii) loss of revenue; and

2. Are due to or arise from the prosecution of any Work undertaken by Metra following the completion of the Preconstruction Activities and the Work to be undertaken by the City, or to the extent caused by the negligent acts or omissions or the willful or malicious misconduct of Metra on the Maintenance of Way Storage Facility following the completion of the Work undertaken by the City and the commencement of Metra's possession and control of the Maintenance of Way Storage Facility Parcel.

D. Following execution hereof each Party shall obtain or provide evidence of insurance in amounts satisfactory to both the City and Metra and/or self-insurance and *all insurance provided by independent carriers shall be with a minimum Best's rating of A+ or better.*

1. Prior to entering upon the City's Property, Metra shall furnish the City evidence of insurance or self-insurance. During the term of this agreement, the City may require commercially reasonable increases in the amount of insurance required to be provided by Metra. The City shall be named as an additional insured on all insurance policies required under the terms and provisions of this Agreement.

2. Prior to entering upon Metra's Property, the City shall furnish Metra evidence of insurance or self-insurance. During the term of this agreement, Metra may require commercially reasonable increases in the amount of insurance required to be provided by the City. The RTA and Metra shall be named as additional insureds on all insurance policies required under the terms and provisions of this Agreement.

3. A Party's failure to obtain or to cause its contractors to obtain proper insurance coverage as set forth in this Section VII shall not, at any time, operate as a waiver of the other Party's right to indemnification and defense against Damages covered under the terms and provisions of this Agreement.

VIII. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Fiber optic or other cable systems may be buried in Metra's Property. Protection of these cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. The City shall send Notice to Metra and notify DIGGER to determine if any cable is buried anywhere in Metra's Property. If it is, the City will contact the telecommunications companies involved, arrange for a cable locator and make arrangements for relocation or other protection of the cable, all at the City's expense, and will commence no Work on Metra's Property until all such protection or relocation has been accomplished.

IX. ENVIRONMENTAL LIABILITIES.

A. Before any Work is undertaken by either Party, the City will cause analyses of both the sites of Driveway Easement upon the City's Property and the Maintenance of Way Storage Facility Parcel as well as Metra's Property to be performed in order to develop the Baseline. The Baseline will be developed on the City's Property, including the Maintenance of Way Storage Facility Parcel following the City's completion of its Preconstruction Activities.

1. The environmental consultant assembling the Baseline will certify its report to both Metra and the City and will provide copies of the Baseline report to the City and to Metra in order that the City can establish health and safety plans for its use of Metra's Property and Metra will create such health and safety plans for Metra's development and future use of the Driveway on the City's Property and the Maintenance of Way Storage Facility Parcel.

2. The environmental consultant will undertake the sampling of the City's Property, including the Maintenance of Way Storage Facility Parcel, and Metra's Property in accordance with the sampling and other specifications set forth in group **Exhibit J [Baseline Survey Specifications and List of Approved Disposal Facilities]**.

3. In the event Metra in its sole discretion finds the Baseline report for the City's Property and/or the Maintenance of Way Storage Facility Parcel unacceptable for any reason or if hazardous conditions are shown to exist on either or both of the City's Property and the Maintenance of Way Storage Facility Parcel, Metra will have the right to stop its Work and until the Parties reach a mutual resolution of the problem or, if no resolution is reached, Metra obtains all additional funds that may be necessary from the City to allow Metra to continue the Work, the amount of which funds shall include the cost of the removal of any contaminated soil to a suitable off-site location, if required by law.

4. The Baseline will not become effective as to any Party until and unless such Party gives the other Party notice of Approval of the Baseline.

B. Metra shall not be responsible or liable, under any statute or at common law, for contamination or the presence of Hazardous Materials: (a) found at the site of the City's Property prior to the date that the Baseline is established under this Agreement for Driveway Easement, and (b) found at the site of the Maintenance of Way Storage Facility Parcel prior to the date that the Baseline is established under this Agreement for the Maintenance of Way Storage Facility Easement. As set out in Section VII of this Agreement, the City shall indemnify and save

harmless Metra regarding any such Hazardous Materials as set out in the Baseline for the City's Property, including the Maintenance of Way Storage Facility Parcel. In addition and as set forth above, if hazardous conditions are encountered by Metra while prosecuting the Work on the City's Property and/or the Maintenance of Way Storage Facility Parcel, Metra will have the right to stop its Work and obtain all additional funds that may be necessary from the City to allow Metra to continue the Work, the amount of which funds shall include the cost of the removal of any contaminated soil to a suitable off-site location, if required by law. On the date that the Baseline for Driveway Easement and Baseline for the Easement on the Maintenance of Way Storage Facility Parcel under this Agreement are established and thereafter, Metra shall be responsible for contamination or the presence of Hazardous Materials found at the site of the Driveway Easement on the City's Property and/or found at the site of the Maintenance of Way Storage Facility Parcel to the extent such contamination arose from Metra's operations and use of the City's Property and/or the Maintenance of Way Storage Facility Parcel following the establishment of the Baseline for each site.

C. The City shall not be responsible or liable, under any statute or common law, for contamination or the presence of Hazardous Materials found at the site of Metra's Property prior to the date that the Baseline is established under this Agreement for the Easement on Metra's Property. Metra shall indemnify, defend and save harmless the City regarding any such Hazardous Materials as set out in the Baseline for Metra's Property. On the date that the Baseline for the Easement on Metra's Property under this Agreement is established and thereafter, the City shall be responsible for contamination or the presence of Hazardous Materials found at the site of Metra's Property to the extent such contamination arose from the City's operations and use of Metra's Property following the establishment of the Baseline for this site.

D. The obligations of this Section IX shall survive the expiration or other termination of this Agreement.

X. NOTICES.

A. All Notices required to be given hereunder shall be in writing and shall be properly served on the date delivered by courier or on the date deposited, postage prepaid, with the U. S. Postal Service for delivery *via* certified mail, return receipt requested, addressed:

If to Metra:	with a copy to:
General Counsel Metra 547 W. Jackson Boulevard, 15 th Floor Chicago, IL 60661	Director of Real Estate and Contract Management Metra 547 W. Jackson Boulevard Chicago, IL 60661
If to the City:	with copies to:
Chicago Department of Housing and Economic Development 121 N. LaSalle Street, Room 1000 Chicago, IL 60602	Chicago Department of Fleet and Facility Management, City of Chicago 1685 N. Throop Street Chicago, IL 60642
	and:
City of Chicago, Department of Transportation 30 N. LaSalle Street Suite 500 Chicago, IL 60602	City of Chicago, Department of Law Finance and Economic Development Division 121 N. LaSalle Street, Room 600 Chicago, IL 60602

B. Either Party hereto may change the place and/or person listed above and/or add persons to the above list for the giving of Notices by Notice given ten (10) days prior to the effective date of such change.

C. Whenever an alert or immediate Notice is necessary to be given by either Party to the other in an Emergency, such notification shall also be given orally by telephone and by e-mail:

If to Metra:

Metra Police: 312-322-2800

If to the City:

Chicago Auto Pound #6: Frank Morrone, (Manager, United Road Towing): 312-_____ and

Chicago Department of Streets and Sanitation: Steve Sorfleet, Pound Operations: 312-746-6955 and

Chicago Department of Transportation: Commissioner's Office: 312-744-3600

XI. NON-WAIVER OF TORT IMMUNITY.

Notwithstanding anything contained in or implied from any other provision of this Agreement, nothing in this Agreement shall be construed as or act as a waiver by either or both Parties of their respective rights, defenses and immunities, under the Illinois Governmental And Governmental Employees Tort Immunity Act, 745 ILCS 10 *et seq.*, with respect to claims made against either or both Parties by persons not a Party to this Agreement.

XII. DEFAULT; NON-WAIVER; REMEDIES.

A. In the event of a Default by either Party, the other Party may, by suit, action, mandamus or any other proceeding, in law or in equity, including specific performance, enforce or compel the terms and performance of this Agreement, including the right to require all owners of the land servient to any of the easements granted or conveyed in this Agreement to refrain from interference with the maintenance, use and/or operation under the terms of the Easement for the purposes set forth in this Agreement, it being agreed that there shall be no waiver or forfeiture of a Party's right to insure compliance with the covenants and conditions of this Agreement by reason of any failure to act on the part of the Party to whom the easement has been granted by this Agreement. Each Party recognizes that, in the event of non-performance by a Party of any of the obligations set forth in this Agreement, Damages will be difficult or impossible to ascertain and accordingly the non-Defaulting Party shall have the right, in addition to each and every remedy or right which the non-Defaulting Party may have at law or in equity, to an injunction or similar equitable relief enjoining or restraining any breach or non-performance of, or compelling specific performance of, the provisions of this Agreement.

B. Notice and Cure.

1. No Party may exercise the right to bring any suit, action, mandamus or any other proceeding pursuant to Paragraph A of this Section without first providing Notice of the default to the Defaulting Party.

2. Continuation of any Default for thirty (30) days following written Notice by

the non-Defaulting Party specifying such Default to the Defaulting Party shall permit the non-Defaulting Party, at its sole discretion, to enforce or compel the performance of this Agreement by such Defaulting Party by suitable action or other proceeding brought in law or in equity.

3. Whenever performance required by one of the Parties herein is delayed by *Force Majeure*, the time period for such specified performance shall be extended by the length of such delay.

C. The rights and remedies under this Agreement are not exclusive to and shall not act as a limitation on any other rights or remedies which may be granted by law. This Agreement shall be construed in accordance with the laws of the State of Illinois.

D. The Party prevailing in such enforcement proceeding shall be entitled to recover its Damages from the other Party, including but not limited to Legal Fees.

XIII. NO ASSIGNMENT; MUTUAL COOPERATION; EMERGENCIES.

A. Neither Party shall assign this Agreement, in whole or in part, nor any rights herein granted, without the prior written consent of the other Party, which shall be memorialized in an amendment to this Agreement. It is understood that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted without such consent in writing, shall be absolutely void. Notwithstanding the foregoing, following completion of the Work to be undertaken by the City, it is understood that the City may transfer an interest in the Easement on Metra's Property to the Chicago Park District for the operation and maintenance of the Pedestrian Access Project. In the event such transfer occurs, the City shall not be relieved from its continuing responsibilities and obligations under the terms of this Agreement as a Party and the Chicago Park District shall be both benefited and bound by the conditions and restrictions contained in this Agreement, such that the transfer shall bind the successors and assigns of the Chicago Park District, its corporate officials, and its and their successors in office, and its and their respective successors in interest.

B. The City and Metra covenant hereby to cooperate in good faith with regard to each and every aspect required for the completion of Work and thereafter with regard to their respective operations contemplated by this Agreement. The City shall not unduly delay or interfere with Metra in performing Metra's Work and shall take all steps reasonably necessary or requested by Metra to facilitate Metra's Work; and Metra shall not unduly delay or interfere with the City in performing the City's Work. Each of the Parties agree to act reasonably to cooperate in carrying out their respective Work and thereafter to carry out their respective use and operation, maintenance and repair in a manner such that during the entire term hereof.

C. In instances of Emergency, the Parties covenant to cooperate in good faith to resolve the Emergency. However, when there has been no immediate response following oral and written Notice given by one Party to the other Party specifying such Emergency, the Party giving such Notice of Emergency, at its sole discretion, may undertake corrective action at the sole cost and expense of the Party to whom the Notice of Emergency was given with the understanding that, if the corrective action entails Work, such cost and expense thereof shall be borne by the City.

XIV. TERM.

When executed by both of the Parties, this Agreement shall be effective from and after the Effective Date in perpetuity, such that Easements granted and conveyed herein shall run with the land and each owner of land servient to such an Easement shall have and hold the land subject to such Easement forever.

A. This Agreement shall bind the respective successors in interest of the Parties, their corporate officials and their successors in office, as well as any other agency or other organization created by either or both Parties and/or their successors, their corporate officials, and their successors in office.

B. Nothing herein shall in any way prevent the alienation or sale of the land involved with this Agreement and the new owner of such land shall be both benefited and bound by the covenants, conditions and restrictions herein expressed.

XV. MISCELLANEOUS PROVISIONS.

A. All provisions, conditions, and regulations set forth in this Agreement and the documents or plans to which it refers shall supersede the Parties' respective ordinances, codes and regulations to the extent they conflict herewith. In the event of any conflict, contradiction, or other ambiguity between the terms of this Agreement or the documents to which it refers or any of the ordinances of the City or Metra, the terms of this Agreement shall apply, control, and supersede the conflict, contradiction, or other ambiguity.

B. By execution hereof:

1. The City certifies hereby that it is not barred from entering into this Agreement as a result of violations of either Section 33E3 or Section 33E4 of the Illinois Criminal Code, that it has a written policy against sexual harassment in place in full compliance with 775 ILCS 5/2105(A)(4), and it is in compliance with the Illinois Drug Free Workplace Act (30 ILCS 580/2).

2. Metra certifies hereby that it is not barred from entering into this Agreement as a result of violations of either Section 33E3 or Section 33E4 of the Illinois Criminal Code, that it has a written policy against sexual harassment in place in full compliance with 775 ILCS 5/2105(A)(4), and it is in compliance with the Illinois Drug Free Workplace Act (30 ILCS 580/2).

C. This Agreement calls for the construction of a "public work," within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/01 *et seq.* The Illinois Prevailing Wage Act requires contractors and subcontractors to pay laborers, workers and mechanics performing services on public works projects no less than the current "prevailing rate of wages" (hourly cash wages plus amount for fringe benefits) in the county where the work is performed. The Department of Labor publishes the prevailing wage rates on its website at <http://www.state.il.us/agency/idol/rates/rates.HTM>. The Department of Labor revises the prevailing wage rates and the contractor/subcontractor has an obligation to check the Department of Labor's web site for revisions to prevailing wage rates. For information regarding current prevailing wage rates, please refer to the Illinois Department of Labor's website. All contractors

and subcontractors rendering services under this contract must comply with all requirements of the Illinois Prevailing Wage Act, *including but not limited to*, all wage requirements and notice and record keeping duties.

D. Each Party, on behalf of itself and its successors and assigns, shall contractually obligate its contractors and subcontractors undertaking any Work that for the term of this Agreement and to the extent not in conflict with such Party's own procurement requirements and applicable federal and state law:

1. No contractor and subcontractor shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.*, of the Chicago Municipal Code, except as otherwise provided by said ordinance and as amended from time to time. Each contractor and subcontractor shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including but not limited to: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each contractor and subcontractor shall agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. In addition, each contractor and subcontractor, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

2. As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), by Title VI of the Federal Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and by U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation — Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21 at 21.7, each contractor and subcontractor shall ensure that it will comply with all requirements imposed by or issued pursuant to 49 U.S.C. 5332, 42 U.S.C. 2000d, and 49 CFR part 21, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which any such contractor and subcontractor receives Federal assistance awarded by the U.S. DOT or FTA.

3. Each contractor and subcontractor shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.*, and any subsequent amendments and regulations promulgated thereto.

4. Each contractor and subcontractor, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by a Party, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

5. Construction Worker Hours. Each Party may have affirmative action requirements or goals for the Work that impose construction worker hours or participation by utilization of minorities and women, respectively. Each Party shall comply, and shall cause each of its contractors and subcontractors to comply, therewith.

6. DBE Commitment. Each Party acknowledges for itself and its successors and assigns, that, to the extent prosecution of the Work involves use of federal funds, such Party will comply with the U.S. Department of Transportation regulations set forth at 49 CFR Part 26, as it pertains to the participation of disadvantaged business enterprises in federally funded contracts. Each Party's obligation to comply with said regulations pertain to all Work performed under this Agreement.

E. In the event any provision of this Agreement or part thereof shall be deemed invalid by a court of competent jurisdiction, such invalidity of said provision or part thereof shall not affect the validity of any other provision hereof. In addition, the invalidity or unenforceability of any provision of this Agreement shall not offset or invalidate any other provision. If any provision of this Agreement is capable of two constructions, one of which would render the provision invalid and the other of which would make the provision valid, then the provision shall have the meaning which renders it valid.

F. This Agreement, including the Exhibits hereto, has been negotiated by both Parties. This Agreement shall not be construed more strictly against Metra than against the City merely by virtue of the fact that the same has been prepared by legal counsel for Metra. It is recognized and acknowledged by both Parties that both Parties have contributed substantially and materially to the preparation, form, substance and content of this Agreement.

G. Except as expressly set forth herein, this Agreement constitutes the entire contract between the Parties with respect to the relationship of the Parties contemplated herein, and supersedes all prior and contemporaneous agreements and undertakings of the Parties pertaining to the subject matter hereof. Accordingly, to that end or for any other reason deemed by both Parties to be mutually beneficial to both Parties, the terms of this Agreement may be modified and amended from time to time by a written "Amendment To Intergovernmental Agreement" signed by the Parties hereto or their successors. No modification of the terms of this Agreement shall be effective, unless contained in such written amendment and executed by both of the Parties.

H. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a Party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. The headings of the sections, paragraphs, and other parts of this Agreement are for convenience and reference only and in no way define, extend, limit, or describe the meaning, scope, or intent of this Agreement, or the meaning, scope, or intent of any provision hereof.

J. The Parties shall take all necessary and reasonable actions to carry out the terms of this Agreement.

XVI. TRIPLICATES.

This Agreement shall be executed in triplicates, each of which shall be deemed an original, provided all Parties have each signed such triplicate; and in such instance each such triplicate shall constitute an original hereof.

XVII. AUTHORITY.

The Parties represent and warrant to one another that each has the requisite authority to enter into this Agreement and the persons signing below have been authorized and directed to execute this Agreement and carry out and perform the terms and provisions hereof, said power and authority having been Approved by the respective corporate authorities of each by suitable ordinances, certified copies of which have been provided by each Party to the other Party. In addition, the officer of a Party executing or required to execute any Exhibit attached hereto has been authorized and directed to so execute such Exhibit, said power and authority having been Approved by the respective corporate authorities of each Party by the aforesaid enabling ordinances.

IN WITNESS WHEREOF, the Parties have entered their hands and seals as of the Effective Date hereof.

AGREED TO FOR METRA:

AGREED TO FOR CHICAGO:

By: _____
Alexander D. Clifford, Executive Director/CEO

By: _____
Andrew J. Mooney, Commissioner
Department of Housing and Economic Development

By: _____
Gabe Klein, Commissioner
Department of Transportation

By: _____
David Reynolds, Commissioner
Department of Fleet and Facility Management

ATTEST:
(SEAL)

ATTEST:
(SEAL)

Secretary

Susana A. Mendoza, City Clerk

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Alexander D. Clifford, personally known to me to be the Executive Director/CEO of Metra and _____, and personally known to me to be the Secretary of Metra; and both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Chairman and Secretary, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as such Chairman and Secretary as their free and voluntary acts and as the free and voluntary act of said Commuter Rail Board for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2013.

(SEAL)

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Andrew J. Mooney, personally known to me to be the Commissioner of Housing and Economic Development of the City of Chicago and Gabe Klein, personally known to me to be the Commissioner of Transportation and David Reynolds, personally known to me to be the Commissioner of Fleet and Facility Management and Susana A. Mendoza, personally known to me to be the City Clerk; and both personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Mayor and City Clerk, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as such Mayor and City Clerk as their free and voluntary acts and as the free and voluntary act of said City for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 2013.

(SEAL)

Notary Public

* * * * *

This Agreement contains the following Exhibits:

Exhibit A	Plat of Easement upon the Maintenance of Way Storage Facility Parcel
Exhibit B	Site Plan for the Maintenance of Way Storage Facility
Exhibit C	Plat of Easement for the Driveway
Exhibit D	Site Plan for the Driveway
Exhibit E	Plat of Easement upon Metra's Property
Exhibit F	Plan of the Pedestrian Access Project
Exhibit G	Plans for the Newly Weds Spur
Exhibit H	Form of Right of Entry Agreement
Exhibit I	Form of Joint Order Escrow
Exhibit J	Baseline Survey Specifications and List of Approved Disposal Facilities

Exhibit A
Plat of Easement upon the Maintenance of Way Storage Facility

Exhibit B
Site Plan for the Maintenance of Way Storage Facility

Exhibit C
Plat of Easement for the Driveway

Exhibit D
Site Plan for the Driveway

Exhibit E
Plat of Easement upon Metra's Property

Exhibit F

**Plan of the Pedestrian Access and of the Decorative Fence at the Westerly End of Metra's
Property**

Exhibit G
Plans for the Newly Weds Spur

Exhibit H. Form of Right of Entry Agreement

RIGHT OF ENTRY AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the [Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, the Regional Transportation Authority and the *Northeast Illinois Regional Commuter Railroad Corporation* their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, ("**Metra**")][City of Chicago, an Illinois municipal corporation and home rule unit as described in the Illinois Constitution, as well as its directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their and/or its authority ("**City**") and _____ ("**Indemnitor**"). [Metra][The City] and Indemnitor are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of [Metra's][the City's] property located _____ and delineated on **Exhibit "A"** attached to and made a part of this Agreement ("**Premises**") for the purpose of _____ ("**Permitted Activities**").

NOW, THEREFORE, for and in consideration of the above stated recitals which are by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, [Metra][the City] and Indemnitor agree as follows:

1. [Metra][the City] hereby permits Indemnitor to enter upon the Premises for a period of _____ () months, commencing on the effective date of this agreement, to conduct the Permitted Activities and for no other purpose whatsoever subject to the terms and conditions set forth in this Agreement. The term of this agreement may be extended by mutual agreement of the Parties as evidenced in writing.
2. As one of the considerations for this Right of Entry, Indemnitor agrees to pay to [Metra][the City] the sum of \$ _____ for the cost of preparing this Agreement, payable in advance.
3. Indemnitor agrees to reimburse [Metra][the City] for all costs and expenses incurred in connection with the use of [Metra][City] personnel and equipment as a direct result of the Permitted Activities.
4. To the fullest extent permitted by law, the Indemnitor hereby assumes and agrees to release, acquit and waive any rights which Indemnitor may have against and forever discharge [Metra][the City], 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 Permitted Activities or rights granted under the terms and provisions of this Agreement or which may occur to or be incurred by the Indemnitor, its employees, officers, agents and all other persons acting on the Indemnitor's behalf while on the Premises or any adjoining [Metra][the City] Property ("Property") or arising from the condition of the Premises or the Property during the term of this Agreement, whether or not such injuries or damages are caused by the negligence or willful misconduct of [Metra][the City]. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

5. To the fullest extent permitted by law, the Indemnitor agrees to indemnify, defend and hold harmless [Metra][the City], its 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, (a) arising out of or in any way relating to or occurring in connection with: (i) the Permitted Activities or rights granted under the terms and provisions of this Agreement; (ii) the condition of the Premises or the Property; or (iii) the failure to investigate claims, or (b) which may occur to or be incurred, by the Indemnitor, its employees, officers, agents, and all other persons acting on its behalf while on the Premises or the Property, whether or not such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence or willful misconduct of [Metra][the City]. [Metra][the City] will notify the Indemnitor in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Indemnitor further agrees to defend [Metra][the City], its 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 City] 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 City] and its directors, administrators, officers, agents or employees. The Indemnitor shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of [Metra][the City], 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 City] with respect to any construction work performed by the Indemnitor or those performing on behalf of or with the authority of the Indemnitor in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 *et seq.*

6. Prior to entering upon the Premises, Indemnitor agrees to furnish insurance in form and in such amounts as required by [the Metra][the City] Risk Management Department (312-322-6991) and shall deliver to [Metra][the City] certificates of insurance or such other documentation acceptable to [Metra's][the City's] Risk Management Department evidencing the acquisition of the required insurance.

7. Upon completion of the Permitted Activities or upon termination as provided in this Agreement, Indemnitor shall, at its sole cost and expense, restore the Premises to the same or to a

better condition than that which existed prior to commencement of Indemnitor's activities on the Premises.

8. Indemnitor further agrees to notify the [Metra][City] Police Communication Center at _____ and _____ when performing activities for the purposes set forth in this Agreement seventy-two (72) hours in advance of Indemnitor's entrance upon the Premises or any other [Metra][the City] property.

9. Indemnitor agrees that any authorized representative of [Metra][the City] has full authority concerning the operation of the railroad and Indemnitor agrees to comply with the recommendations of the authorized representatives of [Metra][the City] having jurisdiction over the Premises relative to railroad operations and safety regulations.

10. Indemnitor agrees that a Railroad flagman may be required whenever Indemnitor is on the Premises or any other [Metra][the City] property for the purposes set forth herein, the cost of which will be borne by Indemnitor. In the event it is determined flagging will be required in excess of five (5) days, pursuant to a work schedule ("Schedule") provided by Indemnitor, such flagging shall be paid in advance. In the event [Metra][the City] determines that flagging services in addition to the Schedule will be required to complete the Permitted Activities, the Indemnitor shall deposit a check with [Metra][the City] in an amount covering the cost of the additional flagging services. Indemnitor shall pay [Metra][the City] any amount due within ten (10) days after receipt of request from [Metra][the City] for deposit for or payment of additional flagging services.

11. [Metra][The City] may terminate this Agreement at any time by giving Indemnitor ten (10) days prior written notice of its intention to so terminate.

12. The Permitted Activities shall be performed at Indemnitor's sole cost and expense and shall at all times be conducted in a good workmanlike, safe and sanitary manner and in accordance with plans and specifications approved in advance by [Metra][the City] and all applicable federal, state and local laws, ordinances and regulations. Indemnitor shall take all reasonable safety precautions (such as covering of borings, installation of barricades and warning signs) to adequately secure the site. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

13. Indemnitor's activities on the Premises shall be conducted in a manner so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by [Metra][the City], its employees, agents or permittees, for the purpose(s) to which the Premises is now, or may hereinafter be, committed by [Metra][the City].

14. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to [Metra][the City], its successors and assigns.

15. All payments required to be made by Indemnitor to [Metra][the City] under the terms, conditions or provisions of this Agreement shall be made within sixty (60) days after Indemnitor's receipt of any demand or invoice from [Metra][the City] 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 1/2%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

16. No waiver of any obligation or default of Indemnitor shall be implied from omission by [Metra][the City] 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. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. 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. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns of [Metra][the City] and Indemnitor. This Agreement shall be governed by the internal laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

17. 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 commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid or sent by facsimile transmission by [Metra][the City] or Indemnitor 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 as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to [Metra][the City] shall be sent to:

Chicago, Illinois 606_
Attn: Law Department, General Counsel

(b) Notices to Indemnitor shall be sent to:

(Signature Page Follows)

Exhibit I. Form of Joint Order Escrow

CHICAGO TITLE INSURANCE COMPANY

Refer to: _____

Phone no 312- _____

Fax no.: 312- _____

STRICT JOINT ORDER ESCROW TRUST INSTRUCTIONS

ESCROW TRUST NO. _____ DATE: _____, 2013

To: Chicago Title and Trust Company, Escrowee

Customer Identification:

Seller: Metra

Purchaser: City of Chicago

Property PINs:

Deposits: 1) Text, without Exhibits: An Intergovernmental Agreement and Grant of Easements Pertaining to the Bloomingdale Trail Project [the "IGA"] (by the City of Chicago and Metra, jointly)
2) Plat of Easement upon the Maintenance of Way Storage Facility Parcel (by the City of Chicago)
3) Plat of Easement for the Driveway (by the City of Chicago)
4) Plat of Easement upon Metra's Property (by Metra)
5) Wire Transfer in the amount of \$2,908,886.00 representing the City of Chicago's initial cash deposit (by the City of Chicago); and

Such additional Wire Transfers as necessary upon Notice to the City of Chicago by Escrowee or Metra (Deposit to be made by the City of Chicago)

Delivery of Deposits:

The above referenced escrow trust deposits numbered 1) through 4) are deposited with the Escrowee to be delivered by it to the Cook County Recorder of Deeds for recordation.

In no case shall the above mentioned deposits be otherwise surrendered except upon the receipt of an order signed by the parties hereto, their respective legal representatives or assigns, or in obedience to the court order described below.

Billing Instructions:

Escrow trust fee will be billed as follows: All escrow fees will be billed to and paid by the City of Chicago. An annual maintenance fee, as determined by the then current rate schedule, will commence _____, 2014.

PLEASE NOTE: The escrow trust law for these joint order escrow trust instructions is due and payable within 30 days from the projected disbursement date (which may be amended by joint written direction of the parties hereto). In the event no projected disbursement date is ascertainable, said escrow trust fee is to be billed at acceptance and is due and payable within 30 days from the billing date. Chicago Title and Trust Company, at its sole discretion may reduce or waive the escrow trust fee for these joint order

escrow trust instructions in the event the funds on deposit herein are transferred to or disbursed in connection with sale escrow trust instruction or an agency closing transaction established at Chicago Title.

Direction to Escrowee to Make Payments to Metra:

Upon receipt of a notice from Metra containing the amount of money ("Draw") to be drawn from the escrow trust, you shall deliver to Metra from the City of Chicago's Deposit cash in the amount of the Draw and you shall deliver to the City of Chicago a copy of the Draw. Whenever during the term of this escrow trust the amount of cash Deposited with the Escrowee by the City of Chicago is insufficient to pay Metra the full amount of any given Draw and pay the escrow trust fees, if any are due, you shall send notice of the amount of such insufficiency to the City of Chicago who, within ninety (90) days after the date of such notice containing the amount of such insufficiency, shall make an additional Deposit of at least the amount of such insufficiency. Thereafter, whenever there are insufficient funds on Deposit in the Joint Order Escrow, you shall repeat this procedure as often as necessary during the term of this Agreement until you are in receipt of a notice to terminate this escrow trust, such termination notice being a joint order signed by both of the parties. Upon receipt of such joint order, you are to pay from the Deposit the amount of all outstanding escrow trust fees and pay the balance of cash on Deposit to the City of Chicago along with accrued interest.

Investment:

Deposits made pursuant to these instructions may be invested on behalf of any party or parties hereto: Provided, that any direction to the Escrowee for such investment shall be expressed in writing and contain the consent of all other parties to this escrow, and also provided that you are in receipt of the taxpayer's identification number and investment forms as required. The Escrowee will, upon request, furnish information concerning its procedures and fee schedules for investment.

Except as to deposits of funds for which Escrowee has received express written direction concerning investment or other handling, the parties hereto agree that the Escrowee shall be under no duty to invest or reinvest any deposits at any time held by it hereunder; and, further, that the Escrowee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under Section 2-8 of the Corporate Fiduciary Act (Ill. Rev. Stat. 1989, Ch 17. Par. 1552-8) and may use any part or all such funds for its own benefit without obligation of any party for interest or earnings derived thereby, if any. Provided, however, nothing herein shall diminish the Escrowee's obligation to apply the full amount of the deposits in accordance with the terms of these escrow trust instructions.

In the event the Escrowee is requested to invest deposits hereunder, Chicago Title and Trust Company is not to be held responsible for any loss of principle or interest which may be incurred as a result of making the investments or redeeming said investment for the purposes of these escrow trust instructions.

Compliance With Court Order:

Except with respect to notices/directions from Metra as set forth in "Direction to Escrowee to Make Payments to Metra" above, the undersigned authorize and direct the Escrowee to disregard any and all notices, warnings or demands given or made by the undersigned (other than jointly) or by any other person. The said undersigned also hereby authorize and direct the Escrowee to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued

by any court with or without jurisdiction; and in case the Escrowee obeys or complies with such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment or decree entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In case the Escrowee is made a party defendant to any suit or proceedings regarding this escrow trust, the undersigned, for themselves, their heirs, personal representatives, successors, and assigns, jointly and severally, agree to pay to the Escrowee, upon written demand, all costs, attorney's fees, and expenses incurred with respect thereto. The Escrowee shall have a lien on the deposit(s) herein for any and all such costs, fees, and expenses. If said costs, fees, and expenses are not paid, then the Escrowee shall have the right to reimburse itself out of the said deposit(s).

Execution:

These escrow trust instructions are governed by and are to be construed under the laws of the State of Illinois. The escrow trust instructions, amendments or supplemental instructions hereto, shall be executed in triplicates, each of which shall be deemed an original of one and the same instrument.

For Metra:	For the City of Chicago:
Name: Tressler, LLP	Name: _____
Attn: John J. Zimmermann, Esq.	Attn: _____

Signature: _____	Signature: _____
Alexander D. Clifford, CEO, Metra	

Accepted, Chicago Title and Trust Company, as Escrowee

By: _____	Date: _____
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Exhibit J
Baseline Survey and List of Approved Disposal Facilities



FIN.

12

OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

February 13, 2013

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith an ordinance authorizing the execution of an Intergovernmental Agreement for TIF Funding for Metra.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

CHICAGO March 13, 2013

To the President and Members of the City Council:

Your Committee on Finance having had under consideration

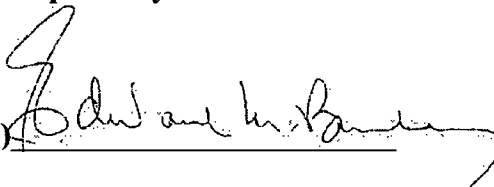
An ordinance authorizing the Commissioner of the Department of Housing and Economic Development to enter into and execute an Intergovernmental Agreement with the Commuter Rail Division of the Regional Transportation Authority.

O2013-858

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

This recommendation was concurred in by _____ (a viva voce vote of members of the committee with _____ dissenting vote(s)).

Respectfully submitted

(signed) 

Chairman

Document No. _____

**REPORT OF THE COMMITTEE ON FINANCE
TO THE CITY COUNCIL
CITY OF CHICAGO**

APPROVED
Robert Emerson
Mayor
3/18/13

APPROVED
Stephen R. Patton
CORPORATION COUNSEL