



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

---

File #: O2020-6213, Version: 1

---

OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT MAYOR

December 16, 2020

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

Ladies and Gentlemen:

At the request of the Commissioner of Transportation, I transmit herewith an ordinance authorizing the execution of an intergovernmental agreement with Metra.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

### **ORDINANCE**

WHEREAS, the City of Chicago (the "City"), a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and has the authority to promote the health, safety and welfare of its inhabitants, to furnish essential governmental services through its various departments and agencies and to enter into agreements with units of local government for the purpose of achieving the aforesaid objectives; and

WHEREAS, the City, through its Department of Transportation ("CDOT") and its Department of Planning and Development ("DPD"), and the Illinois Regional Transportation Authority, an Illinois municipal corporation, by and through its Commuter Rail Division ("Metra") wish to conduct a preliminary engineering study (the "Study") to evaluate repairs and improvements to several roadway-railroad grade crossings on the Milwaukee District rail line in Chicago, Illinois at such locations as identified in the Agreement (as hereinafter

defined) (the "Property") to improve pedestrian safety at the Property; and

WHEREAS, the Property lies wholly within the boundaries of the Kinzie Industrial Redevelopment Project Area (as hereinafter defined); 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 from time to time (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 ordinances adopted by the City Council of the City (the "City Council") on June 10, 1998 and May 12, 2010 and published in the Journal of the Proceedings of the City Council for said dates at pages 70367 to 70520 and 89656 to 89664, the City Council: (i) approved and adopted a redevelopment plan and project (the "Plan") for a portion of the City known as the "Kinzie Industrial Conservation Area Tax Increment Redevelopment Project Area" (the "Kinzie Industrial Redevelopment Area"); (ii) designated the Kinzie Industrial Redevelopment Area as a "redevelopment project area"; (iii) adopted tax increment allocation financing for the Kinzie Industrial Redevelopment Area; and (iv) extended the termination date of the Kinzie Industrial Redevelopment Area; and

WHEREAS, under 65 ILCS 5/11-74.4-3(q)(4), such incremental ad valorem taxes which pursuant to the Act have been collected and are allocated to pay redevelopment project costs and obligations incurred in the payment thereof ("Increment") may be used to pay the costs of construction of public works or improvements, to the extent the municipality by written agreement accepts and approves such costs (Increment collected from the Kinzie Industrial Redevelopment Area shall be known as the "Kinzie Industrial Increment"); and

WHEREAS, CDOT and DPD wish to make available to Metra a portion of the Kinzie Industrial Increment in an amount not to exceed \$850,000 for the purpose of reimbursing Metra for expenses incurred in the Study that are directly related to potential physical improvements to the Property (the "TIF-Funded Improvements") in the Kinzie Industrial Redevelopment Area to the extent and in the manner provided in the Agreement; and

WHEREAS, the Plan contemplates that tax increment financing assistance would be provided for initiatives such as the Study, within the boundaries of the Kinzie Industrial

S:\SHARED\Finance\IGAs\CDOT\Metra <file:///S:/SHARED/Finance/IGAs/CDOT/Metra> signal crossing improvements\Ordinance\Metra TIF signal crossing study ordinance v.2.docx

1

Redevelopment Area; and

WHEREAS, CDOT, DPD and Metra wish to enter into an intergovernmental agreement in substantially the form attached as Exhibit A (the "Agreement") whereby the City will reimburse Metra up to \$850,000 for the TIF-Funded Improvements; now, therefore,

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

SECTION 1. The above recitals are expressly incorporated in and made a part of this ordinance as though fully set forth herein.

SECTION 2. The City hereby finds that the TIF-Funded Improvements, among other eligible redevelopment project costs under the Act approved by the City, consist of the cost of construction of public

works or improvements that are necessary and will directly result from a redevelopment project pursuant to the Study as described in the Act.

SECTION 3. Subject to the approval of the Corporation Counsel of the City as to form and legality, the Commissioner of CDOT and the Commissioner of DPD are authorized to execute and deliver the Agreement in substantially the form attached hereto as Exhibit A, and such other documents and amendments as are necessary, between the City and the parties.

SECTION 4. To the extent that any 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 other provisions of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from and after the date of its passage and approval.

S \SHARED\Finance\IGAs\CDOT\Metra signal crossing improvements\Ordinance\Metra TIF signal crossing study ordinance v.2.docx

2

**EXHIBIT A**

See attached.

S:\SHARED\Finance\IGAs\CDOT\Metra <file://S:/SHARED/Finance/IGAs/CDOT/Metra> signal crossing  
improvements\Ordinance\Metra TIF signal crossing study ordinance v.2.docx

3

**AGREEMENT BETWEEN THE CITY OF  
CHICAGO AND METRA  
MILWAUKEE DISTRICT GRADE CROSSINGS IMPROVEMENTS PROJECT**

This Agreement is made as of \_\_\_\_\_, 20\_\_\_\_ (the "Closing Date"), under authority granted by Article VII, Section 10 of the 1970 Constitution of the State of Illinois, by and between the City of Chicago (the "City"), an Illinois municipal corporation, by and through its Department of Transportation or any successor thereto ("CDOT") and Department of Planning and Development or any successor thereto ("DPD"); and Commuter Rail Division of the Illinois Regional Transportation Authority, a division of an Illinois

municipal corporation ("Metra"), an Illinois municipal corporation. The City, CDOT, DPD and Metra are sometimes referred to collectively herein as the "Parties."

RECITALS

A. The City is a home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, and as such may exercise any power and perform any function pertaining to its government and affairs.

B. Metra is division of the Regional Transportation Authority, an Illinois municipal corporation, and as such has authority over its commuter rail lines, including repairs and improvements to its Milwaukee District rail line (the "Milwaukee District").

C. Metra seeks payment or reimbursement of funds it intends to expend or has expended for the purpose of conducting a preliminary engineering study (the "Study") in connection with improvements to certain roadway-railroad grade crossings on the Milwaukee District, which are located at the intersections indicated on Exhibit A (the "Crossings"), to accommodate increased pedestrian activity (the "Project").

D. The Milwaukee District occupies certain public ways of the City pursuant to an ordinance approved by City Council of the City (the "City Council") on March 23, 1914 and published in the Journal of Proceedings of the City Council (the "Journal") for such date at pages 4576 and 4577, as amended by an ordinance approved by the City Council on November 10, 1914 and published in the Journal for such date at page 1411, and as the same may be further amended from time to time, (the "Public Ways").

E. The Crossings lie wholly within the boundaries of the Redevelopment Area (as hereinafter defined).

F. 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 from time to time (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.

G. In accordance with the provisions of the Act, pursuant to ordinances adopted on June 10, 1998 and May 12, 2010, the City Council: (i) approved a redevelopment plan and project

1

(the "Redevelopment Plan") for a portion of the City known as the "Kinzie Industrial Conservation Area Tax Increment Redevelopment Project Area" (the "Redevelopment Area"), (ii) designated the Kinzie Industrial Conservation Area Tax Increment Redevelopment Project Area as a redevelopment project area under the Act, (iii) adopted tax increment financing for the Redevelopment Area, and (iv) extended the termination date of the Redevelopment Area (collectively, the "TIF Ordinances").

H. The City wishes to make available to Metra an amount not to exceed a total of \$850,000 for the Project (the "TIF Assistance") from Available Incremental Taxes (as defined below) or from any other source of funds available to and selected by the City for the purpose of funding the Project (the "TIF-Funded Improvements") in the Redevelopment Area to the extent and in the manner provided in this Agreement. It is understood and agreed that Metra may include a roadway-railroad grade crossing located generally at 340 N. Clinton Street (the "Non-TIF Assisted Intersection") as a part of the Study; provided, however, that Metra shall not use any TIF Assistance

towards any costs of the Study associated with the Non-TIF Assisted Intersection and Metra will provide all funding related to such costs.

I. The Project is the type of public improvement that is contemplated by the Redevelopment Plan, and therefore the costs of the Project qualify as redevelopment project costs under the Redevelopment Plan.

J. The City and Metra wish to enter into this Agreement whereby Metra shall undertake the Project and the City shall reimburse Metra for the TIF-Funded Improvements made pursuant to the Project.

K. On \_\_\_\_\_, 20\_\_\_\_, the City Council adopted an ordinance published in the Journal of Proceedings of the City Council for said date, (the "Authorizing Ordinance"), among other things, authorizing the execution of this Agreement.

L. On \_\_\_\_\_, 20\_\_\_\_, the Metra Board approved execution of this Agreement **expressing its desire to accept TIF Assistance from the City for the Project and authorizing the execution of this Agreement (the "Metra Authorization")**.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the above recitals which are made a contractual part of this Agreement, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### TERMS AND CONDITIONS SECTION 1. THE

##### PROJECT.

1. With respect to the Project, Metra shall (i) commence the preliminary engineering study no later than six months from the Closing Date, and (ii) complete the preliminary engineering study no later than June 30, 2022. The Commissioner of CDOT or the Commissioner of DPD shall have the sole discretion to extend such deadlines.

2. Metra shall provide the City with copies of all governmental licenses and permits required to complete the Project. Metra shall comply with all applicable federal, state and local

2

laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or Metra as related thereto.

1.3 Certificate of Completion. Upon completion of the Project in accordance with the terms of this Agreement and upon Metra's written request, CDOT shall issue to Metra a Certificate of Completion (the "Certificate") in recordable form certifying that Metra has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. If Metra has not fulfilled its obligation to complete the Project in accordance with the terms of this Agreement, CDOT will issue a written statement detailing the measures which must be taken in order to obtain the applicable Certificate.

Metra acknowledges and understands that the City will not issue a Certificate for the Project until the following conditions have been met with respect to the Project:

- Evidence certified to and acceptable to CDOT of the total actual cost of the Project ("Final Project Cost"). TIF

Assistance for the Project shall be reduced dollar-for-dollar if the Final Project Cost for the Project is less than the Estimated Project Cost;

- Evidence that Metra has incurred costs for TIF-Funded Improvements in an equal amount to, or greater than, the TIF Assistance;
- Evidence acceptable to CDOT that Metra has complied with the requirements of Section 1 hereof; and
- Evidence acceptable to CDOT in the form of a closeout letter from CDOT's Compliance and Monitoring division stating that Metra is in complete compliance with all City requirements.

## **SECTION 2. FUNDING**

2.1. The City shall, subject to Metra's satisfaction of the conditions precedent for disbursement described in this Section 2 and such other conditions contained in this Agreement, disburse the TIF Assistance to pay for TIF-Funded Improvements as described below:

a) Project Contractor(s). Upon the later of the signing of this Agreement or the execution by Metra and its contractor(s) (the "Contractor") of any contract for the Project, the City shall place the amount of TIF Assistance for the Project into the Escrow Account (as defined below).

Metra may submit to CDOT a Request for Reimbursement up to once per quarter, as described in this Section 2. After CDOT approves a Request for Reimbursement, CDOT shall direct the Escrow Agent to disburse to Metra an amount of TIF Assistance sufficient to pay for the TIF-Funded Improvements covered by such Request for Reimbursement, subject to the following limitations: (i) total disbursements from the Escrow Account to Metra shall not exceed the maximum amount of TIF Assistance for the Project; (ii) a retainage of 10% of the TIF Assistance for the Project will be held in the Escrow Account until CDOT has issued a Certificate of Completion for the Project; and (iii) if the Final Project Cost for the Project is less than the Estimated Project Cost for the Project, then the amount of TIF Assistance for the Project shall be reduced by this amount and the remaining funds in the Escrow Account shall be returned to the City.

b) "Escrow Account" shall mean a sole order escrow account held by a title company or financial institution selected by the City (the "Escrow Agent"), the proceeds of which shall be disbursed in CDOT's sole discretion directly to the Contractor or Metra, as applicable.

2. The City shall establish a special account within Kinzie Area Industrial Redevelopment Project Area Special Tax Allocation Fund (the "TIF Fund"); such special account shall be known as the "Milwaukee District Crossing Improvements Project Account." Disbursement of TIF Assistance funds will be subject to the availability of Available Incremental Taxes in the Milwaukee District Crossing Improvements Project Account, subject to all restrictions on and obligations of the City contained in the TIF Ordinances and/or the Authorizing Ordinance, or relating to the Redevelopment Area Increment and all agreements and other documents entered into by the City pursuant thereto. "Available Incremental Taxes" means such ad valorem taxes and such retail, use and service taxes which, pursuant to the TIF Ordinances and Section 5/11-74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof, and which are not encumbered or pledged for the payments towards City programs and redevelopment agreements approved by the City Council as of the Closing Date, which programs and agreements pledge portions of the TIF Fund.

3. Metra represents that it owns and controls the Milwaukee District at the Crossings in the Public Ways owned by the City.

4. Metra may request payment from the City by submitting a Request for Reimbursement in the form of Exhibit C hereto ("Request for Reimbursement") to be processed and executed periodically, but in no event more frequently than quarterly. Metra acknowledges and agrees that all Requests for Reimbursement must be submitted to the City prior to December 1, 2021. The City shall not execute and approve Requests for Reimbursement in the aggregate in excess of the actual costs of the Project that are TIF-Funded Improvements, and in no event in an amount greater than the TIF Assistance for the Project. Prior to each execution of a Request for Reimbursement by the City, Metra shall submit documentation regarding the applicable expenditures to CDOT. Delivery by Metra to the City of any request for execution by the City of a Request for Reimbursement hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such request for execution of a Request for Reimbursement, that:

- a) the total amount of the request for the Request for Reimbursement represents the actual amount payable to (or paid to) the Contractor, subcontractors, and other parties who have performed work on or otherwise provided goods or services in connection with the Project, and/or their payees;
- b) all amounts shown as previous payments on the current request for a Request for Reimbursement have been paid to the parties entitled to such payment;
- c) Metra has approved all work and materials for the current request for a Request for Reimbursement; and
- d) Metra is in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and executive orders, all as may be in effect from time to time, pertaining to or affecting the Project or Metra as related thereto.

5. The City shall have the right, in its discretion, to require Metra to submit further documentation as the City may require in order to verify that the matters certified to in Section 2.4 are true and correct, and any execution and approval of a Request for Reimbursement by the City

4

shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by Metra.

6. The current estimated cost ("Estimated Project Cost") of (a) the entire Project is \$1,000,000. Metra has delivered to the City a budget for the Project attached as Exhibit B. Metra certifies that it has identified sources of funds, including the TIF Assistance, sufficient to complete its budgeted portion of the Project. Metra agrees that the City will disburse TIF Assistance for the costs of the TIF-Funded Improvements and that all costs of completing the Project over the TIF Assistance shall be the sole responsibility of Metra. If Metra at any point learns upon reasonable duty of inquiry that it does not have sufficient funds to complete the Project, Metra shall so notify the City immediately in writing and cease all work on the Project until the City and Metra agree on how to proceed; Metra may narrow the scope of the Project (the "Revised Project") as agreed to by the City prior to the restart of any work in order to complete the Revised Project with the approved funds or TIF Assistance. The City has the right, at its election, to withhold and refuse all reimbursement in the event that Metra fails to so notify the City and/or Metra and the City fail to reach agreement on a Revised Project as described above.

7. Exhibit B contains a preliminary list of the costs of the Project, if any, recognized by the City as being eligible redevelopment project costs under the Act with respect to the Project, to be paid for out of the TIF Assistance. Prior to the expenditure of TIF Assistance funds on the Project, the City, based upon the Project budget, may make such modifications to Exhibit B as he or she wishes in his or her discretion to account for all of the TIF Assistance funds to be

expended under this Agreement; provided, however, that all TIF-Funded Improvements shall (i) qualify as redevelopment project costs under the Act, (ii) qualify as eligible costs under the Plan; and (iii) be improvements that the City has agreed to pay for out of TIF Assistance funds, subject to the terms of this Agreement.

8. Metra hereby acknowledges and agrees that the City's obligations hereunder with respect to the TIF Assistance are subject in every respect to the availability of funds as described in and limited by this Section 2. If no funds or insufficient funds are appropriated and budgeted in any fiscal period of the City for disbursements of the TIF Assistance, then the City will notify Metra in writing of that occurrence, and the City may terminate this Agreement on the earlier of the last day of the fiscal period for which sufficient appropriation was made or whenever the funds appropriated for disbursement under this Agreement are exhausted.

9. If the aggregate cost of the TIF-Funded Improvements is less than the amount of the TIF Assistance contemplated by this Agreement, then the amount of the TIF Assistance shall be reduced by the amount of this shortfall.

### **SECTION 3. TERM.**

The term of this Agreement shall commence on the Closing Date and shall expire on the first to occur of the tenth anniversary of the issuance of the Certificate or the date this Agreement is terminated.

5

### **SECTION 4. ENVIRONMENTAL MATTERS.**

4.1. Metra shall comply with all environmental rules and regulations pertinent to the work to be performed in connection with the Project as contemplated by this Agreement.

4.2 The City's financial obligation shall be limited to an amount not to exceed the TIF Assistance which is provided solely for the items set forth on Exhibit B. The City makes no covenant, representation, or warranty as to the environmental condition of the Crossings and the Public Ways or the suitability of the Crossings and the Public Ways for a roadway-railroad grade crossing or for any use whatsoever.

4.3. Metra agrees to carefully inspect the Crossings and the Public Ways prior to commencement of any activity related to the Project to ensure that such activity shall not damage surrounding property, structures, utility lines or any subsurface lines or cables. Metra shall be solely responsible for the safety and protection of the public. The City reserves the right to inspect the work being done on the Crossings and the Public Ways. Metra agrees to keep the Crossings and the Public Ways free from all liens and encumbrances arising out of any work performed, materials supplied or obligations incurred by or for Metra.

### **SECTION 5. INSURANCE.**

5.1. Metra shall provide and maintain at Metra's own expense, or cause to be provided during the term of this Agreement, the insurance coverages and requirements specified below, insuring all operations related to this Agreement.

1. Workers Compensation and Employers Liability. Workers Compensation as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident or illness.

2. Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages shall include the following: All premises and operations, products/completed operations, explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

3. Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, Metra shall provide or cause to be provided, Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.

4. Professional Liability. When any architects, engineers or professional consultants perform work in connection with this Agreement, Metra shall cause to be provided, Professional Liability Insurance covering acts, errors, or omissions shall be maintained with limits of not less than \$1,000,000.

6

5.1.5. Self-Insurance. To the extent permitted by applicable Law, Metra may self-insure for the insurance requirements specified above, it being expressly understood and agreed that, if Metra does self-insure for any such insurance requirements, Metra must bear all risk of loss for any loss which would otherwise be covered by insurance policies, and the self-insurance program must comply with at least such insurance requirements as stipulated above.

2. Metra will furnish the City at the address stated in Section 8.13, original Certificates of Insurance evidencing the required coverage to be in force on the Closing Date, and renewal Certificates of Insurance, promptly as any requisite insurance is renewed. Metra shall submit evidence of insurance on the City's Insurance Certificate Form or equivalent prior to the Closing Date. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence shall not be deemed to be a waiver by the City.

3. Metra shall advise all insurers of the provisions of this Agreement regarding insurance. Non-conforming insurance shall not relieve Metra of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or this Agreement may be terminated.

4. The required insurance shall provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

5. Any and all deductibles or self-insured retentions on referenced insurance coverages shall be borne by Metra and its contractors.

6. Metra agrees that insurers shall waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.

7. Metra expressly understands and agrees that any coverage and limits furnished by Metra shall in no way limit Metra's liabilities and responsibilities specified by this Agreement or by law.

8. Metra expressly understands and agrees that any insurance or self insurance programs maintained by the City shall not contribute with insurance provided by Metra under this Agreement.

9. The required insurance shall not be limited by any limitations expressed in the indemnification language herein or any limitation placed on the indemnity therein given as a matter of law.

10. Metra shall require all subcontractors to provide the insurance required herein and insurance customarily required by Metra or Metra may provide the coverages for subcontractors. All subcontractors shall be subject to the same insurance requirements of Metra unless otherwise specified herein. In all contracts relating to the Project, Metra agrees to require the contractor to name the City as an additional insured on insurance coverages and to require the contractor to

7

indemnify the City from all claims, damages, demands, losses, suits, actions, judgments and expenses including but not limited to attorney's fees arising out of or resulting from work on the Project by the contractor or contractor's suppliers, employees, or agents.

5.11. The City's Risk Management Department maintains the right to modify, delete, alter or change these requirements.

#### **SECTION 6. INDEMNITY / NO PERSONAL LIABILITY.**

1. To the maximum extent permitted by law, Metra agrees to indemnify and hold the City, its officers and employees, harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses, including, without limitation, reasonable attorney's fees and court costs suffered or incurred by the City arising from or in connection with (i) Metra's failure to comply with any of the terms, covenants and conditions contained in this Agreement; or (ii) Metra's or any contractor's failure to pay Contractors, subcontractors or materialmen in connection with the Project. The defense and indemnification obligations in this Section 6.1 shall survive any termination or expiration of this Agreement.

2. No elected or appointed official or member or employee or agent of the City or Metra shall be individually or personally liable in connection with this Agreement.

#### **SECTION 7. DEFAULT.**

1. Subject to the effects of force majeure, if Metra, without the City's written consent to an extension of the applicable deadline, fails to complete the Project within 12 months after the date of the execution of this Agreement, then the City may terminate this Agreement by providing written notice to Metra,

2. Subject to the effects of force majeure, in the event Metra fails to perform, keep or observe any of its covenants, conditions, promises, agreements or obligations under this Agreement not identified in Section 7.1 and such default is not cured as described in Section 7.3 hereof, the City may terminate this Agreement.

3. Prior to termination, the City shall give its notice of intent to terminate 30 days prior to termination at the address specified in Section 8.13 hereof, and shall state the nature of the default. In the event Metra does not cure such default within the 30-day notice period, such termination shall become effective at the end of such period; provided, however, with respect to those defaults which are not capable of being cured within such 30-day period, Metra shall not be deemed to have committed such default and no termination shall occur if Metra has commenced to cure the alleged

default within such 30-day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

4. The City may, in any court of competent jurisdiction, by any proceeding at law or in equity, secure the specific performance of the agreements contained herein, or may be awarded damages for failure of performance, or both.

**8**

**SECTION 8. GENERAL PROVISIONS.**

1. Authority. Execution of this Agreement by the City is authorized by the Authorizing Ordinance. Execution of this Agreement by Metra is authorized by Metra Authorization. The Parties represent and warrant to each other that they have the authority to enter into this Agreement and perform their obligations hereunder.

2. Assignment. This Agreement, or any portion thereof, shall not be assigned by either Party without the prior written consent of the other.

3. Compliance with Laws. The Parties agree to comply with all federal, state and local laws, status, ordinances, rules, regulations, codes and executive orders relating to this Agreement.

4. Consents. Whenever the consent or approval of one or both Parties to this Agreement is required hereunder, such consent or approval will not be unreasonably withheld.

5. Construction of Words. As used in this Agreement, the singular of any word shall include the plural, and vice versa. Masculine, feminine and neuter pronouns shall be fully interchangeable, where the context so requires.

6. Counterparts. This Agreement may be executed in several counterparts and by a different Party in separate counterparts, with the same effect as if all Parties had signed the same document. All such counterparts shall be deemed an original, shall be construed together and shall constitute one and the same instrument.

7. Further Assurance. The Parties shall perform such acts, execute and deliver such instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement.

8. Governing Law and Venue. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to the principles of conflicts of law thereof. If there is a lawsuit under this Agreement, each Party hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois.

9. Integration. This Agreement constitutes the entire agreement between the Parties, merges all discussions between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

10. Parties' Interest/No Third Party Beneficiaries. This Agreement shall be binding upon the Parties, and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Parties, and their respective successors and permitted assigns (as provided herein). This Agreement shall not run to the benefit of, or be

enforceable by, any person or entity other than a Party and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right. Nothing contained in this Agreement, nor any act of the Parties, shall be deemed or construed by any of the Parties hereto or by third parties, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any of the Parties^

9

v.

11. Modification or Amendment. This Agreement may not be altered, modified or amended except by a written instrument signed by both Parties.

12. No Implied Waivers. No waiver by either Party of any breach of any provision of this Agreement will be a waiver of any continuing or succeeding breach of the breached provision, a waiver of the breached provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to, or demand on, either Party in any case will, of itself, entitle that Party to any further notice or demand in similar or other circumstances.

13. Notices. Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) electronic communications, whether by facsimile (fax); (c) overnight courier or (d) registered or certified first class mail, return receipt requested.

To the City: City of Chicago  
Department of Planning and Development  
City Hall, Room 1000  
121 N. LaSalle Street  
Chicago, Illinois 60602  
Attention: Commissioner  
(312) 744-2271 (Fax)

And to: City of Chicago Department of Transportation 2 N.  
LaSalle Street, 11<sup>th</sup> floor Chicago, Illinois 60602  
Attention: Commissioner

With copies to: City of Chicago  
Department of Law City Hall, Room 600  
121 N. LaSalle Street Chicago, Illinois  
60602  
Attention: Finance and Economic Development Division

To Metra: Commuter Rail Division of the Regional  
Transportation Authority Grant Management & Accounting Division  
547 West Jackson Boulevard Chicago, Illinois 60661 Attention:  
Senior Director

With copies to: Commuter Rail Division of the Regional  
Transportation Authority 547 West Jackson  
Boulevard Chicago, Illinois 60661

Attention: General Counsel

Such addresses may be changed by notice to the other Party given in the same manner provided above. Any notice, demand or request sent pursuant to either clause (a) or (b) above shall be deemed received upon such personal service or dispatch. Any notice, demand or request sent pursuant to clause (c) above shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to clause (d) above shall be deemed received two business days following deposit in the mail.

14. Remedies Cumulative. The remedies of a Party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such Party unless specifically so provided herein.

15. Representatives. Immediately upon execution of this Agreement, the following individuals will represent the Parties as a primary contact in all matters under this Agreement.

For the City: Cynthia Roubik  
City of Chicago  
Department of Planning and Development City Hall, Room  
1101 121 N. LaSalle Street Chicago, Illinois 60602 (312) 744-  
0012

Jeffrey J. Sriver City of Chicago Department of  
Transportation 2 N. LaSalle Street, Suite 950  
Chicago, Illinois 60602 (312) 744-7080

For Metra: David Kralik  
Commuter Rail Division of the Regional  
Transportation Authority  
Division of Strategic Planning & Performance  
547 West Jackson Boulevard  
Chicago, Illinois 60661  
(312) 322-8035

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number and fax number of the representative for such Party for the purpose hereof.

16. Severability. If any provision of this Agreement, or the application thereof, to any person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth herein.

I ]■

17. Survival of Agreements. Except as otherwise contemplated by this Agreement, all covenants and agreements of the Parties contained in this Agreement will survive the consummation of the transactions contemplated hereby.

18. Titles and Headings. Titles and headings to paragraphs contained in this Agreement are for convenience only and are not intended to limit, vary, define or expand the content of this Agreement.

19. Time. Time is of the essence in the performance of this Agreement.

20. Force Majeure. Neither party will be liable to the other party for failure or delay in performing its obligations under this Agreement, if the failure or delay is due to circumstances<sup>N</sup> beyond its reasonable control, including, but not limited to, Acts of God, war, insurrection, embargo, fire, flood, or strike or other labor disturbance.

***[The remainder of this page is intentionally blank-Signature page immediately follows]***

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed and delivered as of the date first above written.

CITY OF CHICAGO, a municipal corporation, by and through its Department of Planning and Development

By:  
Maurice Cox Commissioner

CITY OF CHICAGO, a municipal corporation, by and through its Department of Transportation

By:  
Gia Biagi Commissioner

COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, a division of an Illinois municipal corporation

By:  
Name: David F. Simmons  
Its: Senior Director, Grant Management & Accounting

**EXHIBIT A**

**ROADWAY-MILWAUKEE DISTRICT CROSSINGS**

1. 340 N. Green Street
2. 350 N. Morgan Street

3. 350 N. Carpenter Street
4. 350 N. May Street
5. 350 N. Aberdeen Street
6. 350 N. Raeine Street

**Exhibit B**

**TOTAL PROJECT COST AND TIF ELIGIBLE COSTS**

TASK DESCRIPTIONS	TOTAL HOURS*	TOTAL COST
<b>TASKS:</b>		
1	Quality Co90	\$ 17,325
2	Data Colle12	\$ 2,310
3	Field Verifi58	\$ 11,165
4	Constructi85	\$ 16,363
5	Safe Braki100	\$ 19,250
6	Power Cal100	\$ 19,250
7	Meetings (120	\$ 23,100
8	Document80	\$ 15,400
9	Constructi160	\$ 30,800
10	"Prepare C141	\$ 27,143
<b>DOCUMENTS:</b>		
11	Track & Si260	\$ 50,050
12	Route & A220	\$ 42,350
13	Grade Cro240	\$ 46,200
14	Enlarged V130	\$ 25,025
15	Cable & G200	\$ 38,500
16	Constructi220	\$ 42,350
17	Code Char130	\$ 25,025
18	LCP & MT190	\$ 17,325
19	Constructi90	\$ 17,325
20	Update / M200	\$ 38,500
21	Design Cri130	\$ 25,025
22	Site Specif240	\$ 46,200
23	Update Te190.	\$ 36,575
24	Final Revi70	\$ 13,475
25	Bid/Pre-Pr24	\$ 4,620
	<b>Tasks &amp; D3,380</b>	<b>\$ 650,650</b>

"Total hours include' drawing checks, reviews modifications and quality reviews

"Hours include preparing design report and drawings for 30%, 60%, 90% and 100% Submittals

\*\*\* Includes estimate for full amount of Preliminary Engineering for 7 crossings Since only 6 of these Crossings are located in the Redevelopment Area (all but Clinton Street), the share of TIF-eligible work will be billed to the City at 85% of the total expenses. Thus, the TIF-eligible cost estimate is 85% of the Tasks & Documents Subtotal or \$553,052.50, less than the maximum TIF Assistance amount of \$850,000.

**Exhibit C**  
**REQUEST FOR REIMBURSEMENT**



All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

METRA

By:

Name

Title:

Subscribed and sworn before me this            day of

My commission expires:

Agreed and accepted:

Name  
Title:  
City of Chicago  
Department of Planning and Development

Agreed and accepted:

Name  
Title:  
City of Chicago  
Department of Transportation