



Office of the City Clerk

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Chicago, IL 60602
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Legislation Text

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OFFICE OF THE MAYOR

CITY OF CHICAGO

LORI E. LIGHTFOOT
MAYOR

September 9, 2020

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

Ladies and Gentlemen:

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

Your favorable consideration of this ordinance will be appreciated.

Mayor

ORDINANCE

WHEREAS, the City of Chicago (the "City") is a municipal corporation and home rule unit of government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois; and

WHEREAS, Metra is a division of the Regional Transportation Authority, a municipal corporation and body politic duly established in accordance with the applicable provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq. (the "Act") and, as such, is deemed a special district of the State of Illinois; and

WHEREAS, Pursuant to Section 2.20(a)(iv) of the Act, Metra has the power to acquire real and personal property as it deems appropriate in the exercise of its general corporate powers; and

WHEREAS, the Constitution of the State of Illinois, Article VII, Section 10, provides that units of local government, municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes units of local government, municipalities and special districts in Illinois to exercise jointly with any other public agency or special district, any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities and undertakings; and

WHEREAS, the Local Government Property Transfer Act, 50 ILCS 605/1 et seq., authorizes the conveyance of real property by one of unit of local government to another unit of local government; and

WHEREAS, City is the record owner of certain real property located at 651 West 79th Street in Chicago, Illinois, identified as permanent index number 20-33-102-046 ("City Parcel"); and

WHEREAS, Metra desires to acquire certain real property located at 615 West 79th Street in Chicago Illinois, identified as permanent index number 20-33-103-013 from the current record owner ("Private Parcel"); and

WHEREAS, City desires to reimburse Metra for certain costs incurred by Metra in connection the acquisition of the Private Parcel; and

WHEREAS, City desires to convey to Metra a non-exclusive easement to use the segment of Lowe Avenue approximately 66 feet wide, from the south side of 79th Street, to approximately 100 feet south, to the entrance of the current alleyway running perpendicular to Lowe Avenue ("Metra Easement"), provided that Metra opens Lowe Avenue to public automobile access to the south of the Metra Easement at 80th Street; and

WHEREAS, Metra desires to acquire the City Parcel and Private Parcel, and to use the segment of Lowe Avenue subject to the Metra Easement, each as delineated in an Intergovernmental Agreement between Metra and the City ("Agreement"), in order to construct a new Metra train station and related facilities on its Rock Island District line ("Auburn Park Station").

WHEREAS, City desires to assist Metra in the construction of the Auburn Park Station by transferring and conveying the City Parcel to Metra, and by reimbursing Metra certain costs of the Private Parcel, and conveying rights to use a portion of Lowe Avenue, subject to and in accordance with the terms, covenants, conditions and provisions set forth in the Agreement; now, therefore,

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

SECTION 1. The above recitals are incorporated here by this reference.

SECTION 2. Subject to the approval of the Corporation as to form and legality, the Commissioner of the Department of Planning and Development ("DPD Commissioner"), or a designee of the DPD Commissioner, the Commissioner of the Department of Transportation ("CDOT Commissioner") or a designee of the CDOT Commissioner are each hereby authorized to execute and

deliver the Agreement with Metra in substantially the form attached as Exhibit A, including, without limitation, indemnification by Metra 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, documents and instruments, and to perform any and all acts as shall be necessary or appropriate in connection with the implementation of the Agreement.

SECTION 3. 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 of the other provisions of this ordinance.

SECTION 4. This Ordinance takes effect upon passage and publication.

EXHIBIT A AGREEMENT

INTERGOVERNMENTAL AGREEMENT FOR TRANSFER OF REAL ESTATE

This INTERGOVERNMENTAL AGREEMENT FOR THE PURCHASE AND SALE OF REAL ESTATE ("Agreement") is entered into as of the _____ day of _____, 2020 ("Effective Date"), by and between the COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, an Illinois unit of local government, doing business as Metra ("Metra") and the CITY OF CHICAGO, an Illinois home rule municipality ("City").

RECITALS

A. Metra is a division of the Regional Transportation Authority, a municipal corporation and body politic duly established in accordance with the applicable provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq. (the "Act") and, as such, is deemed a special district of the State of Illinois. Pursuant to Section 2.20(a) (iv) of the Act, Metra has the power to acquire real and personal property as it deems appropriate in the exercise of its general corporate powers.

B. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local government, municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance.

C. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes units of local government, municipalities and special districts in Illinois to exercise jointly with any other public agency or special district, any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities and undertakings.

D. The Local Government Property Transfer Act, 50 ILCS 605/1 et seq., authorizes the conveyance of real property by one of unit of local government to another unit of local government.

E. City is the record owner of certain real property located at 651 West 79th Street in Chicago, Illinois, identified as permanent index number 20-33-102-046 ("City Parcel") and further defined in Exhibit A.

F. Metra desires to acquire certain real property located at 615 West 79th Street in Chicago Illinois, identified

as permanent index number 20-33-103-013 and further defined in Exhibit A. from the current record owner ("Private Parcel"), and City desires to reimburse Metra for certain costs incurred by Metra in connection the acquisition of the Private Parcel.

G. City desires to convey to Metra a non-exclusive easement to use the segment of Lowe Avenue approximately 66 feet wide, from the south side of 79th Street, to approximately 100 feet south, to the entrance of the current alleyway running perpendicular to Lowe Avenue ("Metra Easement"), as legally described in Exhibit A, provided that Metra opens Lowe Avenue to public automobile access to the south of the Metra Easement at 80th Street.

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H. Metra desires to acquire the City Parcel and Private Parcel, and to use the segment of Lowe Avenue subject to the Metra Easement, each as delineated in Exhibit B. in order to construct a new Metra train station and related facilities on its Rock Island District line ("Auburn Park Station").

I. City desires to assist Metra in the construction of the Auburn Park Station by transferring and conveying the City Parcel to Metra, and by reimbursing Metra certain costs of the Private Parcel, subject to and in accordance with the terms, covenants, conditions and provisions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms have the following meanings:

Closing. The closing of the transfer and conveyance transaction contemplated herein.

Closing Date. On or before twenty (20) business days after the date Metra provides notice to City that Metra is prepared to close.

Due Diligence Period. The period commencing on the Effective Date of this Agreement and ending at 5:00 p.m. (Central Standard Time) on the date which is forty-five (45) days from the Effective Date.

Title Company/Title Insurer. Chicago Title Insurance Company.

Agreement or Intergovernmental Agreement or IGA. This intergovernmental contract.

Environmental Law. All federal, state and local laws, statutes, ordinances, regulations, orders, criteria and guidelines issued by governmental authorities having jurisdiction, including any judicial or administrative interpretations thereof, in each case as amended, relating to the regulation and protection of human health, safety, the environment and natural resources.

Recognized Environmental Condition. Any soil or soil gas encountered during construction not meeting the requirements of 35 IAC Section 742.305.

Hazardous Substances. Any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Laws, or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, petroleum (including crude oil or any fraction thereof), any radioactive material or by-product material, polychlorinated biphenyls and asbestos in any form or condition.

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TRANSFER AND CONVEYANCE OF CITY PARCEL

2. Conveyance of City Parcel. City agrees to transfer and convey, and Metra agrees to accept, the City Parcel together with all right, title and interest of City in and to all rights, privileges, easements, hereditaments and appurtenances in any way incident, appertaining or belonging to the City Parcel and any improvements currently existing on the City Parcel ("CityProperty"), in accordance with each of the terms and conditions set forth below.

3. Closing. Provided that all the contingencies and conditions set forth in Section 6 below have been satisfied or waived, the Closing shall take place at the offices of the Title Company, or such other location as the parties shall mutually agree upon, on or before the Closing Date.

4. Purchase Price. For Ten Dollars (\$10.00), and in consideration of the benefits to City from the construction of the Auburn Park Station, City shall convey to Metra all of City's right, title and interest in the City Property ("Purchase Price").

5. Title. City shall convey to Metra fee simple title to all of City's right, title and interest in the City Property by quitclaim deed in recordable form acceptable to Metra and the Title Insurer ("Deed") subject only to those title exceptions set forth on Exhibit C attached to and made a part of this Agreement ("Permitted Exceptions"), and subject to a restriction in the Deed that the City Property may only be used as a paved parking lot to support the Auburn Park Metra Station, unless such requirement is waived by City, in its sole discretion.

6. Contingencies or Conditions Precedent. Metra's obligation to consummate this transaction is subject to and conditioned upon satisfaction of each of the following express conditions precedent. Each of the conditions precedent may be waived in writing by Metra, such conditions being intended for the exclusive protection and benefit of Metra. In the event that such conditions are not satisfied or waived by Metra on or before the Closing Date, then at the sole option of Metra, this Agreement may be either: (i) declared null and void; or (ii) this Agreement shall be extended for reasonable time to permit the satisfaction or waiver of such condition.

A. The continued validity of each and every representation, covenant and warranty contained in this Agreement.

B. City makes no representation as to the condition of the City Property, and Metra assumes all

responsibility for, all debris and personal property on or about the City Property and accepts the City Property in its current "as-is" condition.

C. City shall deliver to Metra within thirty (30) days of the date hereof, copies of the following, if any, which are in City's possession or control: (i) all tax bills, surveys and title policies; (ii) all engineering studies, soil tests, chemical tests, environmental reports, analyses or assessments of the City Property; and (iii) all site plans, drawings, documents showing the installation of utilities, or other documents relating to the City Property or the improvements thereon.

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D. On the Closing Date, City shall deliver to Metra an affidavit of title ("Affidavit of Title") and ALTA Statement, each in customary form covering the Closing Date.

E. Metra shall be satisfied with all title and survey matters in accordance with Sections 7 and 8 below.

7. Title. Within fifteen (15) business days of the Effective Date, Metra shall cause to be delivered to City a title commitment issued by the Title Company ("Title Commitment"), together with copies of all recorded underlying documents (the "Underlying Documents"), for the issuance of an ALTA owner's policy ("Title Policy") covering the City Property in the amount of the Purchase Price, with extended coverage over the general exceptions contained in the Title Policy and showing title in the City subject only to: (a) the Permitted Exceptions, and (b) title exceptions or encumbrances which may be removed by Metra either prior to or at the time of closing. If Metra is not satisfied with the matters set forth in the Title Commitment, Metra shall provide written notice to City within fifteen (15) business days following Metra's receipt of the last of the Title Commitment and the Underlying Documents, or, if such documents are delivered to Metra before the Effective Date, within fifteen (15) business days following the Effective Date (the "Title Review Period") of those exceptions that Metra deems unacceptable (the "Unpermitted Exceptions"). Those title exceptions and Survey Defects (as defined in Section 8 of this Agreement) for which Metra does not provide such notice (or, if Metra does not provide such notice within said fifteen (15) business day period) shall constitute "Permitted Exceptions". City shall have ten (10) business days after the date City receives such notice to have the Unpermitted Exceptions removed from the Title Commitment or to cause the Title Insurer to: (i) issue an endorsement insuring over any damage or risk caused by such Unpermitted Exceptions; or (ii) commit to obtain the Title Insurer's commitment to have such Unpermitted Exceptions removed either prior to or at Closing. If City fails to cause the Unpermitted Exceptions to be deleted or endorsed over within such ten (10) business day period of Metra's notice to City, Metra, at its sole discretion, subject to any rights Metra may have under Section 23 shall have the right to elect to: (A) terminate this Agreement, in which event neither party shall have any further rights, obligations or liabilities hereunder, except the Surviving Obligations, or (B) accept conveyance of title subject to the Unpermitted Exceptions and proceed with the Closing, in which event Metra shall accept City's Deed to the City Property subject to those Unpermitted Exceptions City was unable to remove. If Metra shall fail to so make such election by notice served upon City within three (3) days after the expiration of said ten (10) business day period, Metra shall be deemed to have elected the alternative in (A) above. At Closing the following items shall not be deemed to be Permitted Exceptions, even though they may have been contained in the Title Commitment: (i) claims for mechanics' liens not caused by, through or under Metra; (ii) mortgages not caused by, through or under Metra; and (iii) real estate taxes then due and payable. City, at its sole cost and expense, shall cause such items to be removed from the Title Commitment on or prior to Closing. Metra shall have the right to obtain, at its sole costs and expense, any desired endorsements to the Title Commitment which are available.

8. Survey.

A. Metra has previously obtained, at its cost and expense, a survey of the City Property and delivered a copy of such survey to City (the "Existing Metra Survey"). In the event the Existing Metra Survey is unacceptable to the Title Insurer for purposes of providing extended coverage over the general title exceptions relating to matters of survey, Metra may, at its sole discretion, either cause the Existing Metra Survey to be updated in a form required by the Title Insurer and in accordance with the

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ALTA/ACSM Property survey standards or obtain a new survey at Metra's sole cost and expense (the "New Survey"), or take title subject to the general exceptions. The Existing Metra Survey or the New Survey, as the case may be, are hereafter referred to in this Agreement as the "Survey" and shall set forth the legal description, location, acreage and dimensions of the City Property and any structures or improvements located thereon, show all water lines, sanitary sewer, storm sewers, any other utilities, building lines, setback lines, easements, and other restrictions affecting the City Property, all encroachments onto and from adjoining properties, building lines, access to public roads and street address(es).

B. If the Survey required to be furnished under this Section discloses encroachments over which the Title Insurer will not insure or which Metra is unwilling to accept even with such title insurance, or if, after reviewing such Survey, the Title Insurer raises unpermitted exceptions ("Survey Defects"), Metra shall provide City with written notice of such Survey Defects within fifteen (15) business days following receipt of the Survey and the Title Commitment from the Title Insurer. Those Survey matters that Metra does not include in such notice (or, if Metra does not provide such notice within such fifteen (15) business day period) or, if the Title Commitment and Survey are delivered to Metra before the Effective Date, within fifteen (15) business days following the Effective Date ("Survey Review Period"), such matters shall constitute permitted matters of Survey. City shall have ten (10) business days from the date of City's receipt of Metra's notice to correct such Survey Defects or cause the Title Insurer to issue an endorsement, at its cost and expense, insuring against damage or risk caused by such Survey Defects prior to Closing. If City fails to cure or cause the insuring over of such Survey Defects, Metra, at its sole discretion, subject to any rights Metra may have under Section 23, shall have the right to elect to: (A) terminate this Agreement, in which event neither party shall have any further rights, obligations or liabilities hereunder, except the Surviving Obligations as hereinafter defined, or (B) accept conveyance of title subject to the Survey Defects and proceed with the Closing, in which event Metra shall accept City's Deed to the City Property subject to such Survey Defects which were unable to be cured or insured over by the Title Insurer. If Metra shall fail to so make such election by notice served in writing upon City on or before expiration of the Survey Review Period, Metra shall be deemed to have elected the alternative in (A) above.

9. Closing. When all the contingencies and conditions precedent set forth in this Agreement which are required to be satisfied prior to the Closing Date have been satisfied or waived by Metra, Metra shall notify City of such and Metra shall order a later dated title commitment covering the City Property from the Title Insurer and cause such commitment to be delivered to Metra. Provided the later dated title commitment is acceptable to Metra, and all other obligations of City set forth in this Agreement have been satisfied, the parties will close the transfer and conveyance of the City Property on the Closing Date. On the Closing Date, City shall deliver to Metra all documents required to be delivered at closing under the terms and conditions of this Agreement.

10. Closing Costs. Metra shall pay the following expenses: (i) the cost of the basic title premium (including extended coverage) charged by the Title Insurer and the cost of any title endorsements requested by Metra; (ii) Survey charges, if any; (iii) all closing escrow fees, if any; (iv) City of Chicago transfer taxes, if any; and (v) Deed recording charges; (vi) any conveyance fees (other than the recording of the Deed),

documentary, stamp and all Cook County and State of Illinois transfer taxes, if any; and (vii) the cost of any undertaking required by the Title Insurer to be made by City.

11. Possession. Possession of the City Property shall be delivered to Metra at Closing.

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12. Condemnation/Casualty. If any "material portion" (as hereinafter defined) of the City Property is taken by condemnation or is under threat of being taken by condemnation or is destroyed by fire or other casualty prior to Closing, Metra may terminate this Agreement by notice to City given on or before the earlier of: (i) twenty (20) days after such taking or casualty; or (ii) the Closing Date, and in the event of such termination, this Agreement shall be of no further force and effect and, except for the Surviving Obligations, neither party shall thereafter have any further obligation under this Agreement. If Metra does not so elect to terminate or if the taking is not material, then the Closing shall take place as herein provided, and City shall deliver or assign to Metra on the Closing Date, without warranty or recourse, all of City's right, title and interest in and to all condemnation awards paid or payable to City. As used herein, a "material portion" of the City Property shall mean any portion of the City Property which would affect Metra's ability to develop the City Property in accordance with its plans.

13. City's Representations and Warranties. City makes the following representations and warranties to Metra, which representations and warranties shall be deemed to have been remade on and shall survive the Closing Date.

A. There are no third party leases of any portion of the City Property or any other third party agreements currently in effect, nor are there any such leases or agreements for a future period, and no third party licenses or any other possessory rights exist in any person or entity with respect to the City Property.

B. No litigation, legal proceedings or administrative proceedings of any type relating to or affecting the City Property (including condemnation or similar proceedings) have been instituted or, to the best of City's knowledge, are contemplated against City, the City Property or any part thereof, including without limitation any claims for brokers', mechanics' or materialmen's liens.

C. All real estate taxes assessed against the City Property are currently paid and, to the best of City's knowledge, there are no assessed, levied, pending or contemplated special real estate taxes or regular or special assessments of any nature with respect to the City Property or any part thereof, and the City Property is listed as exempt on the rolls of the Cook County Assessor.

D. There are no obligations or responsibilities of City that will survive the Closing Date with respect to any persons or entities involved in the operation, maintenance and management of the City Property that would become the obligation or responsibility of Metra, and City indemnifies Metra against any and all such obligations and responsibilities to such persons or entities, which arise before or will arise after the Closing Date.

14. Documents for Closing. City shall prepare or cause to be prepared the Deed, the City's Closing Statement, an Affidavit of Title, an ALTA statement and any other documents required of City under the terms of this Agreement or deemed necessary or appropriate by Metra or the Title Insurer to consummate this transaction, all of which shall be in form, scope and substance reasonably acceptable to Metra and the Title Insurer.

ACQUISITION OF PRIVATE PARCEL

15. Metra Acquisition of Private Parcel. Metra will acquire the Private Parcel from the current record owner.

16. City Reimbursement for Metra Acquisition of Private Parcel. As partial reimbursement for Metra's acquisition of the Private Parcel, City shall pay to Metra the amount of fifty-one thousand, seven hundred dollars (\$51,700) in cash by wire transfer of immediately available United States of America funds in accordance with the terms and conditions of this Agreement. Metra will provide to City a copy of the purchase and sale agreement between Metra and the current record owner, at least twenty (20) business days prior to the date of the Private Parcel closing, so that Metra shall receive such payment in its designated account no later than the date of the Private Parcel closing.

METRA PARKING LOT OVER LOWE AVENUE

17. Metra Parking Lot. The City Parcel acquired by Metra will be used for the Auburn Park Station parking lot ("Metra Parking Lot"). The Metra Parking Lot will extend beyond the area of the City Parcel and abut the Private Parcel, extending over the current Lowe Avenue.

18. Lowe Avenue. In order to accommodate the Metra Parking Lot, Metra shall construct a cul-de-sac of the current Lowe Avenue directly to the south of the Metra Parking Lot. The Metra Parking Lot, its landscape and boundaries will serve to close off access to Lowe Avenue from the north, on the south side of 79th Street. Metra will open Lowe Avenue to public automobile access to the south at 80th Street, where Lowe Avenue is currently closed to automobile traffic, before closing off Lowe Avenue at 79th Street. Metra will coordinate curb realignment and all aspects of the Lowe Avenue work with the City's Department of Transportation, whose approval is required prior to the commencement of any such work.

19. Lowe Avenue as Public Way. That portion of Lowe Avenue to be used in Metra's construction of the Metra Parking Lot shall remain a part of the City's "public way", as defined under Chapter 1-4-090 of the Municipal Code of Chicago. City shall authorize Metra to build the Metra Parking Lot over Lowe Avenue, thereby closing that portion of Lowe Avenue off from use as a through street.

20. Metra Easement over Lowe Avenue. Upon the Chicago City Council's approval of this Agreement, the authorized City representative shall execute and convey to Metra the Easement Agreement, attached hereto as Exhibit D. The Metra Easement shall have a term of forty (40) years, with Metra's option to renew the Metra Easement in additional ten (10) year increments.

21. City Access to Utilities. Metra shall construct the Metra Parking Lot per plans approved by the appropriate department of the City of Chicago. City shall be responsible for maintenance of any utilities located underground ("Underground Utilities"), and shall be allowed access onto Metra's Parking Lot to maintain the Underground Utilities. City shall provide Metra with seven (7) days' prior written notice of City's intent to enter the Metra Parking Lot to perform maintenance of the Underground Utilities.

PROVISIONS APPLICABLE TO ENTIRE AGREEMENT

22. Environmental Requirements, Indemnification and Acknowledgement.

A. Although Metra is not required to enroll any of the parcels in the Illinois Environmental Protection Agency's (IEPA) Site Remediation Program (SRP), Metra agrees that it will perform redevelopment activities in accordance with SRP guidelines in order to ensure protection of public health and the environment. These guidelines include but are not limited to:

- i. Constructing future site buildings, if applicable, with a full concrete slab-on-grade foundation or with a full concrete basement floor and walls.
- ii. Testing and disposing of soil being removed from the site must be disposed of in accordance with applicable regulations.
- iii. Covering areas with exceedances to applicable IEPA ingestion or inhalation cleanup objectives with an SRP-compliant engineered barrier such as asphalt, concrete, 3 ft of clean fill, or other barrier type typically approved by IEPA for similar sites.

Metra agrees that redevelopment activities shall be performed in conjunction with a Health and Safety Plan for remediation and construction. Potential exposure from redevelopment activities should be considered based upon the construction worker exposure route in 35 IAC 742.

Metra agrees that: i) any Recognized Environmental Condition encountered during construction shall be addressed as required in accordance with all applicable laws and applicable SRP guidelines; and ii) any soil, groundwater or storm water that is removed from excavations will be disposed of in accordance with applicable law, including sampling as necessary. Any underground storage tanks (USTs) discovered during the redevelopment activities, must be removed and closed in accordance with applicable regulations including Title 41 of IAC Part 175, and any identified leaking USTs must be properly addressed in accordance with 35 IAC Part 734.

B. Metra shall indemnify, protect, and hold City harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, proceedings, costs and expenses (including, without limitation, all reasonable attorneys' fees and legal expenses whether or not suit is brought) which may at any time be imposed on, incurred by, or asserted against City, with respect to or as a direct or indirect result of the violation of any Environmental Law; or with respect to or as a direct or indirect result of Metra's generation, manufacture, production, storage, release, threatened release, discharge, disposal or presence in connection with the properties of a Hazardous Substance including, without limitation, (a) all damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence, or (b) the costs of any required or necessary environmental investigation, monitoring, repair, cleanup, or detoxification and the preparation and implementation of any closure, remedial, or other plans. The provisions of and undertakings and indemnification set forth in this paragraph shall survive the termination of this Agreement

for a period of time set forth in the statute of limitations in any applicable Environmental Law.

C. Metra accepts the property interests acquired under this Agreement in "As Is", "Where Is" and "With All

Faults" condition, without any covenant, representation or warranty, express or implied, of any kind, as to the structural, physical or environmental conditional of the Property (collectively, the "Conditions"), or the suitability of the property for any purpose whatsoever. Metra for itself and its successors and assigns, releases the City from any claims relating to the Conditions.

23. Default. Except as specifically provided otherwise in this Agreement, in the event that either party shall fail to comply with any of the obligations to be performed by that party hereunder, then the other party shall have all rights and remedies available to it at law and/or in equity to seek additional damages and/or to strictly enforce the terms of this Agreement.

If, following the conveyance of the City Parcel, reimbursement payment for the Private Parcel and grant of Lowe Avenue Easement, Metra is unable or unwilling to develop the Auburn Park Station, and/or if the Auburn Park Station has not been constructed within ten (10) years of the date of the IGA, then Metra agrees to convey the City Parcel back to the City, repay the reimbursement amount to the City, and terminate the Easement.

24. Construction and Maintenance Obligations. Metra shall have the sole responsibility to construct the Auburn Park Station in a manner compliant with all applicable laws. City shall have no responsibility with respect to construction, and this Agreement does not supersede or remove any permitting requirements or other requirements that Metra construct the Auburn Park Station in accordance with all applicable laws.

Upon completion of the construction of the Auburn Park Station, Metra shall have sole responsibility to maintain and keep the Auburn Park Station in good repair and condition. The City shall have no responsibility to maintain any part of the Auburn Park Station, subject to Section 21 herein.

25. Notices. All notices, demands, elections and other instruments required or permitted to be given or made by any party upon another under the terms of this Agreement or any statute shall be in writing. Such communication shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid by the parties at the respective addresses shown below or to such other party or address as any 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.

- A. If to City: City of Chicago
Department of Planning and Development 121 North
LaSalle Street, Suite 1000 Chicago, Illinois 60602

With Copy to: City of Chicago

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Department of Law
121 North LaSalle Street, Suite 600
Chicago, Illinois 60602
ATTN: Real Estate and Land Use Division

- B. If to Metra: Commuter Rail Division d/b/a Metra
547 West Jackson Blvd. Chicago,

Illinois 60661
Attn: Director, Real Estate and Contract Management

26. Recordation. Metra shall not record this Agreement, a memorandum of this Agreement, or other notice thereof in any public office without the express written consent of City. A breach by Metra of this covenant shall constitute a material default by Metra under this Agreement.

27. Miscellaneous.

A. Time is of the essence of this Agreement.

B. The terms, conditions, provisions, covenants, representations and warranties herein contained shall survive the Closing Date and delivery of the Deed by City, shall not be merged into the Deed and shall extend to the successors and assigns of City and Metra (collectively, the "Surviving Obligations").

C. This Agreement constitutes the entire contract between the parties with respect to the subject matter of this Agreement, and may not be modified except by an instrument in writing signed by all the parties and dated a date subsequent to the date of this Agreement.

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

E. , This Agreement may be executed in one or more counterparts, each of which together shall constitute one single Agreement and shall be deemed an original.

[REMAINDER OF PAGE INTENTIONALLY BLANK - SIGNATURES TO FOLLOW]

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IN WITNESS WHEREOF, this Agreement is entered into by and between the parties hereto as of the date and year first above written.

**THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY:
CITY OF CHICAGO:**

an Illinois Municipal Corporation and Home Rule Unit of Government

By:

James M. Derwinski CEO/Executive Director
DEPARTMENT OF PLANNING AND DEVELOPMENT

Commissioner

DEPARTMENT OF TRANSPORTATION

Commissioner

**APPROVED AS TO FORM AND LEGALITY:
BY: THE DEPARTMENT OF LAW**

Assistant Corporation Counsel Real Estate Division

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Exhibit A

Legal Description

City Parcel

LOTS 1 TO 10 IN BLOCK 2 IN GEORGE A. CHAMBER'S SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Private Parcel

LOTS 1 TO 7, INCLUSIVE, AND THE NORTH 1/2 OF LOT 8 IN BLOCK 1 IN GEORGE A. CHAMBER'S SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING WEST OF THE CHICAGO ROCK ISLAND AND PACIFIC RAILROAD, IN COOK COUNTY, ILLINOIS.

Lowe Avenue - Metra Easement

THAT PART OF 66.00 FOOT WIDE S. LOWE AVENUE IN GEORGE A CHAMBER'S SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 18, 1889, AS DOCUMENT NO. 1117245, DESCRIBED AS FOLLOWS USING BEARINGS REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD83 (2011 ADJUSTMENT):

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 IN BLOCK 2 OF SAID GEORGE A CHAMBER'S SUBDIVISION, BEING ALSO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF W. 79 STREET AND THE WEST RIGHT-OF-WAY LINE OF S. LOWE AVENUE; THENCE NORTH 88 DEGREES 28 MINUTES 18 SECONDS EAST, 66.00 FEET TO THE NORTHWEST CORNER OF LOT 6 IN BLOCK 1 OF SAID GEORGE A. CHAMBER'S SUBDIVISION, BEING ALSO THE INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE OF W. 79TH STREET AND THE EAST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE; THENCE SOUTH 1 DEGREE 42 MINUTES 19 SECONDS EAST ON THE WEST LINE OF SAID LOT 6 IN BLOCK 1, BEING ALSO THE EAST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE, A DISTANCE OF 100.00 FEET; THENCE SOUTH 88 DEGREES 28 MINUTES 16 SECONDS WEST, 66.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1 IN BLOCK 2, BEING ALSO THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE AND THE NORTH LINE OF THE EAST-WEST ALLEY IN SAID BLOCK 2 IN GEORGE A. CHAMBER'S SUBDIVISION; THENCE NORTH 1 DEGREE 42 MINUTES 19 SECONDS WEST ON THE EAST LPWE OF SAID LOT 1, BEING ALSO THE WEST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

**Exhibit B Auburn
Park Station Property**

Exhibit C Permitted Exceptions

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Exhibit D

EASEMENT AGREEMENT

This EASEMENT AGREEMENT ("Agreement") is entered into as of the _____ day of _____, 2020 ("Effective Date"), by and between the **COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, an Illinois unit of local government, doing business as Metra ("Grantee" or "Metra")** and the **CITY OF CHICAGO, an Illinois home rule municipality ("City" or "Grantor")**.

RECITALS

A. Metra is a division of the Regional Transportation Authority, a municipal corporation and body politic duly established in accordance with the applicable provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq. (the "Act") and, as such, is deemed a special district of the State of Illinois. Pursuant to Section 2.20(a)(iv) of the Act, Metra has the power to acquire real and personal property as it deems appropriate in the exercise of its general corporate powers.

B. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local government, municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance.

C. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes units of local government, municipalities and special districts in Illinois to exercise jointly with any other public agency or special district, any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities and undertakings.

D. City owns public way Lowe Avenue, which will remain part of the "public way", as defined under Chapter 1-4-090 of the Municipal Code of Chicago ("City Parcel").

E. City desires to convey to Metra an exclusive easement to use the segment of Lowe Avenue approximately 66 feet wide, from the south side of 79th Street, to approximately 100 feet south, to the entrance of the current alleyway running perpendicular to Lowe Avenue, as legally described in Exhibit A and delineated in Exhibit B ("Easement Area").

F. Metra desires to use the exclusive easement to build and operate a new Metra commuter station and related facilities on Metra's Rock Island District line. ("Auburn Park Station").

NOWHEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Grant. Grantor hereby grants and conveys to Grantee, its heirs, legal representatives, successors and assigns, an exclusive easement for the commuter station and parking ("Easement") in, under, upon, about, over and through the Easement Area located on the City Parcel, for the benefit of

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Grantee. The Easement shall serve the purpose of closing street access to Lowe Avenue at the Easement Area for use as part of the Auburn Park Station.

2. Use. Grantee may use the Easement to construct and operate the Auburn Park Station for the purpose of providing commuter rail service to the surrounding community, including paving the Easement Area for use as a parking lot and walkway for the Auburn Park Station.

3. Improvements. Grantee may construct improvements over, in, along, across, and upon the Easement Area that are reasonably related to both the purpose of the Easement and Grantee's use and enjoyment of the

Easement ("Improvements"). Grantee will construct the Improvements in accordance with plans as per approved permits, and any future Improvements with minimum interference to City's access to the utilities which lie underground throughout the Easement Area ("Underground Utilities").

4. Plans. Upon Grantor request, Grantee shall provide Grantor with as-built drawings and a survey showing the location and depth of the Improvements installed in the Easement Area.

5. Costs/Lien-Free Construction. Grantee shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of City Parcel, all costs and expenses incurred by Grantee in connection with the construction and maintenance of the Improvements. Grantee hereby acknowledges and agrees that if any lien is filed against City Parcel as a result of the Easement or Grantee's activities in the Easement Area, and Grantee has not had such lien removed of record within one hundred and twenty (120) days of the date of Metra's notice of the initial filing of such lien, Grantee shall be in default of this Agreement, and Grantor shall have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

6. Compliance with Laws. Grantee shall construct the Improvements in a workmanlike manner and in compliance with all applicable statutes, ordinances, rules, and regulations of governing public authorities.

7. Maintenance and Repair. Grantee hereby assumes the obligation, including all costs and expenses, to maintain and repair the Easement Area. Grantee shall not disturb the Underground Utilities, and Grantor assumes the obligation, including all costs and expenses, to maintain and repair the Underground Utilities. In the event that any part of the Easement Area is disturbed, excavated, or altered in furtherance of Grantor's maintenance or repair of the Underground Utilities, Grantor shall repair and return the Easement Area and Improvements to the condition the Easement Area and Improvements were in prior to Grantors maintenance or repair of the Underground Utilities.

8. Representations and Warranties. Grantor hereby represents and warrants to Grantee that:
a) Grantor has the full right, power, title, and interest to make the within grant of Easement to Grantee;
b) such grant of Easement and any rights granted under this Agreement may be fully and thoroughly enjoyed and utilized by Grantee pursuant to the terms hereof; and (c) Grantee's Easement rights hereunder shall not be defeated, impaired, and adversely affected by superior title.

9. Grantor's Use of Property. Grantor reserves the right to use the City Parcel in any manner and for any purpose that does not interfere with Grantee's Easement rights and Grantee's use of the

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Easement, provided that Grantor shall not grant any other easement rights within the Easement Area to any other individual or entity.

10. Insurance. Grantee shall maintain, at Grantee's expense, and keep in force at all times during the term of this Agreement, a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, which shall include coverage against claims for any injury, death, or damage to persons or property occurring on the Easement Area. Grantor and its agents, contractors, and any other third parties performing work in the Easement Area on behalf of Grantor, shall be named as additional insureds on such insurance policies.

11. Term. The term of this Agreement shall commence on the Effective Date, and continues for a period

of forty (40) years ("Term"). If at the end of the Term, the Easement Area is still being used by Metra for commuter rail services, the Term shall automatically renew in additional ten (10) year increments, subject to the condition that the Easement Area continues to be used for commuter rail service.

12. Abandonment. In the event Grantee or its successors and assigns abandon their use of the Easement or all of the improvements within the Easement Area for a period of twelve (12) consecutive months for reasons not outside Grantee's control, this Agreement and all easement rights granted hereunder shall terminate and revert back to Grantor. For the purposes of this Section 12, "abandon" shall mean non-use of the Easement or Improvements for commuter rail service.

13. Indemnification. Grantee shall indemnify, defend, and hold Grantor harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by Grantor arising from or by reason of Grantee's access to, or use of the Easement Area.

Grantor shall indemnify, defend, and hold Grantor harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by Grantee arising from or by reason of Grantor's obligation to maintain and repair the Underground Utilities.

14. Notices. All notices, demands, elections and other instruments required or permitted to be given or made by any party upon another under the terms of this Agreement or any statute shall be in writing. Such communication shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid by the parties at the respective addresses shown below or to such other party or address as any 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.

To Grantor: City of Chicago
Department of Transportation 30 N. LaSalle
Street, Suite 500 Attn: William Higgins

15. Amendment. This Agreement may not be modified, amended, or terminated except in a writing signed by each party hereto.

16. Governing Law. This Agreement shall be governed by the internal laws of the State of Illinois. All actions or proceedings arising directly or indirectly or otherwise in connection with, out of or from this Agreement shall be litigated only in a court having a situs within the County or Counties of the State of Illinois.

17. Recording. Upon execution and recording of this Agreement with the Cook County Recorder of Deeds, a recorded copy shall be returned to Grantee in the manner set forth in Section 14 herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date first written above.

THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY:

James M. Derwinski CEO/Executive Director

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Exhibit A to Easement Agreement

Legal Description

Lowe Avenue - Easement Area

THAT PART OF 66.00 FOOT WIDE S. LOWE AVENUE IN GEORGE A CHAMBER'S SUBDIVISION OF THAT PART OF THE NORTH 1/2 OF THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 33, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 18, 1889, AS DOCUMENT NO. 1117245, DESCRIBED AS FOLLOWS USING BEARINGS REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD83 (2011 ADJUSTMENT):

BEGINNING AT THE NORTHEAST CORNER OF LOT 1 IN BLOCK 2 OF SAID GEORGE A CHAMBER'S SUBDIVISION, BEING ALSO THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY LINE OF W. 79 STREET AND THE WEST RIGHT-OF-WAY LINE OF S. LOWE AVENUE; THENCE NORTH 88 DEGREES 28 MINUTES 18 SECONDS EAST, 66.00 FEET TO THE NORTHWEST CORNER OF LOT 6 IN BLOCK 1 OF SAID GEORGE A. CHAMBER'S SUBDIVISION, BEING ALSO THE INTERSECTION OF SAID SOUTH RIGHT-OF-WAY LINE OF W. 79TH STREET AND THE EAST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE; THENCE SOUTH 1 DEGREE 42 MINUTES 19 SECONDS EAST ON THE WEST LINE OF SAID LOT 6 IN BLOCK 1, BEING ALSO THE EAST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE, A DISTANCE OF 100.00 FEET; THENCE SOUTH 88 DEGREES 28

MINUTES 16 SECONDS WEST, 66.00 FEET TO THE SOUTHEAST CORNER OF SAID LOT 1 IN BLOCK 2, BEING ALSO THE INTERSECTION OF THE WEST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE AND THE NORTH LINE OF THE EAST-WEST ALLEY IN SAID BLOCK 2 IN GEORGE A. CHAMBER'S SUBDIVISION; THENCE NORTH 1 DEGREE 42 MINUTES 19 SECONDS WEST ON THE EAST LINE OF SAID LOT 1, BEING ALSO THE WEST RIGHT-OF-WAY LINE OF SAIDS. LOWE AVENUE, A DISTANCE OF 100.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Exhibit B to Easement Agreement

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