

EASEMENT AGREEMENT

Prepared by: Keith Pardonnet, Esq.

Grantor:

Metra
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate &
Contract Management
Phone: (312) 542-8189

After recording return to Grantee:

Village of Orland Park
14700 South Ravinia Avenue
Orland Park, Illinois 60462
Attn: Village Manager
Phone: (708) 403-6100

PIN: (portion of): 27-29-500-001
(Cook County)

(Above Space for Recorder's Use Only)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**”), Metra Agreement No. _____, is entered into by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation whose address is 547 West Jackson Boulevard, Chicago, Illinois 60661 (“**Metra**”), and the Village of Orland Park, an Illinois municipal corporation with offices located at 14700 South Ravinia Avenue, Orland Park, IL 60462 (“**Grantee**”). Metra and Grantee may hereinafter be referred to individually as a “**Party**” and in combination as the “**Parties**”.

NOW, THEREFORE, for and in consideration of payments to be made to Metra by Grantee, as hereinafter set forth, and also of the covenants and agreements hereinafter stated, Metra hereby grants to Grantee a non-exclusive easement (“**Easement**”) to use the Norfolk Southern Railway Company’s (“**NS**”) property, currently maintained and for the purposes herein, controlled by Metra for the purpose of installing and operating a multi-purpose path crossing Metra’s SouthWest Service Line (“the **SWS**”) pursuant to the Crossing Improvement Agreement to be signed concurrently with this Agreement. Grantee may use the Metra-controlled property to install, operate, and maintain the Path and for no other purposes (“**Permitted Activities**”) located south of the West 167th Street crossing of the SWS in Orland Park, Illinois, SWS MP 26.83 (GPS coordinates: 41.586135, -87.884073), as delineated on **Exhibit A** (“**Premises**”), attached to and made a part of this Agreement, together with the right of reasonable access thereto for the purpose

of exercising the rights and privileges granted in this Agreement. Licensee to maintain, operate, and renew the Path through the continuance of this Easement.

1. As one of the considerations for this Easement, Grantee agrees to pay to Metra the sum of \$2,500, for the cost of preparing this Easement, payable in advance.

2. Any future construction on the Premises shall be constructed in accordance with the plans and specifications approved in advance by Metra. The construction, including but not limited to, the time and manner of doing all of the work and any maintenance, repairs, reconstruction, replacement or renewal upon the Easement Premises or the adjacent Metra property (“**Property**”), shall be as directed by Metra’s authorized representatives. All said work shall be done at Grantee’s sole cost and expense, in a good and workmanlike manner.

3. Upon completion of any construction on the Premises, and upon completion of any subsequent reconstruction, replacement, repair, renewal or maintenance of the Premises, Grantee, at its own cost and expense, shall remove any debris and restore, or cause to be restored to the reasonable satisfaction of Metra, any affected portion of the Property as nearly as may be, to the same or better condition than that which existed immediately prior to commencement of such activities by Grantee.

4. Metra shall permit Grantee reasonable right of entry to the Premises for the purpose of routine maintenance and operation of the Premises as well as for reconstruction, replacement, repair, or renewal. Grantee’s contractor(s) will be required to enter into a Right of Entry Agreement with Metra prior to any access to the Premises for the purpose(s) of installation, construction, reconstruction, repair, replacement, renewal, or removal of the Path. An application for a Right of Entry can be found at Metra’s website: (<http://metra.com/real-estate-leasing>) or by contacting Metra’s Right of Way Administrator at 312-542-8189. Grantee shall contact Metra’s Right of Way Administrator prior to performing any construction, reconstruction, repair, replacement, renewal, revision, or action to the Path or on the Premises or Property.

5. Any rights to the Premises not specifically granted to Grantee herein are reserved to Metra and its successors and/or assigns. The Path shall be repaired, maintained, and operated in a manner so as not to interfere with efficient rail operations or any other business operations, or activities being conducted by Metra or Metra’s tenants or permittees. This Easement is expressly subject to the rights of third-parties to maintain utility and other improvements permitted by Metra on the Premises and the Property. Metra reserves the exclusive right to grant future third-parties use of the Premises and the Property over, under, across, or parallel to the Premises so long as the use does not unreasonably interfere with Grantee’s use of the Premises as mutually determined by the Parties.

6. Grantee agrees that it will bear and pay the entire cost of constructing, maintaining, repairing, replacing, and operating the Path on the Premises.

7. Grantee shall not place, keep, store, or otherwise permit to be placed, kept, or stored on the Premises or the Property any equipment or materials except during such time as

Grantee's employees, agents, or contractors are conducting activities permitted under the terms of this Easement Agreement. Grantee agrees that it shall not operate or cause to be operated any vehicle of any kind on any track or on the Property without prior authorization from Metra's authorized representative; provided, however, that Grantee shall not be prohibited from operating Grantee's vehicles and equipment on any public crossing of Metra's tracks and rights of way. If deemed necessary by Metra, a flagman will be provided by Metra, the cost of such services to be paid by Grantee or Grantee's contractor.

8. Grantee agrees that should any construction, maintenance, operation, repair, or presence of the Path necessitate any change or alteration in the location or arrangement of any wires, appurtenances or other improvements located on the Premises or the Property, the cost of such change or alteration shall be paid by Grantee.

9. Grantee shall at all times construct, replace, repair, maintain, and operate said Path in a secure, safe and sanitary condition and in accordance with all applicable laws, ordinances, rules, and regulations. Grantee shall take all reasonable safety precautions to adequately secure the Premises, warn of risks and ensure the safety of the public during periods of construction, reconstruction, replacement, repair, maintenance, and operation of the Path. If the manner of constructing, repairing, maintaining, replacing, or operating said Path shall at any time be in violation of any applicable law, rule, regulation, or ordinance, Grantee, at no cost or expense to Metra and upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction over the Premises, shall make such changes or repairs as shall be necessary. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed by said agency shall terminate this Easement Agreement, provided that it shall not terminate as long as Grantee, in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from, or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules, or regulations.

10. To the fullest extent permitted by law, Grantee hereby assumes and agrees to release, acquit and waive any rights against and forever discharge Metra, the Regional Transportation Authority ("RTA") and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, or on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with, the use of the Premises by Grantee or its employees, officers, agents, and all other persons, firms, and corporations acting on Grantee's behalf or with Grantee's authority for the purposes set forth in this Easement Agreement and during the term of this Easement Agreement. Notwithstanding anything in this Easement Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Easement Agreement.

11. To the fullest extent permitted by law, Grantee agrees to indemnify, defend and hold harmless Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on

their behalf or with their authority, from and against any and all injuries, liabilities, losses, damages, costs, payments, and expenses of every kind and nature (including court costs and attorneys' fees) as a result of claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with, the use of the Premises by Grantee, its employees, officers, agents, and all other persons, firms, and corporations acting on Grantee's behalf or with Grantee's authority for the purposes set forth in this Easement Agreement. Metra agrees to notify Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. Metra, the RTA and the NIRCRC may elect to participate in the defense of above-described claims, demands, actions, suits, or proceedings at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents, or employees. Grantee shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of Metra, the RTA and the NIRCRC, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Easement Agreement, the indemnities contained in this paragraph shall survive termination of this Easement Agreement.

12. Prior to entering upon the Premises, Grantee agrees to furnish insurance in form and in such amounts as required by as delineated on **Exhibit B**, attached to and made a part of this Agreement and or as required by Metra's Risk Management Department and shall deliver to Metra's Risk Management Department, 547 W. Jackson Blvd., Chicago, IL 60661, certificates of insurance or such other documentation acceptable to Metra's Risk Management Department. During all periods that Grantee or those persons authorized by or acting on behalf of Grantee are on the Premises to perform or cause to be performed any installation, construction, maintenance, repair, or operation with respect to the Path.

13. This Easement may be terminated by Metra effective immediately upon notice to Grantee if the Premises, or any portion thereof, are needed for any Metra or railroad purposes as determined by Metra in its sole discretion or Grantee ceases to operate or maintain the Path or violates any of the terms, conditions, or provisions set forth in this Easement Agreement. In case of termination, the Parties agree to negotiate the disposition of the Path and if any restoration of the Premises would be necessary.

14. This Easement Agreement and all of its terms, conditions, rights, and obligations shall inure to and be binding upon the Parties, their respective legal representatives, lessees, permittees, successors, and/or assigns whether hereinabove so stated or not.

15. All notices, demands and elections required or permitted to be given or made by either party upon the other under the terms of this Easement Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, or hand delivered to the respective addresses on Page 1 of this Easement Agreement or to such other party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections, and other instruments shall be considered delivered to recipient

on the third business day after deposit in the U.S. Mail, or on the day of delivery if hand delivered.

17. This Easement Agreement shall be governed by the internal laws of the State of Illinois without regard to conflicts of law principles. If any provision of this Easement Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Easement Agreement shall be construed as if such invalid part were never included, and this Easement Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Easement Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties. No waiver of any obligation or default of Grantee shall be implied from omission by Metra to take any action on account of such obligation or default, and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday, or holiday, the actual time for performance shall be the next business day. This Easement Agreement constitutes the entire agreement between the parties with respect to the subject matter here.

(Signature Page to Follow)

IN WITNESS WHEREOF, this instrument is executed and enforceable as of the later signature below.

**GRANTEE,
THE VILLAGE OF ORLAND PARK:**

**GRANTOR,
THE COMMUTER RAIL DIVISION
OF THE REGIONAL
TRANSPORTATION AUTHORITY
d/b/a METRA:**

By: _____

By: _____

James M. Derwinski CEO/Executive Director

Name: _____

Date signed: _____

Title: _____

Date signed: _____

Exhibit A

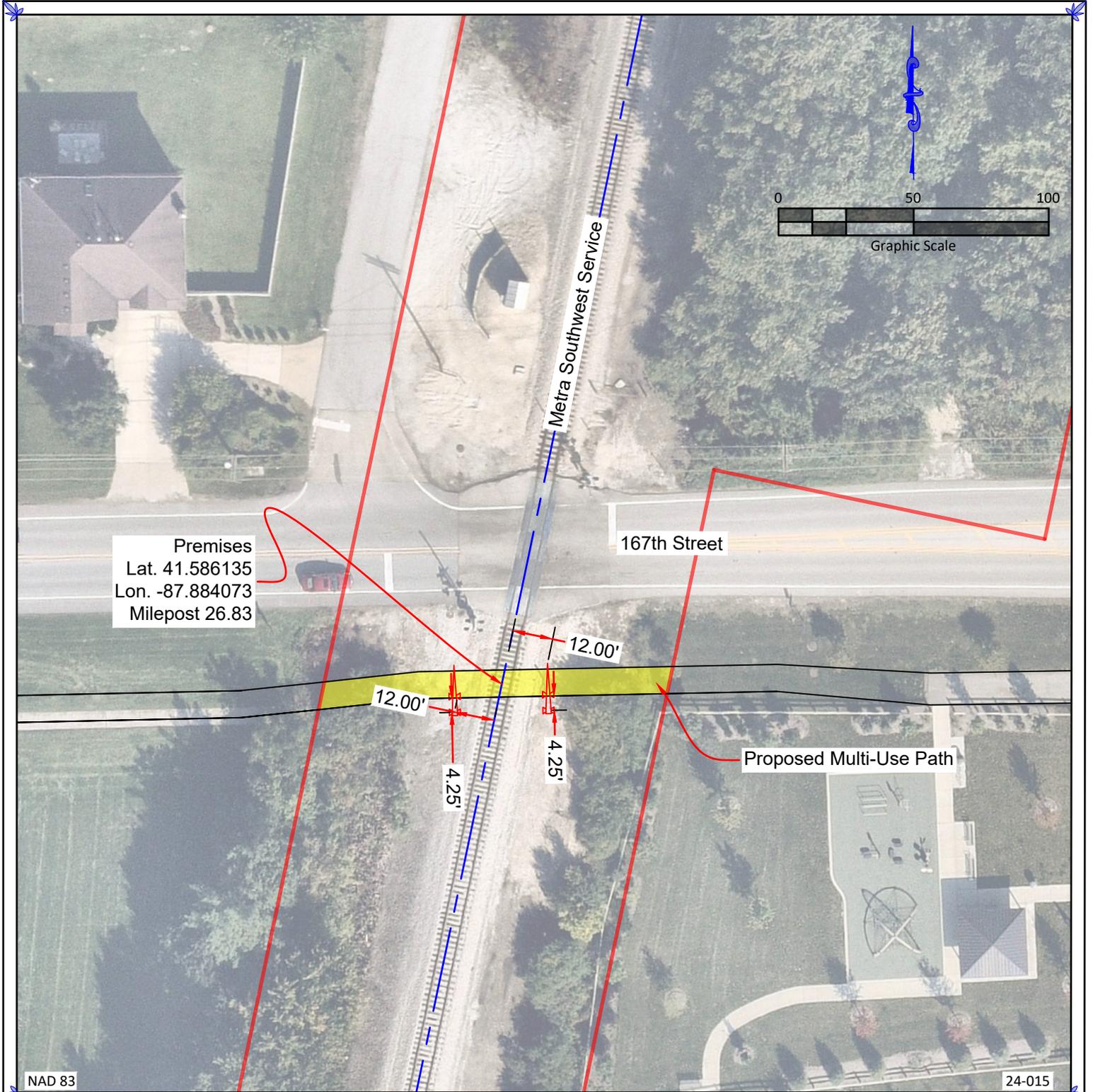


Exhibit illustrating the location of a proposed multi-use path at SWS milepost 26.83 along 167th Street in Orland Park, Illinois.

EXHIBIT "A"



547 W. JACKSON BLVD.
CHICAGO, IL. 60661

METRA’S INSURANCE REQUIREMENTS

1. **Commercial General Liability Insurance**

The CGL policy shall include the following coverage limits when limits are indicated:

\$2,000,000 per occurrence, \$4,000,000 aggregate
\$2,000,000 aggregate for completed operations & products liability

2. **Automobile Liability Insurance**

The Automobile policy shall include the following additional coverage limits:

-Include “any” auto (i.e., all autos owned by the contractor/vendor as well as hired and non-owned autos used by the contractor/vendor and autos used by the contractor/vendors’ employees while on Metra property).

\$1,000,000 for Property Damage (if not combined in single limit)

3. **Worker’s Compensation and Employer’s Liability Insurance**

Workers Compensation Insurance coverage should be at statutory limits.

As a minimum, the Employers Liability policy shall include coverage limits of:

\$1,000,000 for bodily injury by accident
\$1,000,000 for bodily injury by disease, each employee
\$1,000,000 aggregate liability

4. **Contractor’s Pollution Liability Insurance (if applicable)**

Coverage shall:

-Cover losses caused by pollution conditions (including sudden and non-sudden pollution conditions) arising from the services and operations of the contractor/vendor and all subcontractors involved in the work.

-Apply, without limitation, to bodily injury, property damage (including loss of use of damaged property or of property which has not been physically injured or destroyed) and clean-up costs.

-Provide coverage for pollution conditions which arise from encountering pre-existing environmental conditions at the project site.

-Provide coverage for liability resulting from the transportation of hazardous wastes.

-Shall be written on a “project specific” basis.

Exhibit B
(continued)

5. **Railroad Protective Liability Insurance**

LIMITS REQUIRED: \$5,000,000 / \$10,000,000

Insure all liabilities assumed under the provisions of the Hold Harmless and Indemnity Clause in the contract and not exclude any construction and/or demolition work performed within 50 feet of railroad track. Commercial General Liability policies, including excess/umbrella, must contain contractual language covering construction and/or demolition being performed on or near railroad property. Commercial General Liability must be written on the ISO Occurrence Form CG 00 01 12 04 (or a substitute form providing equivalent coverage) and include the following endorsement: Contractual Liability Railroads ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage).

6. **Additional/Named Insured shall be as follows:** *“The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra as now exists or may hereafter be constituted or acquired, The Regional Transportation Authority, an Illinois municipal corporation, the Norfolk Southern Railway Company, a Virginia corporation and all other railroads operating on Metra property.”*

ADDITIONAL INSURED IS REQUIRED ON THE GENERAL LIABILITY CERTIFICATE AND NAMED INSURED IS REQUIRED ON THE RAILROAD PROTECTIVE LIABILITY CERTIFICATE

7. **Each Policy shall:**

-Include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insureds.

-Include the Additional Insured Endorsement for all coverages including products and completed operations, excluding Workers Compensation and Professional Liability.

-Be primary and non-contributory on all coverages.

8. **Deductibles** All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor. The certificate of insurance shall clearly state how defense costs (also known as “allocated loss adjustment expenses”) shall apply in terms of the deductible and the insurance limits. (SIR programs are prohibited, unless approved by Metra’s Risk Management Department.)
9. **Subcontractors** All subcontractors retained or hired for the work shall be required to maintain limits and term equivalent to those required of the prime contractor.
10. **Cancellation** Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. Contractor/Vendor will immediately notify Metra of the cancellation, non-renewal, material change or reduction in coverage of any required insurance policy. Such notice shall be sent certified mail to Metra, care of Director of Risk Management, 547 W. Jackson, Suite 1500, Chicago, IL 60661.

Exhibit B
(continued)

11. **No Waiver** The failure by Metra to receive certificates of insurance required hereunder, or to receive them by the date(s) required hereunder, be construed as a waiver of the contractor/vendor's obligation to obtain the required insurance coverages. Failure by Metra to demand any certificate of insurance or other evidence of full compliance with the insurance requirements set forth herein, or failure by Metra to identify a deficiency in the evidence provided, shall not be construed as a waiver of the obligation to procure, or maintain the insurance required hereunder. The acceptance of delivery by Metra of any certificate of insurance does not constitute approval or agreement that the insurance requirements have been met or that the insurance policies identified in the certificates of insurance are in compliance with such requirements.

12. **Certificates**

Certificates of Insurance shall be sent to:

- Ann Hammo
Metra Risk Management
547 W. Jackson Blvd
Chicago, IL 60661
(phone) 312-322-1455
(email) AHammo@METRARR.com