

SECOND AMENDMENT TO THE COMMUTER FACILITY CONSTRUCTION, OPERATION, AND MAINTENANCE AGREEMENT

THIS AMENDMENT, Metra Agreement No. SW9515-2, dated this ___ day of _____, 20___, shall amend and modify the Commuter Facility Construction, Operation, and Maintenance Agreement concerning the Metra Orland Park 143rd Street Commuter Facility located northeast of the intersection of 143rd Street & Southwest Highway in Orland Park, Illinois, entered into on March 14, 2005, as amended (the “**Agreement**”) Metra Agreement No. SW9515, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”) and the Village of Orland Park, an Illinois municipal corporation (“**Municipality**”). Metra and Municipality are hereafter sometimes individually referred to as “**Party**” and jointly referred to as the “**Parties.**”

RECITALS

A. Metra and Municipality entered into the Agreement whereby the Municipality manages, operates, and maintains of the Commuter Facility and related improvements (the “**Premises**” as more fully defined in the Agreement) pursuant to the Agreement.

B. The Premises is generally located within the Main Street Triangle Project area, named for the right triangle created with the intersection of LaGrange Road and 143rd Street, Orland Park, Illinois making the 90° angle. Metra’s SouthWest Service Line (“**SWS**”) running at a northeast angle allowing 143rd Street to cross the SWS at-grade, approximately 1600’ west of the intersection of LaGrange Road and 143rd Street and LaGrange Road crosses the SWS approximately 1800’ north of the intersection of LaGrange Road and 143rd Street. GPS coordinates, 41.632437, -87.857227, MP 23.1.

C. The First Amendment to the Agreement, Metra Agreement No. SW9515-1, makes many changes, among those changes is the requirement that the 143rd Street Orland Park Commuter Facility is to include not less than six hundred (600) commuter parking spaces.

D. Presently, according to pre-pandemic counts (May 2019) taken by Metra’s Strategic Planning and Performance Department, the 143rd Street Orland Park Commuter Facility has a total of 417 commuter parking spaces of which only 289 spaces were observed being used, 69% of capacity. Those figures were taken prior to the slow down caused by the COVID-19 pandemic, Metra ridership continues to recover however, ridership is not back to pre-pandemic levels. No additional spaces are currently necessary to accommodate Metra commuters wanting to use the 143rd Street Orland Park Commuter Facility. The Parties would like to establish a “trigger” that will determine when more parking spaces need to be built.

E. Additionally, Municipality has requested Metra’s consent to allow the Municipality to use the Parking Facility (as defined in the Agreement) for other than commuter parking purposes.

F. The Parties agree to amend the Agreement to eliminate the immediate need for additional commuter parking at this location, establish the circumstances that the Parties agree necessitates the future expansion of the Parking Facility, and establish the rules concerning Municipality's use of the Parking Facility for non-commuter parking without interfering with Metra's commuters or Metra's commuter railroad purposes.

AMENDMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals, which by this reference are hereby incorporated into this Amendment, the mutual agreements set forth herein and other good and valuable consideration, the receipt, and sufficiency of which are hereby acknowledged by the Parties, the Parties agree to amend and modify the Agreement as follows:

1. The Agreement as amended, says that the current commuter parking capacity at the Commuter Facility is no less than 600 spaces. The Parties agree that each will not endeavor to impose upon the other to correct this deficiency until such time as the commuter parking usage of the Parking Facility reaches 85% of capacity consistently on Tuesday through Thursday counts taken on "normal" (non-holiday) weeks or periods. Upon hitting that threshold, the Parties agree to meet and plan the expansion of the Parking Facility for the convenience of commuters.
2. Metra hereby consents to Municipality's request to use the Parking Facility for parking other than commuter parking for so long as Municipality adheres to the following rules and guidelines:
 - a. Non-commuter parkers will be allowed to use the Parking Facility only during "**Off-Hours**," for this Agreement defined as, Monday through Friday after 3:00pm and all-day Saturday and Sunday, non-commuters are required to remove their vehicles from the Parking Facility prior to 6:00am Monday through Friday.
 - b. Metra commuter parkers will not be asked to move out of the lot.
 - c. Metra commuter parkers, otherwise legally parked, will not be ticketed or interfered with in any way.
 - d. Third-party groups may use the Parking Facility during Off Hours but will be required to enter a Right of Entry Agreement with Metra.
 - e. These rules and guidelines will remain in place for the duration of the Agreement so long as there is no interference with Metra's commuters or Metra's commuter service.
3. Exhibit "B" of the Agreement is hereby deleted in its entirety and replaced with the new Exhibit "B" dated June 5, 2023, currently attached hereto.
4. Section 9(b) of the Agreement is hereby deleted in its entirety and replaced with the following new Section 9(b):

(b) Throughout the Use Term Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-1455) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department. At a minimum, Licensee shall obtain and keep in force the insurance coverages, kinds, and amounts, relating to the Premises as listed on **Exhibit "B" ("Insurance Requirements")** during all periods that Licensee or those persons authorized by or acting on behalf of Municipality are on the Premises to perform or cause to be performed any installation, construction, maintenance, or repair with respect to the Commuter Facility. (Metra may change said insurance requirements from time to time). The total cost of the premium for such insurance shall be at the expense of Municipality or its contractor(s) and/or sub-contractor(s) acting on its behalf.

5. To the extent the provisions of the Agreement are in conflict with the provisions of this Amendment, the provisions of this Amendment shall control.

6. Terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement. The remaining terms, covenants, provisions, and conditions of the Agreement shall remain in full force and effect.

(signature page to follow)

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day and year first above written.

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

VILLAGE OF ORLAND PARK:

By:

James M. Derwinski
CEO/Executive Director

By:

Its: _____
please print name and title

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.

5. **Railroad Protective Liability Insurance**

Exhibit B
(continued)

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.
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

Exhibit B
(continued)

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