

**FIRST AMENDMENT TO COMMUTER FACILITY CONSTRUCTION, OPERATION AND
MAINTENANCE AGREEMENT**

**(EXHIBIT D-1 TO THE INTERGOVERNMENTAL AGREEMENT FOR CERTAIN USES OF
PROPERTY AND THE CONSTRUCTION OF A NEW STATION AND PARKING FACILITY)**

THIS FIRST AMENDMENT TO COMMUTER FACILITY CONSTRUCTION, OPERATION AND MAINTENANCE AGREEMENT ("Amendment") is made and entered into as of July 14, 2009 ("Effective Date"), 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 a "Party" and jointly referred to as the "**Parties**." All initially capitalized terms which are not otherwise defined herein shall have the meanings ascribed thereto as set forth in the Original Agreement (as hereafter defined). To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Amendment, the provision or provisions of this Amendment shall take precedence and control.

WITNESSETH:

A. Metra and Municipality entered into a certain Commuter Facility Construction, Operation and Maintenance Agreement dated March 14, 2005 ("**Agreement**") for the management, operation and maintenance of the Commuter Facility, as hereafter defined, generally located within the Main Street Triangle Project area at the intersection of LaGrange Road and 142nd Street, Orland Park, Illinois (the "**Project**"); and

B. Metra owns or will own the depot ("**Station**") and the decorative plaza, including but not limited to a rail park ("**Decorative Plaza**") to be constructed by Municipality on the property delineated and described on Exhibit D1-A attached to and made a part of this Amendment. The Station and Decorative Plaza are hereafter sometimes jointly referred to as the "**Station Facility**";

C. Metra owns or will own a portion of the parking facility (sometimes referred to as "**Metra Parking Facility**") to be constructed within the Metra right-of-way just south of the

Station and west of the train tracks parallel to Southwest Highway. The Station Facility and Metra Parking Facility are hereafter sometimes jointly referred to as the “**Metra Premises**”;

D. The Municipality owns or will own the remainder of the parking facility (sometimes referred to as “**Municipal Parking Facility**”) to be constructed on property currently owned by the Municipality and generally located southeasterly of and adjacent to the Metra right-of-way and west of LaGrange Road(the “**Municipal Premises**”). The Metra Parking Facility and the Municipality Parking Facility are hereafter sometimes jointly referred to as “Parking” or the “Parking Facility.” The Station Facility and the Parking Facility are hereafter sometimes jointly referred to as the “Commuter Facility.” The current Parking Facility will provide a minimum of 600 commuter parking spaces, provided, however, that the Village may relocate up to 245 parking spaces currently located on the Municipal Premises in accordance with the terms and provisions of the Agreement.

E. The Municipality agrees to construct both the Metra Parking and the Municipal Parking on the Metra Premises and Municipal Premises, respectively, as delineated and described on Exhibit D1-A attached to and made a part of this Amendment. The Metra Premises and Municipal Premises are sometimes collectively referred to herein as the “**Premises;**” and

F. As a result of the foregoing, Metra and Municipality have agreed to certain modifications to the Original Agreement, all as more particularly set forth in this Amendment.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Metra and Municipality hereby agree that the Agreement shall be modified as follows:

1. Modification to Section 1 TERM. Municipality’s right to use the Metra Premises and its obligations to both the Metra Premises and Municipal Premises under the terms and provisions of this Amendment commenced on January 1, 2007, and shall continue in force and effect for a period of forty (40) years from said date (“Use Term”) unless otherwise terminated as provided under the terms and conditions of this Amendment and the Underlying Agreement.

2. Modification to Section 2(a) PURPOSE OF USE. The Parties agree that the purpose of this Agreement is to insure that the Commuter Facility is protected, maintained and operated as a Station Facility and as a daily fee Parking Facility. Municipality desires to control access to said Commuter Facility and operate and maintain the Commuter Facility pursuant to the terms and conditions of this Amendment and Underlying Agreement.

3. Modifications to Section 4 MAINTENANCE, ACCESS, AND RELOCATION.

(a) **Maintenance of the Station.** Except as otherwise provided herein, Municipality, shall manage the Station and shall be responsible throughout the Use Term to maintain and repair the Station and all fixtures and appurtenances thereon and shall keep all of the same, and any area used in the future for commercial development, in a good state of repair, appearance and order (including, but not limited to, janitorial maintenance of floors and windows, painting, plumbing fixtures, broken glass, all utilities inside the Station, and snow removal from sidewalks (leading to ramps, platforms and/or stairwells and the providing of scavenger service)), corresponding to standards that apply to Municipality's other public buildings and facilities ("**Routine Maintenance**"), except Municipality **shall not** be responsible for: (i) the snow removal from the platforms, or (ii) any utilities located on or along the platforms. Municipality shall be responsible for repairing or replacing any structural portion of the Station, including, but not limited to, support walls, structural members, columns, floors, roof, heating plant and foundation ("**Station Capital Improvements**").

(b) **Maintenance of the Parking and Decorative Plaza.** Municipality, at its own cost and expense, shall manage the Parking and Decorative Plaza and shall be responsible for the performance of "**Routine Maintenance**" throughout the Use Term. For purposes of maintenance of the Parking and the Decorative Plaza, Routine Maintenance shall include, but shall not be limited to, snow removal, insurance, lighting upkeep, sealing and patching pavement, cutting the grass on the Decorative Plaza, patrolling the Parking and payment of utility expenses associated with the operation of each. Municipality shall also be responsible for capital improvements to the Parking, including but not limited to, major rehabilitation, excavation, demolition of structures, new construction, light standard placement or replacement necessitated by damage to a structure ("**Parking Capital Improvements**"), the "Station Capital Improvements" and the "Parking Capital Improvements" are hereafter sometimes jointly referred to as "**Capital Improvements.**"

(c) In the event Municipality fails to manage, operate or maintain the Parking and Decorative Plaza in accordance with the terms and provisions of this Agreement, Metra may, after having given the Municipality thirty (30) days prior written notice of and an opportunity to cure such failure, provide, or cause to be provided, such management, operation and maintenance services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra.

(d) Municipality accepts the Station Facility and Metra Premises subject to rights of any party, including Metra, in and to any existing roadways, easements, permits, or licenses. Municipality agrees to provide Metra and the public access to the Commuter Facility over and through the existing roadways and easements should such access be deemed necessary by Metra. Municipality further agrees that Metra shall not be responsible for the care or maintenance (including snow removal) of said roadways.

(e) Municipality shall be responsible for the "**Standard Maintenance**" of all landscaping on and along the railroad right-of-way and the Commuter Facility. For purposes of this Agreement, Standard Maintenance shall include without limitation watering, weeding, mowing, trimming, and mulching as dictated by the specific plantings on the Commuter Facility, including but not limited to the Decorative Plaza.

(f) Metra reserves the right to relocate the Metra Parking or any portion thereof onto other Metra property, at its own cost and expense, in the vicinity of the Premises with no liability for damages to Municipality's interest in the Metra Parking resulting from such relocation; provided, however, that Metra shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Metra Parking or portion thereof and to consent to the relocation, which consent shall not be unreasonably withheld. In the event the Municipality does not consent to the proposed relocation and such consent is not unreasonably withheld, Metra may terminate this Agreement. In the event the Municipality consents to the relocation, Exhibit "D1-A" of this Agreement shall be amended to reflect the Metra Parking as relocated.

(g) The Parking Facility shall at all times consist of not less than 600 commuter parking spaces. In order to facilitate the redevelopment of the Main Street Triangle Project area, Municipality may temporarily relocate up to 245 spaces from the Municipal Parking Facility to Metra's existing 153rd Street Station parking facility located west of the Metra railroad right-of-way ("153rd Street Parking Facility") until such time as the relocated parking spaces can be accommodated at the Parking Facility generally located within the Main Street Triangle

Project area; provided, however, that there exists at the 153rd Street Parking Facility sufficient excess parking spaces to accommodate such relocation, as determined by Metra in its reasonable discretion, and the Parking Facility funding agency does not object to such relocation. In the event the 153rd Street Parking Facility does not have, or no longer has, the capacity to accommodate some or all of the 245 temporarily relocated parking spaces, the Municipality may relocate those spaces to a location or locations close to the 143rd Street Station Facility or the 153rd Street Parking Facility reasonably acceptable to Metra. Any construction necessary or required to accommodate the relocated parking spaces shall be at the Municipality's sole cost and expense. Metra will allow the Municipality, at its sole cost and expense, to build out the 153rd Street Parking Facility west of the railroad right-of-way to create additional parking spaces if Metra property is available for such build-out.

In addition, Municipality reserves the right to relocate the Metra Parking or the Municipal Parking currently available in the Main Street Triangle Project area or any portion thereof onto other Municipal property, at its own cost and expense, in the vicinity of the Premises in a location acceptable to Metra with no liability for damages to Metra's interest in the Metra Parking or Municipal Parking resulting from such relocation; provided, however, that Municipality shall give Metra sixty (60) days prior written notice of its intention to relocate the existing Metra Parking or Municipal Parking or portion thereof and to consent to the relocation, which consent shall not be unreasonably withheld. In the event Metra consents to the relocation, Exhibit D1-A of this Agreement shall be amended to reflect the Metra Parking or Municipal Parking as relocated.

4. Modification to Section 5 SIGNS. Municipality shall not post or place any signs on the Commuter Facility without having first received Metra's approval of the content, design and location of the signs, which approval shall not be unreasonably withheld, provided, however, that no signs shall be permitted on or about the exterior façade of the Station. Metra reserves the right to post or place or to have posted or placed on the Commuter Facility information signs relative to the operations of Metra.

5. Modifications to Section 7 LOCATION OF UTILITIES. Municipality accepts the Metra Premises subject to rights of any party, including Metra, in and to any existing utility or other wires, cables, poles, pipes or facilities of any kind whatsoever, whether or not of record. Metra reserves the right to grant future utility easements over, under or through the Metra Premises

provided such easements do not unreasonably interfere with Municipality's management, operation, maintenance, or use of the Metra Premises.

6. Modifications to Section 13 COMPENSATION. Metra shall own the improvements constructed on the Commuter Facility with Metra funds, including without limitation, the Station, and all other materials used to improve the Commuter Facility and related or appurtenant facilities, equipment, or fixtures ("Improvements"). In the event this Agreement is terminated for any reason by Municipality and Metra has not defaulted under the terms and conditions of this Agreement or Municipality defaults under the terms and conditions of the Agreement and, as a result of such Municipality default, Metra is forced to terminate this Agreement, Metra may, at its option, either (1) take over the maintenance and operation of that portion of the Commuter Facility located on the Municipality's Premises for the remainder of the Use Term or any portion thereof, or (2) be compensated by Municipality for the portion of the Improvements on the Municipality's Premises paid for by Metra. Compensation shall be based upon the remainder of the period beginning on the date which the Improvements are first used in the facilitation of commuter services (January 2, 2007) and ending on the later of the expiration of: (a) twenty (20) years from such date; or (b) if such actual useful life (as determined by Metra in its sole discretion) is more than twenty (20) years, the end of the actual useful life of such Improvements ("Use Period"). In either (a) or (b), compensation shall be in an amount equal to the average of the original cost and the replacement cost of each such Improvement taken out of service because of termination, reduced by that percentage of the Use Period which has expired before such termination. Such payment shall be made in full within ninety (90) days after Municipality's termination of this Agreement or interest at a rate of one and one-half percent (1 ½%) per month shall accrue on any unpaid balances due from the date payment is due until paid. In the event this Agreement is terminated for any reason by Metra and Municipality has not defaulted under the terms and conditions of this Agreement or Metra defaults under the terms and conditions of this Agreement and, as a result of such Metra default, Municipality is forced to terminate this Agreement, Municipality shall not be required to compensate Metra for the Improvements. In the event Municipality fails to manage, operate or maintain the Parking Facility in accordance with the terms and provisions of this Agreement, provided that Metra has not terminated this Agreement as provided above, Metra may, after having given the Municipality thirty (30) days prior written notice of and an opportunity to cure such failure, provide, or cause to be provided, such management, operation and maintenance

services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra.

7. Modifications to Section 15 CAUSE FOR BREACH. If Municipality defaults in any of Municipality's undertakings or obligations of this Agreement and Municipality receives written notice of such default from Metra, then such event or action shall be deemed to constitute a breach of this Agreement and if such default remains uncured for thirty (30) days after notice in writing, the Agreement and Municipality's use of the Premises shall automatically cease and terminate and Metra shall have the right, but not the obligation, to operate and maintain the Commuter Facility or any portion thereof, for the remainder of the Use Term.

8. Modifications to Section 16 SURRENDER OF PREMISES. Upon termination of this Agreement or Municipality's use of the Metra Premises by any manner, means, or contingency whatsoever, Municipality shall, if required by Metra, remove all of Municipality's improvements and/or property from the Metra Premises, fill all excavations that have been made by Municipality and deliver possession of the Metra Premises to Metra in as good a condition than that which existed immediately prior to the commencement of the Use Term, ordinary wear and tear excepted. Should the Municipality fail to perform such removal or restorations, then Metra, at its election, may either remove the Municipality's improvements and property and restore the Metra Premises to its former state at the sole expense of Municipality or retain the Municipality's improvements and property as Metra's sole property. Should Municipality retain possession or use of the Metra Premises or any part thereof after the termination of Municipality's use by Metra or as otherwise provided for in this Amendment and the Original Agreement, any such holding over shall not constitute an extension of Municipality's use and Municipality shall pay Metra all damages, incidental or consequential as well as direct, sustained by Metra, RTA and NIRCRC and their respective directors, employees, agents and licensees by reason of such retention of possession or use. The provisions of this Section 16 do not exclude Metra's rights of reentry or any other rights to recover sue and possession of the Metra Premises afforded Metra by law.

9. Modifications to Section 17 RE-ENTRY. If Municipality shall breach or default in any of the terms of the Agreement or this Amendment and if such breach or default is not cured as

provided in Section 15 of the Agreement as may be modified herein, or if Municipality's use of the Commuter Facility shall expire or terminate in any manner, it shall be lawful for Metra then or at any time thereafter to re-enter the Commuter Facility and take possession thereof for the Use Term or any portion thereof, with or without process of law, and to use any reasonable or necessary force for regaining possession of the Commuter Facility; provided, however, that upon termination of the Use Term or Metra's possession of the Commuter Facility, Municipality shall have the right to remove certain of Municipality's property as hereinabove provided and to use its property in any manner that does not unreasonably interfere with Metra's property rights. No termination of Municipality's use shall release the Municipality from any liability or obligation that accrued prior to said termination. If the Metra Premises is required for railroad purposes, Metra shall have the right to partially or entirely re-enter and terminate this Amendment and the Original Agreement respectively upon ninety (90) days prior written notice.

10. Modifications to Section 19 IMPROVEMENTS. Municipality shall not make any improvements to the Commuter Facility without having first obtained the prior written consent of Metra, which consent shall not be unreasonably withheld. Municipality shall submit to Metra all plans and specifications for improvements on or to any portion of the Commuter Facility (improvements as set forth in this Section shall not include such items of Routine Maintenance and Standard Maintenance as described in Section 4 of the Amendment). The remainder of Section 19 shall remain unchanged.

11. Modifications to Section 22 SALE OR ASSIGNMENT.

(a) Any assignment or transfer of this Agreement by Municipality without the written consent of Metra its successors and assigns shall be void. Unless specifically released in writing by Metra, Municipality shall remain primarily liable to Metra regardless of Metra's consent to an assignment or sublicense by Municipality. No act of Metra, including acceptance of money by Metra from any other party, shall constitute a waiver of this provision.

(b) Subsection (b) shall remain unchanged.

12. Modifications to Section 24(a) REVENUES.

(a) All fees derived from Municipality's use of the Commuter Facility ("**Revenues**") shall first be utilized for Capital Improvements, Routine Maintenance, Standard Maintenance and administrative expenses incurred from the operation of the Commuter Facility.

The remainder shall be deposited in a capital improvement account to be used for future renovations or rehabilitation for the Commuter Facility. If, at the end of the Use Term, any revenues remain in the capital improvement account, said funds shall be paid to Metra within 30 days of the expiration of said Use Term.

13. Modifications to the IGA Exhibit B PROJECT SCOPE, VILLAGE OBLIGATIONS, Permanent Parking provision.

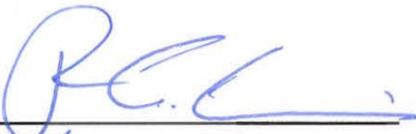
(a) 600 permanent commuter parking spaces required within the Main Street Triangle Project area on or before December 31, 2006, located within the Metra right-of-way just south of the Station Facility, Municipality owned property adjacent to the Metra right-of-way and the Metra right-of-way west of the rail tracks parallel to Southwest Highway.

(b) Relocation of up to 245 commuter parking spaces to the existing 153rd Street Parking Facility in accordance with the terms and provisions of the OMA (this Agreement) as amended from time-to-time.

14. The remaining terms, covenants, provisions and conditions of the Agreement not specifically modified herein shall remain in full force and effect.

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

VILLAGE OF ORLAND PARK:

BY: 
ITS: VILLAGE MANAGER

COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

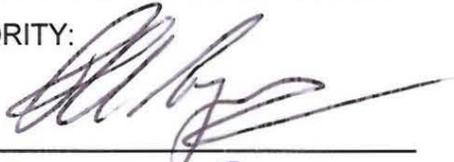
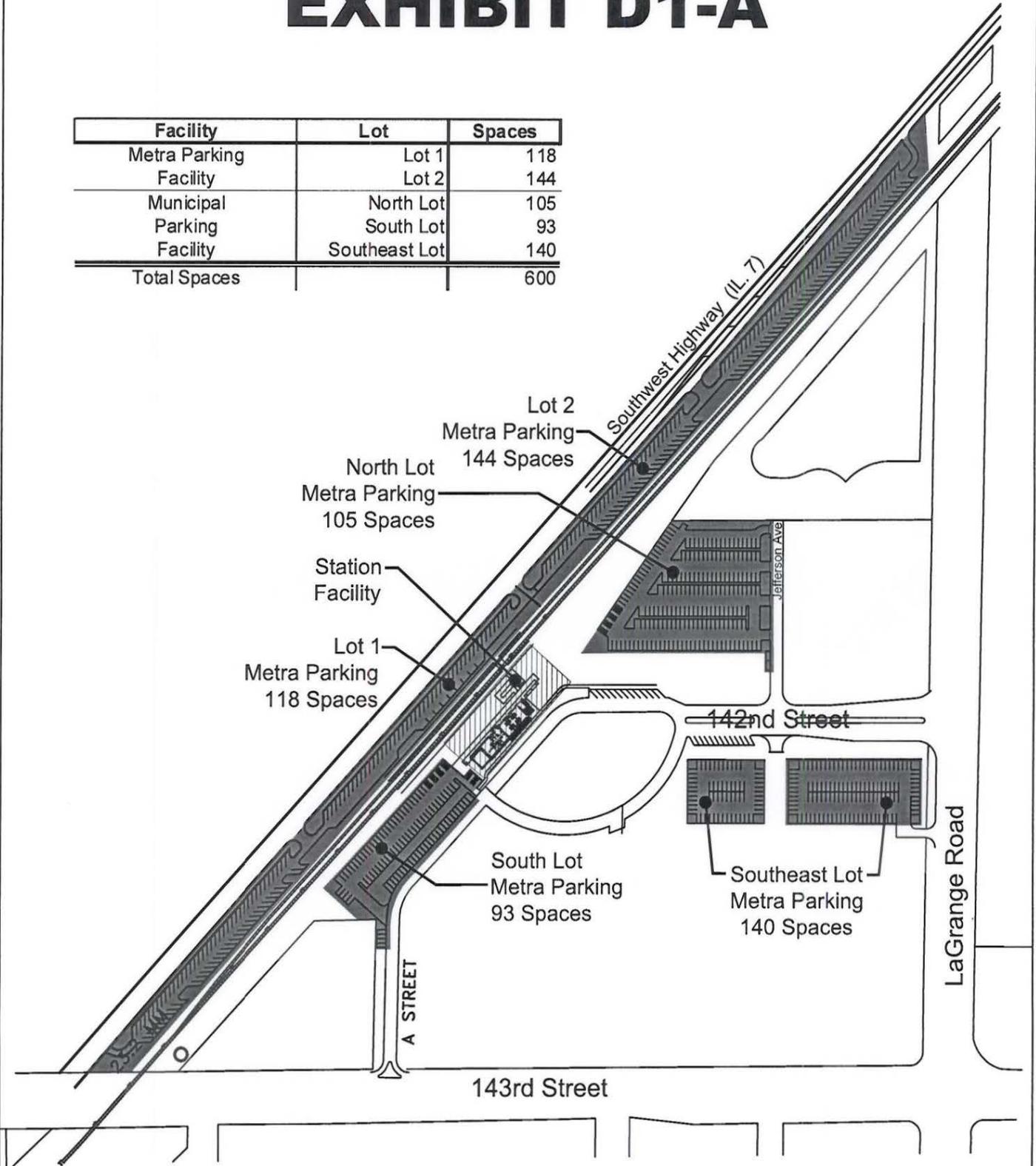
BY: 
ITS: Executive Director

EXHIBIT D1-A

Facility	Lot	Spaces
Metra Parking Facility	Lot 1	118
	Lot 2	144
Municipal Parking Facility	North Lot	105
	South Lot	93
	Southeast Lot	140
Total Spaces		600



6/19/2009

Village of **ORLAND PARK**
Public Works Department
(708) 403-6350

MAIN STREET TRIANGLE



AGREEMENT NOTICE FORM

Plant Number		Metra Number		Effective Date	
Expiration Date				Execution Date	
County Recording No.				File Path Name	
Preparation Fee			Internal Negotiator		
Station/Nearest Station				City (Place)	
Contract Type					
Location				District	
Party Name 1			Party Address 1		
Party Name 2			Party Address 2		
Party Name 3			Party Address 3		
Party Name 4			Party Address 4		
Expiration Rev Date			Escalation Rev Date		
Review Date 3			Review Type 3		
Review Date 4			Review Type 4		
Description 1					
Affirmative Duties					
Metra					
Contractor					
Funding Sources					
FTA Incidental USE			FTA Incidental Desc		
Insurance					
Legal Notice To			Contact Person		
Other \$ Due to Metra			Initial Contract Amount		
Other \$ Due From Metra			PIN		
Bill/Pay Frequency					
Term for Conv				Appraisal Date	
Tax Info					
Financial Terms					
Notes					
Preparer's Initials					