

RIGHT OF ENTRY AGREEMENT SOUTH WEST SERVICE DISTRICT

THIS AGREEMENT, made this ____ day of _____, 2011, 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 ("**Indemnitor**"). Metra and Indemnitor are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties".

PRELIMINARY STATEMENT

Indemnitor desires to enter upon that portion of Metra's owned or controlled property located at Wolf Road, 179th Street, 108th Avenue, 159th Street, 153rd Street and 135th Street in Orland Park, Illinois on Metra's South West Service Line delineated on Exhibit "A" attached to and made part of this Agreement ("**Premises**"). For the purpose of performing the construction and installation of concrete medians and flexible delineators on behalf of the Illinois Department of Transportation ("**Permitted Activities**").

NOW, THEREFORE, for and in consideration of the above stated recital which is by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, Metra and Indemnitor agree as follows:

1. Metra hereby agrees to permit Indemnitor and its Subcontractors, as defined herein below, to enter upon the Premises for a period of six (6) months, commencing on the effective date of this Agreement, to conduct the Permitted Activities and for no other purpose whatsoever, subject to the terms and conditions set forth in this Agreement. The term of this Agreement may be extended by mutual agreement of the Parties as evidenced in writing.

A. Indemnitor also intends to engage various third party contractors ("**Subcontractors**") for performance of certain work in connection with the Permitted Activities. Only Indemnitor's Subcontractors listed on Exhibit "B," attached to and made a part of this Agreement and as may be from time to time amended, are authorized to be on Metra property. Indemnitor shall require its Subcontractors to comply with the applicable requirements of this Agreement.

B. Indemnitor may commence work on the Permitted Activities under this Agreement following: (i) payment of fees as required by Sections 2 and 5 of this Agreement; (ii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; (iii) delivery of proof of insurance acceptable to Metra, as required by Section 6 of this Agreement and (iv) delivery to Indemnitor by Metra of a notice to proceed.

2. As one of the considerations for this Right of Entry, Indemnitor agrees to pay to Metra the sum of \$0.00 for the cost of preparing this Agreement, payable in advance.

3. Indemnitor agrees to reimburse Metra for all costs and expenses incurred in connection with the use of Metra's personnel and equipment as a direct result of the Permitted Activities.

4. To the fullest extent permitted by law, the Indemnitor hereby assumes and agrees to release, acquit and waive any rights which Indemnitor may have 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, and on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with the Permitted Activities or rights granted under the terms and provisions of this Agreement or which may occur to or be incurred by the Indemnitor, its employees, officers, agents and all other persons acting on the Indemnitor's behalf while on the Premises or any adjoining Metra Property ("**Property**") or arising from the condition of the Premises or the Property during the term of this Agreement, whether or not such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

5. To the fullest extent permitted by law, the Indemnitor 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, without limitation, court costs and attorneys' fees) for claims, demands, actions, suits, proceedings, judgments, settlements, (a) arising out of or in any way relating to or occurring in connection with: (i) the Permitted Activities or rights granted under the terms and provisions of this Agreement; (ii) the condition of the Premises or the Property; or (iii) the failure to investigate claims, or (b) which may occur to or be incurred, by the Indemnitor, its employees, officers, agents, and all other persons acting on its behalf while on the Premises or the Property, whether or not such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence or willful misconduct of Metra, the RTA or the NIRCRC. Metra agrees to notify the Indemnitor in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Indemnitor further agrees to defend Metra, the RTA, the NIRCRC, their respective directors, administrators, officers, agents and employees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision provided, however, that

Metra, the RTA and the NIRCRC, may elect to participate in the defense thereof 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. The Indemnitor 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 Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement and the indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence or willful misconduct of Metra, the RTA or the NIRCRC with respect to any construction work performed by the Indemnitor or those performing on behalf of or with the authority of the Indemnitor in violation of the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

6. Prior to entering upon the Premises, Indemnitor agrees to furnish, insurance in form and in such amounts as delineated on Exhibit "C" attached to and made a part of this Agreement.

7. Upon completion of the Permitted Activities or upon termination as provided in this Agreement, Indemnitor shall, at its sole cost and expense, restore the Premises to the same or to a better condition than that which existed prior to commencement of Indemnitor's activities on the Premises.

8. Indemnitor further agree to notify Metra's Police Communication Center at (312) 322-2800 and the South West Service District Engineering Department at (312) 322-6164 when performing activities for the purposes set forth in this Agreement seventy-two (72) hours in advance of Indemnitor's entrance upon the Premises or any other Metra property in said District.

9. Indemnitor agree that any authorized representative of Metra has full authority concerning the operation of the railroad and Indemnitor agrees to comply with the recommendations of the authorized representatives of Metra having jurisdiction over the Premises relative to railroad operations and safety regulations.

10. Indemnitor agrees that a Railroad flagman may be required whenever Indemnitor is on the Premises or any other Metra property for the purposes set forth herein, the cost of which will be borne by Indemnitor. In the event it is determined flagging will be required in excess of five (5) days, pursuant to a work schedule ("Schedule") provided by Indemnitor, such flagging shall be paid in advance. In the event Metra determines that flagging services in addition to the Schedule will be required to complete the Permitted Activities, the Indemnitor shall deposit a check with Metra in an amount covering the cost of the additional flagging services. Indemnitor shall pay Metra any amount due within ten (10) days of receipt of request from Metra for deposit for or payment of additional flagging services.

11. Metra may terminate this Agreement at any time by giving Indemnitor ten (10) days prior written notice of its intention to so terminate.

12. The Permitted Activities shall be performed at Indemnitor's sole cost and expense and shall at all times be conducted in a good workmanlike, safe and sanitary manner and in accordance with plans and specifications approved in advance by Metra and all applicable federal, state and local laws, ordinances and regulations. Indemnitor shall take all reasonable safety precautions (such as covering of borings, installation of barricades and warning signs) to adequately secure the site. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's or employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

13. Indemnitor's activities on the Premises shall be conducted in a manner so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees, for the purpose(s) to which the Premises is now, or may hereinafter be, committed by Metra.

14. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to Metra, its successors and assigns.

15. All payments required to be made by Indemnitor to Metra under the terms, conditions or provisions of this Agreement shall be made within sixty (60) days of Indemnitor's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 ½%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

16. No waiver of any obligation or default of Indemnitor 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. Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. 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. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns of Metra and Indemnitor. This Agreement shall be governed by the internal laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement. In the event of any conflict or inconsistency

between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

17. All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid or sent by facsimile transmission by Metra or Indemnitor at the respective addresses shown below 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 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 or on the first business day after successful transmission if sent by facsimile transmission.

- (a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Law Department, General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

- (b) Notices to Indemnitor shall be sent to:

Robinson Engineering
C/o The Village of Orland Park
17000 South Park Avenue
South Holland, IL 60473-0386
Attn: Mr. Jeffery C. Pintar, P. E.
Phone: (708) 210-5682

(Signature page to follow)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

THE VILLAGE OF ORLAND PARK:

THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

By: _____

By: _____

Name: _____

Alexander D. Clifford
Executive Director/CEO

Title: _____

EXHIBIT "A"

DRAWING OF PREMISES

To Be Inserted

EXHIBIT “B”
LIST OF SUBCONTRACTORS

To Be Provided

EXHIBIT "C"

INSURANCE REQUIREMENTS

Prior to commencement of any work to be performed on or about the Premises under the terms of this Agreement, Indemnitor shall purchase or shall require its subcontractors to purchase the following insurance coverage. The total cost of the premium for such insurance shall be at the expense of Indemnitor or its Subcontractors:

(a) Commercial General Liability Insurance (ISO Form).

Indemnitor shall furnish evidence that, with respect to the operations it performs and the operations performed by sub-contractors, it carries regular Commercial General Liability Insurance providing for a limit of not less than \$5,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence under the terms of which. 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, and the Regional Transportation Authority, an Illinois municipal corporation, the NIRCRC, METRA/Metropolitan Rail, Norfolk & Southern Corporation, Norfolk & Western Railway Co. and any other railroads operating on Metra property **are named as an additional insured.**

(b) Railroad's Protective Liability Insurance.

In addition to the above, Indemnitor or contractor shall furnish evidence, with respect to the operations it or any of its sub-contractors perform, that it has provided Railroad Protective Public Liability Insurance (AAR-AASHTO form) in the name of 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, and the Regional Transportation Authority, an Illinois municipal corporation, the NIRCRC, METRA/Metropolitan Rail, Norfolk & Southern Corporation, Norfolk & Western Railway Co. and any other railroads operating on Metra property are named as an additional insured, operating on Metra property providing for a limit of not less than \$5,000,000 single limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$10,000,000 for all damages as a result of more than one occurrence.

(c) Workers' Compensation Insurance.

Indemnitor or contractor shall furnish evidence that, with respect to the operations it performs, it carries a policy complying with the statutes of the State of Illinois covering all employees of the Indemnitor or contractor, as applicable. The policy shall contain employers liability coverage with limits of not less than \$500,000 each accident; \$500,000 each employee disease; and \$500,000 policy limit-disease.

(d) Automobile Liability Insurance.

Indemnitor or contractor shall furnish evidence that, with respect to the operations it performs, it carries a policy issued to and covering the liability of Indemnitor or the contractor, as applicable, arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear or are required to bear license plates according to the laws of the State of Illinois and which are not covered under the Comprehensive General Liability Insurance. Coverage under this policy shall have limits of liability of not less than \$2,500,000 per occurrence, combined single limit, for bodily injury and property damage liability.

The insurance company or companies providing such insurance shall have a minimum rating of A and a minimum financial rating of XII as published in the most recent issue of Best Key Rating Guide. The insurance hereinabove specified shall be carried until all work required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement. Indemnitor or contractor shall furnish to Metra signed copies of the policy for Comprehensive General Liability and the original of the AAR-AASHTO policy for Railroad's Protective Public Liability Insurance. If any work is sub-contracted, Indemnitor or contractor shall furnish a signed copy of the policy for Comprehensive General Liability Insurance.

No work shall commence until Indemnitor has obtained and provided the required insurance to Metra and has received approval of same by Metra. All policies must be in full force at the time of submission and shall not be canceled, modified, limited or allowed to expire without having given Metra thirty (30) days prior written notice of such. Notice must be sent via certified mail to: Metra, Attention: Director, Risk Management, 15th Floor, 547 West Jackson Boulevard, Chicago, Illinois 60661.

Indemnitor's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Metra, the Northeast Illinois Regional Commuter Railroad Corporation, Norfolk & Southern Corporation, Norfolk & Western Railway Co., and the Regional Transportation Authority as additional insureds shall not, at any time, operate as a waiver of each of Metra's, NIRCRC's, RTA's, NS's or NWR's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement. During the term, Metra may make commercially reasonable increases in the amount of insurance required by Indemnitor or its contractor(s) and/or sub-contractor(s) under the terms and provisions of this Agreement.