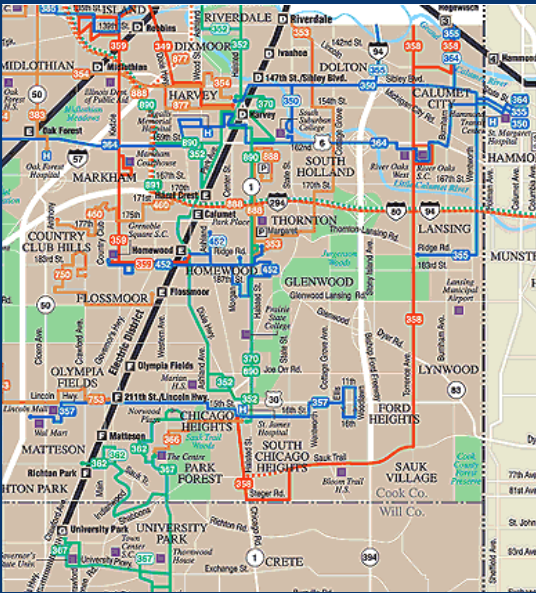


# ***SOUTH SUBURBAN COMMUTER RAIL CORRIDOR***

# **LAND USE AND LOCAL FINANCING STUDY PHASE 2**



EDITORIALS  
**Southeast Line pushes  
away from platform**

**December 2007**

# ***FINAL REPORT***



**Nancy Seeger Associates, Ltd.  
Wildman, Harrold, Allen & Dixon**



## Executive Summary

### Overview – South Suburban Commuter Rail Corridor Proposal

The prospect that “transit-supportive” development will emerge at key locations in a proposed new transit corridor is essential in the highly-competitive pursuit of federal funding support for “New Start” projects. Equally important is a viable local finance strategy to successfully leverage and secure federal backing.

### Purpose of the Study

This study, the second phase of the *Land Use and Local Financing Study*, examines in more detail several recommendations in the “Local Finance” chapter of the Wilbur Smith Associates Phase I report. This study examines preferred funding sources in more detail. It also presents information on how the communities can begin to initiate formal intergovernmental agreements to govern creation, management and oversight of a joint funding pool to help pay for the land acquisition and construction of stations and parking facilities along Metra’s SouthEast Service commuter rail line. Metra’s contribution to the cost of providing the station and parking includes the construction of platforms along the railroad right-of-way and providing commuter rail service.

As the communities along the SES move towards formalizing their cooperative efforts in support of implementing this proposed commuter service, they must address several issues in order to finalize the joint funding pool and begin the process of contributing the necessary funds to capitalize the pool. The topics examined in this section will:

- Create the framework for continued cooperation and progress;
- Determine how those funds will be secured, managed and distributed; and
- Provide the data to determine how much funding a joint funding pool will need to provide to construct a basic station for each community along the proposed corridor.

### Inter-Governmental Agreements

#### 1. Overview

Several years ago, the communities along the SES determined that it is in their interest to work together to secure local funding for stations and parking along the commuter rail line. If the communities wish to continue to work together, it is now time for them to enter into a cooperative relationship to assure that they are each able to provide at least the basic required facilities and services in support of the rail line. Therefore, the eight municipalities along the SES should enter into an initial intergovernmental agreement no later than January 1, 2008.



## Executive Summary

The initial intergovernmental agreement should:

- Formalize the desire of the eight communities to work together to promote and fund their portions of the SES;
- Designate the SSMMA as the management or sponsoring agency;
- Create a Southeast Corridor Rail Development Board (SCRDB) to act as the central body in working with SSMMA;
- Direct the SCRDB to create bylaws and/or other operating procedures for municipal approval;
- Empower the SCRDB to begin creation of a joint funding pool for municipal approval; and
- Direct the SCRDB to begin considering other recommendations made later in this report, as appropriate.

Beyond creating by laws, the SCRDB initial purpose would be to:

- Address the many details that need to be examined so that an acceptable joint funding pool can be created.
- Create the joint funding pool;
- Develop consistent design standards and guidelines for the basic stations to be provided along the corridor; and
- Address other issues in a timely manner that are outlined later in this report.

### **Basic Station Provisions, Design Guidelines, and Management**

Metra will provide each community with the design elements that must be included in a basic station. Metra currently has three sizes for basic stations, based on projected levels of ridership. Metra is currently completing an Alternatives Analysis for the SES and expects preliminary ridership projections to be completed by the end of 2007. The classification of each proposed station will determine the minimum design guidelines that each municipality will be follow.

Metra's basic station and parking design guidelines are documented in *Metra's Station Manual* and *Metra's Parking Manual*. These documents contain the minimum guidelines that each municipality will follow regarding station and parking design elements.



## Executive Summary

Prior to the initiation of rail service and in conjunction with the efforts of the SCRDB, each community with a station will be required to enter into a *Commuter Facility Development Agreement*. This agreement establishes the individual station's design and construction guidelines and sets standards for the following station and parking issues :

- Parking fees,
- Funding of routine maintenance,
- Station, parking, and access maintenance,
- Landscaping upkeep, and
- Utility expenses and provisions.

In accordance with Metra's *Commuter Facility Development Agreement*, a commuter parking capital investment fund will be established. The revenue generated from the commuter parking fees is deposited into this fund to be used for maintenance and repair of the parking lot, including a major rebuilding of the lot.

Since each municipality may have its own ideas of what should be included in station and parking facilities above and beyond Metra's required design elements for a "basic station", the SCRDB should develop a written and/or graphic description of what the stations to be jointly funded by the proposed joint funding pool could include. This discussion should occur after Metra has made ridership projections and classifies each of the proposed station locations.

### **Tax Increment Financing**

Tax Increment Financing allows a local government to construct improvements in an area that will in turn leverage new private investments or reinvestment in the area. The investments typically result in increased property values in the area creating growth in the community's tax base and an increase in future tax revenues. To fund these improvements, a Tax Increment Finance (TIF) District is created, allowing the local government to separately capture the taxes that result from the incremental increase in property values within the district. The tax increment is the difference between the amount of property taxes that were generated before the TIF and the amount of property tax revenue that is due after the improvements are completed. The new property taxes generated by this increase in value are then used to retire bonds or other financing arrangement created to pay for eligible improvements in the TIF District.

Those communities that have not already created TIF Districts covering the areas surrounding the proposed train station location in their community to help fund redevelopment around the station should consider the creation of new or expanded Tax Increment Financing Districts at or adjacent to their planned transit stations in order to help finance the station's construction and other related improvements.



## Executive Summary

Several communities have indicated that they plan to establish a TIF District at or adjacent to their proposed transit station location and may have already begun the planning process to establish these new districts well in advance of the station construction. Some communities already have established TIF Districts in place covering other sites within their jurisdiction and with careful planning there are additional opportunities to leverage new private investment in these districts as well as a result of the new commuter rail system.

While many of the communities have TIF Districts already in place in other locations within their jurisdictions, there are additional opportunities to leverage new private investments as a result of the new commuter rail system. Some of the communities have already begun the planning process to establish a new district and should have those districts in place well in advance of the station construction.

### **Public Private (Joint Development) Partnerships**

The Station Area Concepts for each of the proposed station areas included in the Phase 1 report show potential locations for new development on vacant land and/or redevelopment of existing structures in which private developers could be interested. The ability to lure private developers to participate in the realization of the Station Area Concepts presents an opportunity to use their involvement as a means of funding all or part of the station itself. Based on the comments of the developers, a minimum of 150,000 square feet (SF) of commercial development, primarily retail, would typically be needed to support the funding by the developer of a basic station.

The potential for each community to support at least 150,000 SF of new development around their proposed stations is questionable. Consequently, the communities could consider combining the various development projects at each station site into a single development package that includes them all. This could allow increases or decreases in the amount of development at each station site for an overall average that meets developer's needs.

Even with the pooling of development potential, it may still be hard to provide an average of 150,000 SF of development per station. In order to engage developers in the offerings, the municipalities will need to participate in the funding of the basic station by a developer, even if the developer(s) assume the responsibility of the actual construction work as part of the larger development project.

The communities should begin assembling a public private partnership development offering. The first part of the work should be an analysis of what realistic development potential exists at each station location that would be of interest to developers. This can be followed by more specific economic analysis of costs so that the offering contains realistic expectations of what the level of development will allow developers to contribute towards the construction of a train





## **Executive Summary**

station. As an offering is assembled, the level of municipal contribution towards the construction of the stations should be stated, even if the specific source of the municipal funds, be it TIF District funds, other grants, or some other source, has not yet been finalized. The offering should also include enough incentives to make it attractive to developers.

While the goal is to have the public private partnership pay for the entire station, the offering will most likely include some lesser contribution because the realistic level or type of development potential in the station areas will not support the construction of a complete basic station by the developer.

The offering should clearly indicate development location, type, and characteristics. It should retain some form of design approval by the communities. There should also be provisions for the communities to select additional size or features to be added to the train stations in their communities if they bring additional funding to the projects. The communities that may benefit from greater amounts of development should also typically contribute more towards the overall offering.



## Overview – South Suburban Commuter Rail Corridor Proposal

The prospect that “transit-supportive” development will emerge at key locations in a proposed new transit corridor is essential in the highly-competitive pursuit of federal funding support for “New Start” projects. Equally important is a viable local finance strategy to successfully leverage and secure federal backing.

In 2004 and 2005, South Suburban Mayors & Managers Association (SSMMA), managed a study to explore key land use and financial planning considerations related to a potential new commuter rail connection between Chicago’s downtown Loop district and various communities southeast of the City. Metra, the region’s commuter rail agency, has identified the SouthEast Service (SES) as one of its top priorities for future rail service. Metra is currently completing an Alternatives Analysis for the SES.

Coordinating regional transportation planning and land use development policies integrates both the supply (transportation) and demand side (land use) of the congestion equation. It also has important pricing and market-oriented advantages in an increasingly competitive world. Some of the specific potential land use and transportation benefits of the proposed commuter rail include:

- ◆ Improved mobility and enhanced travel choices for the transportation-disadvantaged residents and workers in the region.
- ◆ New commuting opportunities for thousands of other riders along the corridor. This will allow them better access to jobs in Chicago and elsewhere along the corridor. It will also attract new businesses and residential developers eager to take advantage of access to a Metra rail line.
- ◆ Continued inter-jurisdictional cooperation and public-private coalitions. Collaboration among local governments, the development industry, labor, public interest, and environmental organizations leads to better long-term development and travel conditions and eventually higher quality of life.
- ◆ More balanced economic development within the participating communities, making them more competitive in relation to surrounding, less amalgamated areas.
- ◆ Competitive advantages for existing businesses to attract and retain a skilled workforce within the broader region and it enhances opportunities for new businesses locating in the region to select employees from a regional pool of workers.
- ◆ Greater use of existing transportation and utility infrastructure, minimizing infrastructure cost to taxpayers and maximizing efficiency.



## **Organization of the Report**

This report is organized into four sections. The introduction which includes information on the first phase of the *Land Use and Local Financing Study*, its relationship to the second phase of the work, and the focus of the second phase study, and three additional sections that address other important factors. Section II highlights various issues that communities along the SES corridor must address as they move toward formalizing the informal cooperation that has brought them this far in the planning for the SES. Section III provides detailed information on the preferred funding options and what steps the communities should take next if they wish to pursue them. The last section closes the second phase of the study and includes overall recommendations for the next steps, as well as a proposed schedule for making them.

## **Purpose of the Current Study**

The second phase of the *Land Use and Local Financing Study* examines in more detail several recommendations in the “Local Finance” chapter of the Wilbur Smith Associates Phase I report. Through the earlier study process, the corridor communities endorsed the concept of a “corridor funding pool” through which each municipality identified to host an SES Metra station would be guaranteed a minimum level of funding to acquire land for, build, and maintain station and commuter parking facilities in its community. This funding is needed because Metra’s contribution to the cost of providing the station and parking is limited to the construction of platforms along the railroad right-of-way and providing the commuter rail service.

This additional study identified additional funding resources that could provide financing to support the regional funding pool, development of procedures and schedules by which the funds might be allocated, and descriptions of the parameters of an intergovernmental agreement to govern creation, management and oversight of the funding pool. **Appendix A** provides information on how the study was conducted.

## **Phase I Study Conclusion**

A primary goal of the *Land Use and Local Financing Study* was to ensure that area residents, businesses and organizations would have a “say” in how their communities could support and plan for future commuter rail stations. This included discussions about station locations, development potential in the area around stations, and generation of required local matching funds for station design and construction. Key findings and accomplishments:





## **Introduction**

- ◆ Clarified the continued dependence of most South Suburban residents on employment opportunities located elsewhere in the region.
- ◆ Highlighted the existing use of commuter rail in the South Suburbs is significant and clearly supports the importance of this project to all south suburban communities.
- ◆ Emphasized reverse commuting potential to the South Suburbs given the area's improving economic development prospects.
- ◆ Emphasized Transit-Oriented Redevlopment scenarios ("TOR" versus "TOD") that could leverage additional development benefits for participating communities given existing conditions in most station communities, as well as defined constraints to significant change near certain station sites.
- ◆ Prepared a series of station area development concepts for the nine potential SES station locations.
- ◆ Highlighted the benefits of greater flexibility of development regulations in station vicinities, and recommended ways to incorporate transit-supportive provisions into local development codes.
- ◆ Confirmed interest among South Suburban Communities in developing a cooperative, corridor-wide local finance approach among involved communities to ensure at least a basic station in all cases.
- ◆ Recommended that the South Suburbs tap into existing regional funding sources first (e.g., STP-Surface Transportation Program funds, CMAQ-Congestion Mitigation and Air Quality Improvement Program funds) and aggressively pursue additional grant funding opportunities
- ◆ Verified that use of municipal general revenue will be a last resort.
- ◆ Advised local communities to maintain their coordination through SSMMA to develop a realistic financing plan for future SES stations and parking facilities, showing a local commitment to the future SES commuter rail line, which would be viewed favorably by the Federal Transit Administration when reviewing Metra's funding request under the New Starts program.
- ◆ Achieved the major educational objectives of the project, particularly through Technical Sub-Committee meetings attended by municipal officials and staff.
- ◆ Reached a wider South Suburban audience through project "UpDate" inserts in SSMMA's quarterly newsletter.



### **Corridor Funding Pool Issues**

The Original *Land Use and Local Financing* outlined a list of potential funding sources that could be used to assist in financing the local contributions to the SES. This second phase study examined these recommendations in greater detail, and considered additional funding sources and financing options that might be used to fund the corridor funding pool and help local communities capitalize additional improvements to their stations and surrounding development. **Appendix B** includes additional information on these potential funding sources:

### **Preferred Corridor Funding Pool Options**

Even though the initial study recommended that the South Suburbs tap into existing regional funding sources first, the additional analysis and discussion that took place as part of this Phase II Study identified two methods of funding the local contributions to the SES that were the most attractive to participating communities:

- TIF Districts, and
- The use of local public private partnerships.

These two funding methods are discussed in more detail in Section III.

These two funding sources create significant advantages for local communities. Both of these strategies allow the local community some flexibility in determining when these programs would be initiated, influencing the availability of funds, and in the case of public private partnerships, how the actual construction and development is implemented. Additionally the local communities do not need to rely on others outside of the corridor to decide if these funding sources can or will be used for the SES project.

Some other regional funding sources are still recommended as potential means of contributing funds, but because of these sources are not as predictable, they are considered to be secondary sources at this point. They are also discussed in Section III of this report.



## **Preferred Corridor Community Issues**

### **Overview**

As the communities along the SES move towards formalizing their cooperative efforts in support of implementing this proposed commuter service, they must address several issues in order to finalize the joint funding pool for stations and parking, and begin the process of contributing the necessary funds to capitalize the pool. The topics examined in this section will:

- Create the framework for continued cooperation and progress;
- Determine how those funds will be secured, managed and distributed; and
- Provide the data to determine how much funding a joint funding pool will need to provide to construct a basic station for each community along the proposed corridor.

### **Inter-Governmental Agreements**

#### **1. Overview**

Several years ago, the communities along the SES determined that it is in their interest to work together to secure local funding for stations and parking facilities along the proposed commuter rail line. If the communities wish to continue to work together, it is now time for them to enter into a cooperative relationship to assure that they are each able to provide at least the basic required facilities and services in support of the rail line.

One or more intergovernmental development agreements can be used to clearly establish the legal requirements, performance benchmarks, operating standards, and other conditions that will govern the creation, funding, and operation of basic services to be secured or provided by the communities along the line. The existence of an intergovernmental agreement provides evidence of the commitment of the communities to cooperate in securing funding for and managing the station area facilities associated with the SES.

Intergovernmental agreements are established to create a mechanism that allows the communities to work cooperatively to achieve specific goals as well as to protect each community's interests, and to insure performance on an equitable basis for participating communities. Development agreements establish performance obligations and consequences for failing to meet them. They also provide assurances that the parties to the agreement will perform as they have agreed in the document.



## Preferred Corridor Community Issues

### 2. Issues to Be Addressed

Intergovernmental development agreements could contain a number of conditions and standards that might include:

- Mechanisms to secure financial assistance for the Joint Station Area Funding Pool;
- Development standards for the construction of transit stations above and beyond the required basic station design elements as defined by Metra (also see Appendix D);
- Requirements to appropriate funds from the joint funding pool for approved purposes;
- Authorization requirements to borrow funds on behalf of the joint funding pool;
- Requirements for securing debt on behalf of the joint funding pool;
- Standards for procurement and solicitations;
- Standards for securing professional and other services for the intergovernmental agreement;
- Creation of a Joint Operations Board or other management entity including the appointment of members and representative to this board, approval requirements for capital improvements and acquisitions, creation of restrictive covenants and management policies, obligations of the Board, budgeting and accounting requirements for all assets, payments and contracting policies;
- Consistent implementation by each community of its individual *Commuter Facility Development Agreement* with Metra;
- Authorization of grant applications on behalf of the Joint Funding Pool;
- Municipalities obligations and indemnification;
- Provisions to modify the agreement; and
- Insurance and other requirements.

Not all of these issues need to be addressed immediately. It may be more appropriate to begin with a general intergovernmental agreement that simply formalizes the desire to work together, leaving more detailed decisions to later agreements. An initial intergovernmental agreement should focus on creating a special board or group to serve as the representative of the eight towns in matters relating to the SES. The intergovernmental agreement should also set up an administrative system through an agreement with an existing agency or organization, such as the South Suburban Mayors and Managers Association. The SSMMA has offered to provide administrative assistance as needed at no charge to the special board. A working name for the special board could be the Southeast Corridor Rail Development Board (SCRDB). The SSMMA can also help in obtaining, holding, managing and disbursing funds for the SCRDB.



## Preferred Corridor Community Issues

Finally, the intergovernmental agreement can also memorialize the intent of the municipalities to work together to establish additional agreements on the other items such as those listed above. **Appendix C** includes a sample initial intergovernmental agreement.

The creation of the SCRDB would also help to advance the efforts of the individual municipalities in promoting the creation of station and parking facilities along the SES. A SCRDB would include representatives of each of the municipalities. It would be empowered to act on behalf of the communities in undertaking most or all of the activities the municipalities should or would like to do relating to the SES station areas.

### 3. Recommendations

The eight municipalities along the SES should enter into an initial intergovernmental agreement similar to that which is included in **Appendix C** as soon as possible, but no later than January 1, 2008.

The initial intergovernmental agreement should:

- Formalize the desire of the eight communities to work together to promote and fund station and parking facilities along the SES;
- Designate the SSMMA as the management or sponsoring agency;
- Create a Southeast Corridor Rail Development Board;
- Direct the SCRDB to create bylaws and/or other operating procedures for municipal approval;
- Empower the SCRDB to begin creation of a joint funding pool for municipal approval; and
- Direct the SCRDB to begin considering other recommendations made later in this report, as appropriate.

Beyond creating by laws, the SCRDB initial purpose would be to:

- Address the many details that need to be examined so that an acceptable joint funding pool can be created.
- Create the joint funding pool;
- Develop consistent design standards and guidelines for stations above and beyond the design standards of a basic station as defined by Metra to be provided along the corridor; and
- Address other issues in a timely manner that are outlined later in this report.



## Preferred Corridor Community Issues

### Basic Station Provisions, Design Guidelines, and Management

#### 1. Discussion

Metra requires communities with planned Metra stations along new rail lines to pay for most of the station area costs. Metra's contribution to the cost of providing the station and parking includes the construction of platforms along the railroad right-of-way and providing commuter rail service. The communities' financial responsibilities within the station area include those essential items that support the use of the station other than the platform itself and the right-of-way improvements. This includes the station house, parking, access infrastructure, landscaping, signage, drainage, and lighting. Costs to the communities also include management issues, such as the methods of collecting fees associated with the use of the commuter parking facilities, as well as the cost of other operation and maintenance of these areas.

Metra will provide each community with the design guidelines that must be included in a basic station. Metra currently has three sizes for basic stations, based on projected levels of ridership. Metra is currently completing an Alternatives Analysis for the SES and expects preliminary ridership projections to be completed by the end of 2007. The classification of each proposed station will determine the minimum design guidelines to be followed. Even with Metra's basic station guidelines, there is a wide range of methods for providing these station area improvements. There may also be a desire to standardize some of the facilities in each station to create an identity for the SES, while at the same time, each community may choose to customize the facilities to meet their own needs.

A common approach towards these issues will allow a more even understanding of the design considerations, size (based on ridership projections), and amenities that each station area should include. A shared understanding of what the three basic station sizes will provide will then allow an initial estimate of a corresponding probable base level construction costs for each type of facility. This would be the amount that would be used to set the target levels for the joint funding pool.

Metra's basic station and parking design guidelines are documented in *Metra's Station Manual* and *Metra's Parking Manual*. These documents contain the minimum guidelines that each municipality will follow regarding station and parking design elements including:

- Vehicular access to the station,
- The distance between parking areas and the station,
- Pedestrians and bicycle access to station,
- Bus access to the station,
- Landscaping,





## Preferred Corridor Community Issues

- External lighting, and
- Basic station amenities (seating, restrooms, ticket agent office, etc.).

Prior to the initiation of rail service, and in conjunction with the efforts of the SCRDB, each community with a station will enter into a *Commuter Facility Development Agreement* with Metra. Appendix D contains a sample copy of Metra's *Commuter Facility Development Agreement*. This agreement formally establishes the community's adherence to Metra's station and parking design and construction standards and sets standards for the following station and parking issues:

- Parking fees,
- Station, parking, and access maintenance,
- Funding of routine maintenance,
- Landscaping upkeep, and
- Utility fees and provisions.

In accordance with the *Commuter Facility Development Agreement*, a commuter parking capital investment fund will also be established. The revenue generated from the commuter parking fees will be deposited into this fund to be used for maintenance and repair of the parking lot, including major rebuilding of the lot when needed.

### 2. Recommendations

Since each municipality may have ideas of what should be included in a station above and beyond Metra's requirements for a basic station as well as how it wants to approach the development of its station, the SCRDB, using the Metra *Commuter Facility Development Agreement* as the starting point, should develop a written and/or graphic description of what the stations should include. This discussion should occur after Metra has determined the required size of each of the proposed stations. Some design elements that are considered above and beyond a "basic station" include:

- Higher-quality building materials,
- Brick pavers,
- Retail space inside a station,
- Additional or higher-quality indoor and outdoor amenities,
- Open space at and within ¼ mile of the station,
- Additional landscaping
- Security, and
- Access to retail space.

It is important to note that these types of design elements would also need to be funded by the communities.



## Preferred Corridor Joint Station Area Funding Pool Options

### Tax Increment Financing

#### 1. Discussion

Tax Increment Financing allows a local government to construct improvements in an area that will in turn leverage new private investments or reinvestment in the area. The investments typically result in increased property values in the area creating growth in the community's tax base and an increase in future tax revenues. To fund these improvements, a Tax Increment Finance (TIF) District is created, allowing the local government to separately capture the taxes that result from the incremental increase in property values within the district. The tax increment is the difference between the amount of property taxes that were generated before the TIF and the amount of property tax revenue that is due after the improvements are completed. The new property taxes generated by this increase in value are then used to retire bonds or other financing arrangement created to pay for eligible improvements in the TIF District.

In Illinois there are 5 major categories of TIFs:

- Central Business Districts,
- Shopping Mall/Commercial Districts,
- Industrial Districts,
- Mixed Development/Non-Central Business Districts, and
- Housing TIF's.

Under Illinois state law TIF funds can be used to support:

- Property acquisition,
- Rehabilitation or renovation of existing public or private buildings,
- Construction of public works or public improvements,
- Job Training,
- Relocation,
- Financing costs including capitalized interest,
- Studies, surveys, and plans,
- Marketing sites that are located within the TIF,
- Professional services such as architects, engineers, legal costs, and
- Demolition and site preparation, and
- Administration of a TIF redevelopment project.

Before a TIF District can be designated, local elected officials are required to identify the project area and determine the physical and economic conditions that



## **Preferred Corridor Joint Station Area Funding Pool Options**

exist within the area. The determination of existing “blighting conditions” or other special needs is necessary in order to establish that the private investment anticipated to occur in the district would not move forward without some type of incentive such as a TIF district might provide. Local officials must provide evidence that the district satisfies the “But For” text in the Redevelopment Plan: “but for” the public improvements funded by the TIF district, the development or redevelopment would not occur. In addition to meeting these requirements communities must prepare a development or redevelopment plan that identifies the improvements to be made, the specific district boundaries, a budget for the TIF district, and the total eligible TIF expenditures.

In order to designate a TIF district in Illinois, certain conditions are required and each district must meet the factors for one of five conditions:

- ◆ Blighted conditions,
- ◆ Conservation conditions,
- ◆ Industrial park conservation conditions,
- ◆ Transportation oriented districts, or
- ◆ Intermodal terminal facility.

To qualify as a blighted area the property must meet at least five of fourteen factors that include:

- ◆ Deterioration,
- ◆ Obsolescence,
- ◆ Environmental clean-up,
- ◆ Declining equalized assessed values,
- ◆ Excessive land coverage,
- ◆ Dilapidation,
- ◆ Illegal use of individual structures,
- ◆ Structures below minimum code standards, and
- ◆ Deleterious land use or layout.

If the property is vacant at least two of the following six factors must be present:

- ◆ Obsolete platting,
- ◆ Diversity of ownership,
- ◆ Tax and special assessment delinquencies,
- ◆ Environmental contamination,
- ◆ Declining equalized assessed value, and



## **Preferred Corridor Joint Station Area Funding Pool Options**

- ◆ Deterioration of structures or site improvements on adjacent land.

To qualify as a conservation area the property at least 50 percent of the structures in the area must be over 35 years of age and three of the fourteen blight factors must be present along with another factor, excessive vacancies.

To be designated as an industrial park conservation area the municipality must have a high unemployment rate and the area to be designated must be inside the municipality or within close proximity to the municipality. The site must also be zoned industrial before the TIF is established and contain vacant land that would be suitable for the development of an industrial park

Recent modifications to the State enabling legislation added Intermodal Terminal Facilities and Transportation Oriented Districts as also qualifying as TIF District areas.

All of the villages or cities associated with the development of the SES have existing TIF Districts and several villages have multiple districts. All municipalities except Dolton have already set up TIF Districts at or near their proposed station areas. While TIF Districts are an excellent mechanism to finance eligible public improvements, careful attention should be paid to the location of existing districts that might overlap with the station locations for this project. Communities must prepare a Redevelopment Plan that assesses the area proposed for the new TIF District and demonstrates why the revitalization is needed and how revitalization will occur.

### **2. Recommendations**

Those communities that have not already created TIF Districts covering the area surrounding the proposed train station location in their community to help fund redevelopment around the station should consider the creation of new or additional Tax Increment Financing Districts at or adjacent to their planned transit stations in order to help finance the station's construction and other related improvements.

Several communities have indicated that they plan to establish a TIF District at or adjacent to their proposed transit station location and may have already begun the planning process to establish these new districts well in advance of the station construction. Some communities already have established TIF Districts in place covering other sites within their jurisdiction and with careful planning there are additional opportunities to leverage new private investment in these districts as well as a result of the new commuter rail line.



## **Preferred Corridor Joint Station Area Funding Pool Options**

The creation of additional TIF Districts within a community must be done with care. As the debt service on earlier TIF Districts is retired, most bond covenants will provide language to allow the local community to immediately begin receiving the total tax revenues. Each community with existing TIF Districts should ask their Finance Officers and Attorneys to review covenants associated with existing districts to determine if there are opportunities to pass money from the existing TIF Districts to newly created districts. These bond covenants may also address the conditions under which an existing district could be expanded and additional revenues captured to support the financing of new improvements.

It may be easier to establish a new district than to expand an existing district depending upon the locally established requirements and bonds of financing covenants that are attached to the existing districts. It is also important to remember that the success of a TIF District is tied to the creation of new development and redevelopment within the area that adds additional property values within the district.

### **Enterprise Zones**

The Illinois Enterprise Zone Program was designed to create a number of state and local tax incentives to help revitalize neighborhoods experiencing certain blighting conditions and a depressed economy. Existing businesses or new businesses that locate in an area designated as an Enterprise Zone can receive special state and local tax incentives. The menu of incentives includes:

- EZ Machinery and Equipment Sales Tax Exemption,
- Investment Tax Credit,
- Sales Tax Credit,
- Utility Tax Exemption,
- Property Tax Incentives,
- Jobs Tax Credit,
- Income Tax Deductions for Financial Institutions,
- Dividend Deduction, and
- Corporate Contribution Deduction.

Businesses locating or expanding in an enterprise zone may receive an exemption on the retailer's occupation tax paid on building materials, an investment tax credit on qualified property, and possibly additional tax incentives as well. Under the sales tax exemption, a 6.25% state sales tax exemption is permitted on building materials that are used in real estate within an enterprise zone. A certificate of



## **Preferred Corridor Joint Station Area Funding Pool Options**

eligibility for sales tax exemption must be issued in advance by the administrator of the enterprise zone where the building is located. This exemption could be an important tool in working with private developers in a public-private partnership for the development of transit stations.

The law also provides a sales tax exemption for machinery and equipment including pollution control equipment however, the business must make at least a \$5 million investment and create 200 full time jobs and a majority of the jobs created or retained must be located in the enterprise zone. Additional investment and job retention requirements are provided for larger projects. The utilize tax exemption also requires a business to make a \$5 million investment and create 200 full time jobs with a majority of the jobs created or retained located in the enterprise zone in which the investment occurs. In each instance the business must submit an application to the Illinois Department of Commerce and Economic Opportunity and they will determine the exemption and term.

Additional tax credits and income tax deductions are available under the Illinois law. Each community's attorney should review existing enterprise zones within the community and determine how these tax incentives can best be used in conjunction with other resources to attract private developers and investment to the areas around the transit station.

Local governments may provide additional local incentives to leverage the growth of jobs and private investment in the community. These incentives are established by each local government and could include:

- Abatements of some portion of the property taxes on new improvements,
- Homesteading and shopsteading programs,
- Waiver of some business licensing and permit fees, and
- Special local financing programs.

The Illinois Enterprise Zone Act Sec. 11-74.4-8c. provides language concerning redevelopment project areas within enterprise zones that should be reviewed carefully by each community's attorney to determine if the requirements of Section 5.4.1 of the Illinois Enterprise Zone Action are satisfied.

### **Public Private (Joint Development) Partnerships**

#### **1. Discussion**

The Station Area Concepts for each of the proposed station areas included in the Phase 1 report show potential locations for new development on vacant land





## **Preferred Corridor Joint Station Area Funding Pool Options**

and/or redevelopment of existing structures. The level and type of development varies among the station sites. The development potential appears to be significant enough that private developers could be interested in the potential projects. The ability to lure private developers to participate in the realization of the Station Area Concepts presents an opportunity to use their involvement as a means of funding all or part of the station itself.

Each community could assemble an offering to developers that could include the land upon which development would occur, potential financing assistance, permit assistances, or other incentives. The private developers would construct commercial and/or residential development near the station and either construct the station as part of the project, or contribute funds towards its construction.

Discussions with several development companies in the Chicago area provided information on what could make a development package attractive to a developer. Residential development by itself typically would not yield enough income to support the construction of a train station as part of the package, although if the number of units was high enough, it could potentially work. Based on the comments of the developers, commercial development, primarily retail, is the most attractive to developers. They indicated that when constructed on a station by station basis, a minimum of 150,000 square feet (SF) of retail development would typically be needed to support the funding by the developer of a basic station.

The potential for each community to support at least 150,000 SF of new development around their proposed stations is questionable. Additionally, development around some station locations would most likely be more attractive to private developers than others. Consequently, the communities could consider combining the various development projects at each station site into a single development package that includes them all. Ideally, this would allow the development to be larger in some locations and smaller in others, with an overall aggregate that averages 150,000 SF per station. The specifics of a combined development offering would necessitate negotiations among the municipalities involved, so that the distribution of development and the amount of local incentives are acceptable to all.

Even with the pooling of development potential, it may still be hard to provide an average of 150,000 SF of development per station, or a total of 1,350,000 SF of new construction within the nine proposed suburban station areas along the entire corridor. In order to engage developers in the offerings, the municipalities will need to participate in the funding of the basic station by a developer, even if the developer(s) assume the responsibility of the actual construction work as part of their larger project. The specific balance between how much the communities



## Preferred Corridor Joint Station Area Funding Pool Options

contribute and how much the developer contributes would depend on how large the overall potential for development is determined to be. This emphasizes the continued need for the municipalities to pursue other funding sources for the joint funding pool to pay for development of the station area improvements, even if a public private partnership is pursued.

Another significant concern of developers is uncertainty. Therefore, the more that the municipalities can do to remove uncertainty, the more likely they are to get significant interest in their project by qualified builders. Working with only one client would be a significant way to remove uncertainty. Using the SCRDB as the single entity that works with the selected developer could accomplish this goal if the nine different suburban station development projects are combined into a single offering. Creating a well defined set of design guidelines, describing the specific details of the proposed development, including proposed land uses, the amount of SF devoted to each, the number of stories to be in the various buildings and similar items would also remove uncertainty.

### 2. Recommendations

The communities should begin assembling a public private partnership development offering. The first part of the work should be an analysis of what realistic development potential exists at each station location that would be of interest to developers. This can be followed by more specific economic analysis of costs so that the offering contains realistic expectations of what the level of development will allow developers to contribute towards the construction of a train station. As an offering is assembled, the level of municipal contribution towards the construction of the stations should be stated, even if the specific source of the municipal funds, be it TIF District funds, other grants, or some other source, has not yet been finalized. The offering should also include enough incentives to make it attractive to developers.

While the goal is to have the public private partnership pay for the entire station, the offering will most likely include some lesser contribution because the realistic level or type of development potential in the station areas will not support the construction of a complete basic station by the developer.

The offering should clearly indicate development location, type, and characteristics. It should retain some form of design approval by the communities. There should also be provisions for the communities to select additional size or features to be added to the train stations in their communities if they bring additional funding to the projects. The communities that may benefit from greater amounts of development should also typically contribute more towards the overall offering.



## Preferred Corridor Joint Station Area Funding Pool Options

### Grants

#### 1. Discussion

Several different transportation grant programs could provide additional funding for the joint funding pool, either as a group or for individual communities. Access to these funds, including STP and CMAQ funds, would need to be coordinated with the region and the Chicago Metropolitan Agency for Planning.

There are three non-transportation funding programs that could also provide some of the funding for the nine suburban station improvements:

- The Economic Development Administration's Public Works and Economic Development Program (PWEDP),
- The State of Illinois Business Development Public Infrastructure Program (BDPIP), and
- Community Development Block Grant funds and 108L Program.

#### Public Works and Economic Development Program

This Economic Development Administration program supports the construction or rehabilitation of essential public infrastructure and facilities that are needed to retain existing private sector jobs, attract new private investment, and promote regional competitiveness. These funds are provided primarily to help qualifying communities revitalize and upgrade their physical infrastructure to help them attract new businesses and encourage existing business expansion while working to diversify local economies and create or retain private sector jobs. These grants can be used for a broad range of infrastructure including redevelopment of brownfield sites. Projects must be in a location that meets one or more of the economic distress criteria established by EDA. They must also improve opportunities for the creation or expansion of industrial or commercial facilities in the area, assist in the creation of long term jobs, or benefit the long-term unemployed and members of low-income families.

There is strong interest in regional economic development at EDA and the opportunity exists to prepare a regional application to EDA in support of transit station improvements that could be very attractive to the agency. SES communities should consider how the station construction could achieve the EDA requirements and then meet with the EDA Regional Office to discuss the applicability of this project for EDA funding. If EDA considers the proposal



## Preferred Corridor Joint Station Area Funding Pool Options

appropriate, they will invite the applicant to submit a proposal which must be submitted in advance of submitting a formal application for funding. A consortium of SES communities applying for assistance under this program could be a very competitive package.

### Illinois Business Development Public Infrastructure Program

This program is designed to help local government develop public improvement to attract or retain projects that result in new private investment and the creation of jobs. These infrastructure improvements must be demonstrated to provide clear public benefits and be located on public property. They must result in the creation or retention of private sector jobs. This program might be used to help fund some station construction costs if it can be linked to new private investments or jobs in the area of the station.

This assistance is limited to a maximum of \$500,000 and can be used for a variety of public infrastructure improvements including public transit systems. Communities may want to carefully evaluate how this program might be used in conjunction with other economic development activities in the areas around the transit stations. The relationship between new jobs and private investment is a crucial element of this grant program

### Community Development Block Grant and 108L Funds

Cook County is designated as an Urban County for purposes of receiving Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (HUD). Cook County guides the investment of approximately \$13 million per year in CDBG funds to address eligible needs throughout the county. These CDBG funds must be used to address a broad national goal to, “develop viable urban communities by providing decent affordable housing and a suitable living environment and by expanding economic opportunities, principally for low and moderate-income person”. On an annual basis Cook County considers the unique needs and establishes objectives and strategies to meet those needs for Cook County. The county prepares a Consolidated Plan that outlines the objectives, strategies, and priorities for funding projects with CDBG funds.

Generally, CDBG funds can be used for a broad range of activities within eligible areas. CDBG funded projects might include community facilities, public infrastructure improvements, economic development related activities, and other related activities. Over the next 5 years, Cook County is expected to receive over \$63 million in CDBG funds, assuming there are no decreases in funding.



## **Preferred Corridor Joint Station Area Funding Pool Options**

SES communities should consider working with the Cook County Department of Planning and Development to determine how CDBG funds could be used to help finance some elements of the station construction costs in eligible areas. Many of the communities along the SES corridor are eligible and have received CDBG funds for a variety of projects in the past. Using the data from the Phase I Study the SES communities can make a strong case to support the importance of this transit system and the station construction to low and moderate income residents of the SES communities and the economic vitality of businesses that these residents support in the SES communities.

### **2. Recommendations**

Once an intergovernmental agreement has been signed by the eight communities and a managing agent, such as the SSMMA, has been selected, the managing agent should review the current status of the PWEDP, BDPIP, and CDBG funding programs to determine their continued applicability and availability for use on the SES stations. As appropriate, applications to the programs should be prepared and submitted.



## **Overview**

This Phase II portion of the *Land Use and Local Financing Study* is only one step in the process of securing local funding for station and parking facilities along the SES. The eight communities along the SES, Crete, Steger, South Chicago Heights, Chicago Heights, Glenwood, Thornton, South Holland, and Dolton will need to continue to work to bring the local financing of station and parking facilities along the SES to fruition. As the Phase I report stated regarding a strong local financial commitment,

A strong local funding commitment for both capital and operating costs could help to move the project up in priority vis-à-vis other projects. Both Congress and the Illinois General Assembly – and Federal and State grant makers – will be more receptive to pledging funds to a project that has such a local commitment.

It is important to note that the projected project costs are subject to change based on the completion of the Alternatives Analysis; the capital costs will be projected multiple times throughout the remainder of the planning process. This makes the focus of the Phase II study on methods of funding the development of the stations and the station areas even more important. Additionally, funding sources for the ongoing operation and maintenance of the stations also needs to be developed. The Joint Operations Board, or some other form of joint committee or task force, or group, along with the SSMMA, could begin to explore options for this ongoing funding.

## **On-Going Actions**

At a minimum, the eight suburban communities should continue to meet on a quarterly basis, if not more often, to review the status of applications, research, or other activity relating to the SES and station area planning activities.

## **Schedule**

By January 2008, the eight suburban communities should have at least an initial intergovernmental agreement signed that creates the Southeast Corridor Rail Development Board. Part of the agreement should also designate the SSMMA as a managing partner.

By April 2008, the eight suburban communities should have proposed rules and regulations before the communities for approval so that the SCRDB can begin to take on the more detailed tasks of securing the funding for the Joint Funding Pool.





The specific timing of other recommendations in this report can be determined by the SCRDB in response to the timing and results of Metra's progression through the New Starts funding process.



## **Appendix A: Study Process**

The South Suburban Mayors and Managers Commuter Rail Corridor Study Phase II, started last December, is nearing completion. This Phase is digging deeper into the issues of how the eight suburban communities can work together to fund their portions of the project. The consultant team of Wilbur Smith Associates, Wildman, Harrold, Allen and Dixon, and Nancy Seeger Associates, working with the SSMMA, are nearing completion on their efforts to create a cooperative, joint approach toward funding the stations, parking areas and other local aspects of the project.

The eight suburban communities still agree that the commuter line is essential to the advancement of each of the communities and they need to work together in order to make the line a reality. Because the economic abilities of the communities vary, they all also continue to support the concept of a joint funding pool that will help all of the communities provide at least the basic station and parking areas as determined by Metra that will be required to provide in order to make the commuter line a reality.

Their work started with more research into the specific advantages and challenges of using the most promising funding sources identified in the Phase I study: Special taxing districts and partnerships with private developers. They also outlined some of the initial issues that would need to be addressed as part of creating an intergovernmental agreement between the eight communities along the proposed commuter line.

The consultant team shared the results of their initial research at a meeting of representatives of the eight suburban communities, Crete, Steger, South Chicago Heights, Chicago Heights, Glenwood, Thornton, South Holland, and Dolton. After reviewing the information, the representatives encouraged further analysis of these two concepts, adding some valuable refinements at the time, including the recommendation to consider creating one combined public private partnership with a developer that covered all nine of the proposed suburban stations. The notes from this meeting are at the end of this Appendix text.

After this meeting, WSA met individually with the municipalities in the suburban portion of the corridor to give them a chance to express in more detail their ideas, thoughts, concerns or questions about the project, the potential funding options and the intergovernmental agreement. After meeting with the community leaders, it was clear that support for the project is still strong and that each community understands the need to work together to get this project to happen. A summary of the meetings is included at the end of this Appendix text.



The Team used information from these meetings to draft a sample intergovernmental agreement for the communities to consider. They presented this draft at another meeting of the municipal representatives in May for their review. The discussion at this meeting focused on addressing some of the issues that must be included in the intergovernmental agreement. Notes from this meeting are included at the end of this Appendix text.

The second meeting provided additional details that the WSA Team used to prepare its final report. In the report, The WSA Team finalized a list of recommendations that outline the most appropriate next steps for the eight suburban communities to take in securing adequate funding for the railroad stations and other amenities with no or minimal impacts on local residents.

South Suburban Mayors and Managers Association  
South Suburban Commuter Rail Corridor  
Technical Sub-Committee Kick-Off Meeting  
December 14, 2006  
Meeting Notes

Attendees

<b>NAME</b>	<b>ASSOCIATION</b>
WILLIAM COX	Village of Steger
ED PAESEL	SSMMA
CATHERINE KANNENBERG	METRA
RICHARD DIETERICH	Village of South Village
BILL LENSKI	RTA
ANDREW PLUMMER	RTA
J. WYNSMA	Village of South Holland
CONRAD R. KIEBLES	Village of Steger
CORNELL HUDSON	Village of Steger
TOM DURKIN	Village of Crete
DON DEGRAFF	Village of South Holland
NANCY SEEGER	Nancy Seeger Associates Ltd
JIM DONOVAN	Wilbur Smith Assoc.
MELISSA ZIEGLAR	Wilbur Smith Assoc.
LOUIS VITULLO (via phone)	Wildman Harrold



After introductions, Jim Donovan of WSA provided an overview of this phase of the South Suburban Community Rail Corridor. Melissa Ziegler presented more details on the most viable funding options presented in Phase 1, including:

- a. STP Funds
- b. CMAQ Funds
- c. TIF Districts
- d. Commercial Interests
- e. Parking Concessions
- f. Municipal General Revenues
- g. Other Public Funds

Following the presentation, a general discussion, based on questions asked by the participants followed, touching on these points:

Discussion of Options

Issues Associated with the Intergovernmental Agreement

Next Steps

Presentation

Discussion

*(Note: those items noted with an \* include discussion points that were not totally correct. Corrected information is provided in parenthesis, but this information was NOT part of the meeting discussion.)*

- WSA should create an evaluation or suitability table of the various funding options showing what may be appropriate for each community station area.
- WSA requested information on where the TIF districts are located in each community.
- WSA will describe corridor public/private development potentials, including a general discussion of the incentives that may be needed to make such an agreement work -
  - Providing land for the development,
  - Providing tax abatements for the development, and/or
  - Sharing TIF District Revenues.
- The Communities should consider advantages of a negotiated vs. RFP process of getting a developer.



- The length of time it takes to get the projects completed is important to the developers.
- The communities should arrange appropriate flexible zoning to make development or redevelopment easy for the communities and developers.
- The communities need to understand where specific existing TIF Districts are located to determine if they are workable for development around the proposed train stations, overlay other TIF districts or may otherwise create a conflict with proposed TIF districts.
- should consider two additional types of agreements as they move forward with station area development: \*
  - #1 is the master intergovernmental cooperation agreement between the communities which would set up some entity to act on behalf of the organized communities;
    - All 3<sup>rd</sup> party funds would flow through this entity, and
    - Disbursements would be controlled by this entity.
  - #2 is the Government/Developer agreements to
    - Cover individual development options near the stations, and
    - Provide arrangement for the disposition of specific funds.

*(Each community will also need to sign the Community Facility Development Agreement with Metra.)*
- The most likely source of funds for development or redevelopment is TIF District funds.
- Communities need to understand that the real key for TIF District revenue is how much is generated over the life of the district and how much the developer will get in the end. It is not as important to consider when the funds are dispersed to the community itself.
- Enhancement funds could also be a source of funding for development or redevelopment.
- Revenue from parking is typically too little too late for use in the construction of the train stations or surrounding areas. Typically communities use parking revenue funds to maintain and repair parking areas or stations.



- It would be useful for the communities in this study to see examples of other new train stations in Illinois that were funded with TIF funds or other funding options being considered by this study.
- It would be helpful for the communities to understand how communities paid for new stations in past commuter rail projects.
- The optional time to draw up a master agreement between communities is now before work starts. The most difficult issue to be determined is the development of an equitable formula for distributing funds to the communities.
- What is provided to each community can vary by station, but at a minimum, each station must include parking and a train station building. The specific size and amenities in each station can be variable.\*  
*(Based on ridership projections that will soon be completed, Metra will provide each community with required station and parking design guidelines to be incorporated into a basic station.)*
- The ownership requirements of real estate are flexible. The stations can be on private land, as long as the community owns the station space itself. There is at least one recent new Metra train station where Metra has a condominium ownership of the station portion of a larger building.
- It is not possible to determine how much parking is required now. Parking needs will be determined after ridership projections for the proposed SouthEast Service are completed.
- It is not clear whether each of the communities would be considered distressed communities for the purposes of using Community Development Block Grants (CDBG).
- There may need to be creative funding options to make funding possible for every station. Part of this study will include a basic suitability assessment that looks at the proposed station location and the surrounding areas to determine how large an area is needed to qualify for CDBG.
- Each community can use whatever funding options it has available to make its station work, as long as the master intergovernmental agreement allows it.
- Of the financing options being considered, it seems that the TIF financing option may be used the most although increased sales tax revenue could also be a good source of revenue.





The South Suburban Commuter Rail Corridor business support group will hold an information lunch at Balmoral Park on January 26, 2007.



South Suburban Mayors and Managers Association  
South Suburban Commuter Rail Corridor

## **Individual Mayors and Managers Meetings Summary**

*WSA met individually with each of the eight communities after the first Technical Subcommittee Meeting to discuss their specific comments, concerns and questions. The communities were told that only an overall summary of the meetings would be produced, and no specific notes of their particular meeting would be recorded, in the hope that the participants would be as open and honest as possible. This is a summary record of the meetings*

As part of the work of refining the potential funding sources for the stations along the proposed SouthEast Service, Wilbur Smith Associates (WSA) met with each individual community to allow them the opportunity to discuss concerns, ask questions about financing strategies, discuss their unique financial conditions, review changing public opinions, and check on other factors that could influence the financing and development of these stations. In all of these meetings, communities were advised that the information they shared would be synthesized into a summary report and their individual questions and issues would not be identified. WSA conducted these meetings on March 8<sup>th</sup> and 9<sup>th</sup> 2007. The following information summarizes the result of these meetings. It also highlights several important discussion points that seem to be of importance to the entire project.

- 1) Intergovernmental funding strategies should provide a base level of funding for the basic station and parking facilities and allow communities the flexibility to provide additional funding in order to develop a transit station in keeping with their downtown area.
- 2) Strong concern was expressed by all of the communities regarding the fair and equitable use of the fund; no community should have any super powers or veto power over other communities.
- 3) A number of communities also expressed concern that all of the participating communities along the rail line should actively work to contribute to the intergovernmental funding pool whether through grants or other efforts and no communities should assume that the other members of the intergovernmental partnership will “take care of it”. There was strong feeling that lack of effort was not acceptable and should have a consequence.
- 4) The Intergovernmental Funding strategy should be created through SSMMA or other third party organization, using an existing organization seemed to be preferred as opposed to creating a new entity. Ideally this organization will have the capability to issue bonds, service the debt, raise and manage fund through other means, and work with private developers



- in a public/private partnership or other similar relationship to leverage private capital for the project.
- 5) Efforts should begin as soon as possible to identify potential grants for funding including STP, CMAQ, CDBG 108L, and other resources in order to determine application deadlines and requirements. Applications should be made collectively where possible, however not all communities were ready to reallocate funds from these possible sources to the station project. There was not universal support for the use of STP funds for this project particularly from communities who had committed these resources for other projects or communities who were concerned that they may need the STP funds for other pressing projects in the future.
  - 6) There was strong concern that the cost estimates for the basic transit station costs need to be updated so the municipalities have more accurate information about the funds that will be required for the basic stations.
  - 7) Private developers could be major players in all 9 suburban stations along the proposed SES and there was collective interest in developing public-private partnerships to build and perhaps even operate these stations. All of the communities recognize that some of the stations would be more attractive to private developers than others and by packaging the stations together the private developers could achieve certain cost savings and advantages that would enable them to build a basic station for all of the station locations. There was strong feeling that attracting region-wide developers to consider all the stations in a partnership effort was important, but several communities indicated that local developers should also be allowed to bid on the package of projects
  - 8) All of the communities appeared to understand the value of working together on this project and acknowledged that this did not happen often. Most also appeared to understand that this was the project where a joint funding pool was to everyone's advantage and without it the project might not be possible.
  - 9) The communities said a 3<sup>rd</sup> party intergovernmental body was needed to keep the focus on the project and to keep communities strategically focused on what they need to do in order to have the funds to build these stations at the appropriate time. They like the concept of an umbrella organization to manage the funding, development, and perhaps even management and maintenance of the stations.
  - 10) Most communities are considering using TIF Districts to assist in the funding, however some communities have already established a TIF District at their proposed station locations and have committed the funds to other projects. The majority of the communities were interested in using TIF funding for acquiring land for and constructing stations, how this might work as a common funding source if all of the communities cannot use this financing strategy will require additional analysis.



- 11) There is no clear understanding of what Metra would require each community to build in the way of stations, parking, and any other facilities, the process that the communities need to follow to work most effectively with Metra, or the appropriate time table for analyzing, funding and then constructing this project. More information on these questions is desired.
- 12) A majority of the communities appear to own some property in the proposed areas for the Stations.



South Suburban Mayors and Managers Association  
 South Suburban Commuter Rail Corridor  
 Technical Sub-Committee Meeting  
 May 10, 2007  
 Meeting Notes

Attendees:

NAME	ASSOCIATION
DAVID OWEN	So. Chicago Heights
REGGIE GREENWOOD	SSMMA
BERT HERZOG	Dolton
PAUL PETERSON	So. Chicago Heights
CATHERINE KANNENBERG	Metra
LYNNETTE CIAVARELLE	Metra
CORNELL HUDSON	Village of Steger
COLIN DUESING	Will County Land Use
JAY STOUAN	Optional Living Development
LAURA GUTT	11
MAIKOR AKINTONDE	Optional Living Developments
DAVID ROCK	SESBA
CONRAD R. KIEBLES	Village of Steger
J. WYNSMA	South Holland
BILL COX	Village of Steger
NANCY SEEGER	Nancy Seeger Associates Ltd
JIM DONOVAN	Wilbur Smith Associates
MELLISA ZIEGLER	Wilbur Smith Associates
MARK HUDDLE	Wildman Harrold

*(Note: those items noted with an \* include discussion points that were not totally correct. Corrected information is provided in parenthesis, but this information was NOT part of the meeting discussion.)*

After introductions, Ed Paesel of SSMMA provided an overview of this phase of the South Suburban Community Rail Corridor and the issues being addressed in this portion of the work.

Melissa Ziegler presented an overview of the individual community meetings she attended in February and March of 2007. The meetings results indicate that:

- 1) Each of the communities understands the importance of the project itself, as well the need to work together with a single voice in order to move forward successfully to implementation
- 2) Support for intergovernmental funding strategies was positive from all of the communities with an understanding that they wanted to review a draft



- document as soon as possible to assess the issues and opportunities in greater detail
- 3) Intergovernmental funding strategies should provide funding to cover the cost of a basic station for each community and allow communities the flexibility to provide additional local funding in order to develop a transit station in keeping with their downtown area;
  - 4) Most communities felt there was significant advantages in using some existing agency such as SSMMA to facilitate the intergovernmental funding agreement and secure the final support of each of the communities;
  - 5) The communities are interested in getting more information on potential grant funding sources;
  - 6) STP funds could be used for some of the funding, although there was not universal support for the use of STP funds for this project particularly from communities who had committed these resources for other projects or communities who were concerned that they may need the STP funds for other pressing projects in the future;
  - 7) The cost estimates for the basic transit station costs should be updated so the municipalities have more accurate information about the funds that will be required for the basic stations;
  - 8) Private developers could be major players in all 9 suburban stations along the proposed SES and there is collective interest in developing public-private partnerships to build and perhaps even operate the stations, but some of the stations would be more attractive to private developers than others and packaging the stations together could achieve certain cost savings through economies of scale and advantages that would enable private developers to build a basic station for all of the station locations, as long as there was some potential for local developers to participate in the projects;
  - 9) A 3<sup>rd</sup> party intergovernmental body was needed to keep the focus on the project and to keep communities strategically focused on what they need to do in order to have the funds to build these stations at the appropriate time, and to manage the funding, development, and perhaps even management and maintenance of the stations.
  - 10) TIF Districts can be a significant source of funding, however some communities have already established a TIF District at their proposed station locations and have committed the funds to other projects;
  - 11) More information on what Metra requires from each community in terms of stations, parking, and other facilities is needed;
  - 12) A majority of the communities appear to own some property in the proposed areas for the Stations; and
  - 13) Strong concern was expressed by all of the communities regarding the fair and equitable use of the fund and other input; no community should have any super powers or veto power over other communities and that lack of





effort on any individual community's part was not acceptable and should have a consequence.

Melissa also indicated that some communities had already started thinking of how to establish local funds to pay for portions of their station.

Jim Donovan then opened the discussion on some of the issues outlined in Melissa's summary, with the goal of reaching some initial conclusions, beginning with the issue of Fair and Equitable treatment. During the course of the discussion, the focus shifted to various other issues also associated with an intergovernmental agreement, including:

- It needs to be decided who will define fair and equitable.
- There needs to be agreement on the basic station cost to help define what fair and equitable means.
- Another aspect of the fair and equitable issues is how the communities will address the problem of one community defaulting on its portion of the payback even if its intentions are good.
- The concept of eliminating the station from a community that is not cooperating will not work because Metra will not move forward with the overall project if one of the stations is missing from the package.
- There is still time now to configure which communities will be in and out of the project, but it will need to be firmly determined at some point in the near future.
- There should be a shift in the definition of fair and equitable in intergovernmental agreements from general wording to specific descriptions of dollar amounts.
- The issue of fair and equitable may not matter if the intergovernmental agreement is really needed.
- What is the purpose of an intergovernmental agreement for this project?
- An intergovernmental agreement helps to show strong, unified support of the project to Metra and funding sources.
- The fair and equitable issue can be addressed by re-examining what funding is needed from the intergovernmental agreement, looking at what each community can contribute towards that funding, and seeing what shortfall



is for each community that needs to be addressed by the inter-governmental funding pool.

- The basic requirements for station and parking facilities will be established by Metra and appear to be that each community will acquire land for, build, own, and maintain basic station and commuter parking facilities, \* (*Metra through ridership forecasting as part of the Federal Transit Administration's Alternatives Analysis process, will set the basic requirements for each station. Per Metra's Commuter Facility Development Agreement, each community will need to maintain their own station and parking facilities.*)
- Metra will be updating basic station costs as part of the alternative analysis work in the next few months.
- Has the ability of each community to fund the basic station been determined?
- It has previously been determined that not all of the communities are able to fund even the basic stations needed to make the project work, which was the basis for the previous recognition of the need for an intergovernmental funding pool.
- The intergovernmental agreements can be done in two phases; the first brings the communities together in a formal way to collectively advocate for the line; the second looks at financial agreements after the first has been in place and working for a while.
- The intergovernmental agreement made between the communities along the North Central Line, which initiated service in 1996, could serve as an example; their agreement created a single, central committee to serve as the one entity that represented each of the communities to work with Metra, developers and others to accomplish the construction of the stations, other possible associated adjacent development, and the parking, and to set the parking fees with Metra.
- The communities should set goals for the intergovernmental agreements, including the intergovernmental funding pool, joint advocacy, public/private partnership management, and managing other most reliable funding sources.
- The public/private partnership could yield significant funding.
- Full funding of at least the basic station and parking facilities for each community is the goal.



- Initial information indicates that private developers would need to be able to develop approximately 150,000 SF of commercial space at a minimum around the train stations in order to provide funding for the train station as well.
- Creating one large public/private development package that covers all of the stations could let developers shift the development between locations, providing less than the required 150,000 SF at one site and balancing it by providing more than 150,000SF at another, but providing the funding and/or construction of the basic station at all sites.
- Residential development alone around the proposed trains stations would most likely not yield enough income for private developers to allow them to provide funds or construction of a train station.
- More incentives, such as land, permit assistance, or TIF funding would make the public/private development package more attractive to developers.
- Needing to work with just one entity representing all of the communities would be most appealing to developers.

Discussion was ongoing, but was eventually put on hold so that a draft, basic intergovernmental agreement could be distributed and reviewed. Lou Vitullo gave a basic overview of the draft and requested that the community representatives let us know if they have questions or comments on the draft

The meeting ended with a general agreement that each of the communities remained committed to the project and the intergovernmental agreement needed to proceed.



## **Appendix B: Funding Options**

### **Introduction**

Recognizing the intense competition for transit funds, it is important for the South East Services (SES) Corridor request for federal funds to stand out when compared to other applications. To achieve this goal it will be important to maximize the non-federal revenues that are committed to the project. Each municipality that will host a station along the proposed SouthEast Service (SES) will be responsible for funding the cost of land acquisition, construction of the station and parking facilities, maintenance of the station and parking facilities and landscaping. Metra's contribution to the cost of providing the station and parking includes the construction of platforms along the railroad right-of-way and providing commuter rail service.

There are a number of financing strategies that the SES communities can consider in order to provide the best possible financial commitments for this project including the following potentials.

### **TIF and Special District Financing**

It is possible to combine tax increment financing with special district financing to make projects more feasible for both local governments and developers. One example of this is the use of Business Improvement Districts (BIDs) that permit property owners in a targeted area to band together and assess special taxes or fees. The fees can then be used for capital improvements and supplemental services beyond those services and improvements normally provided by the municipal government.

One drawback to using special taxing districts is a substantial majority of the property owners in the area must agree to pay these additional taxes. Often however, businesses and property owners realize that there are certain improvements and services that could improve their economic self-interests so they are willing to invest their funds to support area improvements.

BIDs or other special district funds can generally be used for a number of purposes including capital improvements that might include some portion of station construction, pedestrian-scale lighting, street furniture near the stations, parking management systems, security, and marketing. The increase in assessment to pay for these improvements should provide the property owners in the district with increases in sales, occupancy, property values, or other benefits over time.



### **Parking Revenues**

Generally speaking, revenues from parking facilities cannot be used to support the capital costs associated with the transit stations. Additionally, the *Commuter Facility Development Agreement* that Metra would require each to community to sign prior to the start of services specifies that revenue generated from parking fees can only be used for the maintenance and repair of the parking lots.

### **Municipal General Revenues**

There are a number of revenue sources available to many of the Chicago area communities. While not equally embraced by all the communities, several indicated in the earlier survey that they would consider dedicating some local revenues to the station construction.

Municipalities have a number of general revenue sources that might be used to pay for a portion of the station costs. Given the lead time between the planning phase of this project and actual construction, municipalities could dedicate funds continually over the next five to seven years to help off-set part of the station construction and development. Even a nominal yearly contribution of \$25,000 to a special transit station fund could accrue sufficient funds in the next few years to provide a meaningful contribution to the station construction.

### ***Municipal Bonds***

Using municipal bonds to finance the station construction is an option. Municipalities can generally issue general obligation bonds. General obligation bonds are often used to finance public improvement projects including transit system improvements and other related improvements that benefit the entire community.

### ***Other Public Funds***

There are a number of federal and state funds that should be evaluated by the SES station communities. Most of these grants will require an application and care should be taken to determine when those applications should be made in advance of the station construction and the time frame for performance on the project.

### **State of Illinois Business Development Public Infrastructure Program (BDPIP)**

This program is designed to help local government develop public improvement to attract or retain projects that result in new private investment and the creation of jobs. These infrastructure improvements must be demonstrated to provide clear



public benefits and be located on public property. They must result in the creation or retention of private sector jobs. This program might be used to help fund some station construction costs if it can be linked to new private investments or jobs in the area of the station.

This assistance is limited to a maximum of \$500,000 and can be used for a variety of public infrastructure improvements including public transit systems. Communities may want to carefully evaluate how this program might be used in conjunction with other economic development activities in the areas around the transit stations. The relationship between new jobs and private investment is a crucial element of this grant program

### **The Cook County Consortium for Community Development Block Grant Funds (CDBG)**

Cook County is designated as an Urban County for purposes of receiving Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (HUD). Cook County guides the investment of approximately \$19 million per year in CDBG funds to address eligible needs throughout the county. Most suburban Cook County communities with populations of less than 50,000 and several entitlement communities including Chicago Heights participate in the Cook County Consortium for CDBG funds.

These CDBG funds must be used to address a broad national goal to, “develop viable urban communities by providing decent affordable housing and a suitable living environment and by expanding economic opportunities, principally for low and moderate-income person”. On an annual basis Cook County considers the unique needs and establishes objectives and strategies to meet those needs for Cook County. The county prepares a Consolidated Plan that outlines the objectives, strategies, and priorities for funding projects with CDBG funds.

Generally, CDBG funds can be used for a broad range of activities within eligible areas. CDBG funded projects might include community facilities, public infrastructure improvements, economic development related activities, and other related activities. Over the next 5 years, Cook County is expected to receive over \$63 million in CDBG funds, assuming there are no increases in funding.

SES communities should consider working with the Cook County Department of Planning and Development to determine how CDBG funds could be used to help finance some elements of the station construction costs in eligible areas. Many of the communities along the SES corridor are eligible and have received CDBG funds for a variety of projects in the past. Using the data from the Phase I Study the SES communities can make a strong case to support the importance of this transit system and the station construction to low and moderate income residents





of the SES communities and the economic vitality of businesses that these residents support in the SES communities.

### **Section 108 Loan Guarantee Program**

The Section 109 Loan guarantee is a part of the Community Development Block Grant program. This program provides communities with a source of financing for larger scale physical development programs. The 108 program allow communities to take a small portion of their CDBG funds and leverage a federally guaranteed loan to pursue physical and economic revitalization projects. Local governments borrowing funds that are guaranteed by Section 108 must pledge some portion of their current and future CDBG allocations to cover the loan amount as security for the loan.

In this case, Cook County as a CDBG entitlement recipient, would have to apply for these funds on behalf of the SES communities. Cook County would have to be willing to pledge some portion of their CDBG funds to pay for the loan in the event that other resources were not available. Section 108 financing can be used for the acquisition of property, construction of public facilities, debt service reserves, and economic development activities that are eligible under CDBG.

### **Economic Development Administration: Public Works and Economic Development Program**

This EDA program supports the construction or rehabilitation of essential public infrastructure and facilities that are needed to retain existing private sector jobs, attract new private investment, and promote regional competitiveness. These funds are provided primarily to help distressed communities revitalize and upgrade their physical infrastructure so that they can attract new businesses and encourage business expansion while working to diversify local economies and create or retain private sector jobs. These grants can be used for a broad range of infrastructure including redevelopment of brownfield sites. Projects must be in a location that meets one or more of the economic distress criteria established by EDA. They must also improve opportunities for the creation or expansion of industrial or commercial facilities in the area, assist in the creation of long term jobs, or benefit the long-term unemployed and members of low-income families.

SES communities should consider how the station construction could achieve the EDA requirements and then meet with the EDA Regional Office to discuss the applicability of this project for EDA funding. If EDA considers the proposal appropriate, they will invite the applicant to submit a proposal which must be submitted in advance of submitting a formal application for funding. A consortium of SES communities applying for assistance under this program could be a very competitive package.



### **Federal Historic Preservation Tax Credits**

If any existing buildings are considered for use as a station, communities may want to evaluate the use of historic preservation tax credits. This incentive offers a credit against total federal taxes owed and can be a very attractive strategy for projects where an older building could be renovated for use as a station. A number of private developers are interested in either purchasing these tax credits or acquiring and renovating the building where these credits will be available.

There are four factors to meet the requirements for these tax credits:

- ◆ The historic building must be on the National Register or it must be a contributing building within a historic district
- ◆ After rehabilitation the building must be used for an income-producing purpose for at least 5 years (station concessionaries could qualify)
- ◆ The project must meet the “substantial rehabilitation test”
- ◆ The rehabilitation work must be done according to the Secretary of the Interior’s Standards for Rehabilitation



## **Appendix C: Initial Inter-Governmental Agreement Sample**

WITNESSETH:

WHEREAS, the People of the State of Illinois through the 1970 Constitution and in particular Article 7, Section 10 "Intergovernmental Cooperation" and Illinois Rev. Stat. 35 ILCS 220/2-3 have provided for all units of local government, private corporations and individuals, to enter into agreements for intergovernmental cooperation; and

WHEREAS, the individual units of local government ("Units") desire to enter into an Intergovernmental Cooperation Agreement with South Suburban Mayors and Managers Association ("SSMMA"); and

WHEREAS, the purpose of the Agreement is to authorize SSMMA to pursue on behalf of the Units and local government funds that may be available from the Surface Transportation Program ("STP"), the Congestion Mitigation and Air Quality Program ("CMAQ"), Community Development Block Grant ("CDBG"), any available state or federal grants or appropriations; and

WHEREAS, these Units further request that SSMMA assist them in establishing formulas for basic contribution, supplemental contribution, and participation in the allocation of these funds and advice and consulting services relative to the development of these facilities including, but not limited to, tax increment financing, municipal financing, zoning, redevelopment, intergovernmental cooperation with developers and participating corporations; and

WHEREAS, the parties wish to memorialize the extent of their intention to participate, THE PARTIES HEREBY AGREE AS FOLLOWS:



## **ARTICLE I**

### **In General**

Section 1.1. General Definitions. Unless the context hereof clearly indicates otherwise, the capitalized words, terms and phrases defined in the recitals and preambles hereto and elsewhere herein shall have the same meanings for all purposes of this Agreement. In addition, in all cases the singular includes the plural, the plural includes the singular and a reference to any gender includes both genders and the neuter, as the case may be.

Section 1.2. Certain Phrases. The words "hereof," herein," "hereunder," "hereto" and other words of similar import refer to this Agreement as a whole and not solely to the particular portion thereof in which any such word is used.

Section 1.3. Subdivisions. References to sections and other subdivisions of this Agreement are to the designated sections and other subdivisions of this Agreement as originally executed.

Section 1.4. Headings. The headings of this Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

## **ARTICLE II**

### **Undertakings**

Section 2.1. SSMA Undertakings. SSMMA shall, during the term of this Agreement, interface with the STP, the CMAQ, CDBG, federal transportation agencies, state transportation agencies, the Congress of the United States, the Legislature of the State of Illinois, the Metropolitan Transportation Authority and any other funding or granting agency to obtain the maximum funding available for distribution to the Units who are a party to this Agreement and shall receive all available funds on behalf of the Units. It will also endeavor to provide advice regarding an equitable distribution of the funds so received, implementation of



intergovernmental cooperation as among the entities receiving these benefits to ensure equitable distribution of a base amount to all participating Units and additional amounts pursuant to distributive formulas agreed to by the participants, and further to offer consulting services, advice and counsel on the maintenance of Intergovernmental Cooperation Agreements, the implementation of tax increment financing, municipal financing, and zoning. SSMMA will establish a fee to be agreed upon by the participating Units for the services set out herein.

Section 2.2. Units' Undertaking. The Units agree to work among themselves to establish by-laws and rules and regulations to govern the procedures of intergovernmental cooperation pursuant to this Agreement; to establish a base distributive formula and the required financial participation of each Unit to receive the base amount; establish a supplemental amount and the contributions that need to be received in order to qualify for the supplemental amounts and to enter into intergovernmental cooperation agreements with other municipalities, developers, corporations, not-for-profit entities, and third party granting agencies to secure funding and services for the development of one or more of stations contemplated by this Agreement.

### **ARTICLE III**

#### **Miscellaneous**

Section 3.1. Notices and Communications. All notices, demands, requests for reimbursement or other communications under or in respect of this Agreement shall be in writing and shall be deemed to have been given when the same are (a) deposited in the United States mail and sent by first class mail, postage prepaid or (b) delivered, in each case, to the Village and the City at their respective addresses (or at such other address as each may designate by notice to the other), as follows:



(1) If to SSMMA, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, Illinois, Attn.: Executive Director; and

(2) If to a Unit, at \_\_\_\_\_, \_\_\_\_\_, Illinois, Attn.:  
Administrative Officer.

Whenever any party hereto is required to deliver notices, certificates, opinions, statements or other information hereunder, such party shall do so in such number of copies as shall be reasonably specified.

Section 3.2. Illinois Law. This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

Section 3.3. Written Modification. Neither this Agreement nor any provisions hereof may be changed, revised, modified, waived, discharged, terminated or otherwise abrogated, diminished or impaired other than by any instrument in writing duly authorized and executed by both the Village and the City.

Section 3.4. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 3.5. Effective Date and Term. This Agreement shall become effective upon its execution and delivery by both the SSMMA and the Unit and shall remain in full force and effect thereafter for each of the Special Event Dates.

Section 3.6. Entire Agreement. This Agreement constitutes the entire agreement of SSMA and the Unit on the subject matter hereof. SSMMA represents, warrants, covenants and agrees that no representation, warranty, covenant or





agreement shall be binding on a Unit unless expressed in writing herein or by written modification pursuant to Section 3.3 hereof.





**Appendix D: Commuter Facility Development Agreement Sample**

**COMMUTER FACILITY DEVELOPMENT AGREEMENT**

**PART I**

**Between**

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

**and**

**[INSERT MUNICIPALITY]**

---



This Commuter Facility Development Agreement (“**Agreement**”) is made by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, created under the Act, as hereafter defined (“**CRD**” or “**Metra**”), and the [insert Municipality], a municipal corporation, created under the laws of Illinois (“**Municipality**”). CRD and the Municipality are hereafter sometimes individually referred to as a **AParty@** and jointly as the **AParties.@**

## RECITALS

A. The Intergovernmental Cooperation Act, 5 ILCS 220/1, et seq., authorizes units of local government in Illinois to exercise jointly with any other unit of local government 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.

B. CRD has the authority to cooperate with other governmental agencies regarding the acquisition, construction, operation, maintenance and use of commuter rail stations and parking lots pursuant to 70 ILCS 3615/313.09 and the above-cited provision.

C. The Municipality is authorized to cooperate with CRD in the exercise of its powers and to sell, acquire or lease real property or otherwise grant easements and use and access rights to CRD pursuant to 65 ILCS 5/11-122.2-1 and, if applicable, the Municipality's home rule powers as provided by Article VII, Section 6 of the Illinois Constitution.

D. The Municipality desires to develop property located in the Municipality to provide better commuter transportation, housing and business opportunities to its community and residents.

E. The Municipality wishes to undertake a public transportation capital improvement project and has made a request to CRD for the provision of commuter rail service (“**CRS**”) to its community and other communities along the proposed [insert SES, STAR, UP Line] expansion corridor (“**Expansion Corridor**”). The Parties recognize that the provision of CRS is intended to offer significant benefit to the Municipality and represents a commitment to provide CRS to both residents and non-residents of the Municipality.

F. CRD has agreed, in furtherance of establishing CRS to the Municipality, to use its best efforts to obtain an operating agreement with the [insert Contract Railroad] (“**Railroad**”) for the provision of CRS along the



Expansion Corridor, upgrade track and signals and deploy and operate equipment as necessary and required to provide CRS to the Municipality.

G. The Municipality has agreed, in furtherance of establishing CRS to the Municipality, to provide the Premises, as hereafter defined, and construct the Project Facilities, as hereafter defined.

H. Municipality has agreed to construct, operate and maintain the Project Facilities in accordance with the terms and conditions of that certain Agreement for Maintenance and Operation of Commuter Facility attached to and made a part of this Agreement as **Exhibit A**.

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are by this reference hereby incorporated into this Agreement, the mutual terms, covenants, conditions and provisions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, CRD and Municipality agree as follows:

#### **ITEM 1. DEFINITIONS**

Except to the extent specifically provided or defined otherwise, as used in this Agreement, the following terms, when capitalized, shall have the following meanings:

**Act.** The Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., as amended from time-to-time.

**Agreement.** This Commuter Facility Development Agreement and all exhibits and appendices thereto as amended from time-to-time.

**Commuter Rail Service or CRS.** Public transportation services by rail within the Metropolitan Region as defined in the Act.

**Construction Schedule.** As defined in Part I, Item 2.

**CRD.** The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation established by the Act.

**Eligible Costs.** Expenditures made by Municipality in carrying out the Project which are reimbursable under the terms of Part II, Item 9 of the Agreement.

**Expansion Corridor.** As defined in Part I, Recital E.



**Funding Agency.** Any federal, state or local agency or entity providing funding to the Project.

**Funds.** The amount set forth in Part I, Item 4.

**Funds Administration.** As defined in Part I, Item 4.

**General Insurance Requirements.** As defined in Part II, Section 15.

**Indemnitees.** The CRD, RTA, NIRCRC, and any federal, state or local agency providing Funds to the Project, their respective directors, administrators, officers, employees, agents, commuters, permittees, successors, and assigns, and all those acting on their behalf or with their authority.

**Lease.** As defined in Part I, Item 2.

**Lease Term.** As defined in Part I, Item 2.

**Master Grant Agreement.** Funding agreement between the federal, state or local Funding Agency and CRD.

**Metropolitan Region.** The six county region included within the territory of the RTA and as otherwise defined in the Act.

**Municipality.** The Illinois municipal corporation named in the introductory paragraph of Part I of the Agreement.

**NIRCRC.** Northeast Illinois Regional Commuter Railroad Corporation, a public corporation (d/b/a “Metropolitan Rail/Metra”).

**Non-Conflicting Use.** Uses of the Project Facilities that do not conflict with the provision of CRS and are approved by the CRD.

**Parking Facilities.** Required spaces for daily parking to be constructed as part of the Project Facilities. Daily parking is defined as a daily fee, first come-first served parking operation that does not discriminate against non-residents of the Municipality. Daily fee rates must be approved by the CRD.

**Plans.** As defined in Part II, Section 2.

**Premises.** The property defined in Part I, Item 2 of this Agreement upon which all or a portion of the Project Facilities shall be constructed and maintained.





**Project.** As defined in Part I, Item 2 of the Agreement.

**Project Account.** As defined in Part II, Item 8(a) of the Agreement.

**Project Budget.** As defined in Part II, Section 7.

**Project Facilities.** Any facilities, equipment, or real property purchased, acquired, constructed, improved, renovated or refurbished as part of the development of the Municipality's public transportation capital improvement project and facilitation of CRS to the Municipality including, without limitation, the station facilities, not less than 1250 parking spaces, and all required utility, sewer, detention and environmental compliance facilities.

**Project Funds.** As defined in Part II, Item 8(b) of the Agreement.

**Property.** As defined in Part II, Section 16(a).

**Railroad.** As defined in Part I, Recital F.

**Railroad Right-of-Way.** The railroad right-of-way used by CRD for CRS.

**RTA.** The Regional Transportation Authority, an Illinois municipal corporation.

**Term.** The period beginning on the date that the Project Facilities are first used in the facilitation of CRS and extending until the termination of CRS to the Premises as set forth in Part II, Section 11(a).

**Total Project Cost.** The total of all line items shown in **Exhibit B** of this Agreement.

**Work.** The Project work, including without limitation, the acquisition of the Premises and the construction of the Project Facilities, to be performed by the Municipality under this Agreement.

The defined terms contained in agreements attached to and made a part of this Agreement or otherwise modifying or amending this Agreement, shall have the meanings set forth in such attached or amendatory agreements.

## **ITEM 2. THE PROJECT.**

The project ("**Project**"), which is to be more particularly described in the plans, specifications and schedules set forth herein is generally defined as:



(a) The acquisition of sufficient acreage to construct the Project Facilities, including, without limitation, the planned station facilities and not less than 1250 parking spaces together with the required number of ADA parking spaces, in a location acceptable to CRD for the provision of CRS to the Municipality (“**Premises**”) and the construction of the Project Facilities and related improvements in accordance with the Plans, so as to satisfy the initial and projected future ridership and parking demand estimates set forth in Exhibit C. The parties acknowledge that, generally, 12.5 to 15 acres is sufficient to construct the said Project Facilities, however, if requested by the Municipality, Metra will review the Municipality’s Plans to determine if the necessary Project Facilities can be accommodated on less acreage. With the consent of the CRD, in lieu of the acquisition of a fee simple title interest in the Premises, the Municipality may lease the Premises in accordance with the terms and provisions of this Agreement provided such lease term (“**Lease Term**”) is for a period of not less than the term of the Municipality’s Commuter Facility operation and maintenance commitment under the terms and provisions of this Agreement (“**Lease**”).

(b) Municipality shall obtain, on its own motion, all zoning approvals necessary for the construction and operation of the Project Facilities on the Premises and shall pay all building permit or other municipal or governmental fees related thereto.

(c) Municipality shall undertake and complete the Project in accordance with a construction schedule agreed to by the Parties and in accordance with Funding Agency requirements (“**Construction Schedule**”). CRD shall have the right, but not the obligation, to take over construction of the Project, or any portion thereof, if Municipality fails to perform the work in accordance with the Project Schedule and to provide for CRD’s use of the Project Facilities as described in this Agreement.

### ITEM 3. MUTUAL UNDERTAKINGS

(a) The CRD’s agreement to establish CRS for the Municipality shall be contingent upon the Municipality’s execution of this Agreement and completion of specific undertakings. These undertakings include without limitation obtaining, either by acquisition or, if approved by CRD, long-term lease, the Premises required for the Project Facilities, including, without limitation, the station facility, shelters and the initial and future daily parking facilities. Said property shall be provided by the Municipality for commuter and public use at no cost to the CRD.

(b) The CRD shall begin final engineering and design for the construction of the station platforms required to accommodate CRS after having received title evidence that the Municipality has acquired the Premises and the necessary



Funding Agency approvals to proceed. The CRD shall use its best efforts to enter into an operating agreement with the Railroad, upgrade track and signals, deploy and operate equipment as required and necessary to provide CRS to the Municipality. Notwithstanding anything to the contrary contained within this Agreement, CRD shall have no obligations to provide CRS unless and until CRD receives the Railroad operating rights and funding necessary to enable the completion of the Expansion Corridor.

(c) The Municipality agrees that it will pay, or cause to be paid, the cost of the Project Facilities.

#### **ITEM 4. CRD FUNDS ADMINISTRATION.**

In the event the CRD obtains funds from a Funding Agency for the Project (“**Funds**”), CRD shall administer such Funds to the Municipality subject to the terms and provisions of, (1) the Master Grant Agreement and (2) this Agreement (“**Funds Administration**”). In no event, however, shall the amount of the funds provided by the CRD under this Agreement exceed the actual Project Costs eligible for reimbursement as determined by the Funding Agency.

#### **ITEM 5. DOCUMENTS FORMING THIS AGREEMENT.**

The Parties agree that this Agreement constitutes the entire Agreement between the Parties hereto, that there are no agreements or understanding, implied or expressed, except as specifically set forth in the Agreement and that all prior arrangements and understanding in this connection are merged into and contained in this Agreement. The Parties hereto further agree that this Agreement consists of Part I, entitled *Commuter Facility Development Agreement*; Part II, entitled *Commuter Facility Development Agreement General Terms and Conditions*; *Certificate of Municipality’s Attorney*; Exhibit A, entitled *Agreement for the Construction, Operation and Maintenance of a Commuter Facility*; Exhibit B, entitled *Project Budget*; Exhibit C, entitled *Municipal Ridership and Parking Requirement Estimates*; Exhibit D, entitled *CRD Sign Specifications*; and Exhibit E, entitled *General Insurance Requirements*; all of which are by this reference specifically incorporated herein, together with any subsequent properly authorized amendments to the Agreement.

[Signature Page Follows]



**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be made effective and executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by their respective duly authorized officials.

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

**[INSERT MUNICIPALITY]:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**Certificate of Municipality's Attorney**

I, \_\_\_\_\_, acting as attorney for the Municipality, do hereby certify that I have examined this Agreement and the proceedings taken by the Municipality relating thereto, and that the execution of the Agreement by the Municipality has been duly authorized by the Municipality's action dated \_\_\_\_\_ (certified copy of which is attached), and that the execution of this Agreement is in all respects proper and in accordance with applicable state and local law and further that, in my opinion, said Agreement constitutes a legal and binding obligation of the Municipality in accordance with the terms thereof. I further certify that to the best of my knowledge there is no legislation or litigation pending or threatened which might affect the performance of the Project in accordance with the terms of this Agreement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Municipality



**COMMUTER FACILITY DEVELOPMENT AGREEMENT**

**PART II**

**GENERAL TERMS AND CONDITIONS**

**Between**

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

**and**

**[INSERT MUNICIPALITY]**



1. **GENERAL REQUIREMENTS.** Municipality shall commence, carry on, and complete the Project with all practicable dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions of this Agreement.

2. **SUBMISSION OF PROCEEDINGS, CONTRACTS AND OTHER DOCUMENTS.** Municipality and CRD hereby agree that the documents governing the Work shall be the environmental assessments, impact studies, designs, surveys, plans, estimates, working drawings and specifications for the Project, approved in advance by CRD (collectively the “Plans”). Municipality shall submit bid documents, contracts and Plans, necessary for the completion of the Work, to CRD for review and approval prior to commencement of the Work. After CRD approval is received, no change shall be made in such documents without the prior written consent of CRD.

3. **CHANGED CONDITIONS AFFECTING PERFORMANCE.** Municipality shall immediately notify CRD of any change in conditions or local law, or of any other event that may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement.

4. **NO OBLIGATIONS TO THIRD PARTIES.** Neither CRD nor any state or federal Funding Agency shall be subject to any obligations or liabilities of contractors of the Municipality or their subcontractors or any other person not a party to this Agreement without CRD's specific consent. This limitation shall apply despite the fact that CRD concurred in or approved of the award of any contract, subcontract or the solicitation thereof. Unless expressly authorized in writing by CRD, the Municipality agrees to refrain from, (i) executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation, or (ii) obligating itself in any manner to any third party, that in any way would affect CRD's interest in the Premises or any Project Facilities.

5. **PURSUANT TO FEDERAL, STATE, AND LOCAL LAW.**

(a) In the performance of its obligations pursuant to this Agreement, the Municipality and its contractors shall comply with all applicable provisions of federal, state and local law, rules and regulations including, without limitation, provisions of any Master Grant Agreement signed between CRD and a Funding Agency. All limits and standards set forth in this Agreement that are to be observed in the performance of the Project are minimum requirements and shall not affect the application of more restrictive standards.

6. **PERMITS AND APPROVALS.** Municipality shall obtain all necessary permits, licenses, consents and other approvals for the Project including, without





limitation, all governmental zoning, sewer, drainage, detention, wetland, environmental and impact approvals or permits.

7. **PROJECT BUDGET.** The Municipality shall prepare the Municipality's budget for the project and forward said budget to CRD prior to commencement of the Project. CRD shall prepare an Exhibit B to this Agreement setting forth the Municipality's budget for the Project and any Funds for the Project and Exhibit B shall be attached to and made a part of this Agreement ("**Project Budget**"). The Project Budget may be amended by the Municipality or CRD from time-to-time; provided, however, that such amended Project Budget must be memorialized on an amended Exhibit B, prepared by CRD, and the Agreement amended to attach the revised Exhibit B.

#### 8. **PROJECT ACCOUNTS.**

(a) Municipality shall establish and maintain as a separate set of accounts, or as an integral part of its current accounting scheme, accounts for the Project ("**Project Account**").

(b) Municipality shall appropriately record in the Project Account and deposit in a bank or trust company, which is a member of the Federal Deposit Insurance Corporation, all Funds payments received by it from CRD pursuant to this Agreement and all other funds provided for, accruing to, or otherwise received on account of the Project. CRD payments and other funds are herein collectively referred to as "Project Funds".

#### 9. **ELIGIBLE COSTS.**

(a) Expenditures incurred by Municipality shall be reimbursable under the Project as Eligible Costs to the extent they meet all of the requirements set forth below. They must:

1. Be made in conformance with the final Project Budget and all other provisions of this Agreement;
2. Be necessary in order to accomplish the Project;
3. Be reasonable in amount for the goods or services purchased;
4. Be actual net costs to Municipality (i.e., the price paid minus any refunds, rebates, proceeds from the sale of scrap and replaced facilities, or other items of value received by Municipality which have the effect of reducing the cost actually incurred). Local fees which would normally be applicable to the Work shall be waived by Municipality and shall not be considered Eligible Costs hereunder.



5. Be incurred (and be for work performed) after the date of this Agreement, unless specific written authorization from the CRD to the contrary is received;
6. Be satisfactorily documented; and
7. Be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the CRD for Municipality and those approved or prescribed by Municipality for its contractors.

(b) In the event that it may be impractical to determine exact costs of indirect or service functions, Eligible Costs will include such allowances for these costs as may be approved in writing by the CRD.

10. **REQUESTS FOR PAYMENT BY MUNICIPALITY.** In order to receive CRD Funds payments of Eligible Costs, Municipality must:

- (a) Completely execute and submit to CRD a requisition approved by CRD;
- (b) Submit to CRD an explanation of the purposes and copies of invoices for which costs have been incurred to date;
- (c) Have submitted all financial and progress reports currently required by CRD; and
- (d) Have received approval by CRD for all budget revisions required to cover all costs to be incurred by the end of the requisition period.

11. **PAYMENT BY THE CRD.** Upon receipt of the completed requisition form and the accompanying information in satisfactory form, the CRD shall process the requisition and the CRD shall then reimburse Eligible Costs incurred by Municipality within 60 days of the date upon which such payment requisition form was timely received by it, if Municipality is in compliance with its obligations pursuant to the Agreement. If all obligations have been met, CRD shall reimburse apparent allowable costs incurred by Municipality up to the maximum amount of the CRD Grant payable. Municipality shall submit invoices for actual costs incurred within 45 days after completion of the Project. Reimbursement of any cost pursuant to this Section shall not constitute a final determination by the CRD of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by Municipality. The CRD will make a final determination as to the allowability only after a final audit of the Project has been conducted.



12. **DOCUMENTATION OF PROJECT COSTS.** All costs charged to the Project, including any approved services contributed by Municipality or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and property of the charges.

13. **DISALLOWED COSTS.** In determining the amount of the CRD Grant, CRD will exclude all Project costs incurred by Municipality prior to the date of this Agreement, or another date specifically authorized by CRD; costs incurred by Municipality which are not provided for in the Project Budget except as otherwise provided under Section 10(b); and costs attributable to goods or services received under a contract or other arrangement which has not been concurred in or approved in writing by the CRD.

14. **SIGNS.**

(a) When a Project involves construction work, the Municipality shall cause to be erected and maintained at the construction site, signs satisfactory to CRD during construction and in accordance with the specifications set forth on **Exhibit D** attached to and made a part of this Agreement identifying the Project and indicating that CRD is participating in the development of the Project.

(b) CRD shall have the right to require as part of the Project directional signage at off-site locations acceptable to the Municipality as necessary to guide commuters to the Project Facilities.

(c) Metra, by or through its advertising agent, shall be entitled to place the following number of advertising sign structures (currently 4 feet high by 15 feet wide, excluding the frame support) along each of the Railroad Right-of-Way platforms, provided that such sign structures do not create a safety hazard, comply with applicable State and federal railroad regulations and are not placed directly adjacent to or on the front side of the station depot or shelters so as to impede pedestrian traffic: (1) 4 sign structures along each platform more than 8 rail cars in length; (2) 3 sign structures along each platform more than 6 rail cars in length; and 2 sign structures along each platform less than 6 rail cars in length. To the extent consistent with the above criteria, back-to-back sign structures shall count as one structure and a platform shelter with similar Metra advertising thereon shall be counted as a sign structure for purposes of determining the number of structures permitted. Each municipality shall have the opportunity to participate in a program for the advertising of local municipal events, such as farmer markets and concerts. Generally, a portion of a sign structure will be made available for community events on a quarterly basis.

(d) Each municipality shall permit Metra, by or through its advertising agent, to place banners from light poles located on Metra's commuter parking lots for the advertising of local and regional businesses.



(e) The Municipality shall not cause any tax or fee to be assessed against the signs or required of Metra or Metra’s contractor(s) for the installation and maintenance of the sign structures described in this Section.

15. **ACCEPTANCE OF PROJECT FACILITIES.** Upon completion of the Work, Municipality and CRD shall conduct a joint inspection of the Project Facilities. Municipality shall not allow the Project Facilities to be opened for use unless said inspection reveals there has been substantial conformance with the Plans and the Project Facilities are otherwise safe for commuter use as reasonably determined by CRD in its sole discretion.

16. **UTILITIES.**

(a) Municipality agrees to pay for electricity used in lighting the station, platforms and parking lot areas. Municipality shall also be responsible for all utility expenses used for the Project Facilities, unless otherwise agreed to by CRD.

(b) CRD shall be permitted to install on or about the platforms, Premises, or Project Facilities, such communication, security and other facilities, including without limitation, “Voice of Metra” speakers and LED signage, typically utilized by CRD in the provision of CRS.

17. **TERM.**

(a) Municipality agrees that the Project Facilities will be used for the facilitation of CRS. The Project Facilities use term (“**Term**”) shall commence on the date of this Agreement and shall extend for an initial period of forty (40) years, unless sooner terminated by either Party pursuant to the terms of this Agreement. The Municipality further agrees that the CRD shall be relieved of the responsibility to provide CRS should the Municipality terminate this Agreement. CRD agrees that the Municipality shall be permitted to utilize the Project Facilities for Non-Conflicting Uses, as defined in the Part 1, Definitions.

(b) In the event this Agreement is terminated for any reason whatsoever, CRD shall have the right and option, but not the obligation, to operate the Project Facilities, in lieu of the Municipality, for the remainder of the Term, upon notice to the Municipality within ninety (90) days of termination or receipt of Municipality’s notice of termination. CRD shall operate the Project Facilities in the same or a similar manner as CRD operates other station and parking facilities in its system.

18. **RIGHT TO TERMINATE.**

(a) Upon written notice to Municipality, CRD reserves the right to suspend or terminate all or part of the CRS herein provided, if Municipality is, or has been, in



violation of the terms of this Agreement. Municipality shall have sixty (60) days from receipt of written notice to remedy any deficiency. Any failure to make progress that significantly endangers substantial performance of completion of the Project as determined by CRD, in its sole discretion, shall be deemed to be a violation of the terms of this Agreement.

(b) Upon written notice to Municipality, CRD reserves the right to suspend or terminate all or part of the financial assistance herein provided if either (i) Municipality is, or has been, in violation of the terms of this Agreement, or (ii) the Funds become unavailable to, or for use by, CRD or the Municipality. Termination of any part of the Project will not invalidate obligations properly incurred by Municipality and concurred in by CRD prior to the date of termination, to the extent they are non-cancelable. The acceptance of a remittance by CRD of any or all Project Funds previously received by Municipality or the closing out of CRD financial participation in the Project shall not constitute a waiver of any claim which CRD may otherwise have arising out of this Agreement. In the event of termination of this Agreement during the construction phase for reasons other than violation of the terms hereof by Municipality, CRD shall determine the most appropriate course of action to be taken with respect to the Project. Anything set forth in this Agreement to the contrary notwithstanding, CRD reserves the right but not the obligation to complete the Project if the Agreement is terminated as a result of a violation by the Municipality, and, in such event, the expenses incurred by CRD in excess of the amount of the Funds plus interest thereon at the per annum rate of twelve percent (12%) from the date of such expenditures until the date of reimbursement of CRD by the Municipality, shall be reimbursed by the Municipality promptly after a written request from CRD.

19. **OPERATION OF PARKING FACILITIES.** Municipality shall set fees for the use of the Parking Facilities on a first come, first served basis in an amount adequate to defray the Municipality's operation, maintenance, debt service, lease fees, capital cost recovery, capital reserves and administrative expenses for the operation of the Parking Facilities. CRD reserves the right to review and approve these parking fees which shall be set in a manner consistent with the fees of other municipalities along the Expansion Corridor. Fees set by Municipalities shall be standardized for all patrons of the Parking Facilities, and shall in no circumstance discriminate against non-residents of Municipality. Subsequent expansions of the Parking Facilities will be triggered by utilization demand. When a Parking Facility reaches 90 percent capacity, the Municipality shall begin engineering of additional parking spaces. When the facility reaches 95 percent of capacity, the Municipality will use its best efforts to construct the engineered addition.

20. **CONTINUANCE OF SERVICES.** Municipality agrees to continue to provide, either directly or by contract, as the case may be, the administrative and maintenance services described in this Agreement for the Term, unless





maintenance of the Project Facilities is taken over by CRD under the terms and provisions of this Agreement.

21. **INSURANCE.** Municipality and its contractors shall maintain, in amounts and forms satisfactory to CRD, such insurance or risk pool as will be adequate to protect the Project Facilities throughout the Term, including without limitation, periods of engineering and construction. Said insurance shall include, but not be limited to, commercial general liability, railroad protective liability (if construction is within 50 feet of the Railroad Right-of-Way), property damage, statutory workmen's compensation, automobile, and employer's liability coverages not less than the amounts set forth on **Exhibit E** ("**General Insurance Requirements**").

22. **WAIVER AND INDEMNIFICATION.**

(a) To the fullest extent permitted by law, the Municipality hereby assumes and agrees to release, acquit and waive any rights which Municipality may have against and forever discharges Indemnitees 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 use of the Premises, or any other CRD property ("**Property**"), for the purposes set forth in this Agreement, the failure to investigate claims, or which may occur to or be incurred by the Municipality, its directors, officers, employees, agents and all other persons acting on behalf of or with the authority of the Municipality while on the Premises or the Property, or arising from the condition of the Premises or the Property during the Term, except to the extent such injuries or damages are caused by the negligence or willful misconduct of CRD, 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.

(b) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless the Indemnitees, 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 arising out of or in any way relating to or occurring in connection with the use of the Premises or the Property for the purposes set forth in this Agreement, the failure to investigate claims, or which may occur to or be incurred, by the Municipality, its employees, officers, agents, and all other persons acting on its behalf or with its authority while on the Premises or the Property, or the condition of the Premises or the Property, except to the extent such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence or willful misconduct of CRD, the RTA or the NIRCRC. The Municipality further agrees to defend the Indemnitees 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 CRD, 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 CRD, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents or employees. The Municipality shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of CRD, 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.

23. **NON-COLLUSION.** Municipality warrants that it has not paid and agrees not to pay any bonus, commission, fee, or gratuity for the purpose of obtaining any approval of its request for CRS pursuant to this Agreement. No CRD officer or employee, or member of any unit of local government which contributes to the Project Funds shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

24. **PROJECT SETTLEMENT; CLOSE-OUT AND AUDIT.**

(a) Upon receipt of notice of successful completion of the Project or upon termination by CRD, Municipality shall cause a final audit to be performed on the Project to determine the allowability of costs incurred and make settlement of the Funds Administration. If CRD has made payments to Municipality in excess of the Total Project Cost or if CRD has advanced Funds that exceed the eligible Project costs under the terms and provisions of this Agreement or the Master Grant Agreement, Municipality shall promptly remit such excess funds to CRD. Project close-out occurs when CRD notifies Municipality and forwards the final payment or when an appropriate refund of CRD Funds has been received from Municipality and acknowledged by CRD. Funds that have not been dispersed to the Municipality will automatically revert to CRD upon completion of the Project.

(b) Municipality shall permit, and shall require its contractors to permit, CRD, RTA, or any other state or federal agency providing Funds, or their designated agents, authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project. CRD also may require the Municipality to furnish audit reports for the Project, prepared according to Funding Agency requirements and generally accepted accounting principles, at Municipality's expense. Municipality agrees to promptly comply with recommendations contained in CRD's final audit report. Close-out shall be subject to any continuing obligations imposed on Municipality by this Agreement or contained in the final notification or acknowledgment from CRD.





25. **CONTRACTS & PROJECT MANAGEMENT.** Municipality shall execute all contracts and perform all project management activities in accordance with the terms of this Agreement.

26. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with federal and state statutes, laws, rules and regulations, as applicable, and the Municipality's established rules, regulations and ordinances for each contract to be let by Municipality that requires constructing or furnishing of any materials, supplies, or equipment to be paid for with Project Funds and Municipality shall give such publicity in its advertisements or calls for bids for each contract as will provide adequate competition. The award for each such contract shall be made by Municipality as soon as practicable to the lowest responsive and qualified bidder or as otherwise specifically approved by CRD. Contracts for the purchase of land, real estate, transit property, or other real or personal property not normally acquired through competitive bidding are specifically excluded from the requirements of this Section, except that contracts for professional and consulting services shall be awarded only after competitive solicitation of proposals consistent with applicable federal and state statutes, laws, rules and regulations.

27. **SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES.** CRD has a vested interest in the settlement of disputes, defaults, or breaches involving any CRD assisted third party contracts. CRD retains a right to a proportionate share, based on the percentage of the CRD share committed to the Project, of any proceeds derived from any third party recovery. Therefore, Municipality shall avail itself of all legal rights available under any third party contract. Municipality shall notify CRD of any current or prospective litigation pertaining to any compromise or settlement of the Municipality's claim(s) involving any third party contract, before making CRD assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the Project account involved unless CRD permits otherwise.

28. **ASSIGNMENT OF CONTRACT.** The Municipality agrees that no contract for construction work or professional or consulting services of any kind in connection with the Project shall be assigned, transferred, conveyed, sublet, or otherwise disposed of without the prior written consent of CRD.

29. **LABOR LAW COMPLIANCE.** Municipality agrees to comply with all applicable federal laws, state laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Municipality also agrees to require any contractor doing construction work or



performing professional or consulting service in connection with the Project to agree to adhere to the requirements of this Section. Municipality agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and Municipality further agrees to make all required withholdings and deposits therefore. In addition, Municipality agrees to require all contractors and subcontractors for this Project to pay their employees all their rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes and to further require withholdings and deposits therefore. Such requirements shall be included by the Municipality in all its contracts and agreements with contractors and subcontractors for this Project. CRD reserves the right to withhold any payments for this Project in the event that it is notified that the Municipality or any contractor and subcontractor has refused to pay any employee his/her salary, medical benefits, pension or social security benefits or to make the required withholdings and deposits therefore, until such time as the CRD is satisfied that the Municipality, its contractors and subcontractors have made all such payments, withholdings, or deposits. Upon request, Municipality shall provide CRD, and cause any or all of its contractors and subcontractors to provide CRD, access to all books and records pertaining to payments, withholdings, or deposits of the Municipality or the Municipality's contractors or subcontractors relating to employees' salaries, medical benefits, and pension or social security benefits. Any such inspection by the CRD shall occur on regular business days and during normal working hours.

30. **EQUAL EMPLOYMENT OPPORTUNITY.** Municipality shall comply with 775 ILCS 5/2-101 et seq.

31. **MAINTENANCE, USE AND OPERATION OF PREMISES AND PROJECT FACILITIES.**

(a) The Municipality agrees that the Premises is provided for commuter and public use. Except as otherwise specifically set forth in this Agreement, Municipality shall maintain the Project Facilities, or cause them to be maintained, in a safe and operable condition throughout the Term. The specific maintenance, use and operation requirements for the Project Facilities shall be in accordance with the applicable provisions of the Exhibit "A" Agreement for the Construction, Operation and Maintenance of a Commuter Facility.

(b) CRD shall maintain the platforms and pedestrian crosswalks between the platforms and, upon prior written notice to the Municipality, such other Project Facilities or operational facilities as CRD may elect to maintain from time-to-time.

32. **RETENTION OF RECORDS AND INSPECTION.** Municipality shall keep satisfactory records with regard to the use of the Project Facilities for five (5) years after Project close-out, or longer if required by state or federal



agencies providing Funds. Specifically, if state funds are used, Municipality shall fully comply with the five (5) year record retention requirements and the burdens of proof specified in the Funding agreement executed between CRD and the Illinois Department of Transportation. Such requirements are specifically incorporated herein by reference if required. Municipality shall submit to CRD upon request such information as is required in order to assure compliance with the terms of this Agreement and shall immediately notify CRD in all cases where Project Facilities are used in a manner substantially different from that intended by this Agreement. CRD and Municipality shall conduct a yearly joint inspection of the Project Facilities to assure compliance with the terms of this Agreement.

33. **OWNERSHIP.** CRD shall be and remain the owner of, (i) the platforms and pedestrian crosswalks between the platforms, and (ii) any portion of the Premises or the Project Facilities paid for with the Funds. The Premises and Project Facilities paid for by the Municipality shall be owned by the Municipality subject to, (i) the terms and conditions of the Agreement for the Construction, Operation and Maintenance of a Commuter Facility between Municipality and CRD, attached hereto as Exhibit A and (ii) all other agreements entered into by Municipality and CRD pursuant thereto. Municipality shall not cause or permit any of the Project Facilities to become subject to liens or encumbrances of any kind. If any such lien shall be filed on property of CRD by Municipality or any contractor, subcontractor or supplier of Municipality, the Municipality shall promptly take such steps as may be required to have the lien released and shall provide evidence thereof to CRD. CRD agrees to notify the Municipality of any lien of which CRD may become aware.

33. **ASSIGNMENT OF AGREEMENT.** The Parties agree that this Agreement shall not be assigned without the prior written consent of the other Party.

34. **AMENDMENT.** CRD and Municipality agree that no change or modification to this Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated commensurate with or after the date of this Agreement, reduced to writing, executed by both Parties, and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred in consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement and the Project Budget has been amended to conform thereto.

35. **CONTROLLING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without regard to the conflicts of laws principles thereof. 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 that the Premises is located. Municipality hereby consents and submits to the jurisdiction of any local, state or federal court or administrative body located within said County or Counties and hereby waives any right it may have to transfer or change the venue of any litigation arising directly or indirectly or otherwise in connection with, out of, or from this Agreement.

36. **NOTICES.** 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 certified or registered mail with proper postage prepaid, hand delivered, or sent by successful facsimile transmission to CRD or Municipality 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.

(a) Notices to CRD shall be sent to:

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

(b) Notices to Municipality shall be sent to:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered or on the first business day after successful transmission if sent by facsimile transmission.

37. **BINDING ON PARTIES.** This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective heirs, legal representatives, successors and assigns.



38. **WAIVER.** No waiver of any obligation or default of Municipality shall be implied from omission by CRD 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.

39. **CAPTIONS FOR CONVENIENCE.** Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement.

40. **CONTEXT.** 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.

41. **TIME FOR PERFORMANCE.** 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.

42. **ENTIRE AGREEMENT.** This Agreement, together with the Exhibits attached hereto (all of which are incorporated herein by this reference), constitutes the entire Agreement between the Parties with respect to the subject matter hereof.

43. **INVALID PROVISION.** 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, however, that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

44. **COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

45. **IMPLEMENTATION.** Municipality agrees that the Project Facility construction shall be substantially completed by [insert date] or ninety (90) days prior to the implementation of CRS, whichever is later.

46. **FUTURE STATION/PARKING EXPANSION.** CRD and the Municipality agree that the Project Facilities shall be designed to accommodate “present-demand” projections. The Municipality agrees to acquire sufficient station and parking property, to accommodate projected daily passenger boarding



and parking demand projection. This may be accomplished by reserving additional property for increased surface parking or by zoning acquired property to accommodate a parking structure.





**EXHIBIT A**

This construction, operation and maintenance agreement (“OMA”) is made pursuant to the Commuter \_\_\_\_\_ Improvement Grant Agreement between the Municipality and CRD. In accordance therewith, Municipality and CRD hereby agree as follows:

**RECITALS**

A. Municipality desires to construct a commuter station and/or shelters (collectively referred to as the “**Station Facility**”) and parking facility (“**Parking Facility**”), on the premises delineated and described on **Exhibit A-1** attached to and made a part of this **OMA** (“**Premises**”). The Station Facility and Parking Facility are hereafter sometimes jointly referred to as the “**Commuter Facility**.”

B. CRD desires to grant to Municipality the right to manage, operate and maintain the Commuter Facility.

C. Municipality has agreed to construct, operate and maintain the Commuter Facility as set forth in this OMA. Municipality has determined that the operation and maintenance of the Commuter Facility on the Premises is in the best interests of the public and serves a valid public purpose.

D. Municipality owns the land comprising the Premises, subject to the right of CRD to use the Premises and the improvements thereon for railroad purposes in accordance with the provisions of the Commuter Facility Development Agreement for the development of the Commuter Facility between the Parties dated commensurate with or prior to the date of this OMA (“**Development Agreement**”).

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this OMA, and the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted by the Parties, CRD does hereby grant to Municipality the right to manage, operate, and maintain the Commuter Facility subject to and in accordance with the following terms covenants and conditions:

1. **TERM.** Municipality's obligations and right to use the Premises under the terms and provisions of this OMA shall commence on the date of the Development Agreement and shall continue in force and effect for a period of forty (40) years from said execution date (“**Term**”) unless otherwise terminated as





provided under the terms and conditions of this OMA or the Development Agreement. CRD shall, solely at its option, be able to extend the Term for an additional twenty (20) years at the end of the initial Term and such extended term shall then be considered the “Term” for purposes of this Agreement. To the extent applicable, this Agreement is subject to the terms, provisions, conditions and limitations of any lease or operating agreement entered into between CRD and another Railroad (“**Railroad**”) for the provision of CRS to the Premises.

## 2. CONSTRUCTION.

(a) In addition to the specifications set forth in this OMA, Municipality will construct, or cause to be constructed, the Commuter Facility in accordance with all established local state and federal guidelines for construction projects, if applicable, and Parts I and II of the Development Agreement and plans and specifications delivered to CRD for approval prior to the commencement of construction of the Commuter Facility.

(b) CRD, its contractors, subcontractors, architects, engineers, employees and agents are hereby granted an irrevocable right-of-entry on the Premises to oversee and inspect the Commuter Facility during the Term.

(c) Municipality and its contractors, subcontractors and agents shall not use nor occupy said Premises for any purpose other than to erect, locate, construct and inspect the Commuter Facility and to use and maintain the Premises and Commuter Facility for commuter railroad purposes. No other buildings, structures, additions, alterations or improvements shall be erected on or made to the Commuter Facility by Municipality or CRD without the prior express permission in writing by the other Party.

## 3. PURPOSE OF USE.

(a) The Parties agree that the purpose of this OMA is to insure that the Premises is protected, maintained and operated as a Commuter Facility with daily rates for public parking. Municipality desires to control access to said Premises and operate and maintain the Commuter Facility pursuant to the terms and conditions of this OMA.

(b) Parking Facility fees set and collected by Municipality shall be standardized for all patrons of the Commuter Facility and Municipality shall under no circumstances discriminate against non-residents of the Municipality in setting parking fees. The Parking Facility shall be operated as a daily fee parking lot with spaces available on a first come-first served basis. CRD reserves the right, at any time, to review and approve the amount of the Parking Facility fees charged by Municipality, which approval shall not be unreasonably withheld provided, however, that the proposed increase is consistent with regional standards for CRD



parking lots. The Municipality may also issue monthly or quarterly permits for convenience to residents and non-residents provided such permits are issued, (i) on a non-discriminatory basis, (ii) provide for parking on a first come-first served basis, and (iii) do not involve the reservation of a parking space in favor of the permit holder.

(c) Municipality may, upon the prior written consent of CRD, sublicense space for Non-Conflicting Uses and commuter related services, such as vending and concession operations, provided that such terms are acceptable to CRD.

(d) As long as adequate indemnification and insurance are provided to CRD and CRD has given Municipality prior written approval, the Municipality shall be permitted to use or allow others to use, the Parking Facility, or any lesser portion thereof, on Saturdays and Sundays for municipal or civic events sponsored by or approved by the Municipality. Prior written approval from CRD shall not be unreasonably withheld.

4. **USE BY CRD AND PUBLIC.** CRD further reserves unto itself, its successors and assigns, permittees and licensees the right to use the Commuter Facility in the general conduct of its railroad business including, without limitation endeavors for the convenience of its commuters and the public. Municipality shall not interfere with or infringe upon CRD's or the public's lawful use of the Commuter Facility so reserved. Municipality further agrees that Municipality and Municipality's employees and invitees in and about said Premises shall be subject to the general rules and regulations of CRD relating to the operation of CRD commuter facilities and to CRD's railroad operations. CRD reserves the nonexclusive right to regulate and control the people who enter said Premises and their conduct including, without limitation, the installation of Communication facilities and other operational facilities on the Premises, and reserves the right to enter upon said Premises at any time and to eject therefrom any disorderly person or persons.

5. **MAINTENANCE, ACCESS, AND RELOCATION.**

(a) Commuter Facility Maintenance. Municipality, at its own cost and expense, shall manage and maintain the Commuter Facility throughout the Term (“**Parking Facility Maintenance**”) in accordance with CRD’s maintenance standards. In the event Municipality fails to manage, operate or maintain the Commuter Facility, or any portion thereof. in accordance with the terms and provisions of this OMA, CRD 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 CRD for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written



demand or demands for payment from CRD; provided, however, that CRD shall first utilize Parking Facility Revenues to maintain the Parking Facility and shall not charge the Municipality for CRD Repair capital improvements set forth in subsection (c) below.

(b) **Parking Facility Maintenance.** Municipality, at its own cost and expense, shall manage and maintain the Parking Facility throughout the Term (“**Parking Facility Maintenance**”). Maintenance shall include, but shall not be limited to, snow removal, insurance, lighting upkeep, sealing and patching pavement, patrolling the Parking Facility and payment of utility expenses associated with the operation of the Parking Facility. Municipality shall also be responsible for capital improvements to the Parking Facility, including but not limited to, major rehabilitation, excavation, demolition of structures, new construction, light standard placement or replacement necessitated by damage to a structure.

(c) **Station Facility Maintenance.** Except as otherwise provided herein, Municipality shall manage the Station Facility and shall be responsible throughout the Term to maintain and repair the Station Facility 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 Facility, and snow removal from sidewalks, ramps, and stairwells and the provision of scavenger service) corresponding to standards that apply to CRD’s and Municipality’s other buildings and facilities (“**Station Facility Maintenance**”). CRD shall repair and/or replace those structural portions of the Station Facility which have come into such a state of disrepair as to require repair or replacement; provided, however, that such structural portions are a component of CRD’s basic station facility design plan in use at the time the Station Facility is designed and set forth on the list of basic station components attached to and made a part of this OMA as **Exhibit B-1**. Municipality shall be responsible for notifying CRD, in writing, within 30 days of the need for replacements or repairs which are to be the responsibility of CRD. For the purpose of determining what items shall be the responsibility of Municipality or CRD hereunder, it is hereby agreed that any single structural component costing Three Thousand Five Hundred and no/100 dollars (\$3,500) or more, to repair or replace shall be the responsibility of CRD (“**CRD Repair**”), and all other maintenance and repair expenses shall be the responsibility of Municipality, unless said item to be replaced or repaired is part of the structural portion of the Station Facility, in which case CRD shall be solely responsible for its replacement or repair regardless of the cost of said replacement or repair. The threshold amount to qualify as a CRD Repair shall increase annually at a rate of five percent (5%) every three years commencing on the third anniversary date of this Agreement. Municipality shall inspect the Station Facility at least once each year and notify CRD if a CRD Repair will be necessary.



(d) **Landscaping Maintenance.** Municipality shall be responsible for the maintenance of all landscaping on and along the Premises and the railroad right-of-way adjacent to the Premises (“**Landscaping Maintenance**”). For purposes of this OMA, Landscaping Maintenance shall include without limitation watering, weeding, mowing, trimming, and mulching as dictated by the specific plantings on the Premises.

(e) **Platform Maintenance.** CRD shall maintain the platforms and such other Project Facilities as CRD may elect from time-to-time to maintain upon prior written notice to Municipality. Municipality shall provide CRD with access to the platforms and the Premises for such maintenance purposes.

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

(f) **Relocation.** CRD reserves the right to relocate the Commuter Facility or any portion thereof onto other CRD property, at its own cost and expense, in the vicinity of the Premises with no liability for damages to Municipality's interest in the Commuter Facility resulting from such relocation; provided, however, that CRD shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Commuter Facility or any portion thereof and 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, the Municipality may terminate this Agreement. In the event of relocation, Exhibit A-1 of this OMA shall be amended to reflect the Premises as relocated.

6. **SIGNS.** Municipality shall not post or place any signs on the Premises without having first received CRD's approval of the content, design and location of the sign, which approval shall not be unreasonably withheld, provided, however, that no signs shall be permitted on or about the exterior facade of the Station Facility. CRD reserves the right to post or place or to have posted or placed on the Premises, directional signs, advertising signs and informational signs relative to the operations of CRD, in accordance with the provisions of the Development Agreement.

## 7. **COMPLIANCE (LEGAL AND INSURANCE).**

(a) Municipality shall not use or permit upon the Premises anything that will invalidate any policies of insurance held by CRD or Municipality now or hereinafter carried on or covering the Premises or any improvements thereon.



Municipality shall manage, operate, maintain and use the Commuter Facility in compliance with the requirements of all local, state and federal ordinances, laws, rules and regulations in effect during the Term.

(b) Prior to entering upon the Premises, Municipality agrees to furnish and deliver to CRD's Risk Management Department certificates of insurance or such other documentation acceptable to CRD's Risk Management Department evidencing the acquisition of the insurance required under the terms and provisions of this OMA. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and when required, railroad's protective liability insurance coverage, as set forth on **Exhibit C-1** attached to and made a part of this OMA, or such other commercially reasonable coverage as required by CRD ("**OMA Insurance Requirements**"). To the extent permitted by law, said insurance shall show CRD, the Regional Transportation Authority ("**RTA**"), the Northeast Illinois Regional Commuter Railroad Corporation ("**NIRCRC**"), and the [add contract railroads], as additional insureds and shall be endorsed to assume the contractual obligations of Municipality as set forth in this OMA. A duplicate copy of such insurance policy or a certificate of insurance and signed copy of a report showing established insurable value shall be furnished to CRD and must show on the insurance policy or the certificate of insurance that CRD will be properly notified in writing at least thirty (30) days prior to any modification or cancellation of such policy.

(c) Municipality and its agents shall not permit the existence of any nuisance on the Premises; shall not create dangerous or hazardous conditions on the Premises, nor allow dangerous, explosive, flammable, or combustible materials on the Premises which would increase or tend to increase the risk of fire; and further, the Municipality, or its agent, shall keep, observe and comply with all federal, state and local rules, regulations, ordinances, and laws having jurisdiction over the Premises. If, as a result of the Municipality's occupancy of the Premises hereunder, any such rule, regulation, ordinance or law is violated, the Municipality shall protect, hold harmless, defend and indemnify the CRD, RTA, NIRCRC, Railroad, and any federal, state or local agency providing funding for the construction of the Commuter Facility, their respective directors, administrators, officers, employees, agents, commuters, permittees, successors, and assigns, and all those acting on their behalf or with their authority (collectively, "**Indemnitees**") from and against any and all loss, penalties, fines, costs, damages or expenses, including court costs and attorneys' fees, caused by, resulting from, or connected with such violation or violations.

(d) Municipality and its agents agree to use their reasonable best efforts to prevent the occurrence of contamination, hazardous materials or any related environmental damage or condition on the Premises during the Term. Should any contamination or other environmental condition occur or result from Municipality's use or occupancy of the Premises, Municipality will be responsible





for all costs associated with its mitigation, cleanup and any related liability. Municipality specifically agrees to indemnify, defend and hold harmless the Indemnitees, RTA and NIRCRC from all such loss, damages, costs or liabilities, including court costs and attorneys' fees, arising from Municipality's use or occupancy of the Premises.

(e) Municipality's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure CRD, the RTA or the NIRCRC as additional insureds shall not, at any time, operate as a waiver to CRD's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this OMA.

8. **LOCATION OF UTILITIES.** Municipality accepts the Premises subject to rights of any party, including CRD, in and to any existing utility or other wires, cables, poles, pipes or facilities of any kind whatsoever, whether or not of record. CRD reserves the right to grant future utility easements over, under or through the Premises, provided such easements do not unreasonably interfere with Municipality's management, operation, or maintenance of the Commuter Facility.

9. **LICENSE TO OPERATE.** Municipality shall pay for the cost of any licenses, permits or fees required by federal, state or local rule, regulation, ordinance or law necessary to manage, operate and maintain the Commuter Facility.

10. **INDEMNIFICATION AND WAIVER.**

(a) To the fullest extent permitted by law, the Municipality hereby assumes and agrees to release, acquit, waive any rights against and forever discharge the Indemnitees, 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 from the failure to investigate claims or any accident or incident which may occur to or be incurred by the Municipality, its employees, officers, agents and all other persons acting on its behalf while on the Premises, except to the extent caused by the negligence of the Indemnitees. Notwithstanding anything in this OMA to the contrary, the waivers contained in this paragraph shall survive termination of this OMA.

(b) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless the Indemnities, from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys' fees) claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with Municipality's use of or the condition of the Premises or failure to investigate claims, except to the extent caused by the negligence of the



Indemnitees. CRD agrees to notify the Municipality in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Municipality further agrees to defend the Indemnitees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that CRD, 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 the Indemnitees. The Municipality shall not enter into any compromise, or settlement of any such claims, suits, actions or proceedings without the consent of CRD, which consent shall not be unreasonably withheld. Notwithstanding anything in this OMA to the contrary, the indemnities contained in this paragraph shall survive termination of this OMA.

#### 11. **CONTRACTOR INDEMNIFICATION AND WAIVER.**

(a) In all contracts executed by Municipality for maintenance of the Premises (including snow removal of sidewalks) or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the Premises, or to be located on such Premises, Municipality will require appropriate clauses to be inserted requiring contractors to the fullest extent permitted by law, to indemnify, hold harmless and defend the Indemnitees from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees.

(b) Municipality will further cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance, insuring contractor, and the Indemnitees, as applicable, from and against any and all risks, liabilities, claims, demands, losses and judgments, including court costs and attorneys' fees, arising from, growing out of or in any way related to the work performed or to be performed by such contractor(s), whether or not any such liability, claim, demand, loss or judgment is due to or arises from the acts, omissions or negligence of such contractor(s), or their officers, employees, agents or subcontractors and their agents or employees.

(c) The indemnification and hold harmless provisions set forth in this OMA shall survive termination of this OMA and shall not be construed as an indemnification or hold harmless against and from the negligence of CRD, RTA or NIRCRC with respect to any party performing work on the Premises to the extent such violates the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.





12. **LIENS.** Municipality agrees not to suffer or permit any lien of mechanics or materialmen to be placed against the Premises or any part thereof and, in case of any such lien attaching to the Premises, immediately to pay off and remove the same or furnish a bond or other security satisfactory to CRD to indemnify CRD against any such lien. It is further agreed by the Parties hereto that Municipality has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Municipality, operation of law, or otherwise, to attach to or to be placed upon CRD's title or interest in the Premises, and any and all liens and encumbrances created or suffered by Municipality or its tenants shall attach to Municipality's interest only.

13. **TAXES.** Municipality shall be responsible for payment of all real estate taxes and special assessments, if any, assessed against the Premises, the Commuter Facility, or any portion thereof, including, without limitation, real estate taxes assessed as a result of Municipality's assignment or license of all or any portion of the Commuter Facility to a third party. Municipality shall protect, indemnify, defend and forever save and keep harmless the Indemnitees against and from, and to assume all liability and expense, including court costs and attorneys' fees, for failure to pay real estate taxes or special assessments assessed against the Premises on or before the date payments of such taxes are due. Nothing in this OMA shall be construed to prohibit the lease or license of the Premises, the Commuter Facility, or any portions thereof, to a third party as long as such third party is responsible for the payment of all real estate taxes assessed against the leased or licensed premises.

14. **CAUSE FOR BREACH.** If Municipality defaults in any of Municipality's undertakings or obligations of this OMA, and Municipality receives written notice of such default from CRD, then such event or action shall be deemed to constitute a breach of this OMA and, if such default remains uncured for thirty (30) days after notice in writing, this OMA and Municipality's use of the Premises shall automatically cease and terminate for the Term.

15. **RETENTION OF POSSESSION.** Should Municipality retain possession or use of the Premises or any part thereof after the termination of Municipality's use by CRD for the Term or as otherwise provided for in this OMA, any such holding over shall not constitute an extension of Municipality's use and Municipality shall pay CRD all damages, incidental or consequential as well as direct, sustained by CRD, RTA and NIRCRC by reason of such retention of possession or use. The provisions of this Section 15 do not exclude the CRD's rights of reentry or any other rights to recover use and possession of the Premises afforded CRD by law.

16. **RE-ENTRY.** If Municipality shall breach or default in any of the terms of this OMA and if such breach or default is not cured as provided in this OMA above, or if Municipality's use of the Premises shall expire or terminate in



any manner, it shall be lawful for CRD then, or at any time thereafter, to re-enter the Premises and take possession 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 Municipality shall have the right to remove Municipality's personal property and to use the Premises in any manner that does not reasonably interfere with CRD's property rights to the Premises and the Commuter Facility. No termination of Municipality's use shall release the Municipality from any liability or obligation that accrued prior to said termination.

17. **WAIVER OF REMEDIES.** No waiver of any default of either Party shall be implied from omission by the other Party to take any action on account of such default. No express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated.

18. **IMPROVEMENTS.** Municipality shall not make any improvements to the Premises without having first obtained the prior written consent of CRD. Municipality shall submit to CRD all plans and specifications for improvements on or to any portion of the Premises (improvements shall not include any items of routine maintenance). CRD reserves the right to have its employees, agents or independent contractors perform such work, if required by its employment contracts or federal or state railroad regulations, and set forth in the plans and specifications it approves and Municipality agrees to pay the cost of all such improvements performed by or on behalf of CRD, whether by CRD's employees, agents or independent contractors.

19. **CUMULATIVE RIGHTS.** All rights and remedies of each party shall be cumulative, and none shall exclude any other rights and remedies allowed by law.

20. **RAIL SERVICE.** CRD makes no warranties or representations, expressed or implied, as to continued rail service to the Premises.

21. **SALE OR ASSIGNMENT.**



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

(b) Vending, concessions, and general commercial activity on the Premises shall be subject to CRD's prior written consent. CRD grants Municipality the limited right to sublicense to third-parties the use of a portion of the Station Facility for commercial purposes provided that: (1) the terms and conditions of the sublicense are acceptable to CRD; (2) Municipality receives CRD's prior written consent to any third-party use; (3) Municipality is primarily liable to CRD for all sublicense obligations entered into with third parties, including but not limited to the following obligations to CRD: indemnification, insurance, use, and rent; and (4) such sublicense shall be subject and subordinate to the terms and provisions of this OMA.

22. **USE RESTRICTIONS.** All rights not specifically granted to Municipality under the terms and conditions of this OMA are hereby reserved in and to CRD. Municipality agrees that none of the Premises will be used, nor will Municipality permit them to be used, for parking within twenty (20) feet of the centerline of any trackage. Any portion of the Premises within twenty (20) feet from the nearest rail of any trackage shall be used only for the construction, maintenance, repair and renewal of platforms and other railroad improvements located within the railroad right of way (subject to legal clearance requirements and CRD's clearance requirements) and for no other purpose whatsoever. Any construction, rehabilitation or repair work performed on behalf of Municipality occurring within the railroad right-of-way will require flagging protection provided by the railroad that owns the right-of-way property or CRD at Municipality's sole cost and expense. Municipality and/or its contractors shall also purchase and keep in full force and effect railroad protection liability insurance during the performance of any such work.

23. **REVENUES.**

(a) All Parking Facility fees or other revenue derived from Municipality's use of the Commuter Facility ("**Revenues**") shall first be utilized for Parking Facility Maintenance and administrative expenses incurred from the operation of the Parking Facility. The remainder shall be deposited in a capital improvement account to be used for future renovation or rehabilitation of the Parking Facility. Upon termination of this OMA, Municipality shall deliver all remaining Revenues, including, without limitation, those on deposit in such capital improvement account, to CRD.



(b) Municipality shall establish and maintain adequate accounting records of all Revenues based on generally accepted accounting principles consistent with the manner Municipality maintains records of its other accounts in order to insure compliance with this OMA. Municipality shall permit and shall require its contractors to permit CRD, RTA, NIRCRC or any other agency authorized to perform such audit and inspection, to inspect all work, material and other data and records with regard to the Revenues collected and to audit the books and accounts of Municipality and its contractors with respect to said Revenues. Municipality shall submit to CRD an annual audit of its records relating to the Revenues collected and shall make its records available to CRD at mutually convenient times. Furthermore, Municipality shall immediately notify CRD if the Commuter Facility is to be used in a manner substantially different from that intended by this OMA. At the option of CRD, CRD and Municipality shall conduct a yearly joint inspection of the Premises to assure compliance with the terms of this OMA.



**EXHIBIT A-1**

**PREMISES**



**EXHIBIT B-1**

**LIST OF BASIC STATION COMPONENTS**



**EXHIBIT C-1**

**OMA INSURANCE REQUIREMENTS**





**EXHIBIT B**  
**PROJECT BUDGET**



**EXHIBIT C**

**MUNICIPAL RIDERSHIP AND PARKING REQUIREMENT  
ESTIMATES**



**EXHIBIT D**

**CRD SIGN SPECIFICATIONS**



**EXHIBIT E**

**GENERAL INSURANCE REQUIREMENTS**