

February 3, 2015

Steve Weinstock
Village of Hanover Park
2041 Lake Street
Hanover Park, Illinois 60133

**Re: Agreement for the Operation and Maintenance of a Commuter Rail Facility in
the Village of Hanover Park N01763**

Dear Mr. Weinstock,

Enclosed for your files is a fully executed copy of the Agreement for the Operation and Maintenance of a Commuter Rail Facility in the Village of Hanover Park. This Agreement replaces the following seven (7) Agreements and shall be used to reference the Village's operation and control of the related parcels;

L30023, Station Facility Operation and Maintenance Agreement
L81913, Parking Lease Agreement (Lot #1)
L82458, Lease Agreement for Beautification west of station
N00775, Beautification Agreement for area surrounding station
N00874, Parking Facility Operation and Maintenance Agreement (Lot #10)
N01313, License Agreement for Bike Racks near station and (Lot #9)
N01579, Parking Facility Operation and Maintenance Agreement (Lot #7)

Should you have any questions regarding this matter, please contact me.

Sincerely,



Maurice Johnson, Manager
Real Estate & Contract Management
312.322.8003 | mjohnson@metrarr.com

Enclosure

Cc: Anthony Ognibene, Director of Real Estate
Demetrios Skoufis, Government Affairs

**AGREEMENT FOR THE OPERATION AND MAINTENANCE OF
A COMMUTER RAIL FACILITY IN THE VILLAGE OF HANOVER PARK**

THIS AGREEMENT is entered into as of this 15th day of January, 2015, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**Metra**") and the Village of Hanover Park, an Illinois municipal corporation ("**Municipality**"). Metra and Municipality are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**."

RECITALS

A. Metra owns the depot, including without limitation, the platforms, ramps, stairs, and sidewalks and surrounding landscaping (collectively referred to as "**Station Facility**") and the commuter parking lots and appurtenances ("**Parking Facility**"), constructed by Metra or funded by Metra with state, federal or Metra funds, on the property owned by Metra and identified as a part of permanent index numbers 06-36-310-059, 06-36-402-017, 06-36-402-026, 06-36-500-003, 01-01-202-023, 01-01-202-024, 01-01-205-004, 01-01-205-005, 01-01-205-006, 01-01-205-007, 01-01-205-008, 01-01-504-001, as delineated on **Exhibit A** attached to and made a part of this Agreement ("**Premises**"). The Station Facility and Parking Facility are hereinafter sometimes jointly referred to as the "**Commuter Facility**."

B. Metra desires to grant to Municipality the right to manage, operate, and maintain the Commuter Facility on the Premises.

C. Heretofore, Metra and the Municipality had entered into seven (7) previous agreements identified by Metra as L30023, L81913, L82458, N00775, N00874, N01313, and N01579 concerning the Station Facility and Parking Facility. Metra and the Municipality desire to restate (and modify) all of those agreements into this agreement so that upon the parties entering into this agreement, those previous seven (7) agreements shall no longer be applicable and shall be superseded by this agreement only.

D. The Parties have 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.

NOW, THEREFORE, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, 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, Metra 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. **FEE AND TERM.** Municipality covenants and agrees to pay Metra the sum of Ten Dollars (\$10.00) as an annual use fee for the Commuter Facility. Municipality's obligations and right to use the Commuter Facility under the terms and provisions of this Agreement shall commence on the day the Station Facility is first used in commuter service and shall continue in force and effect for

a period of forty (40) years from said date (“**Use Term**”) unless otherwise terminated as provided under the terms and conditions of this Agreement. Either Party may at any time terminate this Agreement by giving the other Party ninety (90) days prior written notice of its intention to so terminate.

2. **PURPOSE OF USE.**

(a) The Parties agree that the purpose of this Agreement is to ensure 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 Agreement.

(b) Parking lot fees set and collected by Municipality shall be standardized for all patrons of the Parking 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. Metra reserves the right, at any time, to review and approve the amount of the parking fees charged by Municipality, which approval shall not be unreasonably withheld provided, however, that the proposed increase is consistent with regional standards for Metra parking lots.

(c) Municipality may, upon the prior written consent of Metra, sublicense space for related commuter services, such as vending and concession operations provided that such terms are acceptable to Metra. All revenue derived from Municipality’s use of the Premises for vending or concession operations shall first be utilized for Routine Maintenance, as described below, and administrative expenses incurred from the operation of the Station Facility.

(d) As long as adequate indemnification, insurance, and sufficient alternative commuter parking (if necessary) are provided and Metra 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, for municipal or civic events sponsored by or approved by the Municipality. Prior written approval from Metra shall not be unreasonably withheld.

3. **USE BY METRA AND PUBLIC.** Metra further reserves unto itself, its successors and assigns, permittees and licensees the right to use said Premises in the general conduct of its railroad business including endeavors for the convenience of its commuters and the public including without limitation, such services as coin operated vending machines and automated teller machines. Municipality shall not interfere with or infringe upon Metra's or the public's lawful use of the said Premises so reserved. Municipality further agrees that Municipality and Municipality's employees and invitees in and about said Premises shall be subject to the oversight of Metra relating to the operation of Metra commuter facilities and to Metra's railroad operations. Metra reserves the nonexclusive right to regulate and control the people who enter said Premises and their conduct and reserves the right to enter upon said Premises at any time and to eject therefrom any disorderly person or persons.

4. **MAINTENANCE, ACCESS, AND RELOCATION.**

(a) **Maintenance of the Station Facility.** Except as otherwise provided herein, Municipality, shall manage the Station Facility and shall be responsible throughout the Use 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 (leading to ramps, platforms and/or stairwells and the providing of scavenger service)), corresponding to standards that apply to Municipality's other public buildings and facilities ("**Routine Maintenance**"), except Municipality **shall not** be responsible for: (i) the snow removal from the platforms, ramps, and stairwells, (ii) any utilities located on or along the ramps, platforms or stairwells, or (iii) repairing or replacing any structural portion of the Station Facility (including, but not limited to, support walls, structural members, columns, floors, roof, heating plant and foundation). Metra shall repair and/or replace the structural portion of the Station Facility which has come into such a state of disrepair as to require repair or replacement. Municipality shall be responsible for notifying Metra, in writing, within thirty (30) days of the need for replacements or repairs which are to be the responsibility of Metra. For the purpose of determining what items shall be the responsibility of Municipality or Metra hereunder it is hereby agreed that any single item costing Two Thousand Five Hundred Dollars (\$2,500) or more, to repair or replace, shall be the responsibility of Metra ("**Metra 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 Metra 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 Metra Repair shall increase \$250 every five (5) years from the anniversary date of this Agreement. The maintenance obligations as stated herein are further delineated on **Exhibit C**, attached to and made a part of this Agreement.

(b) Municipality shall inspect the Station at least monthly pursuant to the Maintenance Checklist attached to and made a part of this Agreement as **Exhibit D**. Municipality shall be responsible for filling out the Maintenance Checklist, maintaining copies and submitting the completed forms to Metra's Senior Director, Engineering Maintenance, on at least a semi-annual basis (no later than the 1st of February and 1st of July of each year), pursuant to the notice provisions listed in Section 21.

(c) **Maintenance of the Parking Facility.** Municipality, at its own cost and expense, shall manage the Parking Facility and shall be responsible for the performance of "**Routine Maintenance**" throughout the Use Term. Routine Maintenance shall include but shall not be limited to snow removal, salting, insurance, lighting upkeep, sealing and patching pavement, restriping as needed (but, no less than every five years), repairing and replacing parking signage, and payment of utility expenses associated with the operation of the Parking Facility on the Premises. 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, and light standard placement or replacement necessitated by damage to a structure. Capital improvements shall be mutually agreed by both Parties.

(d) Metra may, from time to time, request the Municipality to perform Metra's obligations regarding maintenance, replacements, or repairs ("**Work**") on Metra's behalf. Only upon

receipt of a written request from Metra, Municipality may, at its option, affect such Work, provided that Metra shall have prior written notice of Municipality's intention to so perform and Municipality **shall not** begin any Work until it receives a written notice to proceed ("**Notice to Proceed**") from Metra. Said Notice to Proceed shall contain any restrictions that may be necessary regarding work to be performed, plan approval and any procedures required for reimbursement of funds for the cost of any Work performed on behalf of Metra. It is further agreed that Metra shall be under no obligation to pay for any costs arising from Work performed prior to receiving, or falling outside the restrictions or scope of, the Notice to Proceed. All such Work shall be done lien-free and in a good and workmanlike manner consistent with the quality of labor and materials used in originally constructing such improvements and in accordance with all applicable laws and Railroad requirements and regulations to be advised by Metra.

(e) In the event Municipality fails to manage, operate or maintain the Station Facility in accordance with the terms and provisions of this Agreement, Metra may provide, or cause to be provided, such management, operation and maintenance services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra.

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

(g) Municipality, at its own cost and expense, shall be responsible for the "**Standard Maintenance**" of all landscaping on and along the Premises. For purposes of this Agreement, Standard Maintenance shall include without limitation watering, weeding, mowing, trimming, and mulching as dictated by the specific plantings on the Premises, and the replacement or removal of dead shrubs and trees pursuant to municipal ordinances regarding landscaping.

(h) Metra reserves the right to relocate the Commuter Facility or any portion thereof onto other Metra property, at its own cost and expense, in the vicinity of the Premises with no liability for damages to Municipality's interest in the Commuter Facility resulting from such relocation; provided, however, that Metra shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Commuter Facility or portion thereof, and Municipality shall be entitled to immediately terminate this Agreement upon receipt of this notice if Municipality determines, in Municipality's sole discretion, that the relocation of the CPF will: (i) materially interfere with the right of Municipality to use, operate, and maintain the CPF in accordance with the terms of this Agreement; or (ii) substantially increase the cost to Municipality of operating and maintaining the CPF in accordance with the terms of this Agreement.

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

6. **PARKING REVENUES.**

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

(b) Municipality shall establish and maintain adequate accounting records of all Revenues collected and expenses incurred based on generally accepted accounting principles consistent with the manner Municipality maintains records of its other accounts in order to ensure compliance with this Agreement. Municipality shall permit and shall require its contractors to permit Metra, the Regional Transportation Authority ("**RTA**"), the Northeast Illinois Regional Commuter Railroad Corporation ("**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 Metra an annual audit of its records relating to the Revenues collected and shall make its records available to Metra at mutually convenient times. Furthermore, Municipality shall immediately notify Metra if the Commuter Facility is to be used in a manner substantially different from that intended by this Agreement. At the option of Metra, Metra and Municipality shall conduct a yearly joint inspection of the Premises to assure compliance with the terms of this Agreement.

7. **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.

8. **SIGNS.**

(a) Municipality shall not post or place any signs on the Premises without having first received Metra'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.

(b) Metra reserves the right to post or place or to have posted or placed on the Premises, informational signs relative to the operations of Metra

9. **COMPLIANCE (LEGAL AND INSURANCE).**

(a) Municipality shall not use or permit upon the Premises anything that will invalidate any policies of insurance held by Metra or Municipality now or hereinafter carried on or covering the Premises, the Commuter Facility or any improvements thereon. Municipality shall manage, operate, maintain, and use the Premises and the Parking Facility in compliance with the requirements of all local, state, and federal ordinances, laws, rules, and regulations in effect during the Use Term.

(b) Throughout the Use Term, Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-6991) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and when required, railroad protective liability insurance coverage as stated on **Exhibit B** attached to and made a part of this Agreement ("**Insurance Requirements**"). To the extent permitted by law, said insurance shall show *The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and the Norfolk Southern Corporation*, as additional insureds and shall be endorsed to assume the contractual obligations of Municipality as set forth in this Agreement. 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 Metra and must show on the insurance policy or the certificate of insurance that Metra 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 or during the operation of the Commuter Facility; 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 or the Parking Facility. 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 Metra, RTA and NIRCRC from and against any and all losses, 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 Use 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 Metra, 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 Metra, the RTA or the NIRCRC as additional insureds shall not, at any time, operate as a waiver to Metra's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement.

(f) During the Use Term, Metra may make commercially reasonable increases in the amount of insurance required by Municipality or its contractor(s) and/or sub-contractor(s) under the terms and provisions of this Agreement.

10. 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 discharge Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with the activities permitted under the terms and provisions of this Agreement or which may occur to or be incurred by the Municipality, its employees, officers, agents and all other persons acting on the Municipality's behalf while on the Premises or arising from the condition of the Premises during the term of this Agreement, except to the extent such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

(b) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all injuries, liabilities, losses, damages, costs, payments and expenses of every kind and nature (including, without limitation, court costs and attorneys' fees) for claims, demands, actions, suits, proceedings, judgments, settlements arising out of or in any way relating to or occurring in connection with: (i) the activities permitted under the terms and provisions of this Agreement; (ii) the condition of the Premises; (iii) the failure to investigate claims; or (iv) 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, or, except to the extent such injuries, liabilities, losses, damages, costs, payments or expenses are caused by the negligence or willful misconduct of Metra, the RTA or the NIRCRC. Metra agrees to notify the 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 Metra, the RTA, the NIRCRC, their respective directors, administrators, officers, agents and employees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision provided, however, that Metra, the RTA and the NIRCRC, may elect to participate in the defense thereof at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents or employees. The Municipality shall not enter into any compromise or settlement of any such claims, suits, actions or proceedings without the consent of Metra, the RTA and the NIRCRC, which consent shall not be unreasonably withheld.

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

11. **CONTRACTOR INDEMNIFICATION AND INSURANCE.**

(a) In all contracts executed by Municipality for maintenance of the Premises (including snow removal) 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 indemnify, hold harmless and defend Metra, RTA and NIRCRC, their directors, employees, agents, licensees, successors and assigns 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, Metra, RTA and NIRCRC, their directors, employees, agents, successors and assigns 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.

12. **IMPROVEMENTS.** Municipality shall not make any improvements to the Premises without having first obtained the prior written consent of Metra. Municipality shall submit to Metra all plans and specifications for improvements on or to any portion of the Premises and the Commuter Facility (improvements shall not include such items of Routine Maintenance and Standard Maintenance as described in section 4 of this Agreement). Metra reserves the right to have its employees, agents or independent contractors perform such work 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 Metra, whether by Metra's employees, agents or independent contractors.

13. **LIENS.** Municipality agrees not to suffer or permit any lien of mechanics or materialmen to be placed against any portion of the Premises or Commuter Facility, and in case of any such lien attaching to the Premises or Commuter Facility, Municipality shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Metra sufficient to discharge such lien and any interest accrued thereon. 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 Metra's title or interest in the Parking Facility,

and any and all liens and encumbrances created or suffered by Municipality or its tenants shall attach to Municipality's interest only.

14. **TAXES.** Municipality shall be responsible for payment of all real estate taxes and special assessments, if any, assessed against the Premises, including but not limited to real estate taxes assessed as a result of Municipality's assignment or license of all or any portion of the Premises to a third party. Municipality shall protect, indemnify, defend and forever save and keep harmless Metra, RTA, NIRCRC, and their directors, employees and agents licensees, successors and assigns 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. Metra represents that the Premises is currently exempt from real estate taxes and Metra shall use its reasonable best efforts not to take any actions during the Use Term that would result in the loss of the tax exempt status of the Premises; provided, however, that nothing in this Agreement shall be construed to prohibit the lease or license of the Premises, or any portion 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.

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

16. **WAIVER OF REMEDIES.** No waiver of any default of Municipality shall be implied from omission by Metra 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. No receipt of money by Metra from Municipality (a) after any default by Municipality, (b) after the termination of Municipality's use, (c) after the service of any notice or demand, (d) after the commencement of any suit, or (e) after final judgment for possession of the Premises, shall waive such default or reinstate, continue or extend the Use Term or affect in any way such notice or suit, as the case may be.

17. **SURRENDER OF PREMISES.** Upon the termination of this Agreement or Municipality's use of the Premises by any manner, means, or contingency whatsoever, Municipality shall, if required by Metra, remove all of Municipality's improvements and/or property from the Premises, fill all excavations that have been made by Municipality and deliver possession of the Premises to Metra in as good a condition than that which existed immediately prior to the commencement of the Use Term, ordinary wear and tear excepted. Should the Municipality fail to perform such removal or restoration, then Metra, at its election, may either remove the Municipality's improvements and property and restore the Premises to its former state at the sole expense of Municipality or may retain the Municipality's improvements and property as Metra's sole property. Should Municipality retain possession or use of the Premises or any part thereof after the termination of Municipality's use by Metra or as otherwise provided for in this Agreement, any such holding over shall not constitute an extension of Municipality's use and Municipality shall pay Metra all damages, incidental or consequential as well as direct, sustained by Metra, RTA and NIRCRC and their

respective directors, employees, agents and licensees by reason of such retention of possession or use. The provisions of this Section 17 do not exclude the Metra's rights of reentry or any other rights to recover use and possession of the Premises afforded Metra by law.

18. **REENTRY.** If Municipality shall breach or default in any of the terms of this Agreement and if such breach or default is not cured as provided in Section 15 above, or if Municipality's use of the Premises shall expire or terminate in any manner, it shall be lawful for Metra then or at any time thereafter to reenter 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 certain of Municipality's property as hereinabove provided and to use its property in any manner that does not reasonably interfere with Metra's property rights. No termination of Municipality's use shall release the Municipality from any liability or obligation that accrued prior to said termination. If the Premises is required for railroad purposes, Metra shall have the right to partially or entirely re-enter and terminate this Agreement in whole or in part upon ninety (90) days prior written notice.

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

20. **SALE OR ASSIGNMENT.**

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

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

21. **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 facsimile transmission, with proof of successful transmission sent by regular mail by Metra 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 Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director, Real Estate and Contract Management
Phone: (312) 322-8006
Fax: (312) 322-7098

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

Village of Hanover Park
2121 West Lake Street
Hanover Park, Illinois 60133
Attn: Village Manager
Phone: 630-823-5608
Fax: 630-823-5607
Email: jmaller@hpil.org

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.

22. **USE RESTRICTIONS.** All rights not specifically granted to Municipality under the terms and conditions of this Agreement are hereby reserved in and to Metra. 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 Metra's clearance requirements) and for no other purpose whatsoever. Any construction, rehabilitation or repair work performed by or on behalf of the Municipality occurring within the railroad right-of-way will require flagging protection provided by Metra 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. **MISCELLANEOUS PROVISIONS.**

(a) This Agreement shall be binding upon and shall inure to the benefit of the Parties, and their respective successors or assigns.

(b) The captions of the Sections of this Agreement are for convenience and are not to be interpreted as part of this Agreement.

(c) 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.

(d) 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.

(e) This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

24. **SEVERABILITY.** Metra and Municipality agree that if any provision of this Agreement is held to be invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the terms, purposes and requirements of applicable law and does not represent a material change to the rights or obligations of the Parties.

25. **ENTIRE AGREEMENT.** All of the representations and obligations of Metra are contained herein. Metra 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, 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 as a 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.

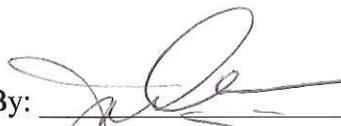
SIGNATURE PAGE TO FOLLOW

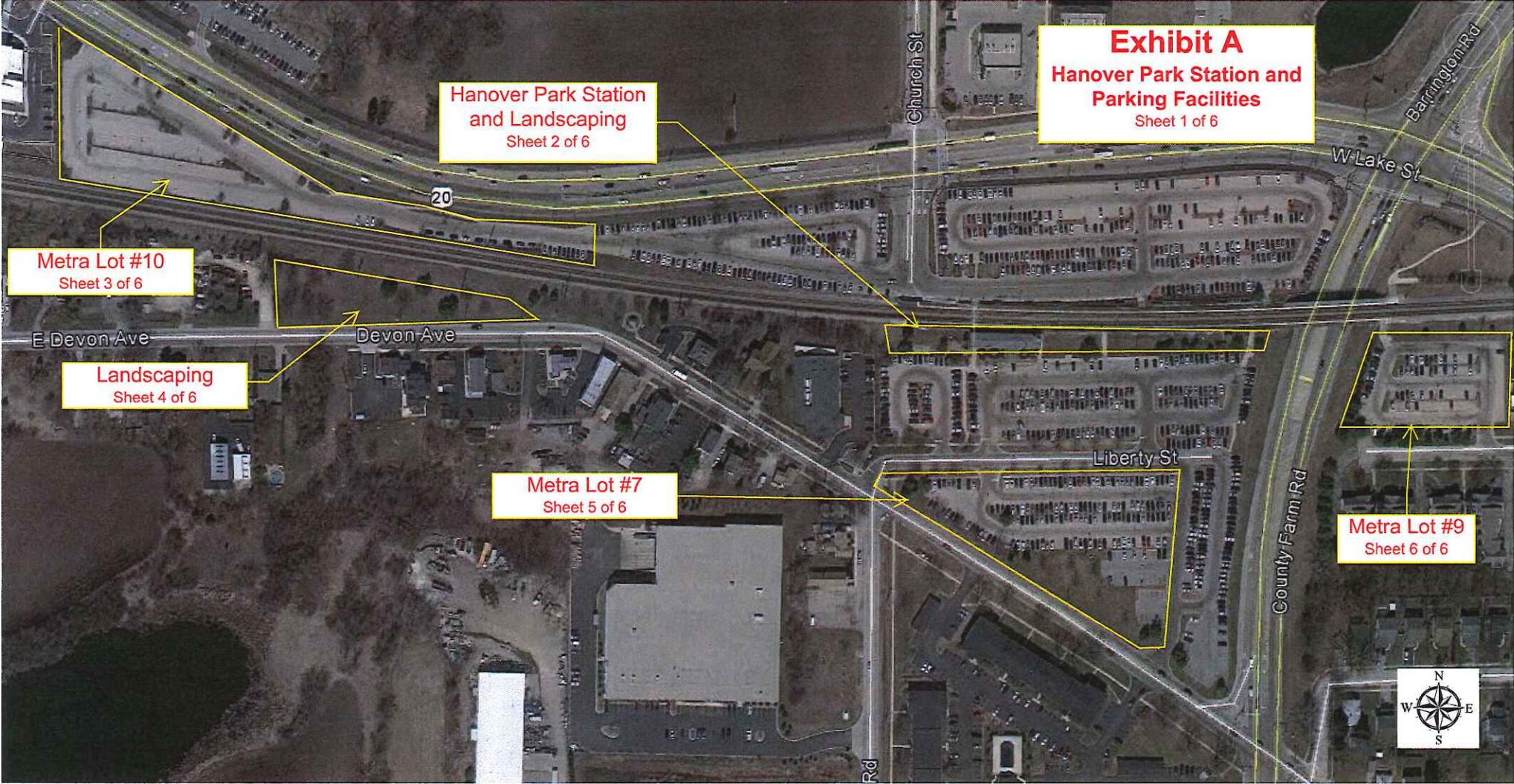
IN WITNESS WHEREOF, this Agreement is entered into by and between the Parties hereto as of the date and year first above written.

THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

By: 
Donald A. Orseno, Executive Director/CEO

VILLAGE OF HANOVER PARK:

By: 
Its: 



Hanover Park Station and Landscaping
Sheet 2 of 6

Metra Lot #10
Sheet 3 of 6

Landscaping
Sheet 4 of 6

Metra Lot #7
Sheet 5 of 6

Metra Lot #9
Sheet 6 of 6

Exhibit A
Hanover Park Station and Parking Facilities
Sheet 1 of 6



Exhibit A
Hanover Park
Station and
Landscaping
PIN: 01-01-504-001
Sheet 2 of 6



Exhibit A
Hanover Park
Metra Lot #10
PIN: 06-36-310-059
06-36-402-026
06-36-500-003
Sheet 3 of 6

Lake Street



Lake Street

Exhibit A

Hanover Park

Landscaping

PIN: 06-36-402-017

Sheet 4 of 6

Devon Avenue



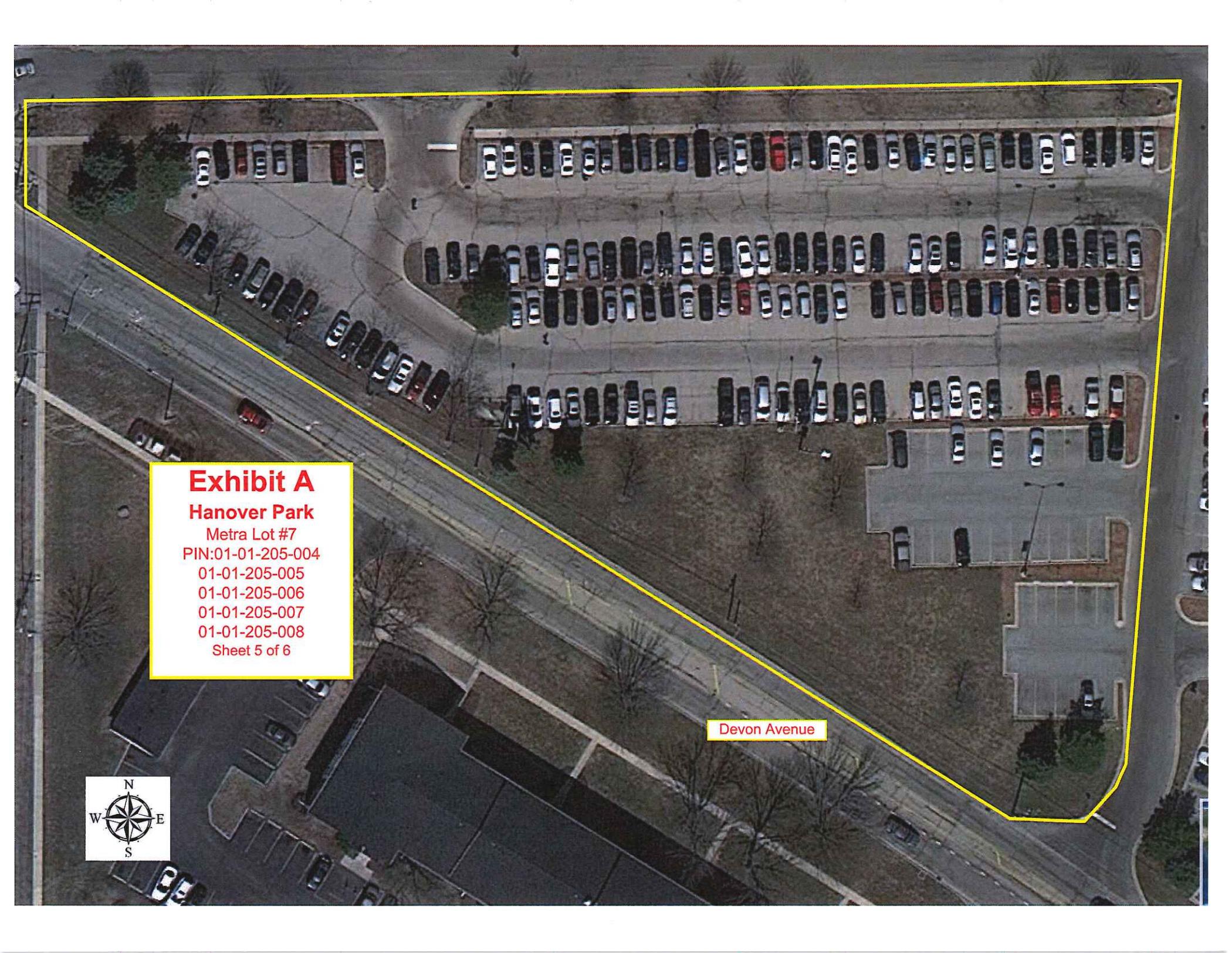


Exhibit A

Hanover Park

Metra Lot #7

PIN:01-01-205-004

01-01-205-005

01-01-205-006

01-01-205-007

01-01-205-008

Sheet 5 of 6

Devon Avenue



Exhibit A
Hanover Park
Metra Lot #9
PIN: 01-01-202-023
01-01-202-024
Sheet 6 of 6



W Lake St

Liberty St



EXHIBIT B
Insurance Requirements
COMMUTER FACILITY OPERATION AND MAINTENANCE AGREEMENT
VILLAGE OF HANOVER PARK

Commercial General Liability Insurance (ISO Broad Form) of the type that normally provides coverage for general liability, or other liability insurance in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate combines single limits for bodily injury or death to person or persons and property damage per occurrence. The CGL policy shall include the following coverage limits:

Automobile Liability Insurance of the type that normally provides coverage for general liability insurance in a minimum amount of \$1,000,000 per occurrence, combines single limit for bodily injury or death to person or persons and property damage.

Workers Compensation Insurance of the type that normally provides statutory coverage in a minimum amount of \$1,000,000.

The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation shall be designated as Additional Insured on said policies.

Station Facility Maintenance Exhibit - C

Municipality Responsibility
General cleaning and sweeping of station stairs, sidewalks and ramps
Graffiti removal
Janitorial maintenance of station floors: sweeping, mopping, waxing, and tile repair.
Janitorial maintenance of windows: washing, glazing, painting, etc.
Maintain and repair station warming shelters and windbreaks.
Maintain boiler and hot water heaters: (per manufacturer's recommendation)
Maintain HVAC system: cleaning, filter changing (per manufacturer's recommendation)
Maintain landscaping surrounding station: Including, watering, weeding, mowing, trimming, mulching, trash removal and removal or replacement of dead trees and shrubs
Maintain painting of interior & exterior station walls and handrails
Maintain planter boxes
Maintain, repair or replace interior and exterior fixtures, including station doors and windows
Maintain, repair or replace broken glass in windows and doors
Payment of station utilities
Provide scavenger service
Snow removal and salting of any station stairs and sidewalks leading to ramps, platform, and stairwells
Trash can liner maintenance
Note: Any single repair item costing over \$2,500, will be a Metra financial obligation. Refer to Section 4a for details.

Metra Responsibility
Repair or replace concrete flooring
Repair or replace station concrete stairs
Repair or replace station heat and air conditioning units (Per Section 4a) \$2,500 single item limit
Repair or replace station roof including gutters, downspouts, and shingle replacement
Repair or replace any structural component of the station
Payment of utilities for platforms
Snow removal from platforms

FACILITY MAINTENANCE INSPECTION REPORT EXHIBIT - D

METRA FACILITY MAINTENANCE PROGRAM	Task Completed
General Conditions	
INSPECT KIOSKS, VENDING AREAS, ETC. FOR DAMAGE/VANDALISM.	
INSPECT STAIRS, WALKWAYS, RAMPS, AND PEDESTRIAN OVER/UNDER PASSES FOR DAMAGE, UNEVEN SURFACES, EXCESSIVE CRACKS, AND DAMAGED/MISSING ANTI-SLIP SURFACES.	
INSPECT PERIMETER FENCING, POSTS, GATES, ENTRANCES, ETC. FOR DAMAGE AND PROPER OPERATION.	
INSPECT HANDRAILS AND RAILINGS FOR DAMAGE AND FAILED ANCHOR CONNECTIONS.	
INSPECT BENCHES, TRASH CANS, BIKE RACKS, ETC. FOR DAMAGE/VANDALISM.	
INSPECT BUILDING/PLATFORM EXTERIOR AND INTERIOR FOR DAMAGE, FOUNDATION CRACKS, WATER LEAKAGE, PEELING PAINT, AND SIGNS OF RODENT AND/OR INSECT INFESTATION.	
INSPECT PARKING LOT PAVEMENT FOR UNEVEN SURFACES, EXCESSIVE CRACKS AND POTHOLES.	
Lights	
INSPECT AND REPAIR ALL STAIRWAY AND TUNNEL LIGHTING IF APPLICABLE	
INSPECT AND TEST EXIT AND EMERGENCY LIGHTS.	
INSPECT LIGHT STANDARDS AND FIXTURES FOR DAMAGE AND BROKEN/BURNT BULBS.	
INSPECT STATION ELECTRICAL SERVICE AND DISTRIBUTION COMPONENTS, REPAIR OR REPLACE AS NECESSARY	
Plumbing	
FLUSH DOMESTIC COLD WATER SYSTEM TO REMOVE DIRT AND SCALE BUILD-UP.	
INSPECT PHYSICAL CONDITION OF ALL PLUMBING EQUIPMENT INCLUDING TOILETS, LAVATORIES, URINALS, SINKS, SHOWERS, MOP BASINS, DRINKING FOUNTAINS, ETC. CHECK FOR PROPER OPERATION.	
INSPECT ALL PIPING, FITTINGS, VALVES, STRAINERS, TRAPS, ETC., FOR SIGNS OF LEAKAGE.	
EXERCISE EACH SHUTOFF VALVE BY PARTIALLY OPENING AND CLOSING THE VALVE. BE SURE TO RETURN THE VALVE TO ITS NORMALLY OPEN OR NORMALLY CLOSED STATE.	
Roof	
CLEAN ROOF, VALLEY FLASHINGS, ROOF DRAINS, GUTTERS, AND DOWNSPOUTS OF ALL DEBRIS.	
INSPECT UNDERSIDE OF ROOF FOR ANY SIGNS OF LEAKAGE (If Possible).	
INSPECT ALL SURFACES, MEMBRANE AND SEALS (IF APPLICABLE), AND FLASHING.	
INSPECT ROOF FOR DAMAGE, EXCESSIVE CRACKING, WATER DAMAGE, AND SIGNS OF RODENT AND/OR INSECT INFESTATION.	
HVAC	
INSPECT HVAC SYSTEM/COMPONENTS FOR DAMAGE AND PROPER OPERATION.	
CLEAN STRAINERS AND REPLACE ANY FILTERS.	
Fire Protection	
INSPECT FIRE PROTECTION SYSTEM FOR DAMAGE CHECK FOR CURRENT TEST/CERTIFICATION TAGS.	
INSPECT PORTABLE FIRE EXTINGUISHERS FOR DAMAGE AND SECURITY AND CHECK FOR CURRENT INSPECTION/CERTIFICATION TAGS.	
Cleanliness	
CHECK ALL FLOOR DRAINS FOR DEBRIS. CLEAN AS NECESSARY.	
INSPECT RESTROOMS FOR CLEANLINESS, DAMAGE, AND PROPER OPERATION.	
INSPECT FOR GENERAL CONDITION - TRASH/DEBRIS, ICE AND SNOW ACCUMULATION, WATER EROSION, AND LANDSCAPE APPEARANCE (EXCESSIVE WEEDS/HIGH GRASS, ETC.).	
Comments:	

Location: _____

Inspected By: _____

Date: _____