

**INTERGOVERNMENTAL FUNDING AGREEMENT FOR  
THE REPAIR OF TWO STAIRWAYS AT THE CITY OF AURORA  
ROUTE 59 COMMUTER FACILITY**

**THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”)** made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the City of Aurora, an Illinois municipal corporation (“**Municipality**”), and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”). The Municipality and Metra are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS:**

A. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and school districts may contract among themselves in any manner not prohibited by law or by ordinance.

B. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes public agencies in Illinois to exercise jointly with any other public agency any power or powers, privileges, functions or authority which may be exercised by a public agency, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings.

C. Metra has the authority to cooperate with other governmental agencies and desires to contribute grant funds to reimburse the Municipality for the repair of 2 sets of stairs on the Aurora side of the Route 59 commuter facility, south of the BNSF tracks (“**Project**”).

D. The Municipality is authorized to cooperate with Metra in the exercise of its powers and agrees to manage the Project, and the work necessary to complete the Project (“**Work**”).

E. Metra has determined that the Parties will benefit from the completion of the Project and will provide the Municipality a portion of the necessary funding for the materials and the performance of the Work.

**AGREEMENT**

**NOW, THEREFORE**, for and in consideration of the foregoing Recitals, which are hereby incorporated into and made a part of this Agreement, 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, the Parties agree as follows:

1. **THE PROJECT**, more specifically described in the **Project Scope**, attached to and made a part of this Agreement as **Exhibit A**. The Project Scope has been approved by Metra.

2. **AMOUNT OF GRANT**. The total cost of the Project is estimated to be One Hundred Thirty Thousand Dollars (\$130,000). Metra agrees to provide grant funding to the Municipality in an amount up to and not to exceed Fifty Thousand Dollars (\$50,000) to reimburse Municipality for a portion of the cost of the Project (“**Grant**” or “**Grant Funds**”). The costs of the Project

which exceed this amount will be the responsibility of the Municipality. Metra may agree in writing to increase the amount of the Grant Funding subject to the approval of Metra's Board of Directors and Executive Director. Any funds not required for Eligible Costs, as later defined, shall revert back to Metra.

3. **INDEMNITY.** Each Party ("**Indemnifying Party**") shall indemnify and hold harmless the other Party, its directors, officers, agents, servants and employees ("**Indemnified Party**") from and against any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including attorney's fees and court costs, to which Indemnified Party may become liable or subject to by reason of or arising out of the failure of Indemnifying Party to perform its obligations hereunder. Under no circumstance will the indemnification obligation set forth herein extend to cover claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including attorney's fees and court costs arising from the Indemnified Party's own negligence or willful misconduct. The indemnities contained in this section survive the termination of this Agreement.

4. **JOINT OBLIGATIONS.**

(a) The Parties agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement, and the intent of the Parties as reflected by the terms of this Agreement, including, without limitation, the enactment of such resolutions and ordinances, the execution of such permits, applications and agreements, and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement, and as may be necessary to give effect to the objectives of this Agreement and the intentions of the Parties as reflected by the terms of this Agreement.

(b) Neither Party shall assign this Agreement to any person or entity without the prior written consent of the other Party.

(c) Municipality and Metra agree that this Agreement is for the benefit of the Parties and not for the benefit of any third party beneficiary. No third Party shall have any rights or claims against Metra or the Municipality arising from this Agreement.

5. **ELIGIBLE COSTS.**

(a) Expenditures incurred by Municipality shall be reimbursable under the Project to the extent they meet the requirements set forth below:

- i. Be necessary in order to accomplish the Project; and
- ii. Be satisfactorily documented (collectively, the "**Eligible Costs**").

(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 Metra.

6. **PAYMENT.** Metra will pay Municipality upon submittal of an acceptable invoice to Metra along with any detailed information about the Work that may be required by Metra. Upon submittal of an invoice, Metra shall process the invoice to verify that such costs are Eligible Costs incurred by Municipality, and shall submit payment within thirty (30) days of the date upon which such payment invoice was timely received. Municipality shall submit invoices for actual costs incurred within forty-five (45) days after completion of the Work. Reimbursement of any cost pursuant to this Section shall not constitute a final determination by Metra of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by Municipality.

7. **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.

8. **AUDIT AND INSPECTION.** Municipality shall permit, and shall require its contractors to permit, Metra, RTA, or any other state or federal agency providing grant 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. Metra also may require the Municipality to furnish, at any time prior to close-out of the Project, audit reports prepared according to generally accepted accounting principles at Municipality's expense. Municipality agrees to promptly comply with recommendations contained in Metra's final audit report (if required).

9. **RIGHT OF METRA TO TERMINATE.** Upon written notice to Municipality, Metra reserves the right to suspend or terminate all or part of the financial assistance herein provided if Municipality is, or has been, in violation of the terms of this Agreement. Any failure to make progress, which significantly endangers substantial performance of the Project within a reasonable time, shall be deemed to be a violation of the terms of this Agreement. Termination of any part of the Grant Funds will not invalidate obligations properly incurred by Municipality and concurred in by Metra prior to the date of termination to the extent they are non-cancellable. The acceptance of a remittance by Metra of any or all Grant Funds previously received by Municipality or the closing out of Metra financial participation in the Project shall not constitute a waiver of any claim which Metra 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, Metra shall determine the most appropriate course of action to be taken with respect to the Project.

10. **COMPLIANT WITH RULES AND REGULATIONS.** Municipality agrees that the award of the contracts for the Project has been done in accordance with all applicable state, federal, and Municipality's established rules, regulations and ordinances.

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

12. **EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Grant Funds for this Project will be used to reimburse costs for Eligible Costs of the Project.

13. **SUBSEQUENT MAINTENANCE & REPAIR.** Upon completion of the Project, Municipality agrees that the station building and its improvement will be maintained in the same manner and to the same standards as similar buildings maintained by the Municipality.

14. **ENTIRE AGREEMENT.** This Agreement represents the entire Agreement between Metra and Municipality and supersedes all prior negotiations and agreements. This Agreement shall be construed in accordance with the internal laws of the State of Illinois. This Agreement may be amended only by written instrument signed by both Parties hereto.

15. **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, sent by regular mail by the sending Party at the respective addresses shown below, or to such other Party or address as either Party may from time to time furnish to the other in writing. Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered.

(a) Notices to Metra shall be sent to:

Metra  
547 W. Jackson Boulevard  
Chicago, Illinois 60661  
Attn: Director of Government Affairs  
Phone: (312) 322-6494

(b) Notices to Municipality shall be sent to:

City of Aurora  
City Hall  
44 E. Downer Place  
Aurora, IL 60505  
Attn: Mayor's Office  
Phone: (630) 256-4636

16. **GENERAL.**

(a) This Agreement shall be governed by the laws of the State of Illinois.

(b) 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.

(c) The execution, delivery of, and performance under this Agreement is pursuant to authority, validity and duly conferred upon the Parties and signatories hereto.

**17. RECORD RETENTION.** Metra and the Municipality shall maintain their respective records relating to the performance of the Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and the Freedom of Information Act (5 ILCS 140/1 *et seq.*) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by Metra or the Municipality shall be available for review by the other. Metra and the Municipality shall cooperate with each other (a) with any request for public records made pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), (b) with any request for public records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records within a time period which allows Metra or the Municipality to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). Failure by Metra or the Municipality to maintain the books, records and supporting documents required by this section or the failure by Metra or the Municipality to provide full access to and copying of all relevant books and records within a time period which allows Metra or the Municipality to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*) shall establish a presumption in favor of the party served with the Freedom of Information Act request for the recovery of any funds paid by that party under this Agreement or for the recovery for any penalties or attorney's fees imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). The obligations imposed by this section shall survive final payment and the termination of the other obligations imposed by 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.

**CITY OF AURORA:**

**METRA:**

By: \_\_\_\_\_  
Honorable Richard C. Irvin, Mayor

By: \_\_\_\_\_  
James M. Derwinski, CEO/Executive Director