

**INTERGOVERNMENTAL FUNDING AGREEMENT
FOR THE REPAIR OF A COMMUTER FACILITY IN THE CITY OF AURORA**

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 hereinafter sometimes individually referred to as a “**Party**” and jointly referred to 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 the Municipality to make certain agreed upon improvements as more fully described below (“**Project**”).

D. The Municipality is authorized to cooperate with Metra in the exercise of its powers and agrees to perform certain improvements to Metra’s commuter facility located on Metra’s Burlington Northern Santa Fe Line in Aurora (“**Premises**”).

E. Metra has determined that it is in the best interest of Metra to provide the Municipality the necessary grant funding for the performance of the Project.

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.** The Municipality agrees to undertake and complete the Project which includes the replacement of six shingled roofs of buildings located on the south side of the of the Burlington Northern Santa Fe tracks at Metra’s Route 59 Commuter Facility, approved by Metra and more specifically described on the on **Exhibit A**, attached to and made a part of this Agreement, (“**Project Scope**”).

2. **AMOUNT OF GRANT.** The Project cost is estimated to be, Two Hundred Seven Thousand Dollars (\$207,000). Metra agrees to provide grant funding to the Municipality for a portion of the work to be done in an amount not to exceed Ninety Thousand Dollars (\$90,000) (“**Grant**” or “**Grant Funds**”). Metra, at its sole discretion, may agree in writing to increase the amount of the Grant Funding subject to the approval of Metra’s Executive Director, but in no event shall the total amount provided by Metra under this Agreement exceed the actual Net Project Cost. Metra is not liable for any amount in excess of the amount of the Grant Funding. The Municipality agrees that it will provide, or cause to be provided, the cost of project elements which are not approved for Metra’s participation.

3. **METRA’S OBLIGATIONS.**

(a) Metra shall review the proposed list of station repairs cost estimate submitted by the Municipality (“**Repairs and Cost Estimate**”). No work on the Project shall begin prior to Metra’s approval of the Repairs and Cost Estimate. Said approved Repairs and Cost Estimate shall become a part of this Agreement as **Exhibit B**.

(b) Metra agrees to pay Municipality the Grant Funds pursuant to the terms in conditions of this Agreement.

(c) Metra reserves the right to inspect the Project at any and all stages of Work, as later defined herein, and the right to audit the funding transaction and use of said funds.

4. **MUNICIPALITY’S OBLIGATIONS.**

(a) Municipality shall be responsible for providing the Repairs and Cost Estimate for the Project, unless Metra agrees in writing to provide such information. Metra will be under no obligation to pay for any work performed prior to Metra approving the Repairs and Cost Estimate.

(b) Municipality shall be responsible for the performance of the Project elements (“**Work**”) or causing the Work to be performed in a good and workmanlike manner and in accordance with the Project Scope and this Agreement.

(c) Municipality agrees to comply with all applicable federal laws, state laws and regulations and shall obtain all necessary permits, licenses, consents and other approvals for the performance of the Work.

(d) 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 the Project or this Agreement. The indemnities contained in this Section shall survive termination of this Agreement.

(e) Municipality shall permit, and shall require its contractors to permit, Metra or its designated agents 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.

5. **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.

(d) The Parties understand that a Railroad flagman may be required whenever Municipality or its contractor is performing the Work on Metra property or other railroad property for the purposes set forth herein, the cost of which will be borne by Metra. In the event it is determined flagging will be required pursuant to a work schedule ("**Schedule**") provided by Municipality, then Metra and Municipality agree to cooperate in scheduling the flagging to facilitate the Project. In the event the Work is being performed on the property of another railroad, but is being funded by Metra, then in that event, the Municipality or its contractor may need to enter into an Entry Agreement with the other railroad, and Metra agrees provide the Municipality any such additional funding to compensate the Municipality for any costs associated with access to another railroad's property or the flagging required by the other railroad.

6. **NO OBLIGATIONS TO THIRD PARTIES.** Neither Metra 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 Metra's specific consent. This limitation shall apply despite the fact that Metra concurred in or approved of the award of any contract, subcontract or the solicitation thereof. Unless expressly authorized in writing by Metra, the Municipality agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect Metra's interest in any Project Facilities or obligating itself in any manner to any third party with respect to Project Facilities.

7. **CONTRACTOR INDEMNIFICATION AND INSURANCE.**

(a) In all contracts executed by Municipality for the Project and performance of the Work 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 require its contractor to obtain any insurance that may be required by Metra and 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.

8. ELIGIBLE COSTS.

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

1. Be necessary in order to accomplish the Project; and
2. Be satisfactorily documented.

(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.

9. **PAYMENT BY METRA.** Metra may pay Municipality the Grant Funds in advance of the Work being performed, or may pay Municipality upon submittal of an acceptable invoice to Metra along with any detailed information about the Work that may be required by Metra. In the event Metra has determined that payment to Municipality will be pursuant to a submitted invoice, then in that event, Metra shall process the invoice to verify that such costs are Eligible Costs incurred by Municipality, and shall submit payment within 30 days of the date upon which such payment invoice was timely received. 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 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. Metra will make a final determination as to the allowability only after a final audit of the Project has been conducted.

10. **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.

11. **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.

12. **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 Project 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.

13. **PROJECT SETTLEMENT AND CLOSE-OUT.** Upon receipt of notice of successful completion of the Project or upon termination by Metra, Municipality shall cause a final audit to be performed of the Project to determine the allowability of costs incurred and make settlement of the Metra Grant. If Metra has made payments to Municipality in excess of the Total Project Cost of such Metra Grant or if Metra has advanced funds pursuant to an invoice submitted under Section 12 which exceed the Net Project Cost, Municipality shall promptly remit such excess funds to Metra. Project close-out occurs when Metra notifies Municipality and forwards the final Grant payment or when an appropriate refund of Metra Grant Funds has been received from Municipality and acknowledged by Metra. Grant Funds which have not been dispersed to the Municipality will automatically revert to Metra upon completion of the Project, provided that no outstanding invoices from the Municipality are pending submittal. Close-out shall be subject to any continuing obligations imposed on Municipality by this Agreement or contained in the final notification or acknowledgment from Metra.

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

15. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with state statutes, 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 Metra.

16. SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES. Metra has a vested interest in the settlement of disputes, defaults, or breaches involving any Metra-assisted third party contracts. Metra retains a right to a proportionate share, based on the percentage of the Metra 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 Metra 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 Metra 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 Metra permits otherwise.

17. SEVERABILITY. Metra and Municipality agree that if any provision of this Agreement is held invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the purposes, terms and requirements of applicable law.

18. AMENDMENT. 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 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.

19. 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.

20. EXPENDITURE OF GRANT FUNDS. Municipality agrees that the Grant Funds for this Project must be expended upon approved Project elements within 24 months of execution of the Grant contract. Unless otherwise specified in writing by Metra, all unexpended Grant Funds will automatically revert to Metra upon the expiration of this 24 month time period. In no event shall the term of this Agreement exceed 36 months from the date first mentioned above.

21. 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.

22. **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 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:

Commuter Rail Division
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: _____
Phone: (630) 256-4636

23. **GENERAL.**

(a) This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective heirs, legal representatives, successors and assigns. No waiver of any obligation or default of Municipality shall be implied from omission by Metra to take any action on account of such obligation or default, and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated.

(b) Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable. 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.

(c) This Agreement shall be governed by the laws of the State of Illinois. This Agreement provides for the development and maintenance of real estate located within the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Agreement, and

all questions of interpretation, construction, and enforcement hereof, and all controversies hereunder shall be governed by the applicable statutory and common law of the State of Illinois.

(d) 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.

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

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

VILLAGE OF AURORA:

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

By: _____

By: _____

Donald A Orseno, Executive Director/CEO

(please print name and title)

Exhibit A
Project Scope

Shingled Roof Replacement for 6 buildings

- Remove existing roofing material down to deck.
- Provide and install ice and water shield underlayment at all eaves and valleys.
- Provide 15# felt underlayment over remaining roof surface not covered by ice and water shield.
- Provide CertainTeed Landmark shingles over underlayment.
- Removal and disposal offsite of all demo and construction debris.
- Includes a 40 year material warranty and 2 year installation warranty.
- Includes work hours from 9 am to 3 pm.
- Work to be completed in 2016.

Exhibit B
Cost Estimate

(to be added when available)