

COMMUTER FACILITY IMPROVEMENT GRANT AGREEMENT

PART I

Between

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

and

VILLAGE OF LOMBARD

CONTRACT NO. _____

PROJECT NO. _____

This Commuter Facility Improvement Grant Agreement ("Agreement") is made by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("CRD"), created under the Regional Transportation Authority Act, 70 ILCS 3615/1.01 et seq., and the Village of Lombard, a municipal corporation created under the laws of Illinois ("Municipality"). The CRD and the municipality are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties".

PRELIMINARY STATEMENT

The Municipality desires to undertake a public transportation capital project ("**Project**") and has made letter application to the CRD for a grant for the Project.

The Project has been approved for funding by the CRD Board of Directors.

In consideration of the mutual covenants hereinafter set forth, this Agreement is made to provide financial assistance to the Municipality in the form of a capital grant ("**Grant**"), to set forth the terms and conditions upon which the Grant will be made, and to set forth the agreement of the Parties as to the manner in which the Project will be undertaken, completed and used.

ITEM 1. DEFINITIONS

As used in this Agreement, the following terms, when capitalized, shall have the following meanings:

Agreement -- Parts I and II of this Commuter Facility Improvement Grant Agreement and all exhibits and appendices hereto as from time to time modified or amended pursuant to the terms hereof.

Approved Project Budget -- As defined in Section 8 of Part II.

Commuter Service -- Public transportation services by rail within the Metropolitan Region as defined in the Regional Transportation Authority Act.

CRD ■ The Commuter Rail Division of the Regional Transportation Authority as established by amendments to the Regional Transportation Authority Act, November 9, 1983.

Eligible Costs -- Expenditures made by Municipality in carrying out the Project which are reimbursable under the terms of Section 10 of Part II.

Grant-- Capital grant funded, in part, by CRD for the Project.

Grant Close-out-- As defined in Section 17 of Part II.

Grant Funds -- An amount not to exceed the sum set forth in Item 3 of Part I.

Indemnitees-- The Commuter Rail Division of the Regional Transportation Authority (Metra), the Regional Transportation Authority (RTA), Northeast Illinois Regional Commuter Railroad Corporation (NIRCRC), and any federal and/or state agency providing Grant Funds to the Project, and all of their respective directors, administrators, officers, employees, agents, successors, and assigns.

Metropolitan Region -- As defined in the Illinois RTA Act.

Municipality -- An Illinois municipal corporation as named in Part I.

NIRCRC-- The Northeast Illinois Regional Commuter Rail Corporation (d/b/a "Metra")

Net Project Cost -- The sum of the Eligible Costs (as set forth in Section 10 of Part II) incurred in performance of the Work on the Project, including Work done by Municipality, less refunds, rebates, or other items of value received by Municipality which have the effect of reducing the cost actually incurred, and proceeds, if any, from the sale of scrap and replaced facilities.

Plans -- As defined in Section 3 of Part II.

Premises -- Property owned or controlled by the Municipality upon which the Project Facilities shall be constructed and maintained.

Project Account -- As defined in Section 9 of Part II.

Project Facilities -- Any facilities, equipment, or real property purchased, acquired, constructed, improved, renovated or refurbished as part of the Project. Project Facilities are also referred to as Improvements.

RTA -- The Regional Transportation Authority.

Total Project Cost -- The total of all line items shown in Exhibit B of Part II.

Use Term -- As defined in Section 28 of Part II.

Work -- The work to be performed under this Project as described in Item 2, Part I hereof and delineated on the drawing attached to and made a part of this Agreement as Exhibit "A".

ITEM 2. THE PROJECT

The Municipality agrees to undertake and complete the Project and to provide for the use of Project Facilities and equipment as described in the Approved Project Budget and in accordance with this Agreement and all applicable laws. The Project, which is to be more particularly described in the plans, specifications and schedules set forth in Part II generally includes, but is not limited to:

Improvements to the Lombard Station located at 9 South Main Street, Lombard, Illinois, including but not limited to purchase and installation of security cameras, demolition of existing roof, and removal and replacement of existing anti-graffiti coating on the station exterior walls ("Project") in accordance with Exhibit B, Approved Project Budget, attached to and made a part of this Agreement. The new facilities will meet the requirements of the Americans with Disabilities Act (ADA).

ITEM 3. AMOUNT OF GRANT

CRD agrees to make a Grant to the Municipality in an amount not to exceed Eighty Eight Thousand Four Hundred Sixty and No/100 Dollars (\$88,460) to cover the cost of the Project. Said Grant Funds shall not be obligated nor spent before receipt from CRD of an Exhibit B, Approved Project Budget, and execution of this Agreement by CRD's Executive Director, reflecting that the authorization of these funds has been received.

In no event, shall CRD be liable for the payment of Grant Funds that have not been authorized by and received from the federal government, if any. The total amount provided by the CRD under this Agreement shall not exceed the actual Net Project Cost. CRD is not liable for any amount in excess of the amount of the Grant.

The Municipality agrees that it will provide, or cause to be provided, the cost of project elements which are not approved for CRD participation as shown in "Exhibit B, Approved Project Budget." All or part of this local share to be contributed by the Municipality may, with the express written prior approval of the CRD, be provided by the Municipality in the form of contributions of professional, technical, or other services.

ITEM 4. DOCUMENTS FORMING THIS AGREEMENT

The Parties agree that this Agreement with all of its Parts and Exhibits constitutes the entire Agreement between the Parties hereto, that there are no agreements or understandings, implied or expressed, except as specifically set forth in the Agreement and that all prior arrangements and understandings in this connection are merged into and contained in this Agreement. This Agreement may only be amended in writing, signed by both Parties. The Parties hereto further agree that this Agreement consists of Part I, entitled "Commuter Facility Improvement Grant Agreement", together with Part II, entitled "Commuter Facility Improvement Grant Agreement --General Terms and Conditions", Exhibit A, entitled "Work to be Performed under this Agreement, Exhibit B, entitled

"Approved Project Budget", "Exhibit C entitled "Lease Agreement", all of which are by this reference specifically incorporated herein.


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.

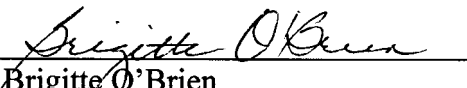
THE COMMUTER RAIL DIVISION OF
THE REGIONAL TRANSPORTATION
AUTHORITY:

By: _____
Philip A. Pagano, Executive Director

Attest: _____
Name: _____
Title: Assistant Secretary

VILLAGE OF LOMBARD:

By: 
Name: William J. Mueller
Title: Village President

Attest: 
Name: Brigitte O'Brien
Title: Village Clerk

STATE OF ILLINOIS)
COUNTY OF DU PAGE)

Before me, _____, a Notary Public within and for the State and County aforesaid, personally appeared William J. Mueller and Brigitte O'Brien with whom I am personally acquainted and who, upon their oaths acknowledged themselves to be the Village President and Village Clerk of the Village of Lombard, an Illinois municipal corporation, and that they as such Village President and Village Clerk being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal _____ on the _____ day of _____, 20__.

Notary Public

STATE OF ILLINOIS)
COUNTY OF COOK)

Before me, _____, a Notary Public within and for the State and County aforesaid, personally appeared Philip A. Pagano and _____, with whom I am personally acquainted and who, upon their several oaths acknowledged themselves to be the Executive Director and Assistant Secretary respectively of the Commuter Rail Division, and that they as such Executive Director and Assistant Secretary being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal at Chicago, Illinois on the _____ day of _____, 20__.

Notary Public

CERTIFICATE OF MUNICIPALITY'S ATTORNEY

I, Thomas P. Bayer, 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 due and proper and in accordance with applicable Federal, State, and local laws, grant conditions and regulations pertaining to this Agreement 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: Village Attorney

Village of Lombard, Grantee -Municipality

COMMUTER FACILITY IMPROVEMENT GRANT AGREEMENT

PART II

GENERAL TERMS AND CONDITIONS

Between

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

and

VILLAGE OF LOMBARD

CONTRACT NO. _____

PROJECT NO. _____

1. **DEFINITIONS.** The terms capitalized in Part II Commuter Improvement Agreement General Terms and Conditions shall have the same definitions as found in Part I, Item 1.

2. **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.

3. **SUBMISSION OF PROCEEDINGS, CONTRACTS AND OTHER DOCUMENTS.** Municipality and CRD hereby agree that the documents governing the Work shall be the designs, surveys, plans, estimates, working drawings, schedules and specifications hereinafter called "Plans". Municipality shall submit all requests for proposals, bid documents, contracts and Plans necessary for the completion of the Work to CRD for approval. After CRD approval is received, no change shall be made in such documents without the prior written consent of CRD.

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

5. **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 executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect CRD's interest in any Project Facilities or obligating itself in any manner to any third party with respect to Project Facilities

6. **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, including the applicable grant provisions of any master grant agreement signed between CRD and a state or federal funding agency, if any. 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. Specifically, if funding is provided, in whole or in part, by the Illinois Department of Transportation (**IDOT**), this Agreement is a Cooperative Agreement as defined in the IDOT Public Transportation Capital Improvement Grant Manual, dated September, 1982, and is subject to IDOT review and concurrence procedures applicable to such agreements, including the applicability of third-party contract requirements to subcontractors of Municipality and CRD.

(b) The Municipality agrees that the most recent of such state and federal requirements will govern the administration of this Agreement at any particular time, except if there is sufficient evidence in the Agreement of a contrary intent. Such contrary intent shall be evidenced by a letter signed by CRD, the language of which modifies or otherwise conditions the text of a particular provision of this Agreement. Likewise, new state and federal laws, regulations, policies and administrative practices may be established after the date the Agreement has been executed and may apply to this Agreement. To achieve compliance with changing government requirements, the Municipality agrees to include in all third party contracts financed with government assistance specific notice that government requirements may change and the changed requirements will apply to the Project as required. Specifically, the Municipality and its contractors agree to administer the Project in accordance with the most recent federal and state provisions, including all applicable OMB or USDOT Circulars and regulations.

7. **PERMITS.** Municipality shall obtain all necessary permits, licenses, consents and other approvals for the performance of the Work.

8. **APPROVED PROJECT BUDGET.** A budget shall be prepared by CRD and submitted to Municipality. Municipality shall carry out the Project and shall incur obligations against and make disbursements of Grant Funds only in conformity with the latest Approved Project Budget shown in Exhibit B ("**Project Budget**"). The Project Budget may be revised in writing from time to time in accordance with guidelines established by CRD.

9. **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 Grant payment installments 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".

10. **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 Approved 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, 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) Expenditures incurred by the Municipality which exceed the amount budgeted for a specific project line item (i.e., project element, job order or item) may be reimbursable as Eligible Costs at the time of completion of the project line item to the extent that those expenditures meet all of the requirements below:

1. Written justification to CRD is provided to explain the reason for the over expenditure and why that over expenditure was not anticipated prior to exceeding the budget for the project line item;

2. The budget for the project line item covers the full scope of the project line item, i.e., the budget of the project line item is intended to be adequate for the completion of the project line item (including, but not limited to, all engineering, material procurement, construction);

3. There are sufficient unspent funds in the Approved Project Budget which may be reallocated to the budget of the project line item;

4. The funds remaining in the Approved Project Budget after reallocation of the funds to the budget of the project line item are sufficient to provide for the uncompleted portions of all project line items;

5. The Total Project Cost for the CRD Grant shall not be exceeded.

6. The expenditures conform with the applicable state and/or federal grant requirements.

(c) 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.

11. **REQUESTS FOR PAYMENT BY MUNICIPALITY.** Unless CRD provides for another payment method, Municipality may make monthly requests for payment of preliminary Eligible Costs, and the CRD will honor such requests in the manner set forth in this Section. In order to receive CRD Grant payments, Municipality must:

- (a) Completely execute and submit to CRD a monthly 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.

12. **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 preliminary Eligible Costs incurred by Municipality within sixty (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 each month within forty-five (45) days after submission of each month's preliminary Eligible Costs, and succeeding payments by CRD shall be adjusted to actual costs. 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.

13. **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.

14. **AUDIT AND INSPECTION.** Municipality shall permit, and shall require its contractors to permit, CRD, 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. CRD 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 CRD's final audit report.

15. **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 Approved 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.

16. **RIGHT OF CRD TO TERMINATE.** Upon written notice to Municipality, CRD reserves the right to suspend or terminate all or part of the financial assistance herein provided for convenience when it is determined by the Parties and any applicable state or federal funding agency that continuation of the project would not produce results commensurate with the further expenditure of funds or 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 will not invalidate obligations properly incurred by Municipality and concurred in by CRD prior to the date of termination, to the extent they are noncancellable. The acceptance of a remittance by CRD of any or all Grant 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.

17. **PROJECT SETTLEMENT AND CLOSE-OUT.** Upon receipt of notice of successful completion of the Project or upon termination by CRD, Municipality shall cause a final audit to be performed of the Project to determine the allowability of costs incurred and make settlement of the CRD Grant. If CRD has made payments to Municipality in excess of the Total Project Cost of such CRD Grant or if CRD has advanced funds pursuant to requisitions under Section 12 which exceed the Net Project Cost, Municipality shall promptly remit such excess funds to CRD. Project close-out occurs when CRD notifies Municipality and forwards the final Grant payment or when an appropriate refund of CRD Grant Funds has been received from Municipality and acknowledged by CRD. Grant Funds which have not been dispersed to the Municipality will automatically revert to CRD upon completion of the Project.

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.

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

19. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with federal and 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 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.

20. 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.

21. ASSIGNMENT OF CONTRACT - SUBCONTRACTORS. 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.

22. CONSTRUCTION PROJECTS – SIGNS. 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 “C” attached to and made a part of this Agreement identifying the Project and indicating that CRD is participating in the development of the Project.

23. 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 therefor. 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 therefor. 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 final payment 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 therefor, 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.

24. **PREMISES.** The Municipality agrees that the property upon which the Project is to be constructed is leased by the Municipality under a Lease Agreement (**Lease**) for the Premises and other property between the Municipality and the Union Pacific Railroad (**UP**) dated _____, 20____, including any and all amendments, modifications, extensions, renewals, consolidations and replacements thereof, now existing or hereafter made and is provided at no cost to the CRD. The Lease is attached to and made a part of this Agreement as Exhibit **D**".

25. **ASSIGNMENT OF LEASE.** If the Municipality defaults or otherwise terminates the Lease, then the Municipality shall have the obligation, with the approval of the UP, to assign the Lease to CRD for the remaining term of the Lease. CRD shall agree to assume all of the remaining rights and obligations under the Lease. Municipality shall give CRD written notice of any termination of the Lease at least thirty (30) days in advance of such termination.

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

27. **ACCEPTANCE OF PROJECT FACILITIES.** Upon completion of the Work, Municipality and CRD shall conduct a joint inspection of the Project Facilities.

28. **MAINTENANCE, USE AND OPERATION OF PROJECT FACILITIES.** Municipality shall maintain the Project Facilities, or cause them to be maintained, in a safe and operable condition throughout the term of this Agreement. The specific maintenance, use and operation requirements for the Project Facilities shall be in accordance with the provisions of the Lease.

29. **CONTINUANCE OF SERVICES.** Municipality agrees that the Premises shall be used as a commuter railway station facility and for related improvements. Municipality agrees to continue to provide, either directly or by contract, as the case may be, the administrative and maintenance services described herein for forty (40) years ("**Use Term**"), subject to Municipality's continuing ability to do so under the Lease.

30. **RETENTION OF RECORDS AND INSPECTION.** Municipality shall keep satisfactory records with regard to the use of the Project Facilities for three (3) years after Project close-out, or longer if required by state or federal agencies providing Grant 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 grant agreement executed between CRD and IDOT. 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.

31. **INDEMNIFICATION AND WAIVER.** To the extent permitted by law, Municipality agrees to protect, indemnify, defend and forever save and keep harmless the Indemnitees as defined in Part I, Item 1.

32. **OWNERSHIP.** CRD shall own the Project Facilities constructed on the Premises with CRD funds and all other materials used to improve the Premises and related or appurtenant facilities, equipment, or fixtures. In the event this Agreement is terminated for any reason by Municipality and CRD has not defaulted under the terms and conditions of this Agreement or Municipality defaults under the terms and conditions of the Agreement and, as a result of such Municipality default, CRD is forced to terminate this Agreement and the Project Facilities are taken out of commuter service, CRD shall be compensated by Municipality for the Project Facilities. Compensation shall be based upon the remainder of the period beginning on the date which the Project Facilities are first used in the facilitation of commuter services and ending on the later of the expiration of: (a) twenty (20) years from such date; or (b) if such actual useful life (as determined by CRD in its sole discretion) is more than twenty (20) years, but in no event more than forty (40) years, the end of the actual useful life of such Project Facilities ("Use Period"). In either (a) or (b), compensation shall be in an amount equal to the average of the original cost and the replacement cost of each such Project Facilities taken out of service because of termination, reduced by that percentage of the Use Period which has expired before such termination. Such payment shall be made in full within ninety (90) days after Municipality's termination of this Agreement or interest at a rate of one-half percent (.%) per month shall accrue on any unpaid balances due from the date payment is due until paid. In the event this Agreement is terminated for any reason by CRD and Municipality has not defaulted under the terms and conditions of this Agreement or CRD defaults under the terms and conditions of this Agreement and, as a result of such CRD default, Municipality is forced to terminate this Agreement, Municipality shall not be required to compensate CRD for the Project Facilities; provided, however, that CRD may, at its sole discretion and cost, remove the Project Facilities including, without limitation, lighting fixtures, benches, and railings or transfer ownership (by quit claim or bill of sale) of the Project Facilities to the Municipality. The Municipality shall accept the transfer of the Project Facilities in as is condition. Project Facilities located on the Premises shall belong to CRD subject to the terms and conditions of Exhibit "C".

33. **LIENS.** Municipality shall not cause 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.

34. **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 application for the Grant 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.

35. **MUNICIPALITY'S WARRANTIES.** Municipality agrees to initiate and consummate all actions necessary to enable it to enter into this Agreement, as evidenced by its "Certificate of Grantee's Attorney" attached to and made a part of Part I of this Agreement.

36. **SEVERABILITY.** CRD 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.

37. **ASSIGNMENT OF AGREEMENT.** Municipality agrees that this Agreement shall not be assigned, transferred, conveyed, sublet or otherwise disposed of without the prior written consent of CRD.

38. **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, 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 exhibit or attachment hereto unless and until such amendment has been executed and made a part of this Agreement and the Approved Project Budget has been amended to conform thereto.

39. **TITLES.** Municipality and CRD agree that the titles of the items of this Agreement, hereinabove set forth, are inserted for convenience of identification only and shall not be considered for any other purpose.

40. **AGREEMENT PERIOD.** The terms of this Agreement shall begin as of the date hereof and shall end upon the completion of all obligations hereunder.

41. **GOVERNING LAW.** This Agreement shall be construed in accordance with the internal laws of the State of Illinois.

42. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other Party 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 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:

Village of Lombard
255 E. Wilson Avenue
Lombard, Illinois
Attn: Village Manager
Phone: (630) 620-5700
Fax: (630) 620-8222

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.

43. **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.

44. **EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Grant Funds for this Project must be expended upon approved Project elements within eighteen (18) months of execution of this Agreement.. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD upon the expiration of this eighteen (18)-month time period.

EXHIBIT A
Work to be Performed

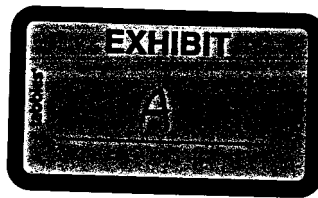


Exhibit A: Work to be Performed

Site Improvements

The bike racks that are currently located near the lower level (north side) of the station building will be relocated to an area along Michael McGuire Drive, immediately west of the Park Avenue platform access point. This will improve visibility and provide a location that is a shorter walk to the train platform.

On the platform itself, a freestanding kiosk will be placed on the north platform between the station building and the nearest bench shelter. This kiosk will have a map of Downtown Lombard with a business and amenity directory, plus an additional display area that may be used to announce community events.

The existing landscaping between the train station and Main Street consists of heavy evergreen plantings which create an extremely secluded area that cannot easily be viewed from the street level. Consequently, this area attracts an assortment of public nuisances, including minor problems such as littering and more serious issues such as its repeated use as an open-air toilet facility. The existing landscaping will be thinned out and supplemented with low-growth, low-maintenance plants.

Security Cameras

Up to 16 closed circuit cameras will be installed inside and outside the station building and along both the north and south platforms. These cameras will have a 24-hour feed to the Police Department with the ability to pan, tilt, and zoom to focus on specific areas. The police station will be able to communicate with people via a public address system, and they will also be able to open the waiting room door via remote control. This system is not intended to be used as a mechanism that will allow police to issue tickets for infractions, but rather it will serve as a way to supervise the platform via observation and recording any events that may occur.

Exterior Building Improvements

The existing roof will be replaced with a new, asphalt-shingled roof featuring a clock tower. Also, the existing, peeling anti-graffiti coating will be removed from the walls and replaced.

Garbage collection will be relocated from its current position on the platform in front of the station building to the alcove on the lower level. The alcove will be secured with a wrought-iron gate to prevent any unauthorized use of the area.

Interior Building Improvements

Two ADA-compliant bathrooms and a janitorial closet will be installed in the former all-hours waiting room. The bathrooms will include penal-grade fixtures to prevent vandalism. The Metra ticket office and private restroom will remain off-limits to the general public. Security cameras will allow the entire building to be monitored, and a television will be installed as a passenger amenity.

EXHIBIT B
Approved Project Budget

EXHIBIT "B"

AGREEMENT BETWEEN
METRA AND VILLAGE
OF LOMBARD

GRANT NUMBERS:
MET-126

PROJECT NO. 4096

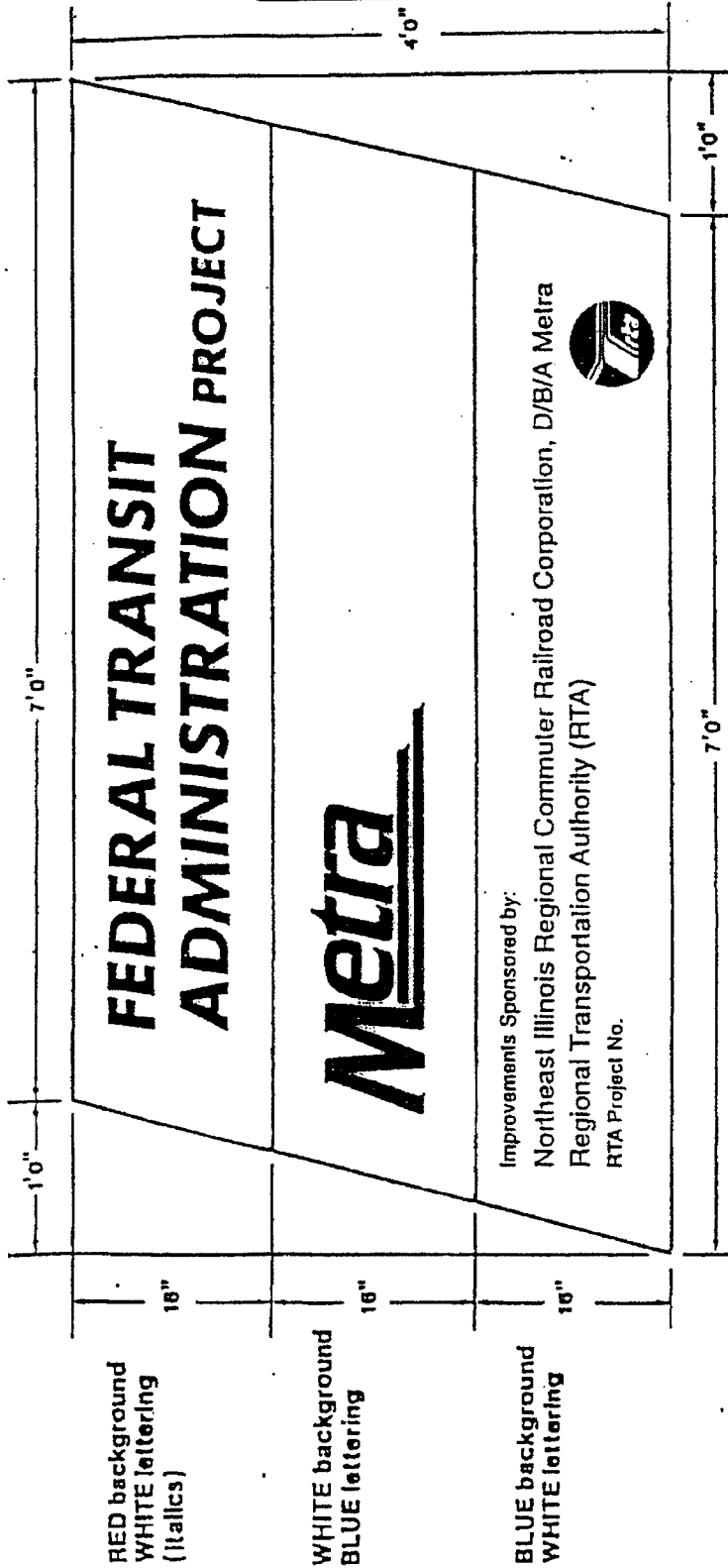
CONTRACT NO.

PROJECT DESCRIPTION: LOMBARD STATION IMPROVEMENTS:
=====

ACTIVITY	PROJECT BUDGET
DG4096-53402006	\$88,460
TOTAL	\$88,460

4/25/2007

EXHIBIT C
Project Signs



RED background
 WHITE lettering
 (italics)

WHITE background
 BLUE lettering

BLUE background
 WHITE lettering

Lettering: Futura Bold Italic (top)
 Futura Bold (center)
 Futura Demi Bold (bottom)
 RTA Logo: Black circle, reversed
 white letters

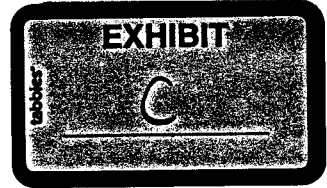
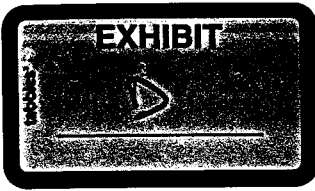


EXHIBIT D
Lease Agreement



PASSENGER STATION LEASE

THIS PASSENGER STATION LEASE ("Lease") is entered into on _____, 2007, between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Railroad"), and the VILLAGE OF LOMBARD, ILLINOIS, an Illinois Municipal corporation, whose address is 255 E. Wilson Avenue, Lombard, Illinois 60148 ("Tenant").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article I. PREMISES; USE.

Railroad leases to Tenant and Tenant leases from Railroad the passenger station at Lombard, Illinois, shown on the attached print identified as ORDER NO. 91-10574-067EXHIBIT REV-1, marked **Exhibit A**, and made a part of this Lease, ("Premises"), subject to the provisions of this Lease and of **Exhibit B** attached and made a part of this Lease. The Premises may be used as a public commuter rail passenger station with ancillary commercial uses serving commuter passengers, only, and for no other purposes.

Article II. TERM.

The term ("Term") of this Lease is for twenty (20) years beginning on _____, 20____, and expiring on _____, 2____, unless sooner terminated as provided in this Lease.

Article III. RENT.

Tenant shall pay to Railroad advance fixed rent of One Dollar (\$1.00) for the Term. Tenant shall pay the advance fixed rent before commencement of the Term.

Article IV. INSURANCE.

A. Before commencement of the Term, Tenant shall provide to Railroad a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C** attached and made a part of this Lease.

B. Not more recently than once every two (2) years, Railroad has the right to reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements must be directed to: Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179, ATTN: _____, Folder No. _____.

Article V. SPECIAL PROVISION. (If none, remove this Article.)

Railroad:
UNION PACIFIC RAILROAD COMPANY
By: _____
Director - Real Estate

Tenant:

By: _____
Title: _____

Marginal Notes:

**EXHIBIT B
TO
PASSENGER STATION LEASE**

Section 1. **IMPROVEMENTS.**

No improvements placed upon the Premises by Tenant will become a part of the realty.

Section 2. **RESERVATIONS AND PRIOR RIGHTS.**

A. Railroad reserves to itself, its licensees, agents and contractors, the rights to (i) use the Premises in the conduct of its railroad business, including, without limitation, commuter passenger operations, (ii) enter the Premises at such times as Railroad deems necessary or desirable, and (iii) the exclusive use and occupancy of the portion (if any) of the Premises shown outlined in red on **Exhibit A** ("Railroad's Space").

B. Railroad also reserves the rights to (i) permit third party placement of advertising signs on the Premises, (ii) modify, remove or relocate new and existing improvements on or under the Premises and to construct, maintain and operate new and existing improvements (including, without limitation, trackage, fences, communication facilities, roadways and utilities) on or under the Premises, and to grant to others such rights, (iii) regulate and control the persons who enter the Premises, and (iv) post, paint or place informational signs on the Premises relative to the commuter passenger operations of Railroad, including, but not limited to, those designed to enhance the accessibility of facilities and services to the elderly and handicapped.

C. Tenant acknowledges that Railroad makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Tenant under this Lease do not extend beyond such right, title or interest as Railroad may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Railroad reserves the right to renew any such outstanding rights granted by Railroad or Railroad's predecessors. If Tenant requires the relocation of any facilities owned by third parties, such relocation will be at Tenant's expense and only with the consent of such third party.

D. Without limitation of Subparagraphs B. and C. above, Tenant shall not interfere in any manner with the use or operation of any new or existing signboards on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards).

Section 3. **PAYMENT OF RENT.**

Tenant shall pay all rent (which includes the fixed advance rent and all other amounts to be paid by Tenant under this Lease) in lawful money of the United States of America, at the place designated by Railroad, and without offset or deduction.

Section 4. **TAXES AND ASSESSMENTS.**

Tenant shall pay, prior to delinquency, all Taxes on Tenant's personal property and improvements on the Premises. Tenant shall reimburse Railroad within thirty (30) days of rendition of Railroad's bill for any Taxes paid by Railroad, whether paid separately, as a part of the levy on other real property of Railroad, or as a part of the central or unit assessment of Railroad's property. For purposes of this Lease, "Taxes" means all governmental charges and levies (including, without limitation, real estate and personal property taxes, special assessments and other charges for public improvements or services, and impact fees, but not including income taxes) as may during the Term be levied, assessed or imposed.

Section 5. **CARE AND USE OF PREMISES.**

A. Tenant shall use reasonable care and caution against damage or destruction to the Premises. Tenant shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use or permit the use of the Premises in any way that creates a hazard to persons or property or that would invalidate any new or existing insurance policies on the Premises. Tenant shall keep

the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad track(s) on or serving the Premises, free and clear from any substance that might create a hazard except for snow removal from the passenger platform.

B. Tenant shall keep the Premises in a safe, neat, clean and presentable condition, and in good condition and repair, except as otherwise specifically provided in Subparagraph C. below. Tenant's responsibility for repair and maintenance includes, without limitation, roof, exterior walls, foundation, overhead doors, loading docks, outside light poles, gutters, downspouts, interior floors, glass, walls, ceilings, plumbing, heating and cooling plant, electric wiring and fixtures, and regardless of whether the need for maintenance and repair is necessitated by ordinary wear and tear, or existing conditions, or explosion or fire howsoever caused, the elements, or by any other cause whatsoever.

C. Tenant is not obligated to make any repair of the Railroad Space or that has an estimated cost for each single item in excess of \$2500 (in year 2007 dollars), unless the need for the repair is caused by (i) any act or omission of Tenant, or Tenant's employees, invitees or licensees, or (ii) any casualty for which Tenant is required by this Lease to maintain insurance coverage and the proceeds from such insurance coverage received by Railroad are insufficient to pay the cost of repair.

D. Tenant shall not permit any sign on the Premises, except signs relating to Tenant's or it subtenant's business.

E. Tenant is responsible for securing the Premises and for controlling access to the Premises by the public, provided, however, that public access must be available during commuter train operating hours.

F. Tenant shall comply with all governmental laws, ordinances, rules, regulations and orders relating to the Premises and this Lease, and also shall comply with Railroad's rules relating to use of passenger stations.

Section 6. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Railroad, Tenant is prohibited from using or permitting the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Tenant may use, if lawful and necessary, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids. Railroad may withhold its consent for any reason whatsoever, and such consent may be subject to conditions in addition to those set forth below. It is the sole responsibility of Tenant to determine whether a contemplated use of the Premises is a Hazardous Substance use.

B. If Tenant uses or permits the use of the Premises for a Hazardous Substance use, with or without Railroad's consent, Tenant shall furnish to Railroad copies of all permits, identification numbers and notices issued by governmental agencies, reports, and other records of any nature, relating to any such Hazardous Substance use, together with such other information on the Hazardous Substance use as Railroad may request.

C. Without limitation of the provisions of Section 11 of this Exhibit B, Tenant is responsible for all damages, losses, costs, expenses, claims, fines and penalties (including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property), and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure) related in any manner to any Hazardous Substance use of the Premises by Tenant) or related in any manner to any contamination of or from the Premises that is exacerbated by Tenant, regardless of Railroad's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party.

D. In addition to the other rights and remedies of Railroad under this Lease or as may be provided by law, if Railroad reasonably determines that the Premises may have been used, or are being used, for any Hazardous Substance, with or without Railroad's consent thereto, and that a release or other contamination may have occurred, Railroad may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Railroad to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Railroad, (iii) cause to be performed any restoration of the

Premises and any adjacent lands of Railroad, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Railroad, as Railroad reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Tenant to Railroad within thirty (30) days after rendition of Railroad's bill .except to the extent the contamination was caused by Railroad, or was caused by a third party and could not reasonably have been prevented by the Tenant, or migrated to the Premises `from adjacent property not owned or occupied by Tenant. In addition, Railroad may, at its election, require Tenant, at Tenant's sole cost and expense, to perform such work, in which event Tenant shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Railroad.

E. Tenant shall promptly notify Railroad of any event, notice, claim or demand relating to contamination of or from the Premises.

F. For purposes of this Section 6, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 7. UTILITIES.

A. Tenant will arrange and pay for all utilities and services supplied to the Premises (except for Railroad's Space) or to Tenant. Without limitation of the foregoing, Tenant shall provide all cleaning and janitorial services and supplies (including, without limitation, toilet paper and hand soap).

B. All utilities and services (except for Railroad's Space) will be separately metered to Tenant. If not separately metered, Tenant shall pay its proportionate share as reasonably determined by Railroad.

Section 8. LIENS.

Tenant shall not allow any liens to attach to the Premises for any services, labor or materials furnished to Tenant at the Premises or otherwise arising from Tenant's use of the Premises. Railroad has the right to discharge any such liens at Tenant's expense.

Section 9. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

A. No alterations, improvements or installations may be made to the Premises by Tenant without the prior consent of Railroad, which consent Railroad may withhold at Railroad's sole and absolute discretion. Such consent, if given, may be subject to the needs and requirements of the Railroad in the operation of its Railroad and to such other conditions as Railroad determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Railroad's then-current clearance standards.

B. All alterations, improvements or installations by Tenant are at Tenant's sole cost and expense. Tenant is not entitled to any compensation for any such alterations, improvements or installations, regardless of whether this Lease is terminated by Railroad.

C. Tenant shall comply with Railroad's then-current clearance standards, except where to do so would cause Tenant to violate an applicable governmental requirement.

D. Any actual or implied knowledge of Railroad of a violation of the clearance requirements of this Lease or of any governmental requirements will not relieve Tenant of the obligation to comply with such requirements, nor will any consent of Railroad be deemed to be a representation of such compliance.

E. If funds become available from a public agency or other sources for the rehabilitation of

railway stations, Railroad shall cooperate with Tenant or other parties in the applications for such funds, provided there is no cost, expense or liability to Railroad of any kind in the acquisition of the funds and provided that such rehabilitation in no way adversely affects Railroad's interests in the Premises or adversely affects the commuter railway operation.

Section 10. AS-IS.

Tenant accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Tenant acknowledges that Railroad has no duty to maintain, repair or improve the Premises or to provide any equipment, facilities or services (including, without limitation) on or to the Premises.

Section 11. RELEASE AND INDEMNITY.

A. As a material part of the consideration for this Lease, Tenant, to the extent it may lawfully do so, waives and releases any and all claims against Railroad and the Commuter Rail Division of the Regional Railway Authority ("METRA") for, and agrees to indemnify, defend and hold harmless Railroad, its affiliates, METRA, and its and their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Railroad, METRA, Tenant, or any employee of Railroad, METRA, or Tenant) arising from or related to (i) this Lease, (ii) any use of the Premises by Tenant or any invitee or licensee of Tenant, (iii) any act or omission of Tenant, its officers, agents, employees, licensees or invitees, or (iv) any breach of this Lease by Tenant.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party, or to have been caused by the negligence of any Indemnified Party in exercising any of the Railroad's rights reserved under Section 2 above but the indemnity shall apply to the extent such Loss was not caused by such negligence.

C. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 11.

Section 12. TERMINATION FOR CAUSE.

A. Railroad may terminate this Lease for Tenant's default by giving Tenant notice of termination, if Tenant defaults under any obligation of Tenant under this Lease and, after written notice is given by Railroad to Tenant specifying the default, Tenant fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given.

B. Tenant acknowledges that Railroad's possible future needs for the Premises in connection with Railroad's transportation operations are paramount. Accordingly, if at any time Railroad, in its sole and absolute discretion, determines that the Premises or any portion thereof are necessary or desirable for use in connection with Railroad's transportation operations, or that Tenant's use of the Premises should be terminated due to safety considerations associated with Railroad's transportation operations, Railroad may terminate this Lease upon thirty (30) days prior written notice to Tenant or, in emergency situations, upon such shorter notice as is reasonable in the circumstances.

C. Tenant or Railroad may terminate this Lease without cause upon ninety (90) days' prior written notice to the other party.

Section 13. RAILROAD'S REMEDIES.

Railroad's remedies for Tenant's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Tenant, collect and receive the rent from reletting, and charge Tenant for the cost of reletting, and/or (b) terminate this Lease as provided in Section 11

A) above and sue Tenant for damages, and/or (c) exercise such other remedies as Railroad may have at law or in equity. Railroad may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Tenant, all without being liable for damages.

Section 14. VACATION OF PREMISES; REMOVAL OF TENANT'S PROPERTY.

A. Upon termination howsoever of this Lease, Tenant (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Railroad, without Railroad giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials of Tenant, and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Tenant has not completed such removal and restoration within thirty (30) days after termination of this Lease, Railroad may, at its election, and at any time or times, (i) perform the work and Tenant shall reimburse Railroad for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Tenant, (iii) collect from Tenant the estimated cost of such removal and restoration, and/or (iv) treat Tenant as a holdover tenant at will until such removal and restoration is completed.

Section 15. FIBER OPTICS.

Tenant shall telephone Railroad during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Railroad may change the telephone number and hours of operation by giving Tenant notice of the change. If cable is buried on the Premises, Tenant shall telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Tenant with this Section 15, the release and indemnity provisions of Section 11 above shall apply fully to any damage or destruction of any telecommunications system.

Section 16. NOTICES.

Any notice, consent or approval to be given under this Lease must be in writing, and personally served, sent by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Railroad at: Union Pacific Railroad Company, Attn: General Manager - Real Estate, Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179; and to Tenant at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices are deemed served five (5) days after deposit in the U.S. Mail. Notices that are personally served or sent by courier service are deemed served upon receipt.

Section 17. ASSIGNMENT.

A. Tenant may sublease the Premises or assign this Lease, by operation of law or otherwise, only if Railroad has consented in advance in writing. Such consent must not be unreasonably withheld for any sublease of a portion of the Premises for commercial commuter convenience services. No subletting or assignment will relieve Tenant of its obligations under this Lease. Any assignment or sublease by Tenant in violation of this Paragraph A will be void and ineffective and will, at the option of Railroad, result in an immediate termination of this Lease. Tenant may retain, in full, any fee/rent it receives for any commercial entering into a sublease with Tenant of a portion of the premises.

B. Subject to this Section 17, this Lease is binding upon and inures to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.

Section 18. CONDEMNATION.

If, as reasonably determined by Railroad, Tenant cannot use the Premises because of a condemnation or sale in lieu of condemnation, then this Lease will automatically terminate. Railroad is entitled

to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Tenant hereby assigns to Railroad any and all claims that Tenant would have to any such awards or proceeds. Notwithstanding the foregoing, Tenant may pursue recovery from the condemning authority of such compensation as may be separately awarded to Tenant for Tenant's relocation expenses, the taking of Tenant's personal property and fixtures, and the interruption of or damage to Tenant's business.

Section 19. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 20. RIGHTS AND OBLIGATIONS OF RAILROAD.

If any of the rights and obligations of Railroad under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Railroad may require Tenant to enter into an amendment to this Lease to eliminate the negative effect on Railroad's rights and obligations to the extent reasonably possible.

Section 21. ENTIRE AGREEMENT.

This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, any prior lease under which all or any portion of the Premises was leased to Tenant. Notwithstanding the prior sentence, Tenant retains any and all obligations and liabilities that may have accrued under any other such agreements prior to the commencement of the Term. This Lease may be amended only by a written instrument signed by Railroad and Tenant.

**EXHIBIT C
TO
PASSENGER STATION LEASE**

**UNION PACIFIC RAILROAD
INSURANCE REQUIREMENTS**

Tenant shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain a single limit of at least \$2,000,000 each occurrence or claim and an aggregate limit of at least \$5,000,000 and include broad form contractual liability coverage. Coverage must be purchased on a post 1998 ISO or equivalent form, including but not limited to coverage for the following:

- Bodily injury including death and personal injury
- Property damage
- Fire legal liability
- Products and completed operations

The policy shall also contain the following endorsements, which **shall be indicated on the certificate of insurance:**

- The workers compensation and employee related exclusions in the above policy apply only to employees of Tenant.
- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or crossings), and explosion, collapse and underground hazard shall be removed.
- Waiver of subrogation
- Designated Premises Pollution Coverage (CG00-39), unless Tenant does not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substance (as defined in Section 6F of **Exhibit B** to this Lease).

B. Business Automobile Coverage insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence or claim, including but not limited to coverage for the following:

- Bodily injury and property damage
- Any and all motor vehicles including owned, hired and non-owned

The policy shall also contain the following endorsements, which **shall be indicated on the certificate of insurance:**

- The workers compensation and employee related exclusions in the above policy apply only to employees of Tenant.
- The exclusions for railroads (except where the Premises is more than fifty feet (50') from any railroad including but not limited to tracks, bridges, trestles, roadbeds, terminals, underpasses or

crossings), and explosion, collapse and underground hazard shall be removed.

C. **Workers Compensation and Employers Liability** insurance including but not limited to:

- Tenant's statutory liability under the workers' compensation laws of the state(s) affected by this Lease
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee

If Workers Compensation insurance will not cover the liability of Tenant in states that require participation in state workers' compensation fund, Tenant shall comply with the laws of such states. If Tenant is self-insured, evidence of state approval must be provided along with evidence of excess workers compensation coverage. Coverage shall include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

The policy shall also contain the following endorsement, which **shall be indicated on the certificate of insurance:**

- Alternate Employer Endorsement

D. **Umbrella or Excess Policies** In the event Tenant utilizes Umbrella or excess policies, these policies shall "follow form" and afford no less coverage than the primary policy.

E. **All Risk Property** insurance (including Flood and Quake) covering Lessor's building, betterments, and improvements on the Premises and all appurtenances thereof in an amount not less than their replacement value, and naming Railroad as Loss Payee.

F. **Comprehensive Boiler and Machinery** Coverage (Object Definition Number 6 - including Production Machinery) including business interruption and extra expense for all objects on the leased premises, and naming Railroad as an Additional Insured and Loss Payee.

Other Requirements

G. Punitive damage exclusion must be deleted, **which deletion shall be indicated on the certificate of insurance.**

H. Tenant agrees to waive its right of recovery, and shall cause its insurers, through policy endorsement, to waive their right of subrogation against Railroad, including, without limitation, for loss of Tenant's owned or leased property or property under its care, custody and control. Tenant's insurance shall be primary with respect to any insurance carried by Railroad. All waivers of subrogation **shall be indicated on the certificate of insurance.**

I. All policy(ies) required above (excluding Workers Compensation) shall provide severability of interests and shall name Railroad as an additional insured. The coverage provided to Railroad as additional insured shall provide coverage for Railroad's negligence whether sole or partial, active or passive, and shall not be limited by Tenant's liability under the indemnity provisions of this Lease. **Severability of interest and naming Railroad as additional insured shall be indicated on the certificate of insurance.**

J. Prior to execution of this Lease, Tenant shall furnish to Railroad original certificate(s) of insurance evidencing the required coverage, endorsements, and amendments. The certificate(s) shall contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing of any cancellation or material alteration. **Upon request from Railroad, a certified duplicate original of any required policy shall be furnished.**

K. Any insurance policy shall be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

L. Tenant **WARRANTS** that this Lease has been thoroughly reviewed by Tenant's insurance agent(s)/broker(s), who have been instructed by Tenant to procure the insurance coverage required by this Lease and acknowledges that Tenant's insurance coverage will be primary.

M. If Tenant fails to procure and maintain insurance as required, Railroad may elect to do so at the cost of Tenant plus a 25% administration fee.

N. The fact that insurance is obtained by Tenant or Railroad on behalf of Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Railroad shall not be limited by the amount of the required insurance coverage.