



LAKE COUNTY FOREST PRESERVES  
www.LCFPD.org

Preservation, Restoration, Education and Recreation

**DATE:** June 4, 2015

**MEMO TO:** S. Michael Rummel, Chair  
Finance and Administrative Committee

**FROM:** Randall L. Seebach, Director  
Planning, Conservation and Development

**SUBJECT:** Intergovernmental Agreement for the Pedestrian Bridge and Trail Connection at Middlefork Savanna Forest Preserve

**RECOMMENDATION:** Approve final Intergovernmental Agreement with the City of Lake Forest and Lake Forest Academy to provide a Pedestrian Bridge and Trail Connection at Middlefork Savanna Forest Preserve, as authorized by the Board of Commissioners on April 14, 2015.

**BACKGROUND:** In July 2014, the Board approved a Term Sheet and authorized staff to prepare an intergovernmental agreement with the City of Lake Forest and Lake Forest Academy for the installation of a pedestrian bridge over the Metra railroad tracks to connect Middlefork Savanna to Lake Forest Academy, and for construction of a city trail to connect the Academy's property to Illinois Route 60 and Townline Community Park. This project is part of an overall effort by several organizations to connect the Middlefork Trail and Greenway to the Des Plaines River Trail. An intergovernmental agreement is necessary to identify several conditions required to successfully complete the project including: securing the necessary temporary and permanent easements, identifying changes to the scope of the project, establishing future ownership and maintenance responsibilities, describing the federal funding process, and identifying cost sharing responsibilities.

In June 2015, the District executed a contract for Phase I engineering services and to prepare the project for federal funding assistance through the CMAQ/TAP program administered by the Illinois Department of Transportation. The CMAQ application was submitted in February 2015, and an award announcement is expected later this year.

On April 14, 2015, the Board approved a Resolution (Exhibit 4945, attached) authorizing the Finance and Administrative Committee to approve the final version of the intergovernmental agreement.

**REASON FOR RECOMMENDATION:** Committee approval is required per Resolution 4945.

**REVIEW BY OTHERS:** Chief Operations Officer, Director of Finance, Legal Counsel

**FINANCIAL DATA:** There is no anticipated cost to the District for approval of the IGA. The District has approved \$900,000.00 in the FY2015/2016 budget for construction of the project. The Preservation Foundation is continuing to search for additional funding opportunities for the project.

**PRESENTER:** Randall L. Seebach

Approve final Intergovernmental Agreement with the City of Lake Forest and Lake Forest Academy to provide a Pedestrian Bridge and Trail Connection at Middlefork Savanna Forest Preserve, as authorized by the Board of Commissioners on April 14, 2015

**FINANCE AND ADMINISTRATIVE  
COMMITTEE:**

**YEA      NAY**

\_\_\_\_\_  
S. Michael Rummel, Chair

\_\_\_\_\_  
Linda Pedersen, Vice Chair

\_\_\_\_\_  
Steve Carlson

\_\_\_\_\_  
Bill Durkin

\_\_\_\_\_  
Sandra Hart

\_\_\_\_\_  
Aaron Lawlor

\_\_\_\_\_  
Audrey Nixon



LAKE COUNTY FOREST PRESERVES  
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Preservation, Restoration, Education and Recreation

**DATE:** April 6, 2015

**MEMO TO:** Carol Calabresa, Chair  
Land Preservation and Acquisition Committee

Bonnie Thomson Carter, Chair  
Planning and Restoration Committee

**Agenda Item#** 9.4

S. Michael Rummel, Chair  
Finance and Administrative Committee

**FROM:** Randall L. Seebach, Director  
Planning and Land Preservation

**SUBJECT:** Intergovernmental Agreement for the Pedestrian Bridge and Trail Connection at Middlefork Savanna

**RECOMMENDATION:** Recommend approval of a Resolution approving an Intergovernmental Agreement with the City of Lake Forest and Lake Forest Academy to provide a Pedestrian Bridge and Trail Connection at Middlefork Savanna Forest Preserve.

**BACKGROUND:** In July 2014, the Board approved a Term Sheet and authorized staff to prepare an Intergovernmental Agreement with the City of Lake Forest and Lake Forest Academy for the installation of a pedestrian bridge over the Metra railroad tracks connecting Middlefork Savanna to Lake Forest Academy and a City trail connecting the Academy property to Illinois Route 60 and Townline Community Park. This project is part of an overall effort by several organizations to connect the Middlefork Trail and Greenway to the Des Plaines River Trail. An Intergovernmental Agreement is necessary to identify several conditions required to successfully complete the project including: securing the necessary temporary and permanent easements, identifying changes to the scope of the project, establishing future ownership and maintenance responsibilities, describing the federal funding process and identifying cost sharing responsibilities.

In June 2014, the District executed a contract for Phase I engineering services and to prepare the project for federal funding assistance through the CMAQ/TAP program administered by the Illinois Department of Transportation. The CMAQ application was submitted in February 2015, and an award announcement is expected later this year.

The attached resolution would authorize the Finance and Administrative Committee to approve the final version of the intergovernmental agreement, subject to the criteria stated in the resolution.

**REASON FOR RECOMMENDATION:** Committee recommendation and Board approval are required in accordance with District policy.

**REVIEW BY OTHERS:** Chief Operations Officer, Director of Finance, Legal Counsel

**FINANCIAL DATA:** There is no anticipated cost to the District for approval of the IGA. This District has approved \$900,000.00 in the Fiscal Year 2014-15 budget for construction of the project. The Preservation Foundation is continuing to search for additional funding opportunities for the project.

**PRESENTER:** Randall L. Seebach

STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF LAKE )

**BOARD OF COMMISSIONERS  
 LAKE COUNTY FOREST PRESERVE DISTRICT  
 REGULAR APRIL MEETING  
 APRIL 14, 2015**

**MADAM PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:**

Your **LAND PRESERVATION AND ACQUISITION COMMITTEE**; **PLANNING AND RESTORATION COMMITTEE**; and **FINANCE AND ADMINISTRATIVE COMMITTEE** present herewith "A Resolution Approving an Intergovernmental Agreement for the Pedestrian Bridge and Trail Connection at Middlefork Savanna Forest Preserve," and request its adoption.

LAND PRESERVATION AND ACQUISITION COMMITTEE	YEA	NAY	PLANNING AND RESTORATION COMMITTEE	YEA	NAY
<u>Carol Calabresa</u> Carol Calabresa, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Bonnie Thomson Carter</u> Bonnie Thomson Carter, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Steve W. Mandel</u> Steve W. Mandel, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Nick Sauer</u> Nick Sauer, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Bonnie Thomson Carter</u> Bonnie Thomson Carter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Carol Calabresa</u> Carol Calabresa	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Linda Pedersen</u> Linda Pedersen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Bill Durkin</u> Bill Durkin	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Tom Weber</u> Tom Weber	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Sandra Hart</u> Sandra Hart	<input type="checkbox"/>	<input type="checkbox"/>
<u>Jeff Werfel</u> Jeff Werfel	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Diane Hewitt</u> Diane Hewitt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Terry Wilke</u> Terry Wilke	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Sid Mathias</u> Sid Mathias	<input type="checkbox"/>	<input type="checkbox"/>
			<u>Craig Taylor</u> Craig Taylor	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<u>Tom Weber</u> Tom Weber	<input checked="" type="checkbox"/>	<input type="checkbox"/>

FINANCE AND ADMINISTRATIVE  
COMMITTEE:

YEA NAY

S. Michael Rummel    
S. Michael Rummel, Chair

Linda Federsen    
Linda Federsen, Vice-Chair

Steve Carlson    
Steve Carlson

Bill Durkin    
Bill Durkin

Sandra Hart    
Sandra Hart

Aaron Lawlor    
Aaron Lawlor

Audrey Nixon    
Audrey Nixon

**LAKE COUNTY FOREST PRESERVE DISTRICT  
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE  
PEDESTRIAN BRIDGE AND TRAIL CONNECTION AT MIDDLEFORK SAVANNA FOREST PRESERVE**

**WHEREAS**, the Lake County Forest Preserve District (the "District") owns a parcel of land known as the Middlefork Savanna Forest Preserve (the "Property"); and

**WHEREAS**, the City of Lake Forest (the "City") and the Lake Forest Academy (the "Academy") desire to enter into an intergovernmental agreement with the District to create a connection to the Property, which would include the construction, use, and maintenance of a City trail within the Academy's property and a pedestrian bridge across the Metra railroad tracks and located within Metra's right of way, the Property, and the Academy's property (the "Project"); and

**WHEREAS**, on July 15, 2014, the District's Board of Commissioners approved a resolution authorizing the Executive Director to negotiate an intergovernmental agreement for the Project with the City and the Academy based on a term sheet approved by the parties (the "2014 Resolution"); and

**WHEREAS**, since that time, the parties have learned that the cost of the pedestrian bridge will substantially exceed their original estimates and therefore they desire that the District seek grant funds to pay for a portion of the Project (including both the pedestrian bridge and the City trail), and the parties enter into an intergovernmental agreement (the "Agreement") that includes the following:

- (i) the parties' cooperation in applying for grant funds,
- (ii) the payment by the City of not more than \$100,000 toward the Project, including without limitation any of the grant-related local share obligations and any of the engineering costs (the "City Contribution"), subject to an increase in the City Contribution for certain increased costs to the construction of the City trail,
- (iii) the payment by the District, utilizing its own funds and the City Contribution, of (a) any required grant-related local share for the construction of the Project (including both the pedestrian bridge and the City trail) and (b) any engineering costs for the Project,
- (iv) sharing between the District and the City of the long-term maintenance obligations for the Project,
- (v) the granting of easements and other rights of access necessary for the construction, use, and maintenance of the Project, including the granting of easements by the Academy and the City and commercially reasonable efforts by the District to obtain easements and access rights from Metra, and
- (vi) such other related provisions as are deemed appropriate by the District's Finance and Administrative Committee (collectively, the "Agreement Criteria"); and

**WHEREAS**, it is in the best interests of the District to authorize the Executive Director to complete the negotiation of the Agreement and to authorize the District's Finance and Administrative Committee to approve the Agreement;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2. Negotiation and Approval of Agreement. The Executive Director, or his designee, is hereby authorized to negotiate the Agreement in a manner consistent with the Agreement Criteria. The District's Finance and Administrative Committee is hereby authorized to approve the Agreement, if it is consistent with the Agreement Criteria and has been approved by Corporate Counsel. Upon such approval, the President and Secretary of the District are authorized to execute and attest to the Agreement. The President, Executive Director and Secretary are further authorized and

directed to execute on behalf of the District whatever other documents are necessary or desirable to effectuate the transactions contemplated by the Agreement if they have been approved by Corporate Counsel.

Section 3. Effective Date; Repealer. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law. The 2014 Resolution is hereby repealed.

PASSED this 14<sup>th</sup> day of APRIL 2015

AYES: 21

NAYS: 0

APPROVED this 14<sup>th</sup> day of APRIL 2015

ATTEST:

Julie Gragnani  
Julie A. Gragnani, Secretary  
Lake County Forest Preserve District

Ann B. Maine  
Ann B. Maine, President  
Lake County Forest Preserve District

Exhibit # 4945

**Agreement  
by and between  
Lake County Forest Preserve District,  
City of Lake Forest,  
and  
Lake Forest Academy**

This Agreement ("**Agreement**") is dated as of the \_\_\_\_ day of \_\_\_\_\_, 2015 ("**Effective Date**"), and is by and between the **Lake County Forest Preserve District**, a body politic and corporate, organized and existing under the Downstate Forest Preserve District Act, 70 ILCS 805/0.01 et seq. (the "**District**"), the **City of Lake Forest**, a \_\_\_\_\_ (the "**City**"), and **Lake Forest Academy**, a \_\_\_\_\_ (the "**Academy**"). In consideration of the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to all applicable authority, including without limitation, the Illinois Constitution, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and the statutes and authorities identified above, the District, the City, and the Academy (collectively, the "**Parties**") agree as follows:

**Section 1. Recitals.**

A. The District owns certain real property known as Middlefork Savanna Forest Preserve ("**Middlefork Savanna**") and currently maintains existing public trails in Middlefork Savanna (collectively, the "**Existing Middlefork Trail**"). Portions of Middlefork Savanna and the Existing Middlefork Trail are generally depicted on Exhibit A attached hereto.

B. The Commuter Rail Division of the Regional Transportation Authority ("**Metra**") owns fee simple interest in and operates a right-of-way for railroad tracks ("**Metra Tracks**") that runs along the western border of Middlefork Savanna. A portion of the Metra Tracks is generally depicted on Exhibit A attached hereto.

C. The Academy owns certain real property west of the Metra Tracks (the "**Academy Property**"). A portion of the Academy Property is generally depicted on Exhibit A attached hereto. The Academy Property includes a private road known as "**Academy Drive**" and a private road known as "**Faculty Drive**." Faculty Drive and a portion of Academy Drive are generally depicted on Exhibit A attached hereto.

D. The City owns land near the northeast corner of the intersection of the Metra Tracks and Illinois Route 60 (the "**City Property**"). The City Property is generally depicted on Exhibit A attached hereto.

E. The Parties desire to have constructed (i) a public pedestrian bridge over the Metra Tracks (the "**Bridge**"), (ii) a new public trail segment within the Academy Property along Academy Drive and across Route 60 and Old Bridge Road (the "**City Trail**"), (iii) a new public trail segment from the Existing Middlefork Trail within Middlefork Savanna to the east end of the Bridge (the "**East Approach**"), and (iv) a new public trail segment from the City Trail to the west end of the Bridge (the "**West Approach**"). The Bridge, the City Trail, the East Approach, and the West Approach are generally depicted on Exhibit A. The components of the Bridge will include the "**Steel Span**," "**Concrete Ramps**," and "**New Bridge Piers**" generally depicted on



Exhibit A-1 attached hereto. The Bridge will be built utilizing the **"Existing Concrete Bridge Abutments"** generally depicted on Exhibit A-1.

F. There currently exist other public trails and sidewalks located generally east, west, and south of Middlefork Savanna, the Academy Property, and the City Property owned and operated by the City of Lake Forest, Lake Forest Open Lands Association, the Village of Mettawa, and others (the **"Additional Existing Public Trails"**). There are also additional public trails that are planned for construction in areas located generally west of Middlefork Savanna, the Academy Property, and the City Property (the **"Planned Public Trails"**). Portions of the Additional Existing Public Trails and the Planned Public Trails are generally depicted on Exhibit B attached hereto. When the West Approach, the Bridge, and the East Approach (collectively, the **"District Project"**) and City Trail are completed, they will connect to the Existing Middlefork Trail and Additional Existing Public Trails and provide additional public recreational opportunities. Further, when the District Project, the City Trail, and the Planned Public Trails are completed, they will allow continuous public pedestrian and recreational access between Middlefork Savanna and MacArthur Woods Forest Preserve (a portion of which is depicted on Exhibit B), which is also owned by the District, and the public Des Plaines River Trail, a portion of which is located therein and generally depicted on Exhibit B. Upon its completion, the Des Plaines River Trail will provide a continuous public pedestrian and recreational trail from approximately the north border of Lake County to approximately the south border of Lake County.

G. Neither the District nor the City has sufficient, currently available public funds to complete the design and construction of the District Project or the City Trail. Therefore, the District and the City have submitted an application (the **"Grant Application"**), as co-applicants, to the appropriate state and federal grant programs administered by government agencies (collectively, the **"Government Agency"**) for grant funds to pay for a portion of (i) the construction of the District Project and the City Trail and (ii) construction inspection and oversight services for the construction of the District Project and the City Trail (the **"Phase III Engineering Services"**), which grant programs include the Congestion Mitigation and Air Quality Improvement Program (**"CMAQ"**) and Illinois Transportation Alternatives Program (**"TAP"**) (collectively, **"Grant Funds"**). More specifically, the District and the City have applied for Grant Funds that pay for not less than 80% of the cost of constructing the District Project and the City Trail and 80% of the costs of the Phase III Engineering Services (**"80% Funding"**).

H. In furtherance of the District's and City's efforts to obtain Grant Funds, the District has entered into a contract (the **"Phase I Contract"**) with Civiltech Engineering, Inc. (**"Civiltech"**), pursuant to which Civiltech is preparing a Phase I engineering study, that includes preliminary engineering and environmental analyses (the **"Phase I Engineering Services"**) and that was necessary for the Grant Application. The Phase I Contract has a contract price of \$116,839.50 (the **"Phase I Contract Price"**).

I. The District has also entered into a contract with Civiltech (the **"Phase II Contract"**) for additional design services for the final design of the District Project and the City Trail (the **"Phase II Engineering Services"**). The Phase II Contract has a contract price of \$162,652.00 (the **"Phase II Contract Price"**).

J. If the Government Agency approves 80% Funding, then, under CMAQ and TAP (i) the Illinois Department of Transportation, as the Government Agency, would enter into one or more contracts with one or more contractors for the construction of the District Project and the City Trail (the **"Construction Contract"**) and (ii) the District would enter into one or more grant agreements governing the Grant Funds (the **"Grant Agreement"**).

K. The Parties acknowledge that several persons and entities have pledged to make donations to the Preservation Foundation of the Lake County Forest Preserves (the "**Foundation**") for the purpose of paying for a portion of the cost of the District Project (the "**Donations**"). The pledges include a pledge by the Academy for a \$25,000.00 Donation toward the cost of the District Project.

L. The Parties desire to enter into this Agreement for the purpose of:

- (i) cooperating with respect to the Grant Application,
- (ii) sharing the costs, between the City and the District, of the Phase I Contract and the Phase II Engineering Services, whether or not the Governmental Agency approves 80% Funding,
- (iii) if the Government Agency grants the Grant Funds:
  - (a) finalizing the acquisition from Metra of the easements and other rights necessary to construct, use, maintain, and replace the District Project within the Metra Tracks, which may include an agreement to reimburse Metra for certain actions or requirements that may be taken or imposed before, during, and after the construction of the District Project, which costs may include without limitation, removal or relocation of the Bridge in whole or in part, the use of flagmen, the use of measures to protect the Metra Tracks, and the installation and maintenance of protective measures such as fences, gates, and locks (the "**Additional Metra Costs**"),
  - (b) granting and accepting among each other the easements and other rights that are necessary to:
    - (1) construct, use, maintain, and replace the West Approach and the City Trail and
    - (2) complete other construction, maintenance and replacement activities,
  - (c) cooperating with the Government Agency's efforts to cause the construction of the District Project and the City Trail,
  - (d) causing the Phase III Engineering Services to be provided,
  - (e) allocating amongst the District and the City their respective shares of that portion of the costs of (i) the construction of the District Project and City Trail and (ii) the Phase III Engineering Services, that are not paid for by the Grant Funds and that will be required, by the Government Agency, to be paid by a local agency as a condition of the agency receiving the Grant Funds (the "**Local Share**"),
  - (f) providing for a Donation by the Academy toward the cost of the District Project,

- (g) following construction of the District Project and the City Trail, allocating between the District and the City the obligations to maintain such improvements, and
- (h) allocating between the Academy and the District the obligations to pay for any Additional Metra Costs.

**Section 2. Grant Applications and Cooperation.** Each Party, at its own cost, shall provide to the other Parties and to the Government Agency, to the extent that is commercially reasonable, such information, expertise, and assistance that is reasonably necessary or desirable to obtain 80% Funding.

**Section 3. Engineering Services.**

**A. Phase I and Phase II.** The District will cause Civiltech to complete the Phase I Engineering Services in accordance with the Phase I Contract and to complete the Phase II Engineering Services in accordance with the Phase II Contract.

**B. Phase III.** If the Government Agency approves 80% Funding, then the District will negotiate and enter into one or more contracts with an engineering firm (the "**Engineering Firm**") pursuant to which the Engineering Firm will provide the Phase III Engineering Services for a price identified therein (the "**Phase III Contract Price**"), which contract or contracts will be subject to the approval of the City's City Manager (the "**City Manager**"), who shall not unreasonably withhold or delay his approval. The City and the District shall seek reimbursement of the Phase III Contract Price through the Grant Funds.

**C. Payment of Engineering Fees.** The District shall pay Civiltech for all amounts due under the Phase I Contract and the Phase II Contract shall pay the Engineering Firm for any portion of the Phase III Contract Price that is not reimbursable by Grant Funds ("**Phase III Unreimbursed Expenses**"). If the Government Agency does not approve 80% Funding, the City shall reimburse the District for:

- (i) the Phase I Contract
  - (a) 7.17% of the Phase I Contract Price (but in no event more than \$8,375.81) plus
  - (b) the full amount of any portion of any change order to the Phase I Contract that has been approved by the City Manager and that is attributable to the City Trail (a "**City Trail Phase I Change Order**") and
- (ii) the Phase II Contract
  - (a) 10.88% of the Phase II Contract Price (but in no event more than \$17,702.00) plus
  - (b) the full amount of any portion of any change order to the Phase II Contract that has been approved by the City Manager and that is attributable to the City Trail (a "**City Trail Phase II Change Order**").

If the Government Agency approves 80% Funding, then the District may use the City Contribution (defined in Section 5) to reimburse itself for portions of the amounts paid by the District to Civiltech and the Engineering Firm.

**Section 4. Construction Contract; Grant Agreement.** If the Government Agency approves 80% Funding, the Parties shall cooperate with each other and with the Government Agency with respect to the Government Agency's efforts to award a contract for the construction of the District Project and the City Trail (the "**Construction Contract**") to one or more contractors (the "**Construction Contractor**"). The District and the City shall ask the Government Agency to ensure that:

- (i) the total price of the Construction Contract (the "**Construction Contract Price**") is the sum of (a) the cost of the District Project construction (the "**District Project Construction Cost**") and (b) the cost of the City Trail construction (the "**City Trail Construction Cost**"),
- (ii) the Construction Contract states the Construction Contract Price in unit price terms so that the District Project Construction Cost and the City Trail Construction Cost can be clearly and readily calculated separately,
- (iii) the Construction Contract requires the Contractor and the Government Agency to specifically and separately identify all change orders to the Construction Contract that increase the City Trail Construction Cost ("**City Trail Construction Change Orders**"), and
- (iv) the Grant Agreement requires the Government Agency, in any request to the District to pay all or any portion of the Local Share, to specifically and separately identify all City Trail Construction Change Orders.

If the Construction Contract and Grant Agreement do not comply with this Section 4, then the District and the City will work cooperatively and in good faith with each other, the Government Agency, and the Construction Contractor to accurately identify the District Project Construction Cost, the City Trail Construction Cost, and any City Trail Construction Change Orders.

**Section 5. City Contribution.** Within 30 days after the Government Agency awards a Construction Contract to the Construction Contractor, the City shall pay \$100,000.00 to the District as the City's contribution toward the District Project and the City Trail, which will include without limitation the City's entire contribution toward the Local Share (the "**City Contribution**"). The City Contribution will be the City's total, and sole, contribution toward the Phase I Contract Price, the Phase II Contract Price, the Phase III Contract Price, the Local Share, any Phase III Unreimbursed Expenses, and any Metra Costs, except that the City shall reimburse the District for (i) City Trail Phase I Change Orders (as provided in Section 3.C), (ii) City Trail Phase II Change Orders (as provided in Section 3.C), and (iii) any City Local Share Portion (as defined and provided in Section 6).

**Section 6. Payment of Local Share.** If, pursuant to the Grant Agreement or otherwise, the Governmental Agency submits a request to the District to pay all or any portion of the Local Share, the District shall pay such request within the time required by the Grant Agreement or otherwise required by the Governmental Agency. The District shall pay all of the Local Share,

without any contribution from the City or the Academy, other than the City Contribution and the Academy Donation, except that, if the sum of (i) the City Trail Construction Cost, including any City Trail Construction Change Order, and (ii) any portion of a change order to the Phase III Contract that is attributable to the City Trail (a "**City Trail Phase III Change Order**"), exceeds \$150,000.00, then the City shall reimburse the District for any portion of the Local Share paid by the District that is attributable to such excess amount (the "**City Local Share Portion**"), within 45 days after the City receives a request from the District for such reimbursement.

**Section 7. Termination for Failure to Obtain 80% Funding.** If, by December 31, 2016 (or such later date agreed to by the District's Executive Director (the "**Executive Director**") and the City Manager) (the "**Grant Deadline Date**"), the District and the City fail to receive a commitment from a Government Agency for 80% Funding, then either the District or the City may terminate this Agreement because of such failure. The Parties' rights and obligations under Section 3.D will survive termination of this Agreement. This Agreement will remain in full force and effect if the District and the City obtain a commitment from a Government Agency for 80% Funding on or before the Grant Deadline Date.

**Section 8. Easements.**

**A. Metra Easement and Right of Entry.** Promptly after the Effective Date, the District will commence and use commercially reasonable efforts to obtain Metra's agreement to approve (i) the Pedestrian and Bike Path Easement Agreement in the form attached hereto as Exhibit C, or in such other form approved by the Executive Director, the City Manager, and the Academy's \_\_\_\_\_, granting to the District the rights necessary to construct, use, maintain, and replace the Bridge across the Metra Tracks as a public pedestrian and recreational trail, subject to the provisions therein (the "**Metra Easement Agreement**") and (ii) the Right of Entry Agreement in the form attached hereto as Exhibit D, or in such other form approved by the Executive Director, the City Manager, and the Academy's \_\_\_\_\_, granting to the District the right to enter the Metra Tracks, which may include access via a haul road along the east side of the Metra Tracks between Route 60 and the location of the Bridge, so they can gain access for construction, maintenance, and replacement work, subject to the provisions therein (the "**Metra Right of Entry Agreement**"). The District will execute the Metra Easement Agreement and the Metra Right of Entry Agreement only after the Governmental Agency approves 80% Funding.

**B. Academy Easement.** Within three business days following the full execution of the Metra Easement and the Metra Right of Entry, the Academy, the City, and the District will execute an easement agreement in a form approved by the Executive Director, the City Manager, and the Academy's \_\_\_\_\_ (the "**Academy Easement Agreement**") granting:

- (i) a temporary easement to the District allowing it and the Government Agency (through the Construction Contractor) to construct the West Approach and those portions of the City Trail and Bridge located within the Academy Property, which will include (a) access through the Academy Property via Academy Drive, and (b) a staging area adjacent to Faculty Drive generally in the location of the "**Staging Area**" within the Academy Property generally depicted on Exhibit A attached hereto, and
- (ii) a perpetual easement allowing

- (a) the City to use, maintain, and replace the West Approach and the portion of the City Trail within the Academy Property, as a public pedestrian and recreational trail, and
- (b) the District to maintain the Steel Span, Concrete Ramp, and New Bridge Pier, located within the Academy Property and to maintain and place fencing around the Existing Concrete Bridge Abutment located within the Academy Property.

**C. City Easement.** Within three business days following the full execution of the Metra Easement and the Metra Right of Entry, the City and the District will execute an easement agreement in a form approved by the Executive Director and the City Manager (the "**City Easement Agreement**") granting to the District, at any time the District is exercising its construction or maintenance obligations hereunder (i) access over the City Property to access the Middlefork Savanna via a haul road to be constructed in generally the location depicted as the "**Haul Road**" on Exhibit A, (ii) the right to install and use a stabilized construction entrance off Route 60 in generally the location depicted as the "**Construction Entrance**" on Exhibit A, (iii) the right to use an equipment staging area in generally the location depicted as the "**Staging Area**" within the City Property on Exhibit A, and (iv) the right to trim trees and remove other plants.

**Section 9. Donations.** Consistent with its previous pledge, and in addition to any other obligation it has under this Agreement, the Academy shall donate \$25,000.00 to the Foundation and request that such amount be used to pay for a portion of the District Project. In addition, if any Party becomes aware of an individual or organization that desires to make a Donation to support the District Project, the Parties, upon the request of any other Party, will request the donor to make the donation to the Foundation. The District will use all Donations for the District Project that it receives from the Foundation to pay for, or reimburse itself for, its share of the Local Share, to the full extent allowed by law and any other requirements governing the Grant Funds, or to any other expense related to the District Project that is not paid for by Grant Funds.

**Section 10. Maintenance Obligations and Costs.**

**A. District Obligations.** The District will maintain the Bridge (including the Steel Span, the New Bridge Piers, and the Concrete Ramps) and the East Approach after the completion of the District Project.

**B. City Obligations.** The City will maintain the West Approach after the completion of the District Project and the City Trail after its completion.

**C. Additional Metra Costs.** The District and the Academy will split any Additional Metra Costs, that are not otherwise paid for as part of the Local Share, equally between them.

**D. Existing Concrete Bridge Abutments.** No Party is obligated to maintain the Existing Concrete Bridge Abutments. However, the District (pursuant to the Academy Easement Agreement) and the Academy may maintain the Existing Concrete Bridge Abutment located on the Academy Property and the District may maintain the Existing Concrete Bridge Abutment located on the Middlefork Savanna.

**E. Enforcement.** If any party fails to perform its maintenance obligations or make payments as required by this Section, each of the other Parties (i) may perform such obligation or make such payment, if it has given the failing Party notice of such failure and the failing Party does not, within 30 days after receiving such notice, cure such failure and (ii) upon performing such maintenance or making such payment, has a right to be reimbursed, by the failing party, for its out of pocket costs, including attorney's fees and enforcement costs (including without limitation attorney's fees and enforcement costs incurred in any litigation, filed to recover such costs, in which the performing or paying party substantially prevails).

**Section 11. General Provisions.**

**A. Compliance with Laws.** The District Project and City Trail will be designed and constructed in accordance with all applicable laws.

**B. Nature, Survival And Transfer Of Obligations.** The easements granted pursuant to Section 8 of this Agreement shall be recorded against the Academy Property and the City Property and shall run with and bind the land and shall bind, inure to the benefit of, and be enforceable by (i) the grantors and grantees of such easements and their grantees, successors, and assigns, (ii) the District, as a third-party beneficiary of the easements granted in the Academy Easement Agreement, and its grantees, successors, and assigns, and (iii) all future owners of the Academy Property and City Property.

**C. Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered: (i) personally, (ii) overnight by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic mail. Electronic mail notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such Party, but no notice of a change of addressee or address shall be effective until actually received. Notices and communications to the District shall be addressed to, and delivered at, the following address:

Lake County Forest Preserve District  
1899 W. Winchester Road  
Libertyville, IL 60048  
Attention: Executive Director  
Email: akovach@lcfpd.org

With a copy to:

Matthew E. Norton, Esq.  
Holland & Knight LLP  
131 S. Dearborn Street  
30th Floor  
Chicago, IL 60603

Email: matt.norton@hkllaw.com

Notices and communications to the City shall be addressed to, and delivered at, the following addresses:

City of Lake Forest  
220 E. Deerpath  
Lake Forest, IL 60045  
Attention: City Manager  
Email: \_\_\_\_\_

With a copy to:

Victor P. Filippini, Jr., Esq.  
Filippini Law Offices  
990 Grove Street, Suite 220  
Evanston, Illinois 60201  
Email: victor.filippini@filippinilawfirm.com

Notices and communications to the Academy shall be addressed to, and delivered at, the following addresses:

Lake Forest Academy  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

George Covington, Esq.  
P.O. Box 126  
Lake Bluff, IL 60044  
Email: gcovington@sbcglobal.net

The requirements of this Section shall not be deemed to invalidate any notice actually received.



**D. Time of the Essence.** Time is of the essence in the performance of this Agreement.

**E. Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**F. Exhibits.** Exhibits A through D attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement.

**G. Amendments and Modifications.** No amendment or modification to this Agreement that affects the rights or obligations of a Party shall be effective unless and until it is reduced to writing and approved and executed by all Parties affected by the amendment or modification.

**H. Authority to Execute.** Each person executing this Agreement warrants and represents to the Parties (i) that he or she has the full and complete right, power and authority to execute this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement on behalf of the Party on whose behalf he or she is executing; and (ii) that all legal actions necessary to authorize him or her to execute and deliver this Agreement have been taken.

**I. No Third Party Beneficiaries.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation, or entity shall be made, or be valid, against the Parties.

ATTEST: **Lake County Forest Preserve District**

By: \_\_\_\_\_  
Julie Gragnani, Secretary

By: \_\_\_\_\_  
Ann B. Maine, President

ATTEST: **City of Lake Forest**

By: \_\_\_\_\_  
Robert R. Kiely, Jr., City Clerk

By: \_\_\_\_\_  
Donald P. Schoenheider, Mayor

ATTEST: **Lake Forest Academy**

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

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

**ACKNOWLEDGEMENTS**

STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF LAKE )

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2015, by Ann B. Maine, the President of the **Lake County Forest Preserve District**, and by Julie Gagnani, the Secretary of said District.

\_\_\_\_\_  
Signature of Notary

SEAL  
My Commission expires: \_\_\_\_\_

---

STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2015, by Donald P. Schoenheider, the Mayor of the **City of Lake Forest**, and by Robert R. Kiely, Jr., the City Clerk of said City.

\_\_\_\_\_  
Signature of Notary

SEAL  
My Commission expires: \_\_\_\_\_

---

STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2015, by \_\_\_\_\_, the \_\_\_\_\_ of the **Lake Forest Academy**, and by \_\_\_\_\_, the \_\_\_\_\_ of said Academy.

\_\_\_\_\_  
Signature of Notary

SEAL  
My Commission expires: \_\_\_\_\_

## Index of Exhibits

- Exhibit A      General depiction of portions of Middlefork Savanna, Existing Middlefork Trail, Metra Tracks, Academy Property, and Academy Drive and general depiction of Faculty Drive, City Property, Bridge, East Approach, West Approach, City Trail, Staging Areas, Haul Road, and Construction Entrance
  
- Exhibit A-1    General depiction of Bridge components: Steel Span, New Bridge Piers, Concrete Ramps, and Existing Concrete Bridge Abutments
  
- Exhibit B      General depiction of portions of Additional Existing Public Trails, MacArthur Woods Forest Preserve, and Des Plaines River Trail, and general depiction of Planned Public Trails
  
- Exhibit C      Metra Easement Agreement
  
- Exhibit D      Metra Right of Entry Agreement

**Exhibit A**

**General depiction of portions of Middlefork Savanna, Existing Middlefork Trail,  
Metra Tracks, Academy Property, and Academy Drive**

**and**

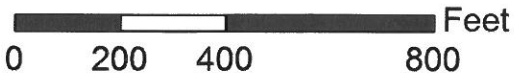
**General depiction of Faculty Drive, City Property, Bridge, East Approach, West  
Approach, City Trail, Staging Area, Haul Road, and Construction Entrance**

# Exhibit A

Lake County Forest Preserve District  
 Land Preservation and Special Projects  
 1899 W Winchester Rd  
 Libertyville, Illinois 60048  
 847-968-3351

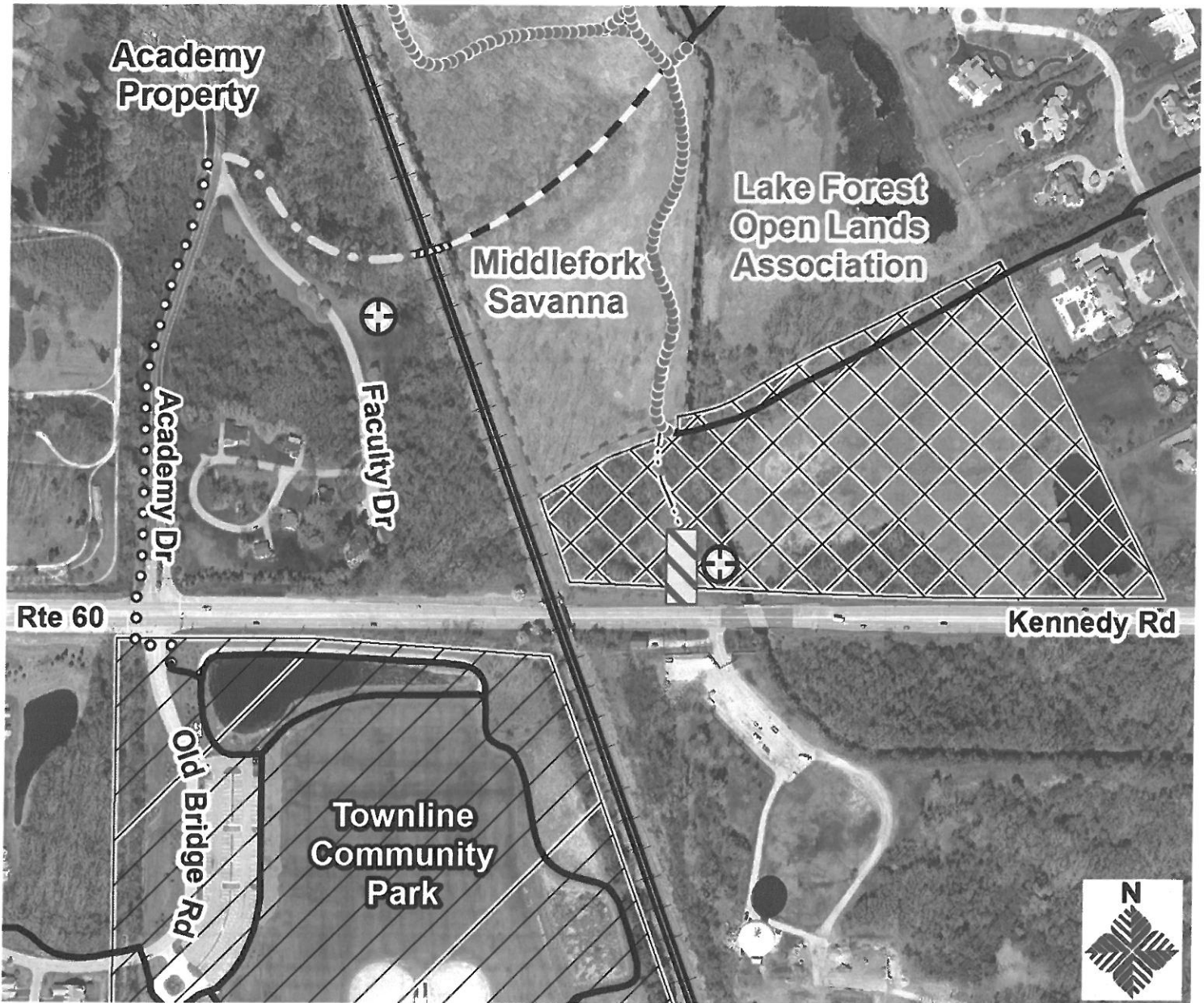
Courtesy Copy Only.  
 Property boundaries indicated are provided  
 for general location purposes. Wetland  
 and flood limits shown are approximate and  
 should not be used to determine setbacks for  
 structure or as a basis for purchasing property.

Prepared using information from:  
 Lake County Department of Information  
 & Technology: GIS/Mapping Division  
 18 North County Street  
 Waukegan, Illinois 60085-4357  
 847-377-2373



2012 Aerial Photo

Map Prepared 2 March 2015



## Legend



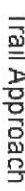
- |                           |                                   |               |                       |
|---------------------------|-----------------------------------|---------------|-----------------------|
| Forest Preserve Property  | Metra Tracks                      | East Approach | Staging Areas         |
| Existing Middlefork Trail | Additional Existing Public Trails | West Approach | Haul Road             |
| City Property             | City Trail                        | Bridge        | Construction Entrance |
| Townline Community Park   |                                   |               |                       |

**Exhibit A-1**

**General depiction of Bridge components: Steel Span, New Bridge Piers, Concrete Ramps, and Existing Concrete Bridge Abutments**

# Exhibit A-1

## Legend

-  Steel Span
-  Concrete Ramp
-  Trail Approach

Lake County Forest Preserve District  
 Land Preservation and Special Projects  
 1899 W Winchester Rd  
 Libertyville, Illinois 60048  
 847-968-3351

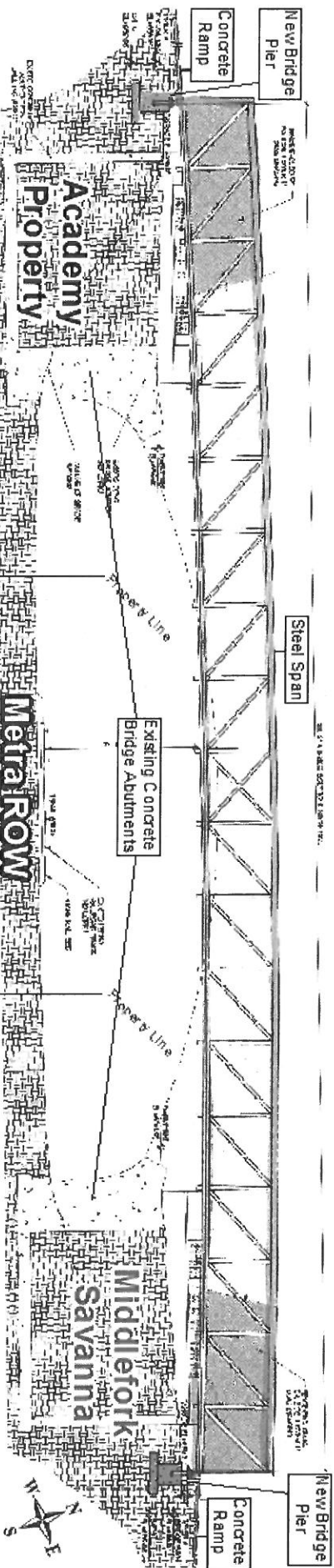
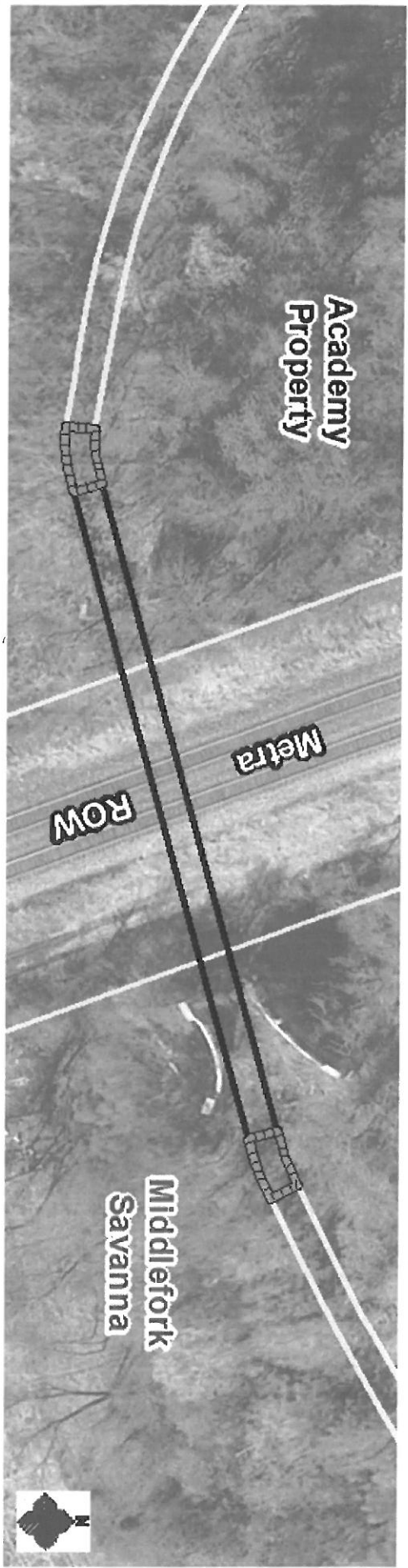


Courtesy Copy Only.  
 Property boundaries indicated are provided for general location purposes. Wetland and flood limits shown are approximate and should not be used to determine setbacks for structure or as a basis for purchasing property.

2012 Aerial Photo

Prepared using information from:  
 Lake County Department of Information & Technology: GIS/Mapping Division  
 18 North County Street  
 Waukegan, Illinois 60085-4357  
 847-377-2373

Map Prepared 28 April 2015



District maintenance responsibility will include, in addition to fixtures on its own property, the Steel Bridge Span crossing the Metra ROW and the New Bridge Pier and Concrete Ramp on the Academy Property










**Exhibit B**

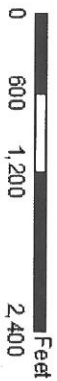
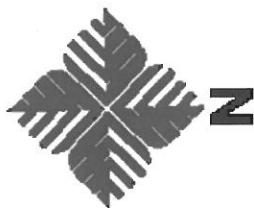
**General depiction of portions of Additional Existing Public Trails,  
MacArthur Woods Forest Preserve, and Des Plaines River Trail  
and  
General depiction of Planned Public Trails**



# Exhibit B

## Legend

-  Forest Preserve Boundary
-  Existing Middlefork Trail
-  Des Plaines River Trail
-  Additional Existing Public Trails
-  Planned Public Trails
-  East Approach
-  West Approach
-  Planned City Trail
-  Bridge



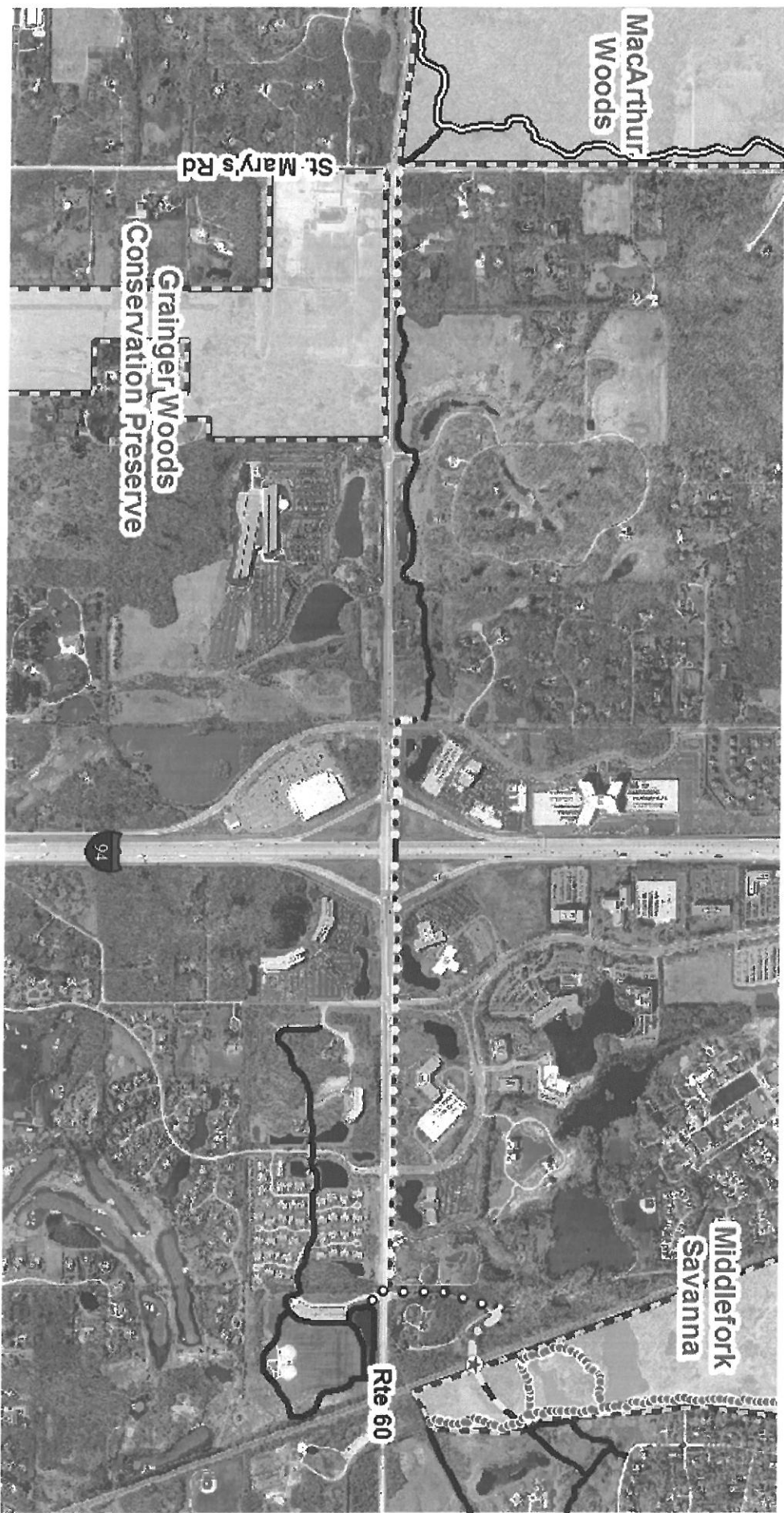
Courtesy Copy Only:  
 Property boundaries indicated are provided for general location purposes. Wetland and flood limits shown are approximate and should not be used to determine setbacks for structure or as a basis for purchasing property.

2012 Aerial Photo

Lake County Forest Preserve District  
 1899 W Winchester Rd  
 Libertyville, Illinois 60048  
 847-968-3351  
[www.lcfd.org](http://www.lcfd.org)

Prepared using information from:  
 Lake County Department of Information & Technology: GIS/Mapping Division  
 18 North County Street  
 Waukegan, Illinois 60085-4357  
 847-377-2373

Map Prepared 28 April 2015



**Exhibit C**

**Metra Easement Agreement**

**PEDESTRIAN AND BIKE  
PATH EASEMENT**

After recording return to:

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

PIN: (portion of) 12-31-300-006

---

(Above Space for Recorder's Use Only)

**PEDESTRIAN AND BIKE PATH EASEMENT AGREEMENT**

**THIS AGREEMENT** is entered into by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**Metra**"), and the Lake County Forest Preserves, with offices located at 1899 West Winchester Road, Libertyville, Illinois 60048 ("**Grantee**"). Metra and Grantee are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties.**"

**NOW, THEREFORE,** for and in consideration of the covenants and agreements hereinafter stated, Metra hereby grants to Grantee an easement ("**Easement**") to construct and install along and over that portion of Metra's owned or controlled right of way and tracks located near MP 30.57, just north of Highway 60 (Kennedy Road), on Metra's Milwaukee North Line identified as a portion of PIN:12-31-300-006, delineated on the plat attached to and made a part of this Agreement as **Exhibit "A"** ("**Premises**"), a grade separated pedestrian and bike path bridge structure, spanning the Metra owned or controlled right of way and tracks ("**Pathway**"); and thereafter to maintain, repair, replace, and operate and the same during the continuance of this Easement.

This Easement is granted upon the following express conditions, terms and covenants to be observed, kept, and performed by Grantee:

1. As one of the considerations for this Easement, Grantee agrees to pay to Metra the sum of \$1,500 for the cost of preparing this Easement, payable in advance.
2. Said Pathway shall be constructed in accordance with the specifications and notes set forth on Exhibit "A." The construction and installation of said Pathway, including but not limited to the grading of the Premises and the time and manner of doing all of the work or of any maintenance,

repairs, or replacements upon the Premises, shall be as directed by Metra's authorized representatives. Grantee shall construct the Pathway in a manner so as not to interfere with the existing drainage of the Premises or any other Metra property ("Property") and shall clean and extend existing highway culverts as required by Metra or any other governmental entity having jurisdiction over the Premises or Property to insure proper drainage of the Premises and the Property. Prior to commencement of the public's use of the Pathway, Grantee shall construct a fence sufficient to prevent the public from entering onto the Property and separating the Pathway from any track areas on Metra's right of way and shall also provide gates, to be locked with Metra controlled locks, at locations required by Metra to allow Metra access to its facilities on the Premises or the Property. Additionally, if at any future time Metra determines that additional fencing or gates, with Metra controlled locks, are required, Grantee shall provide such fencing and/or gates at the locations specified by Metra. Grantee agrees to construct and install and at all times maintain, repair, replace, and operate the Pathway so as to protect any and all improvements now or hereinafter located on the Premises or the Property. All of said work shall be done at Grantee's sole cost and expense, in a good and workmanlike manner, and in accordance with the requirements of the plans, specifications, and profiles to be prepared by Grantee and submitted for approval to Metra's authorized representative(s), and until such approval is given, said work shall not be commenced by Grantee.

3. Upon completion of the initial construction and installation of the Pathway, and upon completion of any subsequent maintenance, repair, replacement, or operation of the Pathway following its construction and installation, Grantee, at its own cost and expense, shall remove any debris and restore, or cause to be restored to the reasonable satisfaction of Metra, any affected portion of Metra's property adjacent to the Premises as nearly as may be, to the same or better condition than that which existed immediately prior to commencement of such activities by Grantee. In the event Grantee fails to cause the Property to be restored to the reasonable satisfaction of Metra as provided for herein, Metra shall have the right to restore the Property and Grantee shall reimburse Metra for all costs and expenses incurred by Metra in its performance of the obligations imposed upon Grantee hereunder.

4. Metra shall permit Grantee reasonable right of access to the Premises for the purpose of constructing, installing, maintaining, repairing, replacing, and operating said Pathway.

5. Any rights to the Premises not specifically granted to Grantee herein are reserved to Metra and its successors and/or assigns. The Pathway shall be constructed, installed, maintained, repaired, replaced and operated in a manner so as not to interfere with efficient rail operations or any other business operations or activities being conducted by Metra or Metra's tenants or permittees on the Premises and so as not to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees for the purpose(s) to which the Premises is now, or may hereafter be, committed by Metra. Metra shall have the right to retain the existing tracks and other improvements at the location of this Pathway on or adjacent to the Premises and also shall have the right at any and all times in the future to construct, maintain and operate over, under, across or parallel to said Pathway such additional track or tracks as it may from time to time elect. Nothing shall be done or caused to be done by Grantee that will in any manner impair the usefulness or safety of the tracks and other improvements of Metra, or such track or tracks and other improvements as Metra may in the future construct or cause to be constructed over, under, across, or

parallel to said Pathway. This Easement is expressly subject to the rights of third parties to maintain utility and other improvements permitted by Metra on the Premises and the Property. Metra reserves the exclusive right to grant future easements over, under, across or parallel to the said Pathway.

6. Grantee agrees that it will bear and pay the entire cost of constructing; installing, maintaining, repairing, replacing and operating said Pathway.

7. Prior to entering upon the Premises, Grantee agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department, (312)-322-7093, and shall deliver to Metra's Risk Management Department certificates of insurance or self-insurance and such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance as delineated on **Exhibit "B"** attached to and made a part of this Agreement. The insurance or self-insurance hereinabove specified shall be full force and effect through all periods of construction, installation, maintenance, repair, replacement, and operation of said Pathway and must show on the insurance policy or the certificate of insurance that Metra will be properly notified in writing at least thirty (30) days prior to any modification or cancellation of such policy. During the Term of this Agreement, Metra may make commercially reasonable increases in the amount of insurance required.

8. Prior to entering onto the Property and/or Premises, Grantee shall require its contractor(s) and or those persons authorized by or acting on behalf of the Grantee for the purpose of constructing, installing, repairing, replacing, maintaining, and/or operating said Pathway, to execute and deliver to Metra, a Right of Entry Agreement to be in effect during all periods of constructing, installing, maintaining, repairing, replacing, and/or operating said Pathway on the Premises. A Right of Entry Application, to be filled out and returned to Metra by each of Grantee's contractors, is available at the following website, <http://www.metrarail.com/Engineering/>, or by contacting Metra's Right of Way Administrator at (312) 322-8016, a current of the Right of Entry Application is attached to and made part of this Agreement as **Exhibit "C."**

9. Grantee shall not place, keep, store, or otherwise permit to be placed, kept or stored on the Premises or the Property any equipment or materials except during such time as Grantee's employees, agents or contractors are physically present and conducting activities permitted under the terms of this Easement. Grantee agrees that it shall not operate or cause to be operated any motorized vehicle of any kind on the Premises, on any track or on the Property without prior authorization from Metra's authorized representative; provided, however, that Grantee shall not be prohibited from operating Grantee's vehicles and equipment on any public crossing of Metra's tracks and rights of way. If deemed necessary by Metra, a flagman will be provided by Metra, the cost of such services to be paid by Grantee.

10. Grantee agrees that it will, immediately upon receipt of a statement showing the amount thereof, pay all costs of any and all work performed upon the right of way and tracks of Metra which shall be made necessary by the construction, installation, maintenance, repair, replacement, or operation thereon of said Pathway.

11. Grantee shall give to Metra reasonable advance written notice of the time when

Grantee will commence any construction, installation, maintenance, replacement, or repair of said Pathway in order that Metra may, if it so desires, have its representative(s) present for the purpose of directing said work so that the same may be done in a manner satisfactory to Metra.

12. Grantee agrees that before and during the construction, installation, repair, replacement, or operation of said Pathway, or at any other time, Metra shall have the right to provide such safe and temporary structures as it may deem necessary for safely caring for and preserving its tracks, buildings, or other improvements and Grantee agrees to pay to Metra the entire cost of putting in or removing such temporary structures and of restoring the Premises and Property as near as may be to the same condition that existed before the commencement of said work.

13. Grantee agrees that should the construction, installation, maintenance, repair, replacement, operation, or presence of the Pathway necessitate any change or alteration in the location or arrangement of any improvements located on the Premises or the Property, the cost of such change or alteration shall be paid by Grantee within thirty (30) days of presentation of a bill by Metra. Grantee further agrees that if, at any time, Metra shall desire to change the location or grade of its track or tracks or shall desire to use or allow third party railroads to use its right of way at a point of crossing or at any point along a parallel course with the Pathway for any purpose whatsoever, including but not limited to track installations by Metra or third parties, Grantee, at its own cost and expense, shall alter, relocate or make all changes to the Pathway required by Metra. If Grantee shall fail, neglect, or refuse to relocate or make such change(s) to the Pathway for a period of ninety (90) days after the receipt of written notice from Metra, then Metra may make or cause to be made such relocation or change(s) at the expense of Grantee.

14. Grantee shall at all times construct, install, maintain, repair, replace, and operate said Pathway in a secure, safe, and sanitary condition and in accordance with all applicable laws, ordinances, rules, and regulations. Grantee shall take all reasonable safety precautions to adequately secure the Premises, warn of risks and ensure the safety of the public during periods of construction, installation, maintenance, repair, replacement, and operation of the Pathway. If the manner of constructing, installing, maintaining, repairing, replacing, or operating said Pathway shall at any time be in violation of any applicable law, rule, regulation, or ordinance, then Grantee, at no cost or expense to Metra and upon receipt of appropriate notice from a governmental agency having enforcement jurisdiction over the Premises, shall make such changes or repairs as shall be necessary. Failure or refusal of Grantee to make the required changes or repairs within the time prescribed by said agency shall terminate this Easement, provided that it shall not terminate as long as Grantee, in good faith and by pursuit of appropriate legal or equitable remedies, enjoins, defends against, appeals from, or pursues other lawful measures to avoid the enforcement of said laws, ordinances, rules, or regulations.

15. To the fullest extent permitted by law, the Grantee hereby assumes and agrees to release, acquit, and waive any rights which Grantee may have against and forever discharge Metra, the Regional Transportation Authority ("RTA") and the Northeast Illinois Regional Commuter Railroad Corporation ("NIRCRC"), their respective directors, administrators, officers, employees, agents, successors, assigns, and all other persons, firms, and corporations acting on their behalf or with their authority, from and against any and all claims, demands, or liabilities imposed upon them

by law or otherwise of every kind, nature, and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property, arising out of or in any way relating to or occurring in connection with the rights granted or activities permitted under the terms and provisions of this Agreement, or which may occur to or be incurred by the Grantee, its employees, officers, agents, and all other persons acting on the Grantee's behalf while on the Premises, except to the extent such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

16. To the fullest extent permitted by law, the Grantee 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, (a) arising out of or in any way relating to or occurring in connection with: (i) the rights granted or activities permitted under the terms and provisions of this Agreement; (ii) the condition of the Premises; or (iii) the failure to investigate claims, or (b) which may occur to or be incurred, by the Grantee, its employees, officers, agents, and all other persons acting on its behalf while on the Premises, or, except to the extent such injuries, liabilities, losses, damages, costs, payments, or expenses are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Metra agrees to notify the Grantee in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Grantee further agrees to defend Metra, the RTA, the NIRCRC, their respective directors, administrators, officers, agents, and employees against any claims, suits, actions, or proceedings filed against any of them with respect to the subject matter of this indemnity provision provided, however, that Metra, the RTA and the NIRCRC, may elect to participate in the defense thereof at their own expense or may, at their own expense, employ attorneys of their own selection to appear and defend the same on behalf of Metra, the RTA, the NIRCRC, and their respective directors, administrators, officers, agents, or employees. The Grantee shall not enter into any compromise or settlement of any such claims, suits, actions, or proceedings without the consent of Metra, the RTA, and the NIRCRC, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement and the indemnification and hold harmless provisions set forth in this Agreement shall not be construed as an indemnification or hold harmless against and from the negligence or willful misconduct of Metra, the RTA, or the NIRCRC with respect to any construction work performed by the Grantee or those performing on behalf of or with the Grantee in violation of the Illinois Construction Contract Indemnification for Negligence Act.

17. This Easement may be terminated by Metra effective immediately upon notice to Grantee if the Premises, or any portion thereof, is needed for any Metra or railroad purposes as determined by Metra in its sole discretion or Grantee ceases to operate or maintain the Pathway or violates any of the terms, conditions, or provisions set forth in this Easement. In case of termination, Grantee shall remove from the Premises said Pathway and shall restore said Premises to the same or

better condition than that which existed prior to the construction and installation of said Pathway; or upon failure, neglect or refusal of Grantee to do so, Metra may make or cause to be made such removal and restoration, and the total cost hereof shall be paid by Grantee; or, if Metra shall so elect, it may treat the said Pathway as abandoned by Grantee and may make such disposition thereof as it may see fit.

18. This Easement and all of the terms, conditions, rights, and obligations herein contained shall inure to and be binding upon the Parties, their respective legal representatives, lessees, permittees, successors, and/or assigns whether hereinabove so stated or not; but it is distinctly agreed that Grantee shall not assign its rights under this Easement without first having received the prior written consent of Metra.

19. All payments required to be made by Grantee to Metra under the terms, conditions, or provisions of this Easement shall be made within sixty (60) days of Grantee's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 1/2%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

20. All notices, demands, and elections required or permitted to be given or made by either Party upon the other under the terms of this Easement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, facsimile transmission, or hand delivered to 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 successful transmission if sent by facsimile transmission or 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, Real Estate & Contract Management  
Phone: (312) 322-8006  
Fax: (312) 322-7098

(b) Notices to Grantee shall be sent to:

Lake County Forest Preserves  
1899 West Winchester Road  
Libertyville, Illinois 60048  
Attn: Mr. Alex Ty Kovach  
Phone: (847) 367-6640



21. This Agreement shall be governed by the internal laws of the State of Illinois. If any provision of this Agreement, or any paragraph, sentence, clause, phrase, or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of either of the Parties. No waiver of any obligation or default of Grantee 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. 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. This Easement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Easement as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**LAKE COUNTY FOREST PRESERVES: COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY:**

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

Name: \_\_\_\_\_

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

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

**Donald A. Orseno  
Executive Director/CEO**

**Exhibit D**

**Metra Right of Entry Agreement**

## RIGHT OF ENTRY AGREEMENT

**THIS AGREEMENT**, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**Metra**”) and \_\_\_\_\_, an Illinois corporation with offices located at \_\_\_\_\_ (“**Indemnitor**”). Metra and Indemnitor are hereinafter sometimes individually referred to as a “**Party**” and jointly referred to as the “**Parties**.”

### PRELIMINARY STATEMENT

Indemnitor desires to enter upon portions of Metra’s property located at \_\_\_\_\_ delineated on **Exhibit “A”** attached to and made a part of this Agreement (“**Premises**”). This allows for \_\_\_\_\_ (“**Permitted Activities**”).

**NOW, THEREFORE**, for and in consideration of the above stated recital which is by this reference hereby incorporated into this Agreement and the mutual promises and agreements set forth below, the sufficiency of which are hereby acknowledged by the Parties, Metra and Indemnitor agree as follows:

1. Metra hereby agrees to permit Indemnitor and its Subcontractors, as defined herein below, to enter upon the Premises for a period of \_\_\_\_ ( ) months, commencing on the effective date of this Agreement, to conduct the Permitted Activities and for no other purpose whatsoever, subject to the terms and conditions set forth in this Agreement. The term of this Agreement may be extended by mutual agreement of the Parties as evidenced in writing.

A. Indemnitor may engage various third party contractors (“**Subcontractors**”) for performance of certain work in connection with the Permitted Activities. Only Indemnitor’s Subcontractors listed on **Exhibit “B,”** attached to and made a part of this Agreement and as may be from time to time amended, are authorized to be on Metra property. Indemnitor shall require its Subcontractors to comply with the applicable requirements of this Agreement.

B. Indemnitor may commence work on the Permitted Activities under this Agreement following: (i) payment of fees as required by Sections 2 and 10 of this Agreement; (ii) issuance of all permits, approvals and authorizations necessary or appropriate for such work; (iii) delivery of proof of insurance acceptable to Metra, as required by Section 6 of this Agreement and (iv) delivery to Indemnitor by Metra of a notice to proceed.

2. As one of the considerations for this Right of Entry, Indemnitor agrees to pay to Metra the sum of \$\_\_\_\_ for the cost of preparing this Agreement, payable in advance.

3. Indemnitor agrees to reimburse Metra for all costs and expenses incurred in connection with the use of Metra's personnel and equipment as a direct result of the Permitted Activities.

4. To the fullest extent permitted by law, the Indemnitor hereby assumes and agrees to release, acquit and waive any rights which Indemnitor may have against and forever discharge Metra, the RTA and the NIRCRC, their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property arising out of or in any way relating to or occurring in connection with the use of the Premises or the Property for the purposes set forth in this Agreement or which may occur to or be incurred by the Indemnitor, its employees, officers, agents and all other persons acting on the Indemnitor behalf while on the Premises or the Property, or arising from the condition of the Premises or the Property during the term of this Agreement, whether or not such injuries or damages are caused by the negligence or willful misconduct of Metra, the RTA, or the NIRCRC. Notwithstanding anything in this Agreement to the contrary, the releases and waivers contained in this paragraph shall survive termination of this Agreement.

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

Notwithstanding anything to the contrary contained in this Agreement, the indemnities contained in this paragraph shall survive termination of this Agreement.

6. Prior to entering upon the Premises, Indemnitor agrees to furnish, insurance in form and in such amounts as delineated on **Exhibit "C"** attached to and made a part of this Agreement.

7. Upon completion of the Permitted Activities or upon termination as provided in this Agreement, Indemnitor shall, at its sole cost and expense, restore the Premises to the same or to a better condition than that which existed prior to commencement of Indemnitor's activities on the Premises.

8. Indemnitor further agrees to notify Metra's Police Communication Center at (312) 322-2800 when performing activities for the purposes set forth in this Agreement seventy-two (72) hours in advance of Indemnitor's entrance upon the Premises or any other Metra property in said District.

9. Indemnitor agrees that any authorized representative of Metra has full authority concerning the operation of the railroad and Indemnitor agrees to comply with the recommendations of the authorized representatives of Metra having jurisdiction over the Premises relative to railroad operations and safety regulations.

10. Indemnitor agrees that a Railroad flagman may be required whenever Indemnitor is on the Premises or any other Metra property for the purposes set forth herein, the cost of which will be borne by Indemnitor. In the event it is determined flagging will be required in excess of five (5) days, pursuant to a work schedule ("**Schedule**") provided by Indemnitor, such flagging shall be paid in advance. In the event Metra determines that flagging services in addition to the Schedule will be required to complete the Permitted Activities, the Indemnitor shall deposit a check with Metra in an amount covering the cost of the additional flagging services. Indemnitor shall pay Metra any amount due within ten (10) days of receipt of request from Metra for deposit for or payment of additional flagging services.

11. Metra may terminate this Agreement immediately if, at Metra's sole discretion, an emergency or safety issue exists or at any time, by giving Indemnitor ten (10) days prior written notice of its intention to so terminate.

12. The Permitted Activities shall be performed at Indemnitor's sole cost and expense and shall at all times be conducted in a good workmanlike, safe and sanitary manner and in accordance with all applicable federal, state and local laws, ordinances and regulations. Indemnitor shall take all reasonable safety precautions (such as covering of borings, installation of barricades and warning signs) to adequately secure the site. Indemnitor shall not place, keep, store or otherwise permit to be placed, kept or stored on the Premises any equipment or materials except during such time as Indemnitor's or employees, agents, contractor's or subcontractors are physically present and conducting activities permitted under this Agreement.

13. Indemnitor's activities on the Premises shall be conducted in a manner so as not

to prevent or unreasonably interfere with use and enjoyment of the Premises by Metra, its employees, agents or permittees, for the purpose(s) to which the Premises is now, or may hereinafter be, committed by Metra.

14. Any rights to the Premises not specifically granted to Indemnitor herein, are reserved to Metra, its successors and assigns.

15. All payments required to be made by Indemnitor to Metra under the terms, conditions or provisions of this Agreement shall be made within sixty (60) days of Indemnitor's receipt of any demand or invoice from Metra evidencing the amount of the indebtedness due. Payments not made within said sixty (60) day period shall accrue interest at a rate of one and one half percent (1 ½%) per month or the highest amount permitted by Illinois law, whichever is less, from the date payment is due until paid.

16. No waiver of any obligation or default of Indemnitor 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. 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. This Agreement and the rights and obligations accruing hereunder are binding upon the successors and assigns of Metra and Indemnitor. This Agreement shall be governed by the internal laws of the State of Illinois. This Agreement, together with the Exhibits attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part were never included and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that such exclusion does not unfairly prejudice the rights of either Party to this Agreement. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any Exhibit hereto, the terms set forth in such Exhibit shall govern and control.

17. 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 commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid or sent by facsimile transmission by Metra or Indemnitor 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 as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to Metra shall be sent to:

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

(b) Notices to Indemnitor shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention:  
Phone: ( ) \_\_\_\_\_

18. Each signatory to this Agreement represents and warrants that they have full authority to sign this Agreement on behalf of the party for whom they sign and that this Agreement shall be binding on the parties hereto, their respective partners, directors, officers, employees, agents, representatives, successors and assigns, and may not be changed orally but only by a writing signed by the parties hereto.

**(Signature Page to Follow)**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed by their duly authorized officers on the day and year first written above.

INDEMNITOR:

THE COMMUTER RAIL DIVISION OF  
THE REGIONAL TRANSPORTATION  
AUTHORITY:

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

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

Name: \_\_\_\_\_

Donald A. Orseno  
Executive Director/CEO

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



**EXHIBIT "A"**

**PREMISES**

**EXHIBIT "B"**

**LIST OF SUBCONTRACTORS**

**(to be inserted if applicable)**

## EXHIBIT "C"

### INSURANCE REQUIREMENTS

Prior to commencement of any work to be performed on or about the Premises under the terms of this Agreement, Indemnitor shall purchase or shall require its subcontractors to purchase the following insurance coverage. The total cost of the premium for such insurance shall be at the expense of Indemnitor or its Subcontractors:

(a) **Commercial General Liability Insurance (ISO Form).**

Indemnitor or Subcontractor shall furnish evidence that, with respect to the operations it performs and the operations performed by sub-subcontractors, it carries regular Commercial General Liability Insurance providing for a limit of not less than \$2,000,000 per occurrence limit, \$4,000,000 aggregate, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person or destruction of property, including the loss of use thereof, in any one occurrence under the terms of which on a primary and non-contributory basis The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and any other railroads operating on Metra property and/or other railroads as required are named as an additional insured for ongoing operations and products/completed operations and include contractual language covering construction and/or demolition being performed on or near a railroad property and include the following endorsement: Contractual Liability ISO Form CG 24 17 10 01 (or a substitute form providing equivalent coverage) and no XCU exclusion.

(b) **Railroad Protective Liability Insurance.**

In addition to the above, Indemnitor shall furnish evidence, with respect to the operations it or any of its Subcontractors perform, that it has provided Railroad Protective Public Liability Insurance (AAR-AASHTO form) in the name of The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and any other railroads operating on Metra property and/or other railroads as required providing for a limit of not less than \$2,000,000 per occurrence limit, bodily injury and/or property damage combined, for damages arising out of bodily injuries to or death of any person in any one occurrence and for damage to or destruction of property, including the loss of use thereof, in any one occurrence. Such insurance shall be furnished with an aggregate of not less than \$6,000,000 for all damages as a result of more than one occurrence or depending on scope of work and/or location \$5,000,000 per occurrence for bodily injury and/or property damage and \$10,000,000 aggregate.

**(c) Workers' Compensation Insurance.**

Indemnitor or Subcontractor shall furnish evidence that, with respect to the operations it performs, it carries a policy complying with the statutes of the State of Illinois covering all employees of the Indemnitor

or Subcontractor, as applicable. The policy shall contain employers liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 each employee disease; and \$1,000,000 policy limit-disease.

**(d) Automobile Liability Insurance.**

Indemnitor or Subcontractor shall furnish evidence that, with respect to the operations it performs, it carries a policy issued to and covering the liability of Indemnitor or the Subcontractors, as applicable, arising out of the use of all owned, non-owned, hired, rented or leased vehicles which bear or are required to bear license plates according to the laws of the State of Illinois. Coverage under this policy shall have limits of liability of not less than \$1,000,000 per occurrence, combined single limit, for bodily injury and property damage liability under the terms of which on a primary and non-contributory basis The Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now exists or may hereafter be constituted or acquired, and the Regional Transportation Authority, an Illinois municipal corporation and any other railroads operating on Metra property and/or other railroads as required are named as additional insured.

All policies listed above, (except railroad protective which is in Metra's name) shall include a waiver of subrogation, thereby waiving your rights of subrogation against Metra and any additional insured's.

All deductibles applicable to the insurance coverage shall be borne by the contractor/vendor and not exceed \$10,000. SIR programs are prohibited, absent prior approval by Metra's Risk Management Department.

The insurance company or companies providing such insurance shall have a AM Best rating of A-7 or better and a minimum financial rating of XIII as published in the most recent issue of Best Key Rating Guide. The insurance hereinabove specified shall be carried until all work required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to carry or keep such insurance in force until all work is satisfactorily completed shall constitute a violation of the Agreement. Indemnitor shall furnish to Metra signed copies of the policy for Comprehensive General Liability and the original of the AAR-AASHTO policy for Railroad's Protective Public Liability Insurance.

No work shall commence until Indemnitor has obtained and provided the required insurance to Metra and has received approval of same by Metra. All policies must be in full force at the time of submission and shall not be canceled, modified, limited or allowed to expire without having given Metra thirty (60) days prior written notice of such. Notice must be sent via certified mail to: Metra, Attention: Manager, Commercial Insurance, 15th Floor, 547 West Jackson Boulevard, Chicago, Illinois 60661.

Indemnitor's failure to obtain or to cause its Subcontractors to obtain proper insurance coverage or to insure CRD, Metra, the NIRCRC or the RTA as additional insured's shall not, at any time, operate as a waiver of each of CRD's, Metra's, NIRCRC's or RTA's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement. During the term, Metra may make commercially reasonable increases in the amount of insurance required by Indemnitor or its Subcontractors under the terms and provisions of this Agreement.