

TEMPORARY RAIL USAGE AGREEMENT

This Temporary Rail Usage Agreement (this "Agreement") is entered into as of this ____ day of February, 2018, between Nippon Sharyo Manufacturing LLC, a Delaware limited liability company ("NIPPON"), and THE CITY OF ROCHELLE, an Illinois non-home rule municipal corporation (the "City") and collectively referred to as "the Parties":

WITNESSETH

WHEREAS, the Parties wish to enter into this Agreement for the purposes set forth herein, which will supersede any prior agreements.

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Use of Trackage for Storing Railroad Cars. NIPPON will allow the City to store railroad cars on certain trackage owned by NIPPON, subject to the following terms:

(a) Trackage. The NIPPON trackage subject to this Agreement consists of one (1) railroad track on property owned by NIPPON commonly known as 1600 Ritchie Court, Rochelle, Illinois (the "Nippon Facility"), totaling approximately 2,070 feet of railroad track, all as depicted on the diagram attached hereto as Exhibit A ("NIPPON Trackage").

(b) Storage Charge. The City shall pay NIPPON a storage charge for any railroad cars stored (from prior to midnight to after midnight) on the NIPPON Trackage pursuant to this Agreement at the rate of four (\$4.00) dollars per railroad car per day. For purposes of this Agreement, a day shall mean any twenty four (24) consecutive hour period. The City shall make a written accounting of the railroad cars stored pursuant to this Agreement on a monthly basis, by the 15th day of the following month. Such accounting and payment for the previous month's storage shall be received by NIPPON no later than the 20th day of such month.

(c) Term. This Agreement shall be in effect for a term of one (1) year from the above date and shall automatically renew for two additional one (1) year terms, unless either Party gives notice to the other Party at least forty-five (45) days prior to the end of the then-current term. NIPPON may also terminate this Agreement effective thirty (30) days after notice to the City to such effect.

(d) Movement of Railroad Cars. NIPPON authorizes the City to move railroad cars between 7:00 a.m. and 3:30 p.m., Monday through Friday, with notice to NIPPON by the City on the day prior to movement. The gate to the NIPPON Facility on the NIPPON Trackage shall remain closed and locked at all times, unless there is railroad car movement. Upon seventy-two (72) hours advance notice given by NIPPON, the City shall remove any and/or all railroad cars from the NIPPON Facility due to the business requirements of NIPPON. No railroad cars shall be placed on or returned to the NIPPON Trackage until after NIPPON notifies the City that NIPPON's business requirement has ended.

(e) Switching Charges. No switching charges will be imposed by either Party upon the other Party with respect to railroad cars stored on the NIPPON Trackage pursuant to this Agreement.

(f) Maintenance and Repairs. The City accepts the NIPPON Trackage in its "AS IS" condition as of the above date, and the costs of all repairs of damage to the NIPPON Trackage resulting from damage caused by the City, including from the City's negligence, shall be the responsibility of the City.

(g) Insurance. The City acknowledges that the railroad cars stored on the NIPPON Trackage pursuant to this Agreement will not be insured by NIPPON against loss, injury or damage, or product integrity. The City shall provide Worker's Compensation and General Liability Certificates of Insurance to NIPPON within thirty (30) days of the above date. NIPPON shall have no liability to the City or those claiming through the City for any property damage, personal injury or death arising from or related to the matters provided for in this Agreement.

(h) Indemnification. The City and its employees, agents, contractors and affiliates shall indemnify, hold harmless, and defend NIPPON and its members, owners, managers, officers, directors, employees, agents, affiliates, successors, and assigns against any and all losses, damages, liabilities, deficiencies, claims, suits, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees, that are incurred by NIPPON in connection with any third-party claim or dispute arising out of or related to entry upon the Nippon Facility or Nippon Trackage as permitted by this Agreement for the movement and storage of certain railroad cars.

2. Notice. All notices and other communications related to this Agreement shall be in writing and shall be deemed properly given if delivered personally, sent postage prepaid by U.S. registered or certified mail (return receipt requested), or sent by email to the following addresses for the Parties:

If to the City:

City Manager
City of Rochelle
420 North 6th Street
Rochelle, Illinois 61068
Attn: Jeff Fiegenschuh
Email: jfiegeschuh@rochelleil.us

and

Peterson, Johnson & Murray-Chicago LLC
200 West Adams – Ste. 2125
Chicago, Illinois 60606
Attn: Dominick Lanzito
Email: dlanzito@pjmchicago.com

If to NIPPON:

Nippon Sharyo Manufacturing LLC
1600 Ritchie Court
Rochelle, IL 61068
Attn: Akira Koyasu, President
Email: koyasu@nipponsharyo.com

or to such other address as a Party may designate for itself by notice given from time to time to the other Party in the manner provided herein. For purposes of this Agreement, notices or other communications given as provided above shall be effective.

3. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the City and NIPPON and their respective successors and assigns.

4. Entire Agreement. This Agreement and Exhibit A to this Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda or agreements related to the subject matter hereof are superseded in total by this Agreement and Exhibit A to this Agreement. No Party has relied on any representations, written or verbal, of any other Party other than any express representations made within this Agreement.

5. Choice of Law. This Agreement shall be governed by the law of the State of Illinois. Any dispute arising from this Agreement may only be litigated in the state court located in Ogle County, Illinois.

6. Exhibits. Exhibit A is incorporated by reference and made a part of this Agreement.

7. Counterparts. This Agreement may be executed in counterparts and delivered via electronic means.

8. Confidentiality. Except as required by the Illinois Freedom of Information Act ("FOIA") and as necessary for the Rochelle City Council to approve this Agreement during a public City Council meeting, under no circumstances shall the City disclose the existence of this Agreement to any person or entity. The City shall keep any information related to or arising from this Agreement in the strictest confidence and not disclose or make available any such information to any person or entity. The City may only reveal such information to representatives of the City who have a need to know such information to assist the City, or act on its behalf, in exercising its rights or performing its obligations under this Agreement, provided that such representatives are subject to the same confidentiality obligations set forth herein. The City agrees that any employees, agents, or independent contractors (collectively, "Agents") the City causes to enter onto, observe, or monitor the NIPPON Facility or NIPPON Trackage will be held to the strictest confidentiality regarding such activities and any observations or information learned during such entries, observations, monitoring, or other duties relating to this Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement to each other as of the date set forth above.

THE CITY OF ROCHELLE, an
Illinois municipal corporation

Nippon Sharyo Manufacturing, LLC, a
Delaware limited liability company

By: _____

By:  _____

Name: Jeff Fiegenschuh

Name: Akira Koyasu

Title: City Manager

Title: President

Attest: _____

Name: Bruce McKinney

Title: City Clerk

