

AGREEMENT

THIS AGREEMENT (the “Agreement”) entered this day of _____, 2019, by and between GREATER ROCHELLE ECONOMIC DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation (hereinafter referred to as “GREDCO”), and the CITY OF ROCHELLE, an Illinois municipal corporation (hereinafter referred to as the “City of Rochelle” or as the “City”), collectively referred to as the “Parties” and each as a “Party.”

W I T N E S S E T H :

WHEREAS, the City of Rochelle owns and operates a railroad known as the City of Rochelle Railroad which has been assigned the designation of CIR from the American Railroad Association (hereinafter referred to as “CIR”); and

WHEREAS, GREDCO is a not-for-profit entity incorporated in the State of Illinois and is qualified under the Internal Revenue Code as a Section 501(c)(4) entity, and has been instrumental in developing industry and other business opportunities for the City of Rochelle utilizing and promoting the CIR; and

WHEREAS, the mission of GREDCO is to participate in, sponsor, and promote economic development for the City of Rochelle and its citizens, facilitated in significant part by GREDCO’s acquisition of land or options to acquire land for economic development involving the timely annexation of any such land into the corporate boundaries of the City of Rochelle; and

WHEREAS, the City of Rochelle recognizes the contributions of GREDCO to the establishment and development of business opportunities for the City of Rochelle through its marketing of the CIR; and

WHEREAS, GREDCO’s financial resources and operating expenses have been largely funded by grants, loans, and land sales but the sources of funds available to GREDCO are now limited and present reserve funds are greatly diminished, thereby undermining GREDCO’s ability to acquire property in pursuit of its economic development mission; and

WHEREAS, the City of Rochelle is desirous that GREDCO continue work for the benefit of the City of Rochelle to facilitate economic development; and

WHEREAS, the City of Rochelle and GREDCO agree it is in their respective best interests to enter into an agreement whereby the City of Rochelle will contribute a portion of revenues from the CIR to GREDCO and GREDCO will continue to facilitate development of the CIR and business opportunities related to the CIR for the benefit of the City of Rochelle for the purpose of increasing revenue and expanding revenue sources and in further pursuance of its mission.

NOW THEREFORE, it is agreed by and between the parties hereto as follows

1. The City of Rochelle shall pay to GREDCO five percent (5%) of the annual revenues received by the City of Rochelle from the City of Rochelle Railroad (CIR). "Annual revenue" is defined as the total of all amounts received by the City of Rochelle during each fiscal year from the operator of the CIR.

2. The amount to be paid to GREDCO shall be determined on an annual basis at the close of the fiscal year for the City of Rochelle and divided into four equal payments to be paid to GREDCO quarterly on the last day of each fiscal quarter during the succeeding fiscal year. Payments to GREDCO under this Agreement shall commence immediately and include one retroactive payment for the second quarter of 2019 which is immediately due and payable. 2019 payments shall be based upon annual revenues for the CIR from calendar year 2018.

3. The term of this agreement shall commence at the execution hereof and shall expire upon the conclusion of the current term of the mayor of the City of Rochelle. This agreement may be renewed for up to two additional 2-year terms if agreed to by both parties no less than 90 days prior to the expiration of the initial term, or the expiration of any succeeding term if the agreement is extended. Such agreement must be in writing and notice shall be provided as set forth below.

4. As consideration for entering into this Agreement, GREDCO shall continue to, in pursuance of its mission, acquire of land for economic development, which land as a condition precedent for its development shall be annexed to the corporate boundaries of the City of Rochelle. However, the parties agree that the proceeds provided under this Agreement shall not be used to purchase any land that is to be purchased by the City of Rochelle.

5. Any amount paid to GREDCO under this agreement shall be utilized in consonance with GREDCO's mission and solely and exclusively for continued development of the railroad system, CIR, and other economic development purposes that benefit the City of Rochelle and the citizens of the City of Rochelle. GREDCO shall provide an accounting for all funds received pursuant to this Agreement so that the City of Rochelle can ensure that all funds are being used for public development and a public purpose. Specifically, GREDCO will continue to provide the City of Rochelle with quarterly financial and economic development activity reports every month during GREDCO's regular monthly meetings. Additionally, GREDCO will provide the City of Rochelle's City Manager with all records and documents related to the compensation of GREDCO's CEO and/or President, including all benefits provided to the CEO and/or President. In the event that GREDCO's CEO and/or President is also an employee of the City of Rochelle, the CEO and/or President shall not perform any functions or duties for GREDCO while working for the City of Rochelle and shall not receive any compensation or consideration from GREDCO while he or she is working for the City of Rochelle.

The City Manager may attend said meetings of the GREDCO board of directors. City Council members may also attend regular GREDCO meetings and shall continue to receive the meeting agendas for and minutes from all monthly GREDCO meetings. The Rochelle City Council shall be allowed to review records of GREDCO's economic development activity and its financial records upon request.

6. Nothing in this Agreement shall impact or adversely affect future agreements between GREDCO and the City of Rochelle (by way of example but without limitation, transactions under which GREDCO acquires land for future railroad right-of-way or other economic development purposes consistent with its mission and sells such right-of-way to the City of Rochelle), except as otherwise stated herein.

7. Each party shall comply with the rules and regulations promulgated by any government or other lawful authority governing railroads.

8. Representations and Warranties of GREDCO. GREDCO represents and warrants to the City:

a. that GREDCO has full power and authority to execute this Agreement and to bind the Property as herein provided;

b. that the officers of GREDCO executing this Agreement have been lawfully authorized to execute this Agreement on behalf of GREDCO and that GREDCO is lawfully organized and in good standing under all applicable laws;

c. that there is no litigation pending by or against GREDCO that would substantially impair its ability to perform its obligations contemplated by this Agreement.

9. Representations and Warranties of City. The City represents and warrants to GREDCO:

a. that the City Manager and Clerk of the City have been lawfully authorized by the City Council of the City to execute this Agreement on behalf of the City;

b. that the City has given or caused to be given and published or caused to be published all notices required by law to be given or published in connection with this Agreement;

c. that there is no litigation pending by or against the City that would substantially impair its ability to perform its obligations contemplated by this Agreement.

10. Any notice required or permitted hereunder shall be personally delivered or sent by certified mail, postage fully prepaid, and return receipt requested, to the parties at the following addresses:

To City of Rochelle:

City of Rochelle
420 N. 6th St.
Rochelle, IL 61068
Attn: City Manager

To GREDCO:

GREDCO

420 N. 6th Street
Rochelle, IL 61068
Attn: GREDCO President

or at such other address as the respective parties may from time to time give notice of. Notice shall be effective when personally delivered or, if mailed, when received, refused or returned by the Postal Service as undeliverable.

11. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency, employment or fiduciary relationship between the Parties. Neither Party nor its agents have any authority of any kind to bind the other Party in any respect whatsoever without the express written consent to be bound.

12. Indemnity. GREDCO shall hold harmless, defend and indemnify the City, the Corporate Authorities, the Plan Commission, and all City elected or appointed officials, officers, employees, agents, representatives, engineers, and attorneys, from any and all claims (except for willful misconduct) that may be asserted at any time against any of them in connection with (i) the City's participation in this Agreement (except for a claim by GREDCO that the City of Rochelle has failed to comply with its obligations under this Agreement; and (ii) any development, construction, maintenance, or any activity occurring as a result of any public development, purchase of land, or project undertaken by GREDCO.

13. Defense Expense. GREDCO shall, and does hereby agree to, pay all expenses, including without limitation legal fees and administrative expenses, incurred by the City of Rochelle in defending any and all of the claims resulting from or related to this Agreement, except for a claim by GREDCO that the City of Rochelle has failed to comply with its obligations under this Agreement.

14. Amendment. This Agreement may be amended only by the mutual consent of the Parties, by adoption of an ordinance by City approving said amendment as provided by law, and by the execution of a written amendment by the Parties or their successors in interest.

15. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provision, covenant or portion of this Agreement, and to that end, all provisions, covenants, agreements and portions of this Agreement are declared to be severable.

16. Entire Agreement. This Agreement sets forth and fully integrates all agreements, understandings and covenants between the Parties with respect to the subject matter hereof and is intended to supersede and discharge all prior oral or written or contemporaneous oral agreements, negotiations and understandings between the Parties.

17. Remedies Available; No Election. Subject to the indemnity provisions of this Agreement, upon a breach of this Agreement, any of the parties, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance

of the covenants and agreements herein contained, may be awarded damages for failure of performance or both. No action taken by any party hereto pursuant to the provisions of this Article or pursuant to the provision of any other Article of this Agreement shall be deemed to constitute an election of remedies and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity.

19. Notice and Opportunity to Cure. In the event of a material breach of this Agreement (other than non-payment of sums owed), the Parties agree that the party alleged to be in breach shall have thirty (30) days after written notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein, (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same).

18. Failure to Cure. If any of the Parties shall fail to perform any of its obligations hereunder (other than non-payment of sums owed), and the party affected by such default shall have given written notice of such default to the defaulting party, and such defaulting party shall have failed to cure such default within thirty (30) days of such default notice (provided, however, that said thirty (30) day period shall be extended if the defaulting party has initiated the cure of said default and is diligently proceeding to cure the same), then, in addition to any and all other remedies that may be available, either in law or equity, the party affected by such default shall have the right (but not the obligation) to take such action as in its reasonable discretion and judgment shall be necessary to cure such default. In such event, the defaulting party hereby agrees to pay and reimburse the party affected by such default for all reasonable costs and expenses (including attorney's fees and litigation expenses) incurred by it in connection with action taken to cure such default.

19. No Waiver. The failure of the Parties to insist upon the strict and prompt performance of the terms, covenants, agreements, and conditions herein contained, or any of them, upon any other party imposed, shall not constitute or be construed as a waiver or relinquishment of any party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

20. Time of Essence. Time is of the essence of this Agreement and of each and every provision hereof.

21. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on their behalf, as of the _____ day of _____, 2019.

GREATER ROCHELLE ECONOMIC
DEVELOPMENT CORPORATION, an Illinois
not-for-profit corporation

By _____
Its Authorized Officer

CITY OF ROCHELLE, an Illinois municipal
corporation

By: _____
City Manager

Attest: _____
City Clerk