

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL MEETING**  
**OCTOBER 2, 2007 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
First Amendment to the Intergovernmental Agreement for the Construction of the Belmont Underpass	✓ Resolution Ordinance Motion Discussion Only	David Fieldman Deputy Village Manager

**SYNOPSIS**

A resolution has been prepared to approve a first amendment to the intergovernmental agreement between the Village, the State of Illinois, DuPage County, Burlington Northern Santa Fe Railway Company (BNSF), and Metra for the construction of the Belmont Underpass. This amendment alters the project funding levels and responsibilities of the parties involved in the original intergovernmental agreement for the Belmont Underpass Project.

**STRATEGIC PLAN ALIGNMENT**

Five Year Plan and Goals for 2006-2011 identified *Top Quality Infrastructure and Facilities*. Supporting these objectives was *Belmont Underpass: Property Acquisition and Funding*.

**FISCAL IMPACT**

N/A.

**UPDATE & RECOMMENDATION**

This item was discussed at the September 25, 2007 Workshop. During that meeting, Council directed staff to contact Metra to determine whether additional changes may be made to the agreement prior to the Village accepting the amendment. Metra indicated that it would deny any changes to the agreement, as a number of the other agencies have already approved the document. They are willing to work cooperatively with the Village to resolve any concerns.

Staff recommends approval on the October 2, active agenda.

**BACKGROUND**

In October of 2002, the Village entered into an intergovernmental agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company (BNSF) and Metra regarding the construction of the Belmont Grade Separation Project (Belmont Underpass). That agreement set forth the preliminary funding guidelines and organizational responsibilities for the parties involved in the agreement. The Village's major project responsibilities as outlined in the original agreement were to utilize its eminent domain authority to acquire property for the project which could not be reasonably obtained by Metra. The Village is not responsible for funding any of the projects associated with the Belmont Underpass.

A first amendment to the intergovernmental agreement for the Belmont Underpass Project has been submitted to the Village by Metra. The amendment updates the funding and project responsibilities for the parties involved in the intergovernmental agreement for the Belmont Underpass. Per the first amendment, the total cost for the project is estimated to be \$52,700,069. The breakdown for the costs of the project per the first amendment is as follows:

EA and preliminary design	\$ 1,500,000
Final design	\$ 650,000
Property acquisition	\$12,297,649
Construction	\$38,252,420
<b>TOTAL</b>	<b>\$52,700,069</b>

Regarding property acquisition, the first amendment states that Metra will contribute \$4,200,000 in CMAQ funds and \$1,050,000 in Metra matching funds. This results in an estimated remaining balance for the project totaling \$47,450,069. This contribution is summarized in the table below:

Total project cost	\$52,700,069
CMAQ contribution	(\$ 4,200,000)
Metra matching funds	(\$ 1,050,000)
<b>Remaining Balance</b>	<b>\$47,450,069</b>

Based on the updated cost estimates outlined in the first amendment, the funding responsibilities of the parties involved in the intergovernmental agreement were also updated. The funding responsibilities as specified in the amendment are:

- The maximum ICC participation will be \$12,000,000
- BNSF will pay 5% of improvement costs, which total \$2,372,503
- The State will pay 50% of the remaining project costs after deducting the ICC and BNSF contributions. The State contributions will not exceed \$16,538,783
- Metra will pay 50% of the remaining project costs after deducting the ICC and BNSF contributions. The Metra contributions will not exceed \$16,538,783

These funding obligations are illustrated in the table below:

ICC	\$12,000,000
BNSF	\$ 2,372,503
State of Illinois	\$16,538,783
Metra	\$16,538,783
<b>TOTAL FUNDS</b>	<b>\$47,450,069</b>

The final section of the first amendment addresses what will occur in the event that funding cannot be secured by either the State or Metra. In the event that the State or Metra cannot secure funding for the Belmont Underpass Project, then either organization has the option to terminate the agreement.

## **ATTACHMENTS**

Resolution Authorizing the Intergovernmental Agreement  
First Amendment to the Intergovernmental Agreement

**VILLAGE OF DOWNERS GROVE**  
**COUNCIL ACTION SUMMARY**

**INITIATED:** Village Manager **DATE:** October 2, 2007  
(Name)

**RECOMMENDATION FROM:** \_\_\_\_\_ **FILE REF:** \_\_\_\_\_  
(Board or Department)

**NATURE OF ACTION:**

- ☐ Ordinance
- ☒ Resolution
- ☐ Motion
- ☐ Other

**STEPS NEEDED TO IMPLEMENT ACTION:**

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO AN AGREEMENT WITH THE STATE, THE COUNTY, THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY AND METRA REGARDING THE BELMONT GRADE SEPARATION PROJECT", as presented.

**SUMMARY OF ITEM:**

Adoption of the attached resolution shall authorize execution of a first amendment to an intergovernmental agreement between the Village of Downers Grove, the State, the County and Burlington Northern and Santa Fe Railway Company, and Metra for the Belmont Grade Separation Project.

**RECORD OF ACTION TAKEN:**

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**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A FIRST AMENDMENT  
TO AN AGREEMENT WITH THE STATE, THE COUNTY, THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY COMPANY AND METRA REGARDING  
THE BELMONT GRADE SEPARATION PROJECT**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois,  
as follows:

1. That the form and substance of a certain amendment to an Intergovernmental Agreement (the “Agreement”), Agreement, entered into October 28, 2002, between the Village of Downers Grove (the “Village”) and the Burlington Northern and Santa Fe Railway Company, a Delaware corporation (“BNSF”) and the Commuter Rail Division of Regional Transportation Authority (“CRD”), for developing, acquiring right-of-way for, operating and maintaining a grade separation structure and related improvements at the intersection of Belmont Road and the BNSF railroad right-of-way in Downers Grove, Illinois, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

\_\_\_\_\_  
Mayor

Passed:

Attest: \_\_\_\_\_  
Village Clerk

## FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

**THIS FIRST AMENDMENT**, dated this \_\_\_\_\_ day of \_\_\_\_\_, 2007, shall amend and modify the Intergovernmental Agreement entered into on October 28, 2002 ("**Agreement**") by and between the State of Illinois, acting by and through its Department of Transportation ("**State**"), the County of Dupage, a body corporate and politic ("**County**"), the Village of Downers Grove, an Illinois municipal corporation ("**Village**"), The Burlington Northern and Santa Fe Railway Company, a Delaware corporation ("**BNSF**"), and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**Metra**"). To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this First Amendment, the provision or provisions of this First Amendment shall control. The State, County, Village, BNSF and Metra are hereafter sometimes individually referred to as "**Party**" and jointly referred to as the "**Parties**."

**NOW, THEREFORE**, for and in consideration of the foregoing recitals, which by this reference are hereby incorporated into this First Amendment, the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. Recital C is hereby deleted in its entirety and replaced with the following Recital C:

" In order to facilitate the free flow of traffic and to ensure the safety of the motoring public, the Parties desire to cooperate in developing, acquiring property for, operating, and maintaining a grade separation structure and related improvements at the intersection of Belmont Road and the BNSF railroad right-of-way in accordance with plans and specifications prepared by Metra ("Plans and Specifications") and approved by the remaining Parties to this Agreement (said grade separation structure, including all appurtenant improvements, property acquisitions, and any other necessary related expense or modification, hereafter referred to as the "Improvement")."

2. Section 3 of the Agreement beginning with the fifth sentence and continuing through the end of Section 3, prior to Section 3.A, is hereby deleted and replaced with the following:

"The estimated cost for the Improvements, based upon final design, is Fifty Two Million Seven Hundred Thousand Sixty Nine Dollars (\$52,700,069), exclusive of the Prairie Avenue turn lane improvements and property acquisition costs ("**Prairie Improvements**") which shall be the responsibility of the County. The breakdown for the Improvement costs is based on the following estimates:

1. EA and preliminary design	\$ 1,500,000
2. Final design	\$ 650,000
3. Property acquisition and relocation	\$12,297,649
4. Construction	\$38,252,420

Metra agrees to contribute Four Million Two Hundred Thousand Dollars (\$4,200,000) in CMAQ funds and One Million Fifty Thousand Dollars (\$1,050,000) in Metra matching funds, for a total of Five Million Two Hundred Fifty Thousand Dollars (\$5,250,000), toward the cost of acquiring the property necessary for the Improvement, except the property required for the construction of a turn lane at Prairie Ave. ("**Metra CMAQ Contribution**") resulting in an estimated balance for the cost of the Improvement in the amount of Forty Seven Million Four Hundred Fifty Thousand Sixty Nine Dollars (\$47,450,069). The Parties desire to assist in the cost and development of the Improvement, in part, by making the following commitments, after deduction of the Metra CMAQ Contribution from the cost for the Improvement:"

3. The third sentence of Section 3.A of the Agreement is hereby deleted and replaced with the following sentence:

"It is understood that the maximum financial participation from the ICC ("**ICC Contribution**") is the amount of \$12,000,000."

4. Section 3.B is hereby deleted in its entirety and replaced with the following Section 3.B:

"BNSF agrees to pay five percent (5%) of the cost of the Improvement ("**BNSF Contribution**") for an estimated amount of \$2,372,503."

5. Section 3.C is hereby deleted in its entirety and replaced with the following Section 3.C:

"The State agrees to pay approximately fifty percent (50%) of the remaining cost of the Improvement after deducting the ICC and BNSF Contributions ("**State Contribution**") for an amount not to exceed \$16,538,783."

6. Section 3.D is hereby deleted in its entirety and replaced with the following Section 3.D:

"Metra agrees to pay approximately fifty percent (50%) of the remaining cost of the Improvement after deducting the ICC and BNSF Contributions ("**Metra Contribution**") for an amount not to exceed \$16,538,783."

7. Section 11 is hereby deleted in its entirety and replaced with the following Section 11:

"In the event that either the State or Metra or both do not receive the funding necessary to complete the Improvements, or such funding is withdrawn or terminated by the funding agency, then the State or Metra shall have the option to terminate this Agreement and the obligations of the Parties under the terms and provisions of the Agreement."

8. Capitalized terms, not otherwise defined herein, shall have the same meanings ascribed to them in the Agreement. The remaining terms, covenants, provisions and conditions of the Agreement shall remain in full force and effect.

#### **SIGNATURES ON FOLLOWING PAGES**

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the day and year first above written.

**STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION:**

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
Director of Highways Secretary

BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Director of Finance and Administration

BY: \_\_\_\_\_  
Chief Counsel

**DU PAGE COUNTY:**

BY: \_\_\_\_\_  
Chairman DuPage County Board

DATE: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
County Clerk

**SIGNATURE PAGE CONTINUED**



**VILLAGE OF DOWNERS GROVE:**

BY: \_\_\_\_\_  
Mayor

DATE: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Village Clerk

**THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY:**

BY: \_\_\_\_\_

ITS: \_\_\_\_\_


DATE: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_

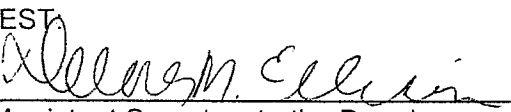
ITS: \_\_\_\_\_

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

BY:  \_\_\_\_\_  
Philip A. Pagano, Executive Director

DATE: 7/17/07

ATTEST:

BY:  \_\_\_\_\_  
Assistant Secretary to the Board