

**VILLAGE OF DOWNERS GROVE**  
**REPORT FOR THE VILLAGE COUNCIL WORKSHOP**  
**JANUARY 13, 2009 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Third Amendment to the Grant Agreement with Metra for the Belmont Grade Separation Project	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

Staff has prepared a resolution to authorize execution of a Third Amendment to the Grant Agreement for Eminent Domain Services for the Belmont Grade Separation Project with the Commuter Rail Division of the Regional Transportation Authority (Metra).

**STRATEGIC PLAN ALIGNMENT**

Five Year Plan and Goals for 2008-2013 identified *Top Quality Village Infrastructure and Facilities and Vibrant Major Commercial Corridors*.

**FISCAL IMPACT**

Under the terms of the agreement, the Village would extend the term of the grant funding agreement with Metra to December 31, 2009 for eminent domain services.

**RECOMMENDATION**

Approval on the January 20, 2009 Consent Agenda.

**BACKGROUND**

As part of the Belmont grade separation project, the Village entered into grant agreement with Metra for eminent domain services in July of 2003. The agreement provides that Metra will reimburse the Village for the reasonable costs and expenses associated with eminent domain services related to the project. The original agreement was for a twenty-four (24) month period, ending July 2005. In 2005, the Village and Metra agreed to the first amendment to the original 2003 agreement. This first amendment extended the funding expenditures through June 30, 2007. The second amendment extended the funding expenditures through December 31, 2008 and additional grant funding of \$200,000 was secured, raising the total amount available for eminent domain services from \$600,000 to \$800,000. At this time, in the form of a third amendment, presented herein, the funding expenditures would be extended until December 31, 2009.

**ATTACHMENTS**

- Resolution
- Third Amendment Agreement between the Village and Metra
- Original Agreement, First Amendment and Second Amendment

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

**A RESOLUTION AUTHORIZING EXECUTION OF A  
THIRD AMENDMENT TO GRANT AGREEMENT FOR  
EMINENT DOMAIN SERVICES FOR THE DOWNERS GROVE  
GRADE SEPARATION PROJECT CONTRACT NO. K00419  
BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE  
COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY**

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 Agreement (the “Agreement”), between the Village of Downers Grove (the “Municipality”) and the Commuter Rail Division of the Regional Transportation Authority (“CRD” or “Metra”) for the third amendment which shall extend the term of the original grant agreement to December 31, 2009, 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



**THIRD AMENDMENT TO  
GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES  
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT  
CONTRACT NO. K00419**

**THIS THIRD AMENDMENT**, dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, shall amend and modify the Grant Agreement for Eminent Domain Services for the Downers Grove Grade Separation Project by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation (“**CRD**” or “**Metra**”) and the Village of Downers Grove, an Illinois municipal corporation, created under the laws of Illinois, (“**Municipality**”) entered into July 1, 2003 (“**Agreement**”) for eminent domain services for the Downers Grove Grade Separation Project. To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Third Amendment, the provision or provisions of this Third Amendment shall take precedence and control. CRD and Municipality are hereinafter sometimes jointly referred to as the “**Parties.**”

**NOW, THEREFORE**, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency are hereby acknowledged by the Parties, CRD and Municipality agree to the following revisions to the Agreement:

1. Paragraph 8 is hereby deleted and replaced with the following paragraph:

**“EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Project Funding for this Project must be expended upon approved eminent domain services on or before December 31, 2009. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD on December 31, 2009.”

2. 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.

**(SIGNATURE PAGE TO FOLLOW)**



**GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES  
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT**

**THIS AGREEMENT**, made and entered into this 1<sup>st</sup> day of July, 2003, by and between the Village of Downers Grove, an Illinois municipal corporation ("**Municipality**"), and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**CRD or Metra**"). The Municipality, and CRD are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**."

**RECITALS:**

A. CRD has the authority to cooperate with other governmental agencies regarding the acquisition, construction, operation, maintenance and upgrading of commuter facilities pursuant to 70 ILCS 3615/3B.09. CRD desires to participate with the Municipality in the funding of the eminent domain services for acquisition of property necessary for the Downers Grove Grade Separation Project ("**Project**").

B. The Municipality is authorized to cooperate with CRD in the exercise of its powers pursuant to 65 ILCS 5/11-122.2-1

C. Pursuant to the Intergovernmental Agreement dated October 28, 2002, the Municipality agreed to acquire any property needed for the Project by eminent domain that cannot be obtained through negotiations by Metra as described on Exhibit "A", attached to and made a part of this Agreement ("**Project Scope**") and Metra agreed to reimburse the Municipality for reasonable costs and expenses associated with the eminent domain services ("**Project Funding**").

D. CRD desires to contribute Project Funding for eminent domain services in the form of a capital grant ("**Grant**") in an amount not to exceed Two Hundred Thousand Dollars (\$200,000) in accordance with the approved budget attached to and made a part of this Agreement as Exhibit "**B**" ("**Approved Budget**"). The Parties acknowledge that the purchase price for the property is not included in this Grant.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals, which are hereby incorporated into and made a part of this Agreement and the mutual promises hereinafter set forth the Parties do hereby covenant and agree as follows:

1. **GENERAL REQUIREMENTS.** Municipality shall commence, carry on, and complete eminent domain for the acquisition of the property needed for the Project in accordance with the provisions of this Agreement.

2. **AMOUNT OF GRANT.** The Parties agree that the Approved Budget for the Grant is Two Hundred Thousand Dollars (\$200,000) as described on the Approved Budget. Eminent domain expenses properly incurred by the Municipality up to the amount of the Approved Budget are eligible for reimbursement. CRD, at its sole discretion, may agree in writing to increase the amount of the Grant. The Parties agree that the Purchase Price for each parcel is not included in this Grant.

3. **COMPLIANCE.** In the performance of its obligations pursuant to this Agreement, the Municipality and its contractors shall comply with all applicable provisions of federal, state and local law, including the applicable grant provisions of any grant agreement with a state or federal funding agency. The Municipality agrees to include in all third party contracts financed with government assistance specific notice that government requirements may change and the changed requirements will apply to the Project as required. Specifically, the Municipality and its contractors agree to administer the Project in accordance with the most recent federal and state provisions, including all applicable OMB or USDOT circulars and regulations.

4. **REQUEST FOR PAYMENT BY MUNICIPALITY.** Municipality may make monthly requests for payment of reimbursable costs and expenses ("Costs") by submitting to CRD a monthly requisition including an explanation of the purposes and copies of invoices for which Costs have been incurred to date.

5. **PAYMENT BY CRD.** CRD shall process the requisition and the CRD shall then reimburse the Municipality for the Costs incurred within thirty (30) days of the date upon which such payment requisition was received by CRD, provided that Municipality has received approval by CRD for all budget revisions required to cover all Costs incurred by the end of the requisition period and Municipality is in compliance with its obligations pursuant to the Agreement.

6. **DOCUMENTATION OF PROJECT COSTS.** All Costs charged to the Project, including any approved services contributed by Municipality or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in detail the nature and property of the charges.

7. **AUDIT AND INSPECTION.** Following completion of the eminent domain, Municipality will provide documentation satisfactory to the CRD certifying that all charges and claims relating to work paid for by the CRD Funding have been paid by Municipality. The CRD has the right to inspect and approve all work as part of the CRD Funding. Municipality shall keep satisfactory records with regard to the use of the CRD Funding. Municipality will submit to CRD, upon request, any information reasonably required to assure compliance with the terms of this Agreement. Municipality will immediately notify CRD, and receive CRD's written approval, in all cases where Municipality intends to use CRD Funding in a manner substantially different from that intended by this Agreement.

8. **EXPENDITURE OF GRANT FUNDS.** The Parties agree that the CRD Funding for this Project must be expended upon approved eminent domain expenses within 24 months of execution of this Agreement. Unless otherwise specified in writing by CRD, all unexpended CRD Funding will automatically revert to CRD upon the expiration of this 24-month time period.

9. **COMPETITIVE BIDDING.** Municipality agrees to give full opportunity for free, open, and competitive bidding in accordance with federal and state statutes, as applicable, and the Municipality's established rules, regulations and ordinances for each contract to be let by Municipality that requires constructing or furnishing of any materials, supplies, or equipment to be paid for with Project Funds and Municipality shall give such publicity in its advertisements or calls for bids for each contract as will provide adequate competition. The award for each such contract shall be made by Municipality as soon as practicable to the lowest responsive and qualified bidder or as otherwise specifically approved by CRD. Contracts for the purchase of land, real estate, transit property, or other real or personal property not normally acquired through competitive bidding are specifically excluded from the requirements of this Section, except that contracts for professional and consulting services shall be awarded only after competitive solicitation of proposals.

10. **SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES.** CRD has a vested interest in the settlement of disputes, defaults, or breaches involving any CRD-assisted third party contracts. CRD retains a right to a proportionate share, based on the percentage of the CRD share committed to the Project, of any proceeds derived from any third party recovery. Therefore, Municipality shall avail itself of all legal rights available under any third party contract. Municipality shall notify CRD of any current or prospective litigation pertaining to any compromise or settlement of the Municipality's claim(s) involving any third party contract, before making CRD assistance available to support that settlement. If the third party contract contains a liquidated damages provision, any liquidated damages recovered shall be credited to the project account involved unless CRD permits otherwise.

11. **ASSIGNMENT OF CONTRACT - SUBCONTRACTORS.** The Municipality agrees that no contract for professional or consulting services of any kind in connection with the Project shall be assigned, transferred, conveyed, sublet, or otherwise disposed of without the prior written consent of CRD.

12. **LABOR LAW COMPLIANCE.** Municipality agrees to comply with all applicable federal laws, state laws and regulations including, but not limited to, such laws and regulations relating to minimum wages to be paid to employees, limitations upon the employment of minors, minimum fair wage standards for minors, payment of wages due employees, and health and safety of employees. Municipality also agrees to require any contractor performing professional or consulting service in connection with the Project to agree to adhere to the requirements of this Section. Municipality agrees to pay its employees, if any, all rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes, and Municipality further agrees to make all required withholdings and deposits therefor. In addition, Municipality agrees to require all contractors and subcontractors for this project to pay their employees all their rightful salaries, medical benefits, pensions and social security benefits pursuant to applicable labor agreements and federal and state statutes and to further require withholdings and



deposits therefor. Such requirements shall be included by the Municipality in all its contracts and agreements with contractors and subcontractors for this Project. CRD reserves the right to withhold final payment for this Project in the event that it is notified that the Municipality or any contractor and subcontractor has refused to pay any employee his/her salary, medical benefits, pension or social security benefits or to make the required withholdings and deposits therefor, until such time as the CRD is satisfied that the Municipality, its contractors and subcontractors have made all such payments, withholdings, or deposits. Upon request, Municipality shall provide CRD, and cause any or all of its contractors and subcontractors to provide CRD, access to all books and records pertaining to payments, withholdings, or deposits of the Municipality or the Municipality's contractors or subcontractors relating to employees' salaries, medical benefits, and pension or social security benefits. Any such inspection by the CRD shall occur on regular business days and during normal working hours.

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

14. **RIGHT OF CRD TO TERMINATE.** Upon written notice to Municipality, CRD reserves the right to suspend or terminate all or part of the financial assistance herein provided for convenience or if Municipality is, or has been, in violation of the terms of this Agreement. Any failure to make progress which significantly endangers substantial performance of the Project within a reasonable time shall be deemed to be a violation of the terms of this Agreement. Termination of any part of the Grant will not invalidate obligations properly incurred by Municipality and concurred in by CRD prior to the date of termination, to the extent they are noncancellable. The acceptance of a remittance by CRD of any or all Project Funds previously received by Municipality or the closing out of CRD financial participation in the Project shall not constitute a waiver of any claim which CRD may otherwise have arising out of this Agreement.

15. **NON-COLLUSION.** Municipality warrants that it has not paid and agrees not to pay any bonus, commission, fee, or gratuity for the purpose of obtaining any approval of its application for any grant pursuant to this Agreement. No CRD officer or employee, or member of any unit of local government which contributes to the Project Funds shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

16. **MUNICIPALITY'S WARRANTIES.** Municipality agrees to initiate and consummate all actions necessary to enable it to enter into this Agreement.

17. **NOTICES.** 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 certified or registered mail with proper postage prepaid, hand delivered or sent by facsimile transmission, with proof of successful transmission sent by regular mail by CRD or Municipality at the respective addresses shown below or to such other party or address as either Party may from time to time furnish to the other in writing.

(a) Notices to Metra shall be sent to:

Commuter Rail Division  
547 W. Jackson Boulevard  
Chicago, Illinois 60661  
Attn: Director, Real Estate & Contract Management  
Phone: (312) 322-8010  
Fax: (312) 322-7098

- (b) Notices to Municipality shall be sent to:  
Village of Downers Grove  
801 Burlington Ave.  
Downers Grove, Illinois 60515  
Attn: Village Manager  
Phone: (630) 434-5500  
Fax: (630) 434-5571

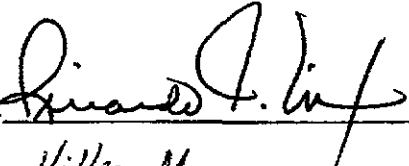
Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered or on the first business day after successful transmission if sent by facsimile transmission.

18. **ENTIRE AGREEMENT.** The Parties agree that this Agreement constitutes the entire Agreement between the Parties, that there are no agreements or understandings, implied or expressed, except as specifically set forth in this Agreement. All prior arrangements and understandings in this connection are merged into and contained in this Agreement. This Agreement may only be amended in writing, signed by both Parties.

19. **GENERAL.** 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. The titles of the items of this Agreement, hereinabove set forth, are inserted for convenience of identification only and shall not be considered for any other purpose. No waiver of any obligation or default of Municipality shall be implied from omission by CRD 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. The execution, delivery of and performance under this Agreement is pursuant to authority, validly and duly conferred upon the Parties and the signatories hereto.

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

**VILLAGE OF DOWNERS GROVE**

By:   
Its: Village Manager

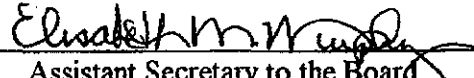
ATTEST:

By:   
Village Clerk

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

By:   
~~Philip Pagano~~, Executive Director

ATTEST:

By:   
Assistant Secretary to the Board

STATE OF ILLINOIS )  
COUNTY OF \_\_\_\_\_ )

Before me, JULIE JONES, a Notary Public within and for the State and County aforesaid, personally appeared Riccardo Ginez and April Holden, with whom I am personally acquainted and who, upon their oaths acknowledged themselves to be the Village Manager and Village Clerk of the Village of Downers Grove the an Illinois municipal corporation, and that they as such Village Manager and Village Clerk, being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal at Village Hall on the 1st. day of July, 2003.

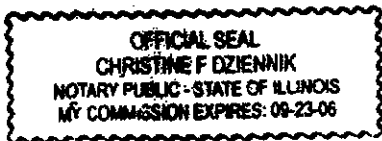
Julie M Jones  
Notary Public



STATE OF ILLINOIS )  
COUNTY OF COOK )

Before me CHRISTINE F. DZIENNIK a Notary Public within and for the State and County aforesaid, personally appeared Philip A. Pagano and ELISABETH M. MERRILL with whom I am personally acquainted and who, upon their several oaths acknowledged themselves to be the Executive Director and Assistant Secretary respectively of the Commuter Rail Division, and that they as such Executive Director and Assistant Secretary being authorized to do so, executed the foregoing instrument for the purpose therein contained by signing and attesting the same. Witness my hand and official seal at Chicago, Illinois on the 26<sup>TH</sup> day of JUNE, 2003.

Christine F. Dziennik  
Notary Public



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**EXHIBIT "A"**

**PROJECT SCOPE**

**Eminent domain services for the acquisition of any property necessary for the Downers Grove Grade Separation Project that Metra cannot obtain through negotiations with the owner(s).**

**EXHIBIT "B"**  
**APPROVED BUDGET**

**FIRST AMENDMENT TO  
GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES  
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT  
CONTRACT NO. K00419**

**THIS FIRSTAMENDMENT**, dated this 4th day of October, 2005, shall amend and modify the Grant Agreement For Eminent Domain Services For The Downers Grove Grade Separation Project by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**CRD or Metra**") and the Village of Downers Grove, a municipal corporation created under the laws of Illinois, ("**Municipality**") entered into on July 1, 2003 ("**Agreement**"), for eminent domain services for the Downers Grove Grade Separation Project. 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 take precedence and control. CRD and Municipality are hereinafter sometimes jointly referred to as the "**Parties**".

**NOW, THEREFORE**, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, CRD and Municipality agree to the following revisions to the Agreement:

1. Paragraph 8 of the Agreement is hereby deleted and replaced with the following Paragraph 8:

**"EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Project Funding for this Project must be expended upon approved eminent domain services on or before June 30, 2007. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD on June 30, 2007."

2. 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.

(Signature Page Follows)

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

THE VILLAGE OF DOWNERS GROVE:

COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY:

By: Ben Krajewski  
Its: Mayor

By: [Signature]  
Its: Executive Director

ATTEST:

ATTEST:

By: [Signature]  
Its: Village Clerk

By: [Signature]  
Its: Assistant Secretary



EXHIBIT "B"  
APPROVED PROJECT BUDGET  

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AGREEMENT BETWEEN METRA  
AND THE  
VILLAGE OF DOWNERS GROVE

GRANT NUMBERS:  
MET-116

PROJECT NO: 2933

CONTRACT NO: K00419

**PROJECT DESCRIPTION: EMINENT DOMAIN SERVICES**

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<u>VILLAGE OF DOWNERS GROVE ACTIVITY</u>	<u>PROJECT BUDGET</u>
ACQUISITION SW2933-57691009	\$ 200,000.00
TOTAL	<u>\$200,000.00</u>

**FIRST AMENDMENT TO  
GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES  
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT  
CONTRACT NO. K00419**

**THIS FIRSTAMENDMENT**, dated this 4th day of October, 2005, shall amend and modify the Grant Agreement For Eminent Domain Services For The Downers Grove Grade Separation Project by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("**CRD or Metra**") and the Village of Downers Grove, a municipal corporation created under the laws of Illinois, ("**Municipality**") entered into on July 1, 2003 ("**Agreement**"), for eminent domain services for the Downers Grove Grade Separation Project. 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 take precedence and control. CRD and Municipality are hereinafter sometimes jointly referred to as the "**Parties**".

**NOW, THEREFORE**, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, CRD and Municipality agree to the following revisions to the Agreement:

1. Paragraph 8 of the Agreement is hereby deleted and replaced with the following Paragraph 8:

**"EXPENDITURE OF GRANT FUNDS.** Municipality agrees that the Project Funding for this Project must be expended upon approved eminent domain services on or before June 30, 2007. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD on June 30, 2007."

2. 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.

(Signature Page Follows)

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

THE VILLAGE OF DOWNERS GROVE:

COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY:

By: Ben Krajevski  
Its: Mayor

By: [Signature]  
Its: Executive Director

ATTEST:

ATTEST:

By: [Signature]  
Its: Village Clerk

By: [Signature]  
Its: Assistant Secretary

RESOLUTION NO. 2007-27

**A RESOLUTION AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO A GRANT AGREEMENT WITH METRA FOR EMINENT DOMAIN SERVICES FOR 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 Agreement (the "Agreement"), between the Village of Downers Grove (the "Municipality") and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("CRD or Metra") for eminent domain services for the Downers Grove Grade Separation Project, is hereby amended, as set forth in the form of the Second Amendment 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.

Brian Krajewski  
Mayor

Passed: March 20, 2007

Attest: April H. Horn  
Village Clerk

**SECOND AMENDMENT TO  
GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES  
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT  
CONTRACT NO. K00419**

THIS SECOND AMENDMENT, dated this 20<sup>th</sup> day of March, 2007, shall amend and modify the Grant Agreement for Eminent Domain Services For The Downers Grove Grade Separation Project by and between the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("CRD or Metra") and the Village of Downers Grove, an Illinois municipal corporation, created under the laws of Illinois, ("Municipality") entered into on July 1, 2003 ("Agreement"), for eminent domain services for the Downers Grove Grade Separation Project. To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Second Amendment, the provision or provisions of this Second Amendment shall take precedence and control. CRD and Municipality are hereinafter sometimes jointly referred to as the "Parties."

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, CRD and Municipality agree to the following revisions to the Agreement:

1. The following Recital E is hereby added:

"CRD desires to contribute additional Project Funding for eminent domain services in the form of a capital grant ("Grant") in an amount not to exceed Six Hundred Thousand Dollars (\$600,000)."

2. The first sentence of paragraph 2 is hereby deleted and replaced with the following:

"The Parties agree that the Approved Budget for the Grant is Eight Hundred Thousand Dollars (\$800,000) as described on the Approved Budget. In no event shall CRD be required to disburse or pay out Grant funds that have not been authorized by and received from the Federal or State funding agency providing such funding."

3. Paragraph 8 is hereby deleted and replaced with the following paragraph:

"EXPENDITURE OF GRANT FUNDS. Municipality agrees that the Project Funding for this Project must be expended upon approved eminent domain services on or before December 31, 2008. Unless otherwise specified in writing by CRD, all unexpended Grant Funds will automatically revert to CRD on December 31, 2008."

- 4. The Exhibit "B," Approved Budget, attached to the Agreement is hereby deleted and replaced with the Exhibit "B" Approval Budget attached to and made part of this Second Amendment.
- 5. 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.

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

THE VILLAGE OF DOWNERS GROVE:

COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION  
AUTHORITY:

By: *Cara Paulicek*  
 Its: Village Manager

By: \_\_\_\_\_  
 Its: Executive Director

ATTEST:  
 By: *Donna H. [Signature]*  
 Its: Village Clerk

ATTEST:  
 By: \_\_\_\_\_  
 Its: Assistant Secretary



EXHIBIT "B"  
 APPROVED PROJECT BUDGET  
 .....  
 AGREEMENT BETWEEN METRA  
 AND THE  
 VILLAGE OF DOWNERS GROVE

GRANT NUMBERS: IL-90-X375/MET-041                      PROJECT NO: 2933  
 CONTRACT NO: K00419

PROJECT DESCRIPTION: EMINENT DOMAIN SERVICES

VILLAGE OF DOWNERS GROVE ACTIVITY	PREVIOUS BUDGET	FY2007 GRANT FUNDING	NEW APPROVED BUDGET
AC2933-57691009	\$ 200,000.00		\$ 200,000.00
PENDING	\$ -	\$ 600,000.00	\$ 600,000.00
<b>TOTAL</b>	<u>\$ 200,000.00</u>	<u>\$ 600,000.00</u>	<u>\$ 800,000.00</u>