

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL WORKSHOP  
FEBRUARY 16, 2010 AGENDA**

<b>SUBJECT:</b>	<b>TYPE:</b>	<b>SUBMITTED BY:</b>
First Amendment to an Intergovernmental Agreement 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 First Amendment to the Intergovernmental Agreement with State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the Belmont Grade Separation Project.

**STRATEGIC PLAN ALIGNMENT**

Five Year Plan and Goals for 2010-2014 identified *Top Quality Village Infrastructure and Facilities and Vibrant Major Commercial Corridors*.

**FISCAL IMPACT**

N/A.

**RECOMMENDATION**

Approval on the February 16, 2010 consent 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.

Since the execution of the agreement, the cost estimate of this project has increased significantly. This amendment increases the contribution and funding amounts of Metra, the State, the Illinois Commerce Commission (ICC) and the BNSF. This amendment also deletes Section 11 of the original agreement, which established funding period limitations. Although, the Village Council previously approved a First Amendment to this Intergovernmental Agreement in September of 2005, that amendment was never approved by the State; therefore, it has been declared null and void and this amendment will become the First Amendment. Per the First Amendment, the new contribution and funding amounts for the Belmont Underpass are as follows:

<b>Property Acquisition</b>	
Metra - CMAQ Funds	\$ 4,200,000
Metra - Matching Funds	\$ 1,050,000
<b>Total</b>	<b>\$ 5,250,000</b>
<b>Construction</b>	
ICC Contribution	\$ 12,000,000
BNSF	\$ 2,709,855
State	\$ 19,743,623
Metra	\$ 19,743,623
<b>Total</b>	<b>\$ 54,197,101</b>
<b>TOTAL PROJECT COSTS</b>	<b>\$ 59,447,101</b>

**ATTACHMENTS**

Resolution & Agreement

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

**A RESOLUTION AUTHORIZING EXECUTION OF  
A FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT  
WITH THE STATE, THE COUNTY, THE VILLAGE,  
THE BNSF 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 First Amendment to Intergovernmental Agreement (the "Agreement"), between the Department of Transportation ("State"), the County of DuPage, a body corporate and politic ("County"), the Village of Downers Grove ("Village"), BNSF Railway Company, a Delaware Corporation ("BNSF") and the Commuter Rail Division of the Regional Transportation Authority ("Metra"), 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 \_\_\_\_\_, 2010, 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**”), BNSF 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 Nine Million Four Hundred Forty Seven Thousand One Hundred One Dollars (\$59,447,101), exclusive of the Prairie Avenue turn lane improvements and property acquisition costs (“**Prairie Improvements**”) which shall be the responsibility of the County. 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 Fifty Four Million One Hundred and Ninety Seven Thousand One Hundred and One Dollars (\$54,197,101). 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 \$2,709,855.”

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

“The State agrees to pay fifty percent (50%) of the remaining cost of the Improvement after deducting the ICC and BNSF Contributions (“**State Contribution**”) for an estimated amount of \$19,743,623.”

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 \$19,743,623.”

7. A new Section 8 is hereby added and reads as follows:

#### 8. **STATE OBLIGATIONS**

The State agrees that upon execution of this agreement and receipt of an invoice, the State shall pay Metra an amount equal to 80% of the State Contribution for this Improvement (\$15,794,898.40). The State further agrees that after Metra has expended the aforementioned initial 80% State Contribution to the approved contractor, to pay Metra its remaining 20% of the State Contribution (\$3,948,742.60), as invoiced by Metra, up to the maximum State Contribution amount of \$19,743,623.

8. Section 8 - “Notices” hereby renumbered as Section 9 and the second paragraph shall read as follows:

“Notices to State shall be sent to:

Illinois Department of Transportation  
Diane M. O’Keefe  
201 West Center Court

Schaumburg, Illinois 60196

Attn: John Fortmann

Phone: (847) 705-4118

Fax: (847) 705-4468

9. Section 9 – “General” is hereby renumbered as Section 10
10. Section 10 – “Counterparts” is hereby renumbered as Section 11
11. Section 11 – “Funding Limitation” is hereby deleted in its entirety and replaced with the following new Section 12 – “Funding Limitation”:

“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.”

12. 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.

**DU PAGE COUNTY:**

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

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

ATTEST:

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

**VILLAGE OF DOWNERS GROVE:**

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

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

ATTEST:

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

**SIGNATURE PAGE CONTINUED**



**BNSF RAILWAY COMPANY:**

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

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

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

ATTEST:

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

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

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

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

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

ATTEST:

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

**SIGNATURE PAGE CONTINUED**

**STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION:**

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

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

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

**INTERGOVERNMENTAL AGREEMENT**

**THIS AGREEMENT**, made and entered into this 15<sup>th</sup> day of October, 2002, 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"). The State, County, Village, BNSF and Metra are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties."

**RECITALS**

- A. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance.
- B. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes local municipalities and special districts in Illinois to exercise jointly with any other municipality or special district any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings.
- 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 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 accordance with plans and specifications prepared by Metra ("Plans and Specifications") and approved by the remaining Parties to this Agreement (said

Grade Separation Structure hereinafter referred to as the "Improvement").

- D. The Parties desire to cooperate in an effort to construct the Improvement because of the immediate benefit of the Improvement to the residents of the State, County, Village, the BNSF, and to the patrons of Metra. The Parties understand that the Improvement will be a long term endeavor and may likely be comprised of various phases and each Party will materially rely upon the others to complete the obligations stated herein.

The Parties desire to set forth in this Agreement their respective obligations with respect to the development, operation, and maintenance of the Project.

### AGREEMENT

**NOW, THEREFORE**, for and in consideration of the mutual covenants, conditions, and agreements contained in this Agreement, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties agree as follows:

**1. RECITALS INCORPORATED.**

The Recitals set forth above are specifically incorporated as substantive and material terms and provisions of this Agreement.

**2. GENERAL**

- A. Metra shall be the lead agency for coordination and completion of the Improvement and shall initially bear all costs subject to reimbursement by the Parties for their respective shares of the cost upon billing by Metra; provided, however, that Metra, in Metra's sole discretion, may stop the work on the Improvement, or any portion thereof, in the event any Party materially breaches the time period for payment of its proportionate share of the work invoiced, as set forth herein below. Each Party shall pay its proportionate share of the work invoiced within seventy-five (75) days of the

date of any such invoice. Additionally, any fees or penalties for delays assessed with respect to the construction of the Improvement shall be borne by the Party causing the delay, and such delay fees and penalties shall be owed in addition to that Parties' Contribution amount as set forth in this Agreement.

- B. The Parties shall furnish or cause to be furnished, with the expense divided as hereinafter set forth, and in accordance with the stipulations contained in the Federal-Aid Policy Guide, Chapter I, Subchapter B, Part 140, Subpart I, (23 CFR 140I) and supplements, all the labor, materials and work equipment required to perform and complete the construction of the Improvement.
- C. In compliance with the Federal-Aid Policy Guide, Chapter I, Subchapter G, Part 646, Subpart B, (23 CFR 646B) and supplements, which determines the railway benefit and liability, the construction of the grade separation project as herein proposed, including the elimination of the existing at-grade crossing, is a category that establishes the railroad contribution as five (5) percent of the cost of that portion of the overall improvement eligible for financing as a railway-highway grade separation project.
- D. If any loss, damage, destruction, injury or death occurs to any person or property as a result of or in the course of the performance by the Parties of their obligations under this Intergovernmental Agreement, whether intentional or unintentional, the Parties agrees to indemnify and hold harmless the State from any and all liability of the State which may result from any such loss, damage, destruction, injury or death including all related costs and attorneys' fees and expenses. The Parties shall not be obligated to indemnify and hold harmless the State from liability for injury or death

proximately caused by the negligence of any employee or agent of the State.

- E. The Parties shall keep accurate and detailed accounts of the actual costs and expenses as incurred by each, or for its account, in the performance of the work they herein agree to perform.

Metra may bill the Parties monthly for the costs and expenses incurred. The progressive invoices may be rendered on the basis of an estimated percentage of the work completed.

Metra, upon the completion of the improvement, shall render to the Parties a detailed statement of the actual costs and expenses as incurred by Metra.

After the State's representatives have checked the progressive invoices and the final statement and they have agreed with Metra's representatives that the costs are reasonable and proper, insofar as they are able to ascertain, the State shall promptly reimburse Metra for the State's share of the final bill, subject to the State's participation limitation stated herein.

The Parties shall maintain, for a minimum of 5 years after the completion of the contract, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the contract; the contract and all books, records, and supporting documents related to the contract shall be available for review and audit by the Auditor General and other State auditors; and the Parties agree to cooperate fully with any audit conducted by the Auditor General and other State auditors and to provide full

access to all relevant materials. Failure to maintain the books, records, and supporting documents required by this Section shall establish a presumption in favor of the State for the recovery of any funds paid by the State under the contract for which adequate books, records, and supporting documentation are not available to support their purported disbursement.

If any item(s) of expense may be found by the Federal or State representatives as not being eligible for reimbursement, then Metra shall promptly reimburse the State for the overpayment.

The Parties shall comply and shall require their respective contractors and subcontractors to comply with the applicable terms and provisions of Attachment A, State Required Ethical Standards Governing Contract Procurement, attached to and made a part of this Agreement, with respect to the construction of the Improvement.

The project herein contemplated shall be subject to all appropriate Federal laws, rules, regulations, orders and approvals pertaining to all agreements, plans, estimates, specifications, award of contract, acceptance of work and procedure in general. The Parties agree to comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and non-discrimination regulations required by the U.S. Department of Transportation. The State will reimburse Metra as hereinbefore provided, for only such items of work and expense, and in such amounts and forms, as are proper and eligible for payment.

- F. The Parties, subrecipients or subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The

Parties shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Parties to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy deemed appropriate.

In the event any work is performed by other than Party forces, the provisions of "an act regulating wages of laborers, mechanics and other workers employed in public works by the State, County, City or any public body or any political subdivision or by anyone under contract for public works" (Illinois Compiled Statutes, 820 ILCS 130/1) shall apply.

- G. Obligations of the State under this Agreement shall cease immediately without penalty or payment should the Illinois General Assembly or the federal funding source fail to appropriate or otherwise make available funds for the project.
- H. Under penalties of perjury, Metra certifies that its correct Federal Taxpayer Identification Number (TIN) is 36-3126147 and Metra is doing business as a division of a municipal corporation.

**3. JOINT OBLIGATIONS.**

The Parties' obligation to perform under the terms and provisions of this Agreement is contingent upon Illinois Commerce Commission ("ICC") funding of the Improvement in accordance with the terms and provisions of this Agreement. The Parties agree to cooperate in and make every effort to cause acquisition of the property for the Improvement and construction of the Improvement. The Parties agree that the scope of the Improvement will include construction of a Grade Separation of Belmont Road at



the BNSF railroad right-of-way. The limits of the Improvement will extend from a point just north of the intersection of Curtiss Street and Belmont Road to a point north of the intersection of Belmont Road and Prairie Avenue. The preliminary estimated cost for the Improvement is Thirty Six Million Two Hundred Thousand Dollars (\$36,200,000), 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 preliminary Improvement costs is based on the following estimates:

1. EA and preliminary design	\$ 1,600,000
2. Final design	\$ 500,000
3. Property acquisition	\$ 7,000,000
4. Relocation	\$ 2,000,000
5. Construction	\$25,100,000

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 and 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 a preliminary estimated balance for the cost of the Improvement in the amount of Thirty Million Nine Hundred and Fifty Thousand Dollars (\$30,950,000). 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:

- A. After the jurisdiction of Belmont Road is transferred from the State to the County, the County agrees to submit a petition, or such other appropriate documentation ("Petition"), to the Illinois Commerce Commission ("ICC") seeking funding for the

Improvement. The Petition shall provide for direct payment to Metra of ICC funds disbursed based on Metra invoices submitted, in accordance with the terms and provisions of this Agreement, for the Improvement property acquisition and construction costs. It is understood that the maximum financial participation from the ICC is sixty percent (60%) of the cost of the Improvement ("**ICC Contribution**") for an estimated amount of \$18,570,000.

- B. BNSF agrees to pay five percent (5%) of the cost of the Improvement ("**BNSF Contribution**") for an estimated amount of \$1,547,500.
- C. The State agrees to pay fifty percent (50%) of the remaining cost of the Improvement after deducting the ICC and BNSF Contributions ("**State Contribution**") for an estimated amount of \$5,416,250 up to an amount not to exceed \$8,701,250.
- D. Metra agrees to pay fifty percent (50%) of the remaining cost of the Improvement after deducting the ICC and BNSF Contributions ("**Metra Contribution**") for an estimated amount of \$5,416,250 up to an amount not to exceed \$8,701,250.
- E. The Parties agree that, in the event the scope of the work for the Improvement is materially altered or modified, the foregoing Contribution percentages shall be reevaluated by the Parties and modified as agreed to by the Parties.
- F. The Parties agree to cooperate to cause the relocation of those utilities required to be relocated for the construction of the Improvement and such utility relocations will be incorporated into the Plans and Specifications. The Parties agree that the IDOT Contribution shall not be used to pay utility relocation expenses related to the

construction of the Improvement.

- G. The Parties agree to individually or collectively enter into such other agreements as may be necessary or required to effectuate the terms or provisions of this Agreement.

**4. COUNTY'S OBLIGATIONS.**

- A. At the option of the County, the Prairie Improvements may be added to the scope of the Improvement project, provided, however, that the County agrees to pay for the cost of the Prairie Improvements, subject to the Metra reimbursement set forth in Section 6.D of this Agreement.

- B. The County agrees to maintain the Belmont Road pavement, all components of the bridge that carries Warren Avenue/Burlington Avenue over Belmont Road, except the bridge deck and wearing surface, and also maintain all components of the structure that carries the BNSF over Belmont Road, except the track structure that includes the ballast and all items above the ballast.

**5. VILLAGE'S OBLIGATIONS.**

- A. The Village agrees to acquire any property needed for the Improvement by eminent domain that cannot be obtained through negotiations by Metra. It is understood that the Village will be reimbursed for reasonable costs and expenses associated with the Village's acquisition of the property required for the construction of the Improvement, provided, however, such costs and expenses are approved in writing in advance by Metra's Executive Director and further provided that Metra shall not be responsible for payment of any costs or expenses related to the acquisition of property required for the construction of a turn lane at Prairie Avenue or the performance of an environmental

assessment relative thereto.

- B. The Village agrees to maintain the bridge deck and wearing surface of the Warren Avenue/Burlington Avenue bridge over Belmont Road as well as any access roads constructed as part of the Improvement.

**6. METRA'S OBLIGATIONS.**

- A. Metra agrees to use its best efforts to purchase all right-of-way property required for the Improvement provided, however, that property acquisition costs exceeding the Metra CMAQ Contribution shall be shared by the Parties in accordance with the Contribution percentages set forth in Section 3 of this Agreement.
  
- B. Metra agrees to use its best efforts to prepare, or cause to be prepared, surveys of the property to be acquired for the Improvement, design engineering for the Improvement, an environmental assessment of the Improvement, and to receive bids, award the construction contract for the construction of the Improvements, furnish engineering inspection of the Improvements, and cause the Improvement to be built in accordance with the Plans and Specifications for the Improvement (collectively the "**Metra Work**"), provided, however, that Metra's costs and expenses for the Metra Work shall not exceed the Metra Contribution.
  
- C. Metra agrees to submit the preliminary and final Plans and Specifications for the Improvement to the State, County, Village and BNSF for review and approval, provided, however, that such approval shall not be unreasonably withheld or delay construction of the Improvement. Failure of a Party to this Agreement to approve or reasonably disapprove the final Plans and Specifications within sixty (60) days of

receipt by such Party shall constitute and be treated by Metra as approval of the Plans and Specifications.

- D. In addition to the Metra CMAQ Contribution and the Metra Contribution, Metra agrees to reimburse the County up to a maximum amount of Three Hundred Fifty Six Thousand Dollars (\$356,000) toward the cost of engineering and constructing the Prairie Improvements.

**7. BNSF OBLIGATIONS.**

BNSF agrees to maintain that portion of the bridge carrying the BNSF railroad tracks over Belmont Road that is not maintained by the County as stipulated in Section 4.

**8. NOTICES.**

All notices, demands, elections, and other instruments required or permitted to be given or made by a Party upon a Party or Parties 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 at the respective addresses or numbers shown below or to such other party, address or number as either Party may from time to time furnish to the other in writing.

Notices to State shall be sent to:

Illinois Department of Transportation  
John P. Kos  
201 West Center Court  
Schaumburg, Illinois 60196  
Attn: Diane O'Keefe  
Phone: (847) 705-4118  
Fax: (847) 705-4468

**Notices to County shall be sent to:**

Dupage County Division of Transportation  
421 N. County Farm Rd.  
Wheaton, IL 60187  
Attn: County Engineer  
Phone: (630) 682-7318  
Fax: (630) 690-5331

**Notices to Village 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

**Notices to BNSF shall be sent to:**

Ms. Cheryl Townlian  
Manager, Public Projects  
BNSF  
3253 E. Chestnut Expressway  
Springfield, Missouri 65802

**With a copy to:**

Ms. Patricia Casler  
Director, Suburban Service  
BNSF  
547 W. Jackson Blvd., Suite 1509  
Chicago, Illinois 60661  
Phone: (312) 850-5690  
Fax: (312) 850-5690

**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

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.

**9. GENERAL.**

- A. This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective heirs, legal representatives, successors and assigns. No waiver of any obligation or default of any Party shall be implied from omission by any other Party 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.
- B. 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. 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.
- C. The laws of the State of Illinois shall govern this Agreement. This Agreement provides for the development and maintenance of real estate located within the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction, and enforcement hereof, and all controversies hereunder shall be governed by the applicable statutory and common law of the State of Illinois.
- D. This Agreement, together with other documents incorporated herein by reference, constitutes the entire Agreement between the Parties with respect to the subject matter hereof. Specifically, this Agreement consists of this Intergovernmental Agreement and the Plans and Specifications for the Improvement. No changes, modifications or

alterations to this Agreement shall be effective without the written consent and authorization of the Parties.

- E. 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 was 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 the Parties. 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 document referred to herein, the terms set forth in this Agreement shall govern and control.
- F. The execution, delivery and performance of this Agreement are pursuant to authority, validly and duly conferred upon the Parties and their respective signatories hereto.
- G. The Parties agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement and the intent of the Parties as reflected by the terms of this Agreement, including, without limitation, the enactment of such resolutions and ordinances, the execution of such permits, applications and agreements, and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement, and as may be necessary to give effect to the objectives of this Agreement and the intentions of the Parties as reflected by the terms of this Agreement.
- H. No Party shall assign this Agreement to any person or entity without the prior written consent of the other parties.



- I. The Parties agree that this Agreement is for the benefit of the Parties and not for the benefit of any third party beneficiary. No third party shall have any rights or claims against the Parties arising from this Agreement.

**10. COUNTERPARTS.**

This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

**11. FUNDING LIMITATION.**

This Agreement shall be null and void in the event the County does not obtain funding from the ICC, as set forth in this Agreement, within three years from the execution date of this Agreement.

[This space left intentionally blank]

**IN WITNESS WHEREOF**, this Agreement is entered into by and between the Parties hereto  
as of the date and year first above written.

**STATE OF ILLINOIS  
DEPARTMENT OF TRANSPORTATION:**

BY \_\_\_\_\_  
Director of Highways

BY \_\_\_\_\_  
Secretary

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

DATE \_\_\_\_\_

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

**DU PAGE COUNTY:**

BY \_\_\_\_\_  
Robert J. Schillerstrom, Chairman  
DuPage County Board.

DATE \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
County Clerk


**SIGNATURE PAGE CONTINUED**

**VILLAGE OF DOWNERS GROVE:**

BY   
Brian J. Krajewski, Mayor

DATE October 15, 2002

ATTEST:

  
Village Clerk

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

BY \_\_\_\_\_  
Craig Hill, Vice President

DATE \_\_\_\_\_

ATTEST:

\_\_\_\_\_

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

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

DATE \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Assistant Secretary to the Board

## ATTACHMENT A

### STATE REQUIRED ETHICAL STANDARDS GOVERNING CONTRACT PROCURMENT

The certifications hereinafter made by the COMPANY are each a material representation of fact. The STATE may terminate the agreement if it is later determined that the COMPANY rendered a false or erroneous certification.

**Bribery.** Section 50-5 of the Illinois Procurement Code provides that: (a) no person or business shall be awarded a contract or subcontract under this Code who: (1) has been convicted under the laws of Illinois or any other state of bribery or attempting to bribe an officer or employee of the State of Illinois or any other state in that officer's or employee's official capacity; or (2) has made an admission of guilt of that conduct that is a matter of record but has not been prosecuted for that conduct.

No business shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of the business if the employee or agent is no longer employed by the business, and: (1) the business has been finally adjudicated not guilty; or (2) the business demonstrates to the governmental entity with which it seeks to contract, and that entity finds that the commission of the offense was not authorized, requested, commanded, or performed by a director, officer, or high managerial agent on behalf of the business as provided in paragraph (2) of subsection (a) of Section 5-4 of the Criminal Code of 1961.

For purposes of this Section, when an official, agent, or employee of a business committed the bribery or attempted bribery on behalf of the business and in accordance with the direction or authorization of a responsible official of the business, the business shall be chargeable with the conduct.

Every bid submitted to and contract executed by the State shall contain a certification by the COMPANY that it is not barred from being awarded a contract or subcontract under this Section. A COMPANY who makes a false statement, material to the certification, commits a Class 3 felony. The COMPANY certifies that it is not barred from being awarded a contract under Section 50-5.

**Educational Loan.** The Educational Loan Default Act provides that no State agency shall contract with an individual for goods or services if that individual is in default, as defined by Section 2 of this Act, on an educational loan. Any contract used by a State agency shall include a statement certifying that the individual is not in default on an educational loan as provided in this Section.

**Bid Rigging/Bid Rotating.** Section 33E-11 of the Criminal Code of 1961 provides: (a) that every bid submitted to and public contract executed pursuant to such bid by the State or a unit of local government shall contain a certification by the COMPANY that it is not barred from contracting with any unit of State or local government as a result of a violation of either Section 33E-3 or 33E-4

of the Code. The state and units of local government shall provide appropriate forms for such certification.

A COMPANY that makes a false statement, material to the certification, commits a Class 3 felony.

A violation of Section 33E-3 would be represented by a conviction of the crime of bid-rigging which, in addition to Class 3 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be barred for 5 years from the date of conviction from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation, and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

A violation of Section 33E-4 would be represented by a conviction of the crime of bid-rotating which, in addition to Class 2 felony sentencing, provides that any person convicted of this offense or any similar offense of any state or the United States which contains the same elements as this offense shall be permanently barred from contracting with any unit of State or local government. No corporation shall be barred from contracting with any unit of State or local government as a result of a conviction under this Section of any employee or agent of such corporation if the employee so convicted is no longer employed by the corporation and: (1) it has been finally adjudicated not guilty, or (2) if it demonstrates to the governmental entity with which it seeks to contract and that entity finds that the commission of the offense was neither authorized, requested, commanded, nor performed by a director, officer, or a high managerial agent in behalf of the corporation.

The COMPANY certifies that it is not barred from contracting with the Department by reason of a violation of either Section 33E-3 or Section 33E-4.

**International Anti-Boycott.** Section 5 of the International Anti-Boycott Certification Act provides that every contract entered into by the State of Illinois for the manufacture, furnishing, or purchasing of supplies, material, or equipment or for the furnishing of work, labor, or services, in an amount exceeding the threshold for small purchases according to the purchasing laws of this State or \$10,000, whichever is less, shall contain certification, as a material condition of the contract, by which the COMPANY agrees that neither it nor any substantially-owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the U.S. Export Administration Act of 1979 or the regulations of the U.S. Department of Commerce promulgated under that Act. The COMPANY makes the certification set forth in Section 5 of the Act.

**Drug Free Workplace.** The Illinois Drug Free Workplace Act applies to this contract and it is necessary to comply with the provisions of the Act if the COMPANY is a corporation, partnership, or other entity (including a sole proprietorship) which has 25 or more employees.

The COMPANY certifies that if awarded a contract in excess of \$5,000 it will provide a drug free workplace by: (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance, including cannabis, is prohibited in the COMPANY's workplace; specifying the actions that will be taken against employees for violations of such prohibition; and notifying the employee that, as a condition of employment on such contract, the employee shall abide by the terms of the statement, and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; (b) Establishing a drug free awareness program to inform employees about the dangers of drug abuse in the workplace; the COMPANY's policy of maintaining a drug free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug violations; (c) Providing a copy of the statement required by subparagraph (a) to each employee engaged in the performance of the contract and to post the statement in a prominent place in the workplace; (d) Notifying the Department within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of the conviction of an employee for a violation of any criminal drug statute occurring in the workplace; (e) Imposing or requiring, within thirty (30) days after receiving such notice from an employee of a conviction or actual notice of such a conviction, an appropriate personnel action, up to and including termination, or the satisfactory participation in a drug abuse assistance program approved by a federal, state, or local health, law enforcement, or other appropriate agency; (f) Assisting employees in selecting a course of action in the event drug counseling, treatment, and rehabilitation is required and indicating that a trained referral team is in place; (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of the actions and efforts stated in this certification.

**Debt Delinquency Certification.** The COMPANY certifies it is not delinquent in the payment of any debt to the STATE (or if delinquent has entered into a deferred payment plan to pay the debt), and the COMPANY acknowledges the STATE may declare the Agreement void if this certification is false (30 ILCS 500/50-11, effective July 1, 2002).