

VILLAGE OF DOWNERS GROVE
Report for the Village
7/16/2019

SUBJECT:	SUBMITTED BY:
Roof Replacement at the Fairview Avenue Commuter Station and Intergovernmental Funding Agreement with Metra	Mike Baker, Deputy Village Manager

SYNOPSIS

A resolution has been prepared authorizing approval of an intergovernmental funding agreement with Metra for the replacement of the roof at the Fairview Avenue Commuter Station. A motion is requested authorizing approval of a contract with Master Projects, Inc. of Chicago, IL for the replacement of the roof at the Fairview Avenue Commuter Station in an amount not to exceed \$63,350.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Top Quality Infrastructure*.

FISCAL IMPACT

Through an intergovernmental agreement, Metra will reimburse the Village for up to \$50,000 toward the cost of this project. The Village will be responsible for the remaining amount, which is not to exceed \$13,350. This includes the base bid amount \$56,000 plus a contingency for replacement of damaged roof decking at \$3.50 per square foot. The amount of decking to be replaced will be determined after the existing roofing material is removed. The FY19 Budget includes funding in the Major Buildings Fund for the Village's share of this project.

RECOMMENDATION

Approval on the July 16, 2019 Consent Agenda.

BACKGROUND

The roof on the Fairview Avenue station is beyond its useful life and in need of replacement. This project will replace the existing cedar shakes with a new roof of the same material. The station was approved for Historic Landmark Designation in March 2017. This project will adhere to the requirements of the landmark designation and maintain the historic nature of the structure.

Metra will contribute up to \$50,000 of funding toward this project, requiring approval of an intergovernmental funding agreement. This project was competitively bid in June 2019 with three bids received as summarized below:

Vendor	Bid Price
Master Projects, Inc.	\$56,000
L. Marshall Inc.*	\$56,400
Filotto Roofing, Inc.	\$59,250

*The L. Marshall Inc. bid submitted states that the Village of Downers Grove shall cover any additional cost for having a certified Metra flagger while roofing work is being performed within 15 feet of the train tracks. The other two bids include all costs for a certified flagger.

The lowest responsive and responsible bidder is Master Projects, Inc. The company has completed similar work for other local government entities in northern Illinois. Staff contacted references, who indicated that they were satisfied with the quality of the work performed by the recommended vendor and that all requirements were met in completing the projects.

ATTACHMENTS

Intergovernmental Funding Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL
FUNDING AGREEMENT FOR THE REPAIR OF A COMMUTER FACILITY
IN THE VILLAGE OF DOWNERS GROVE**

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 Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove ("Municipality") and the Commuter Rail Division of the Regional Transportation Authority ("Metra") regarding funding for the repair of the Fairview Avenue commuter facility, 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 Mayor 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. The Agreement supersedes and replaces the NIPAS Agreement, dated February 21, 2012, all ordinances and resolutions or parts of ordinances and 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

**INTERGOVERNMENTAL FUNDING AGREEMENT
FOR THE REPAIR OF A COMMUTER FACILITY IN
THE VILLAGE OF DOWNERS GROVE**

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made 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 (“**Metra**”).

RECITALS:

A. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and school 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 public agencies in Illinois to exercise jointly with any other public agency any power or powers, privileges, functions or authority which may be exercised by a public agency, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings.

C. Metra has the authority to cooperate with other governmental agencies and desires to contribute grant funds to the Municipality to replace and repair the roof of the historic Fairview Avenue Station (“**Project**”).

D. The Municipality is authorized to cooperate with Metra in the exercise of its powers and agrees to perform, or cause to be performed, the Project at the Fairview Avenue Metra Commuter Facility in Downers Grove (“**Premises**”).

E. Metra’s goal in providing the agreed upon grant funds to the Municipality is to assure its commuter facility is in a state of good repair.

F. Metra has determined that it is in the best interest of the parties to provide the Municipality the necessary grant funding for the performance of the Project.

AGREEMENT

THE PARTIES THEREFORE agree as follows:

1. **THE PROJECT.** The Municipality agrees to undertake and complete the Project which has been approved by Metra and more specifically described on **Exhibit A**, attached to and made a part of this Agreement, (“**Project Scope**”).
2. **AMOUNT OF GRANT.** The Project has been estimated to cost approximately \$90,000. Metra agrees to provide grant funding to the Municipality, to cover a portion of the Project’s costs in an amount not to exceed \$50,000 (“**Grant**” or “**Grant Funds**”). Metra, at its sole discretion, may agree in writing to increase the amount of the Grant Funding subject to the approval of Metra’s

Executive Director, but in no event shall the total amount provided by Metra under this Agreement exceed the actual Net Project Cost. Metra is not liable for any amount in excess of the amount of the Grant Funding. The Municipality agrees that it will provide, or cause to be provided, the cost of project elements which are not approved for Metra's participation.

3. METRA'S OBLIGATIONS.

- (a) Metra has reviewed and approved the Project Scope and Cost Estimate.
- (b) Metra agrees to pay Municipality the Grant Funds pursuant to the terms and conditions of this Agreement.
- (c) Metra reserves the right to inspect the Project at any and all stages of Work, as later defined herein, and the right to audit the funding transaction and use of said funds.

4. MUNICIPALITY'S OBLIGATIONS.

- (a) Municipality has provided the Project Scope and Cost Estimate(s) for the Project.
- (c) Municipality shall execute all contracts and perform all project management activities in accordance with the terms of this Agreement. Municipality shall follow its established rules, regulations and ordinances for each contract to be paid for with Grant Funds.
- (d) Municipality shall be responsible for the performance of the Project elements ("**Work**") or causing the Work to be performed in a good and workmanlike manner and in accordance with the Project Scope and this Agreement.
- (e) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless Metra, the Regional Transportation Authority ("**RTA**") the Northeast Illinois Regional Commuter Railroad Corporation ("**NIRCRC**"), and the BNSF Railway Company ("**BNSF**") their respective directors, administrators, officers, agents, employees, successors, assigns and all other persons, firms and corporations acting on their behalf or with their authority, from and against any and all injuries, liabilities, losses, damages, costs, payments and expenses of every kind and nature (including, without limitation, court costs and attorneys' fees) for claims, demands, actions, suits, proceedings, judgments, settlements arising out of or in any way relating to or occurring in connection with the Project or this Agreement. The indemnities contained in this Section shall survive termination of this Agreement.
- (f) Municipality shall permit, and shall require its contractors to permit, Metra or its designated agents to inspect all work, materials, payrolls, and other data, and records with regard to the Project and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project.

5. JOINT OBLIGATIONS.

- (a) 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.

(b) Neither party shall assign this Agreement to any person or entity without the prior written consent of the other party.

(c) Municipality and Metra 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 Metra or the Municipality arising from this Agreement.

(d) The parties understand that a Railroad flagman may be required whenever Municipality or its contractor is performing the Work on Metra property or other railroad property for the purposes set forth herein. In the event it is determined flagging will be required pursuant to a work schedule provided by Municipality, then Metra and Municipality agree to cooperate in scheduling the flagging to facilitate the Project. In the event the Work is being performed on the property of another railroad the Municipality or its contractor may need to enter into an Entry Agreement with the other railroad.

6. **NO OBLIGATIONS TO THIRD PARTIES.** Metra shall not be subject to any obligations or liabilities of contractors of the Municipality or their subcontractors or any other person not a party to this Agreement without Metra's specific consent. This limitation shall apply despite the fact that Metra concurred in or approved of the award of any contract, subcontract or the solicitation thereof. Unless expressly authorized in writing by Metra, the Municipality agrees to refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, contract, grant anticipation note, alienation, or other obligation that in any way would affect Metra's interest in any of its property or obligating itself in any manner to any third party.

7. **CONTRACTOR INDEMNIFICATION AND INSURANCE.**

(a) In all contracts executed by Municipality for the Project and performance of the Work on the Premises, or to be located on such Premises, Municipality will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend Metra, RTA, NIRCRC, and the BNSF their directors, employees, agents, licensees, successors and assigns from and against any and all risks, liabilities, claims, demands, losses, and judgments, including court costs and attorneys' fees, arising from, growing out of, or related in any way to work performed by such contractor(s), or their officers, employees, agents or subcontractors, and their agents or employees.

(b) Municipality will further require its contractor to name Metra, RTA, NIRCRC, and the BNSF their directors, employees, agents, successors, and assigns as additional insured on any insurance that may be required insuring contractor, from and against any and all risks, liabilities, claims, demands, losses and judgments, including court costs and attorneys' fees, arising from, growing out of or in any way related to the work performed or to be performed by such contractor(s), whether or not any such liability, claim, demand, loss or judgment is due to or arises

from the acts, omissions or negligence of such contractor(s), or their officers, employees, agents or subcontractors and their agents or employees.

8. ELIGIBLE COSTS.

(a) Expenditures incurred by Municipality shall be reimbursable under the Project as Eligible Costs to the extent they meet the requirements set forth below:

- i. Be necessary in order to accomplish the Project; and
- ii. Be satisfactorily documented.

(b) In the event that it may be impractical to determine exact costs of indirect or service functions, Eligible Costs will include such allowances for these costs as may be approved in writing by Metra.

9. PAYMENT. Metra will pay Municipality upon submittal of an acceptable invoice to Metra along with any detailed information about the Work that may be required by Metra. Upon submittal of an invoice, Metra shall process the invoice to verify that such costs are Eligible Costs incurred by Municipality, and shall submit payment within thirty (30) days of the date upon which such payment invoice was timely received. Municipality shall submit invoices for actual costs incurred within forty-five (45) days after completion of the Work. Reimbursement of any cost pursuant to this Section shall not constitute a final determination by Metra of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by Municipality.

10. 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.

11. AUDIT AND INSPECTION. Municipality shall permit, and shall require its contractors to permit, Metra, RTA, or any other state or federal agency providing grant funds, or their designated agents, authorized to perform such audit and inspection, to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts of Municipality and its contractors with regard to the Project. Metra also may require the Municipality to furnish, at any time prior to close-out of the Project, audit reports prepared according to generally accepted accounting principles at Municipality's expense. Municipality agrees to promptly comply with recommendations contained in Metra's final audit report (if required).

12. RIGHT OF METRA TO TERMINATE. Upon written notice to Municipality, Metra reserves the right to suspend or terminate all or part of the financial assistance herein provided 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 Funds will not invalidate obligations properly incurred by Municipality and concurred in by Metra prior to the date of termination to the extent they are non-cancellable. The acceptance

of a remittance by Metra of any or all Grant Funds previously received by Municipality or the closing out of Metra financial participation in the Project shall not constitute a waiver of any claim which Metra may otherwise have arising out of this Agreement. In the event of termination of this Agreement during the construction phase for reasons other than violation of the terms hereof by Municipality, Metra shall determine the most appropriate course of action to be taken with respect to the Project.

13. **COMPLIANT WITH RULES AND REGULATIONS.** Municipality agrees that the award of the contracts for the Project has been/will be done in accordance with all applicable state, federal, and Municipality's established rules, regulations and ordinances.

14. **SETTLEMENT OF THIRD PARTY CONTRACT DISPUTES OR BREACHES.** Metra has a vested interest in the settlement of disputes, defaults, or breaches involving any Metra-assisted third party contracts. Metra retains a right to a proportionate share, based on the percentage of the Metra 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 Metra 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 Metra 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 Metra permits otherwise.

15. **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 the sending party 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. 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.

(a) Notices to Metra shall be sent to:

Metra
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Director of Government Affairs
Phone: (312) 322-6799

(b) Notices to Municipality shall be sent to:

Village of Downers Grove
5101 Walnut Avenue
Downers Grove, IL
Attn: Nan Newlon, Director Department of Public Works
Phone: (630) 434-5461

16. **GENERAL.**

- (a) This Agreement shall be governed by the laws of the State of Illinois.
- (b) This Agreement, together with the exhibits attached hereto (all of which are incorporated herein by this reference), constitutes the entire Agreement between the parties with respect to the subject matter hereof.
- (c) The execution, delivery of, and performance under this Agreement is pursuant to authority, validity and duly conferred upon the parties and signatories hereto.
- (d) Metra and the Village shall maintain their respective records relating to the performance of the Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and the Freedom of Information Act (5 ILCS 140/1 *et seq.*) until written approval for the disposal of such records is obtained from the Local Records Commission. All books and records required to be maintained by Metra or the Village shall be available for review by the other. Metra and the Village shall cooperate with each other (a) with any request for public records made pursuant to the Freedom of Information Act (5 ILCS 140/1 *et seq.*), (b) with any request for public records made pursuant to any audit, and (c) by providing full access to and copying of all relevant books and records within a time period which allows Metra or the Village to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). Failure by Metra or the Village to maintain the books, records and supporting documents required by this section or the failure by Metra or the Village to provide full access to and copying of all relevant books and records within a time period which allows Metra or the Village to timely comply with the time limits imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*) shall establish a presumption in favor of the party served with the Freedom of Information Act request for the recovery of any funds paid by that party under this Agreement or for the recovery for any penalties or attorney's fees imposed by the Freedom of Information Act (5 ILCS 140/1 *et seq.*). The obligations imposed by this section shall survive final payment and the termination of the other obligations imposed by this Agreement.
- (e) This Agreement may be simultaneously executed in counterparts, each of which so executed shall be deemed to be original, and such counterparts together shall constitute one and the same instrument.

Signature Page to Follow

THE PARTIES have signed and made this Agreement as of the date of the later signature below.

VILLAGE OF DOWNERS GROVE:

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

By: _____

By: _____
James M. Derwinski, CEO/Executive Director

print name and title

Date signed: _____

Date signed: _____

Exhibit A

Project Scope

Replacement of the cedar shake roof at the Fairview Avenue Train Station requires removal and disposal of existing wood shakes, along with replacement of rotting or missing decking boards and installation of a layer of fire-treated plywood prior to the installation of new cedar shakes. Required work also includes installation of downspouts, flashings and roof vents, along with tuck pointing as necessary. The contractor will be required to provide for a certified Metra flagger while work is being performed.

Exhibit B
Cost Estimate
(to be added when available)