



MANAGER'S MEMO ITEM

ITEM: **First Amendment to an Intergovernmental Agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the Belmont Grade Separation Project; and First Amendment to a Grant Agreement with Metra for Eminent Domain Services for the Belmont Grade Separation Project**

WORKSHOP DATE: September 27, 2005

PREPARED BY: Enza Petrarca, Village Attorney

BID AMOUNT: \$ _____ **ACCOUNT:** _____

BUDGET AMOUNT: \$ _____

PURPOSE: **To amend the intergovernmental agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the Belmont Grade Separation Project by extending the funding limitation for an additional four years; and to amend the grant agreement with Metra for eminent domain services for the Belmont Grade Separation Project by extending the term to June 30, 2007.**

BACKGROUND:

As you know, in October of 2002, the Village entered into an intergovernmental agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the construction of the Belmont Grade Separation Project. Among other things, that agreement provides that if the County does not obtain funding from the Illinois Commerce Commission within three years from the execution date of the agreement (October 28, 2002) the agreement shall become null and void. It is expected that this project will be funded in the ICC 2008-09 budget. Therefore, we are requesting an amendment to the agreement that will provide for an extension to obtain funding to October 2009.

Also as part of the Belmont grade separation project, the Village entered into a grant agreement with Metra for eminent domain services. 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 agreement was for a twenty-four month period – expiring July 2005. This amendment will extend the term of the grant agreement for an additional two year period – June 30, 2007.

ATTACHMENTS:

A Resolution Authorizing Execution of a First Amendment to an Intergovernmental Agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the Belmont Grade Separation Project; and

First Amendment to an Intergovernmental Agreement with the State, the County, the Burlington Northern and Santa Fe Railway Company and Metra regarding the Belmont Grade Separation Project; and

A Resolution Authorizing Execution of a First Amendment to a Grant Agreement with Metra for Eminent Domain Services for the Belmont Grade Separation Project; and

First Amendment to a Grant Agreement with Metra for Eminent Domain Services for the Belmont Grade Separation Project

STAFF RECOMMENDATION:

Approval of the Resolutions authorizing the amendments to the agreements.

REQUESTED COURSE OF ACTION:

Place on the September 27, 2005 Workshop Agenda and on the October 4, 2005 Village Council Agenda for final approval.

RESOLUTION NO. _____

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

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

1. That the form and substance of a certain Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and the Burlington Northern and Santa Fe Railway Company, a Delaware corporation ("BNSF") and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, ("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 AMENDMENT, dated this _____ day of _____, 2005, shall amend and modify the Intergovernmental Agreement entered into on October 28, 2002, ("**Agreement**") by and between the State of Illinois, acting by and through its Department of Transportation, ("**State**"), the County of DuPage, a body corporate and politic, ("**County**"), the Village of Downers Grove, an Illinois municipal corporation ("**Village**"), the Burlington Northern and Santa Fe Railway Company, a Delaware corporation ("**BNSF**") and the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation, ("**Metra**") 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. To the extent that a provision or provisions of the Agreement are in conflict with a provision or provisions of this Amendment, the provision or provisions of this Amendment shall control. The State, County, Village, BNSF and Metra are hereinafter sometimes individually referred to as a "**Party**" and 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, the Parties agree that the Agreement shall be amended as follows:

1. Section 11, FUNDING LIMITATION, is amended to delete the phrase "three years" and replace it with the phrase "seven years".
2. This Amendment 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.
3. 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 Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the day 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: _____
Chairman, DuPage County Board

DATE: _____

ATTEST:

County Clerk

SIGNATURE PAGE CONTINUED

VILLAGE OF DOWNERS GROVE:

By: _____
Mayor

DATE: _____

ATTEST:

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

By: _____
Vice President

DATE: _____

ATTEST:

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

By: _____
Philip A. Pagano, Executive Director

DATE: _____

ATTEST:

By: _____
Assistant Secretary to the Board

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF A FIRST 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, 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
GRANT AGREEMENT FOR EMINENT DOMAIN SERVICES
FOR THE DOWNERS GROVE GRADE SEPARATION PROJECT
CONTRACT NO. K00419**

THIS FIRSTAMENDMENT, dated this _____ day of _____, 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: _____

By: _____

Its: _____

Its: Executive Director

ATTEST:

ATTEST:

By: _____

By:

Its: _____

Its: Assistant Secretary