

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
DECEMBER 5, 2006 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Metra Intergovernmental Agreement – Belmont Road Grade Separation Project	<input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Ordinance <input type="checkbox"/> Motion <input type="checkbox"/> Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

A resolution has been prepared to authorize execution of an agreement with Metra which provides for the construction, operation and maintenance of the Belmont Road Grade Separation Project. This intergovernmental agreement has a number of agreements as exhibits which includes an easement for parking and access, an easement for railroad purposes and access, a temporary easement for construction, and an agreement for construction, operation and maintenance of the commuter facilities.

STRATEGIC PLAN ALIGNMENT

Five Year Plan and Goals for 2006-2011 identified *Exceptional Municipal Organization*. A supporting objective of this goal is *Highly Productive Village Organization Accountable for the Outcomes and Results*.

FISCAL IMPACT

N/A

UPDATE & RECOMMENDATION

This item was discussed at the November 28, 2006 Village Council Workshop. Approval is recommended on the December 5, 2006 Active Agenda. In order to ensure this project continues on a timely basis, staff would oppose any delay in Council's consideration of approval.

The following information was requested:

Exhibit E, Section 3(c): *Do the parking fee regulations apply to any other municipal facility?*

No, the recitals on the face page of Exhibit E entitled "Agreement for Construction, Operation and Maintenance of Commuter Facilities in Downers Grove," define what this agreement encompasses. Staff has worked with Metra and has stricken some superfluous language that may have appeared to incorporate other commuter parking areas.

Exhibit E, Section 3(c): *Why is an increase in parking fees solely dependant upon the approval of Metra's Executive Director?*

Staff worked with Metra and some language has been added regarding the consideration process of Metra's Executive Director. Metra has advised that this is standard language and under their operating procedures, it is the Executive Director's role to ensure consistency of parking rates within the Metra system.

Exhibit E, Section 3(c): *Isn't the last sentence of the paragraph contradictory to the first sentence of the paragraph?*

Whereas the first sentence defines the Village's responsibility and restrictions, the last sentence is a restriction on Metra for the easement that they will have at the conclusion of this project.

Exhibit E, Section 8(a): *There is a missing preposition in the second to last sentence of the paragraph.*
The preposition has been added.

Exhibit E, Section 14: *The language appears to place a lot of authority in Metra to determine useful life of project.*

This language is consistent with language that Metra is subject to based upon the Federal funds that are a part of the project. As such, Metra is required to pass along this exact language as a part of any related agreements due to the fact that Metra is the recipient of the Federal funds.

In regards to site plans, staff has included copies of information from a Workshop meeting in 2002 which presented information regarding the proposed project. Metra and the Village continue to work together to develop further project specifications and engineering drawings.

BACKGROUND

A long range plan of the Village and Metra has been to construct the Belmont Road underpass. This agreement provides for cooperation between Metra and the Village for the construction and maintenance of such a project. Initially, Metra will obtain and convey two parcels to the Village. The Village will grant easements back to Metra to allow these parcels to be used for commuter parking purposes. The Village will grant Metra an additional easement for railroad purposes for a third parcel that is currently shown in the design plans as green space. The Village will own and maintain all these parcels, although Metra will be responsible for the construction of the improvements to the area. It is anticipated that the future maintenance costs associated with the operation of these parcels will be funded from the commuter parking operations at these locations.

ATTACHMENTS

Resolution

Agreement

October 15, 2002 Workshop Information

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Manager **DATE:** December 5, 2006
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY (METRA)", as presented.

SUMMARY OF ITEM:

Adoption of the attached resolution shall authorize an intergovernmental agreement between the Village and Metra to define roles, obligations and benefits with regard to the acquisition, construction and maintenance of the Belmont Road Grade Separation Project and its related facilities.

RECORD OF ACTION TAKEN:

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE AND THE COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY (METRA)

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 "Municipality") and the Commuter Rail Division of the Regional Transportation Authority ("Metra"), for the granting of easements for temporary construction access, parking and access for railroad purposes, the construction of the Belmont Road Grade Separation Project and execution of an agreement for the construction, operation and maintenance of a community parking facility in relation to the Belmont Road Grade Separation Project (Belmont Underpass) , 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

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 20 __, 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**"). Municipality 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 government 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 units of local government and school districts in Illinois to exercise jointly with any unit of local government 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. Metra has the authority to cooperate with other governmental agencies regarding the acquisition, construction, operation, and maintenance of commuter facilities pursuant to 70 ILCS 3615/3B.09 and the above-cited provisions.
- D. The Municipality is authorized to cooperate with Metra in the exercise of its powers pursuant to 65 ILCS 5/11-122.2-1.
- E. The Parties have entered into a five-party Intergovernmental Agreement ("**Five-Party IGA**") dated October 28, 2002 to develop, acquire right of way for, construct, operate and maintain a grade separation structure and related improvements at the intersection of Belmont Road and the Burlington Northern and Santa Fe Railway Company ("**BNSF**") railroad right-of-way in Downers Grove, Illinois ("**Project**").
- F. Metra owns the property identified by Permanent Index Numbers ("**PIN(s)**") 08-12-212-013 and 08-12-212-017 ("**Metra Portion of Parcel 3**") and 08-12-211-006 through 010 and 08-12-217-001 through 007 ("**Parcel 2**") as delineated on **Exhibit "A-1"** attached to and made a part of this Agreement acquired by Metra for the Project ("**Metra Acquisition Parcels**").
- G. The Municipality owns or will own the property identified as PIN(s) 08-12-215-001 through 007 ("**Parcel 1**"), 08-12-212-014, 08-12-212-015, 08-12-212-016 ("**Municipality Portion of Parcel 3**") and 08-12-211-013, 08-12-211-015 and 08-12-211-016 ("**Parcel 4**") delineated on **Exhibit A-1** acquired by the Municipality for

the Project ("**Municipality Acquisition Parcels**"). The Metra Acquisition Parcels and the Municipality Acquisition Parcels are sometimes hereinafter referred to collectively as the "**Project Acquisition Parcels**." The acquisition of the Project Acquisition Parcels has been or will be funded by a grant agreement with the federal government and various local funding sources ("**Grant Agreement**").

- H. Upon acquisition of Parcel 1 by the Municipality, the Parties desire Metra to convey the Metra Acquisition Parcels to the Municipality so that the Municipality will own all of the Project Acquisition Parcels and for the Municipality simultaneously to convey the following easements over portions of the Project Acquisition Parcels to Metra: 1) parking and access easement over Parcel 1 and Parcel 2 as delineated on Exhibit "A-2" substantially in the same form as the Easement for Parking and Access attached to and made a part of this Agreement as **Exhibit "B" ("Metra Parking Lot Easement")**; 2) an easement for railroad purposes and access over those portions of Parcel 3 which are identified by Permanent Index Nos.: 08-12-212-013, 08-12-212-014, 08-12-212-015, part of 08-12-212-016 and part of 08-12-212-017 and delineated on **Exhibit "A-2,"** attached to and made a part of this Agreement, substantially in the same form as the Easement for Railroad Purposes and Access attached to and made a part of this Agreement as **Exhibit "C" ("Metra Railroad Easement")**; and 3) the Temporary Construction Easement described and defined in these Recitals below. The Metra Parking Lot Easement parcels and the Metra Railroad Easement parcel are sometimes hereinafter referred to collectively as the "**Metra Easement Parcels**."
- I. The Municipality also owns the property west of Belmont Road and south of the BNSF tracks identified as PIN 08-12-214-008 delineated on **Exhibit "A-3,"** attached to and made a part of this Agreement, which has been developed as a commuter parking lot and identified as "**Village Parking Lot H**".
- J. Metra desires to obtain from the Municipality a temporary easement ("**Temporary Construction Easement**") upon, under, over, across, along and through all property owned by the Municipality in the "**Project Area**" as delineated on Exhibit A-3 (the "**Premises**") to construct and install the Belmont Road Grade Separation Project as delineated on Exhibit "A-3" ("**Project**") substantially in accordance with the Temporary Easement for the Construction of the Belmont Road Grade Separation Project in Downers Grove, Illinois attached to and made a part of this Agreement as **Exhibit "D."** The Temporary Construction Easement shall terminate at such time as the Project and all portions thereof are constructed and available for use by the public.
- K. Upon completion of the construction of the facilities on the Metra Easement Parcels (the "**Metra Improvements**") or any portion thereof, the Municipality desires to maintain the Metra Improvements or cause them to be maintained, in a safe and operable condition in accordance with the provisions of the Agreement for

Construction, Operation and Maintenance of Commuter Facilities in Downers Grove, Illinois, attached to and made a part of the Agreement as **Exhibit "E"** (the "OMA").

- L. The Parties desire to set forth herein their respective obligations with respect to the development, construction, operation and maintenance of the Project and the Project Acquisition Parcels.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Municipality and Metra 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. **MUNICIPALITY'S OBLIGATIONS.** The Municipality agrees to develop, or assist in the development of the Project by making the following contributions:
 - A. Upon acquisition of Parcel 1 by the Municipality and upon conveyance by Metra of the Metra Acquisition Parcels to the Municipality, the Municipality shall simultaneously convey the following easements over portions of the Project Acquisition Parcels to Metra: 1) the Metra Parking Lot Easement, 2) the Metra Railroad Easement, and 3) the Temporary Construction Easement.

 - B. Municipality agrees to make all reasonable efforts to enter into a separate agreement with the BNSF for the right to operate and maintain the Facilities located on property owned by the BNSF constructed as part of the Project for commuter use, including but not limited to the pedestrian tunnel, ramps and stairwells.

 - C. To the extent not already provided for in the Five-Party IGA, Municipality agrees to make all reasonable efforts to enter into a separate agreement with the County of DuPage to determine their respective responsibilities to operate and maintain the Project other than the Facilities including but not limited to the bridge decks, bridge structures, retaining walls, underground storm water storage facilities, stormwater pumping station, and the roadways between Warren/Burlington and Belmont Road.

 - D. From the date that the Facilities open for use by Metra commuters, the Municipality agrees to operate and maintain the Facilities, or cause them to be operated and maintained, in accordance with the provisions of the OMA.

3. **METRA'S OBLIGATIONS.** Metra agrees to develop, or assist in the development of, the Project, by making the following contributions:

- A. Upon acquisition of Parcel 1 by the Municipality, Metra agrees to quit claim the Metra Acquisition Parcels to the Municipality upon simultaneous conveyance by the Municipality of the following easements to Metra: 1) the Metra Parking Lot Easement, 2) the Metra Railroad Easement, and 3) the Temporary Construction Easement.
- B. As soon as feasible and after Municipality grants the Temporary Construction Easement to Metra, Metra shall construct or cause to be constructed the Project, including but not limited to the Facilities, pursuant to and in accordance with the Five-Party IGA and in accordance with the plans and specifications approved by the Parties for the Project.
4. **JOINT OBLIGATIONS.** The Parties understand that the Project will be a long term endeavor and may likely be comprised of various design and construction phases and each Party will materially rely upon the other to complete the obligations set forth in this Agreement. The Parties agree to do all things reasonably necessary or appropriate, within their legal capacities, 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 and provisions of this Agreement.
- The Parties agree that all conveyance documents for the acquisition of real property shall include a statement that the property is subject to the terms and conditions of the Grant Agreement funding the acquisition of the property.
5. **ASSIGNMENT.** Neither Party shall assign this Agreement, nor the rights granted in this Agreement, to any person or entity without the prior written consent of the other Party.
6. **BENEFIT OF PARTIES.** The 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.
7. **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.

Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

Notices to Municipality shall be sent to:

The Village of Downers Grove
801 Burlington Avenue
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.

8. GENERAL.

- A. This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective successors and assigns. No waiver of any obligation or default of either Party shall be implied from omission by the 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. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Illinois. 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 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. Specifically, this Agreement consists of this Intergovernmental Agreement and all attachments thereto. 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.
 - F. 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 exhibit hereto, the terms set forth in this Agreement shall govern and control.
 - G. The execution, delivery of, and performance under this Agreement is pursuant to authority and duly conferred upon the Parties and signatories hereto.
9. **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.

(SIGNATURE PAGE FOLLOWS)

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

VILLAGE OF DOWNERS GROVE:

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

By: _____
Brian Krajewski, Mayor

By: _____
Philip A. Pagano, Executive Director

ATTEST:

ATTEST:

By: _____
Village Clerk

By: _____
Assistant Secretary to the Board

STATE OF ILLINOIS)
)
COUNTY OF DUPAGE)

Before me, _____, a Notary Public within and for the State and County aforesaid, personally appeared Brian Krajewski and _____, with whom I am personally acquainted and who, upon their oaths acknowledged themselves to be the Mayor and Village Clerk, respectively, of the Village of Downers Grove, an Illinois municipal corporation, and that they as such Mayor 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 _____ on the ____ day of _____, 20__.

Notary Public

SEAL

STATE OF ILLINOIS)
)
COUNTY OF COOK)

Before me, _____, a Notary Public within and for the State and County aforesaid, personally appeared Philip A. Pagano and _____, 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 ____ day of _____, 20__.

Notary Public

SEAL

EXHIBIT "A-1"

DRAWING

PROJECT ACQUISITION PARCELS

EXHIBIT "A-2"

METRA EASEMENT PARCELS

EXHIBIT "A-3"

**TEMPORARY CONSTRUCTION EASEMENT
PROJECT AREA**

EXHIBIT "B"

EASEMENT FOR PARKING AND ACCESS

EXHIBIT "C"

EASEMENT FOR RAILROAD PURPOSES AND ACCESS

EXHIBIT "D"

**TEMPORARY EASEMENT FOR THE CONSTRUCTION OF THE BELMONT ROAD
GRADE SEPARATION PROJECT IN DOWNERS GROVE, ILLINOIS**

EXHIBIT "E"

**AGREEMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF
COMMUTER PARKING FACILITY IN THE VILLAGE OF DOWNERS GROVE, ILLINOIS**

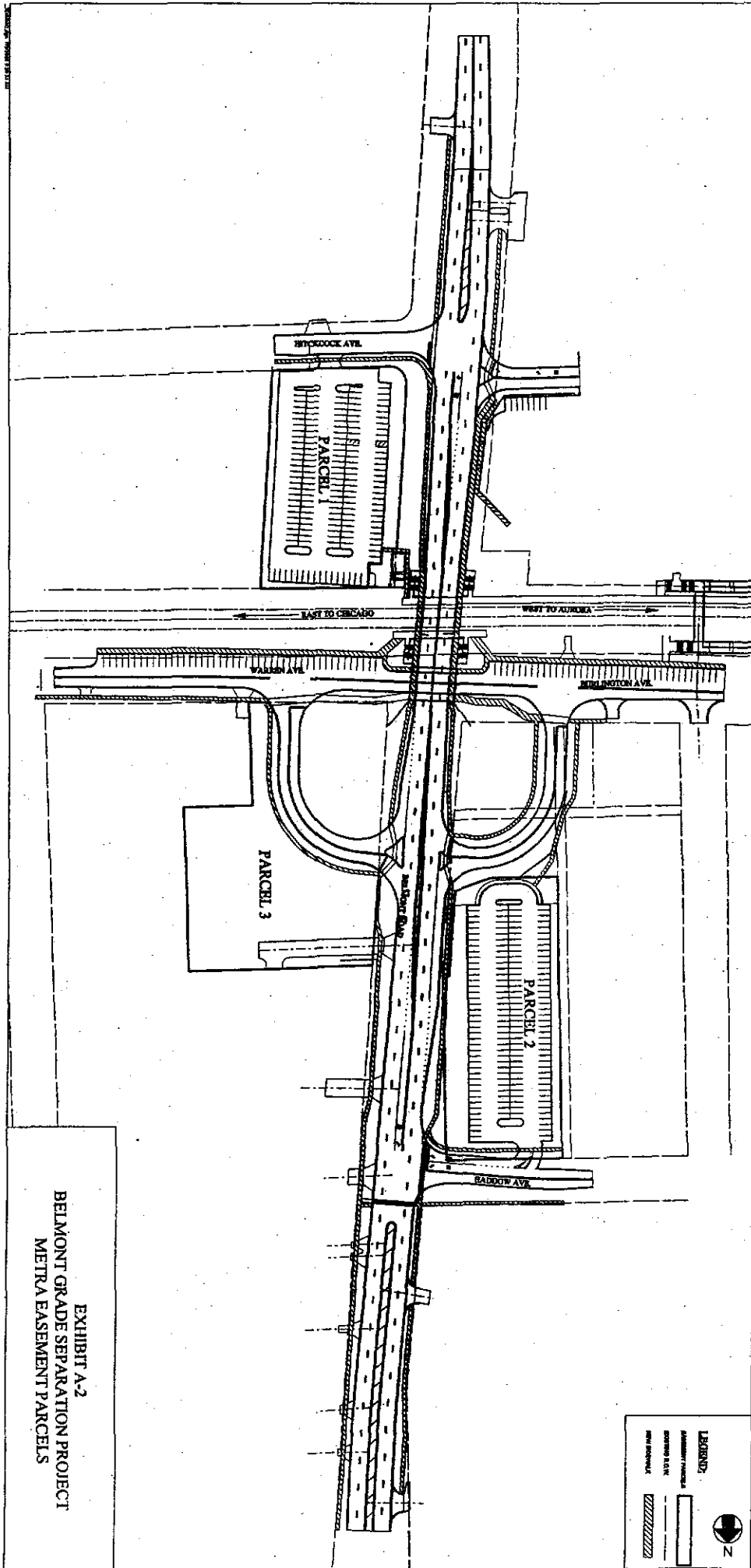


EXHIBIT A-2
 BELMONT GRADE SEPARATION PROJECT
 METRA EASEMENT PARCELS

VILLAGE PARKING LOT H

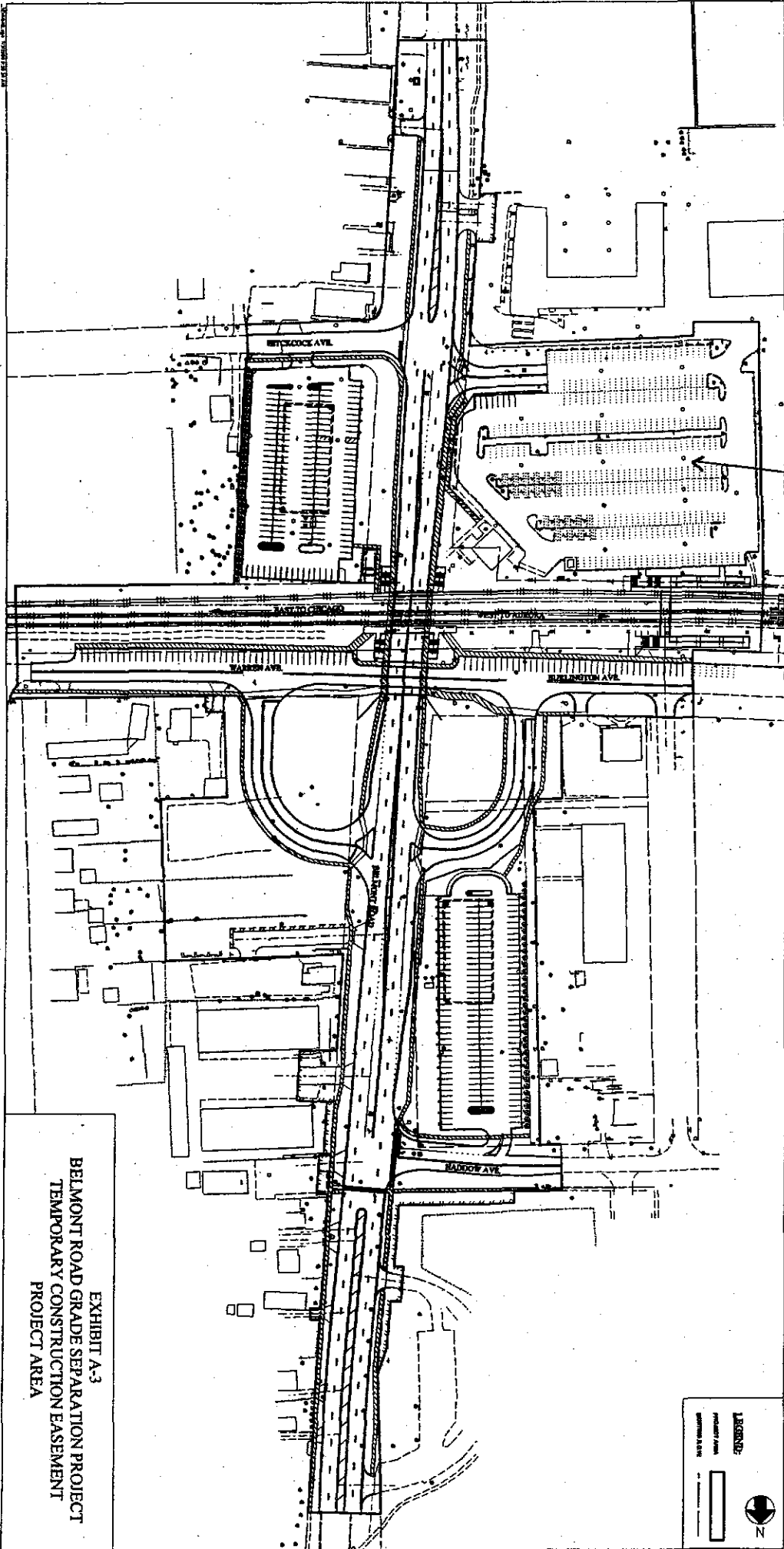


EXHIBIT A-3
BELMONT ROAD GRADE SEPARATION PROJECT
TEMPORARY CONSTRUCTION EASEMENT
PROJECT AREA

LEGEND

EXISTING ROAD

CONSTRUCTION EASEMENT




EXHIBIT "B"

EASEMENT FOR PARKING AND ACCESS

EASEMENT FOR PARKING AND ACCESS

WHEREAS, the undersigned, the Village of Downers Grove ("**Grantor**"), an Illinois municipal corporation, is the owner of the following parcels of land situated in the County of DuPage and State of Illinois ("**Land**") delineated on Exhibit A, attached to and made a part of this Easement:

Parcel 1 - South of Tracks and East of Belmont ("Parcel 1")

Permanent Index Nos.: 08-12-215-001 through 007

Parcel 2 - North of Tracks and West of Belmont ("Parcel 2")

Permanent Index Nos.: 08-12-211-006 through 010 and 08-12-217-001 through 007

WHEREAS, Grantor desires to grant to Grantee (as defined below) and Grantee desires to acquire from Grantor a permanent, nonexclusive easement for commuter parking purposes for at least Two Hundred Ninety Three (293) parking spaces ("**Spaces**"), together with access thereto, in, under, over, across, and along the Land and all improvements from time to time located on the Land (the Land and such improvements being hereinafter referred to collectively as the "**Premises**");

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration in hand paid by the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation with offices located at 547 West Jackson, Chicago, Illinois, 60661 ("**Grantee**"), the receipt and sufficiency of which consideration is hereby acknowledged, Grantor hereby gives and grants unto Grantee, and its lessees, permittees, licensees, successors and assigns, the permanent nonexclusive right, easement, and authority to construct, install, use, operate, maintain, repair, replace, relocate (to a location approved by Grantor in its commercially reasonable discretion), renew, and reconstruct a commuter parking facility on the Land, along with necessary curbs, gutters, signs, drainage, pipes, poles, foundation, conduit, and other equipment on, over, under, across, and along the Land for such commuter parking purposes, together with the right of access thereto for the purpose of exercising the rights and privileges granted in this Easement, provided, however, Grantee, in its sole discretion and upon written notice to Grantor, may terminate this Easement if Grantee ceases to use the Premises for commuter parking purposes.

Grantee or its contractor(s) shall indemnify, defend, and hold harmless Grantor from and against any and all claims, demands, actions, costs, and expenses, (including without limitation, reasonable attorneys fees and court costs) for bodily injury or death and damage to property arising out of the acts, omissions, or negligence of Metra, its contractors, officers, agents, shareholders, employees, or permittees while conducting the activities on the Easement Premises permitted by this Agreement, except to the extent caused by the actions, omissions, or negligence of Grantor or any person or persons acting on behalf of or with the authority or permission of Grantor. Grantee agrees to notify Grantor in writing

within a reasonable time (but in no event later than thirty (30) days) of any claim of which it becomes aware which may fall within this indemnity provision.

If, because of any act or omission of Metra or its officers, employees, contractors, subcontractors or agents, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Premises or the Metra Improvements, Metra shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Municipality sufficient to discharge such lien and any interest accrued thereon.

This Easement and all of the terms, conditions, rights and obligations herein contained shall run with the Land, and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the Grantor and Grantee, their respective grantees, lessees, licensees, successors, assigns, and all subsequent owners of the fee title to the Premises.

Any relocation or replacement of the Spaces by Grantor shall be relocated to a location acceptable to Grantee at its sole discretion in the vicinity of the Land.

Any mortgage, deed of trust, or ground lease granted or entered into with respect to the Land from and after the date of this Easement Grant shall be subordinate and inferior to the easements, rights, benefits, and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, rights, benefits, and obligations created by this Easement Grant.

The Grantor retains all other rights over, upon, and across the Premises and to the use, enjoyment and benefit of the surface of the Land, except that Grantor shall not diminish or unreasonably interfere with Grantee's rights hereunder.

This Easement shall be construed and enforced in accordance with the laws of the State of Illinois.

If any provision of this Easement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Easement shall be construed as if such invalid part was never included and this Easement shall be and remain valid and enforceable to the fullest extent permitted by law, provided that the Easement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

IN WITNESS WHEREOF, the Grantor has duly executed this Easement as of this _____ day of _____, 20__.

ATTEST:

Village of Downers Grove, an Illinois municipal corporation

By: _____, Village Clerk

By: _____
Brian Krajewski, Village Mayor

State of Illinois)
) ss.
County of Cook)

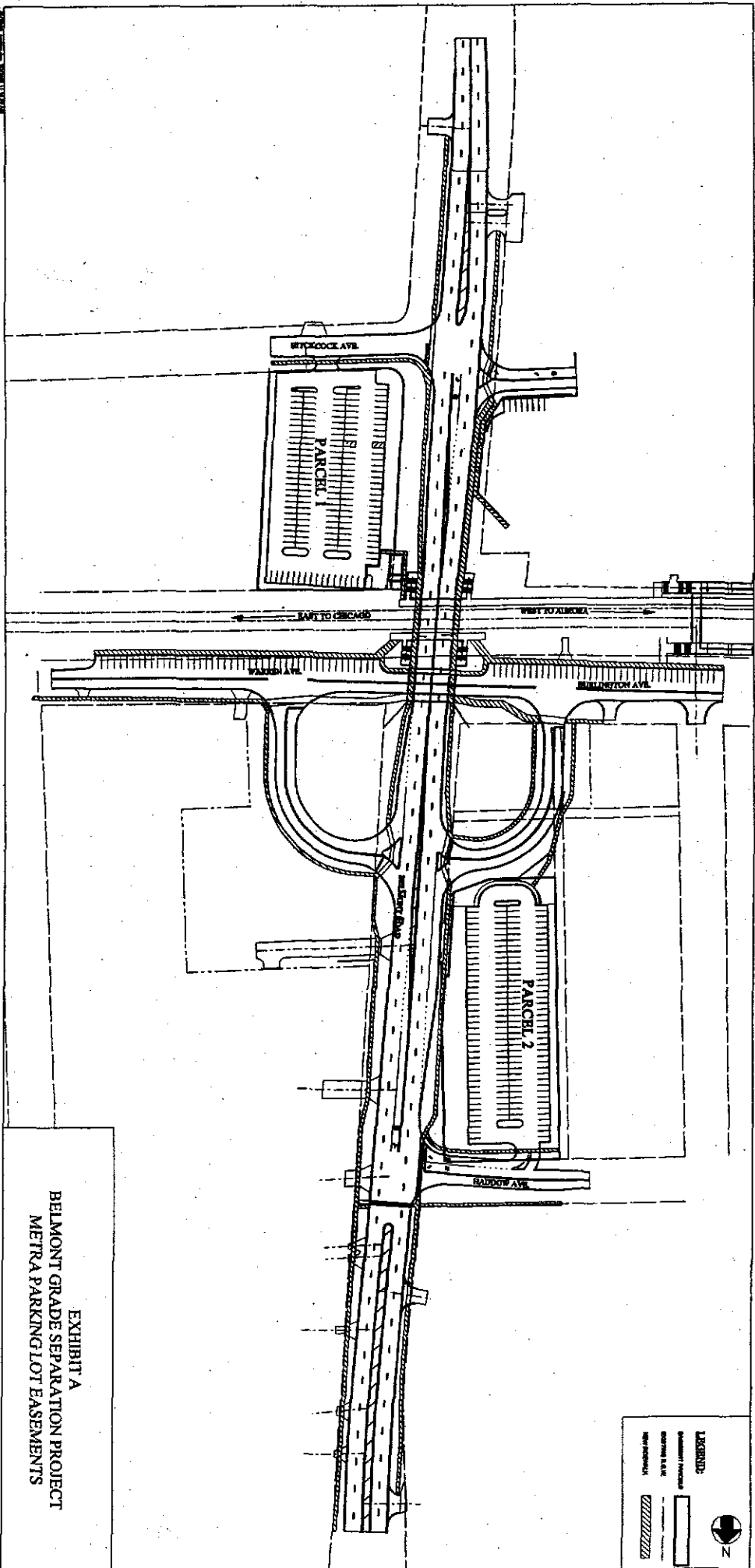
The undersigned, a Notary Public in and for the above County and State, do hereby certify that Brian Krajewski, **Mayor** of the Village of Downers Grove and _____, **Village Clerk**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be the **Mayor** and **Village Clerk** respectfully, appeared before me this day in person and severally acknowledged signing and delivering the instrument as their free and voluntary act, and as the free and voluntary act of the Village, being thereunto duly authorized for the uses and purposes therein set forth.

Given under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My: commission expires:

**EXHIBIT A
(DRAWING)
BELMONT ROAD GRADE SEPARATION PROJECT
METRA PARKING LOT EASEMENTS**



(EXHIBIT A TO EXHIBIT B - EASEMENT FOR
PARKING AND ACCESS)

EXHIBIT A
BELMONT GRADE SEPARATION PROJECT
METRA PARKING LOT EASEMENTS

EXHIBIT "C"

EASEMENT FOR RAILROAD PURPOSES AND ACCESS

EASEMENT FOR RAILROAD PURPOSES AND ACCESS

WHEREAS, the undersigned, the Village of Downers Grove ("**Grantor**"), an Illinois municipal corporation, is the owner of the following parcel of land situated in the County of DuPage and State of Illinois ("**Land**") delineated on Exhibit A, attached to and made a part of this Easement:

Parcel 3 - North of Tracks and East of Belmont

Permanent Index Nos.: 08-12-212-013, 08-12-212-014, 08-12-212-015 and part of 08-12-212-016 and 08-12-212-017.

WHEREAS, Grantor desires to grant to Grantee (as defined below) and Grantee desires to acquire from Grantor a permanent, nonexclusive easement for commuter railroad purposes, together with access thereto, in, under, over, across, and along the Land and all improvements from time to time located on the Land (the Land and such improvements being hereinafter referred to collectively as the "**Premises**").

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10) and other good and valuable consideration in hand paid by the Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation with offices located at 547 West Jackson, Chicago, Illinois, 60661 ("**Grantee**"), the receipt and sufficiency of which consideration is hereby acknowledged, Grantor hereby gives and grants unto Grantee, and its lessees, permittees, licensees, successors and assigns, the permanent nonexclusive right, easement, and authority to use the Premises for Metra and railroad support purposes (but not to include material or rolling stock storage purposes) ("**Railroad Purposes**"), together with the right of access thereto for the purpose of exercising the rights and privileges granted in this Easement, provided, however, Grantee, in its sole discretion and upon written notice to Grantor, may terminate this Easement if Grantee ceases to use the Premises for commuter parking purposes. At such time as the Grantor comes into title to any of the properties that constitute the Land, said property shall automatically be added to this Easement without further action of the Grantor.

Grantee or its contractor(s) shall indemnify, defend, and hold harmless Grantor from and against any and all claims, demands, actions, costs, and expenses, (including without limitation, reasonable attorneys fees and court costs) for bodily injury or death and damage to property arising out of the acts, omissions, or negligence of Metra, its contractors, officers, agents, shareholders, employees, or permittees while conducting the activities on the Easement Premises permitted by this Agreement, except to the extent caused by the actions, omissions, or negligence of Grantor or any person or persons acting on behalf of or with the authority or permission of Grantor. Grantee agrees to notify Grantor in writing within a reasonable time (but in no event later than thirty (30) days) of any claim of which it becomes aware which may fall within this indemnity provision.

If, because of any act or omission of Metra or its officers, employees, contractors, subcontractors or agents, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Premises or the Metra Improvements, Metra shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Municipality sufficient to discharge such lien and any interest accrued thereon.

This Easement and all of the terms, conditions, rights and obligations herein contained shall run with the Land, and the covenants and agreements herein contained shall inure to the benefit of and be binding upon the Grantor and Grantee, their respective grantees, lessees, licensees, successors, assigns, and all subsequent owners of the fee title to the Premises.

In the event the Grantee constructs a commuter parking facility on the Land, Grantor hereby gives and grants unto Grantee, the right, to relocate the spaces contained in said parking facility ("Spaces") to a location approved by Grantor in its commercially reasonable discretion. Any relocation or replacement of the Spaces by Grantor shall be relocated to a location acceptable to Grantee at its sole discretion in the vicinity of the Land.

Any mortgage, deed of trust, or ground lease granted or entered into with respect to the Land from and after the date of this Easement Grant shall be subordinate and inferior to the easements, rights, benefits, and obligations created hereby, and the foreclosure under any such mortgage or deed of trust shall not extinguish or impair the easements, rights, benefits, and obligations created by this Easement Grant.

This Easement is subject to a relocatable, non-exclusive easement ("Access Easement") for access to and from Belmont Road for the benefit of the parcel immediately north of and adjacent to the Premises identified as permanent Index Number 08-12-217-012 ("Parcel 1") not inconsistent with Metra's use of the Premises for Railroad Purposes. In the event that Parcel 1 is conveyed to an adjoining property owner with direct ingress and egress to a public right-of-way the Access Easement and the rights granted thereunder shall immediately terminate.

The Grantor retains all other rights over, upon, and across the Premises and to the use, enjoyment and benefit of the surface of the Land, except that Grantor shall not diminish or unreasonably interfere with Grantee's rights hereunder.

This Easement shall be construed and enforced in accordance with the laws of the State of Illinois.

If any provision of this Easement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Easement shall be construed as if such invalid part was never included and this Easement shall be and remain valid and enforceable to the fullest extent permitted by law, provided that the Easement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties.

IN WITNESS WHEREOF, the Grantor has duly executed this Easement as of this _____ day of _____, 20__.

ATTEST:

Village of Downers Grove, an Illinois municipal corporation

By: _____, Village Clerk

By: _____
Brian Krajewski, Village Mayor

State of Illinois)
) ss.
County of DuPage)

The undersigned, a Notary Public in and for the above County and State, do hereby certify that Brian Krajewski, **Mayor** of the Village of Downers Grove and _____, **Village Clerk**, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, and to me personally known to be the **Mayor** and **Village Clerk** respectfully, appeared before me this day in person and severally acknowledged signing and delivering the instrument as their free and voluntary act, and as the free and voluntary act of the Village, being thereunto duly authorized for the uses and purposes therein set forth.

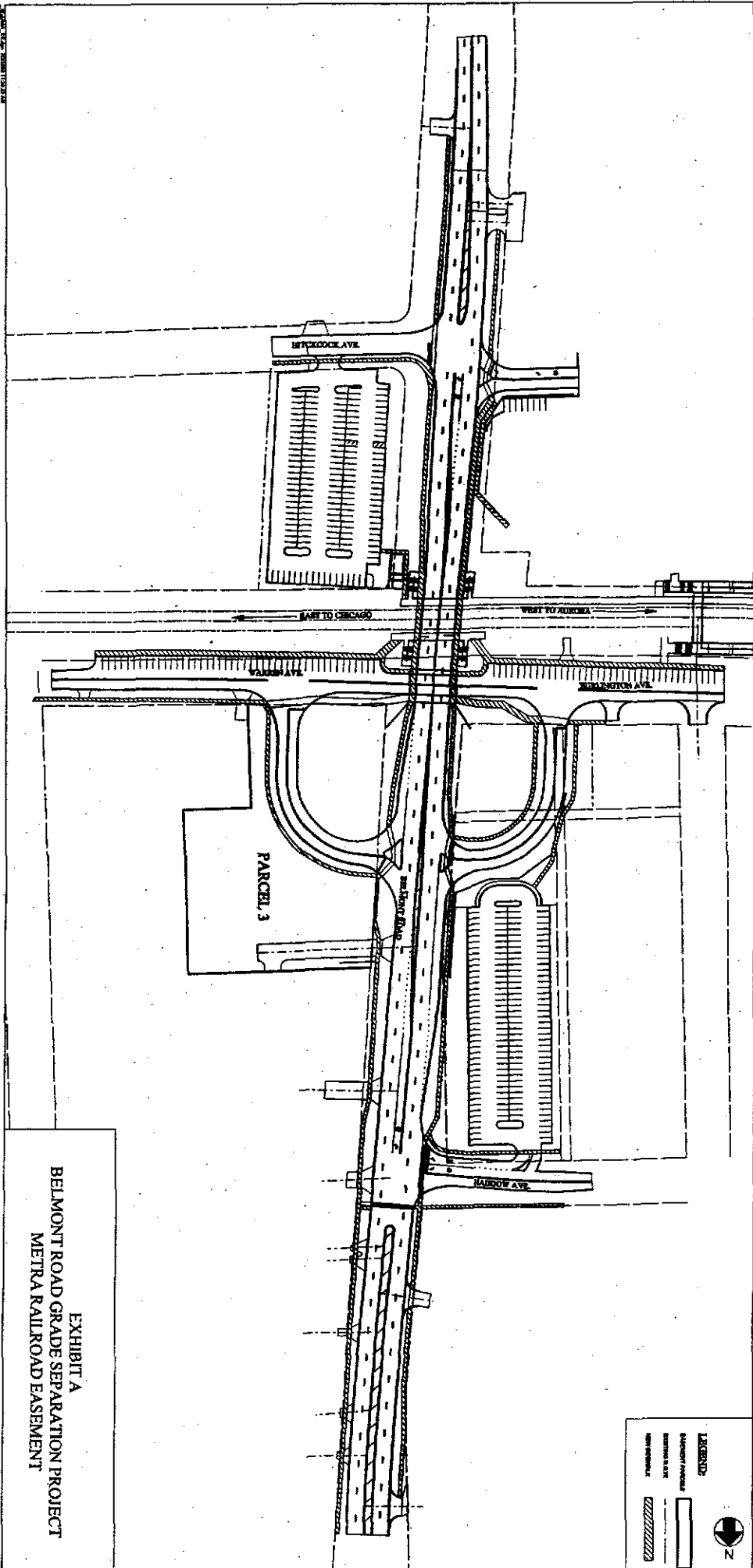
Given under my hand and notarial seal this _____ day of _____, 20__.

Notary Public

My: commission expires:

EXHIBIT A

**BELMONT ROAD GRADE SEPARATION PROJECT
METRA RAILROAD EASEMENT**



(EXHIBIT A TO EXHIBIT C - EASEMENT FOR RAILROAD PURPOSES AND ACCESS)

EXHIBIT A
 BELMONT ROAD GRADE SEPARATION PROJECT
 METRA RAILROAD EASEMENT

EXHIBIT "D"

**TEMPORARY EASEMENT FOR THE CONSTRUCTION
OF THE BELMONT ROAD GRADE SEPARATION PROJECT
IN DOWNERS GROVE, ILLINOIS**

THIS AGREEMENT ("Agreement") is entered into by and between the **Village of Downers Grove**, an Illinois municipal corporation ("**Grantor**") and the **Commuter Rail Division of the Regional Transportation Authority**, a division of an Illinois municipal corporation ("**Metra**"). Grantor 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 land, the covenants and agreements hereinafter stated, the receipt and sufficiency of which consideration is hereby acknowledged, Grantor hereby grants to Metra an easement ("**Easement**") upon, under, over, across along and through all property owned by the Grantor in the "**Project Area**" as delineated on the drawing attached to and made a part of this Agreement as **Exhibit "D-1"** ("**Premises**") to construct and install the Belmont Road Grade Separation Project including but not limited to the parking lots as delineated on Exhibit "D-1" ("**Project**"). At such time as the Grantor comes into title to any of the properties in the Project Area, said property shall automatically be added to this Agreement without further action of the Parties for the term of this Agreement.

This Easement is granted upon the following express conditions, terms and covenants to be observed, kept and performed by Grantor:

1. All of said work shall be done in a good and workmanlike manner, and in accordance with the requirements of the plans, specifications, and profiles to be prepared by Metra.
2. Grantor shall permit Metra access to the Premises for the purpose of constructing said Project.
3. The Parties agree that the obligation to construct and the cost of constructing the Project shall be in accordance with that certain five-party Intergovernmental Agreement dated October 28, 2002 ("**Five-Party IGA**").
4. Metra shall at all times construct the Project in a secure, safe and sanitary condition and in accordance with all applicable laws, ordinances, rules and regulations.
5. Metra shall indemnify, defend, and hold harmless Grantor from and against any and all claims, demands, actions, costs, and expenses, (including without limitation, reasonable attorneys fees and court costs) for bodily injury or death and damage to property arising out of the acts, omissions, or negligence of Metra, its contractors, officers, agents, shareholders, employees, or

permittees while conducting the activities on the Easement Premises permitted by this Agreement, except to the extent caused by the actions, omissions, or negligence of Grantor or any person or persons acting on behalf of or with the authority or permission of Grantor. Grantor agrees to notify Metra in writing within a reasonable time (but in no event later than thirty (30) days) of any claim of which it becomes aware which may fall within this indemnity provision.

6. Metra will cause appropriate clauses to be inserted in all contracts for construction of the Project requiring contractors to procure and maintain comprehensive policies of insurance, insuring contractor, Metra, and Grantor from and against any and all risks, liabilities, claims, demands, losses, and judgments arising from, growing out of or in any way related to the work performed or to be performed by such contractor, whether or not any such liability, claim, demand, loss, or judgments is due to or arises from the acts of negligence of contractor, Metra, or Grantor or their respective officers, agents, employees, or subcontractors.

7. In the event that Metra shall discover the existence of any Hazardous Materials on the Premises during the course of its construction of the Project, Metra shall stop work on the Project and notify the Grantor of the existence of said Hazardous Material. The Parties shall, within thirty (30) days of discovery of any Hazardous Materials, determine the manner in which they will proceed to remove and dispose of such Hazardous Materials (herein, the "**Remediation**"). Notwithstanding the foregoing, Metra may, but is not obligated to, proceed with the Remediation, at its sole cost and expense, in order to prevent unreasonable delay of the Project and loss of the funding for the Project. Remediation shall be in accordance with applicable Environmental Laws (including the execution of any and all waste manifests or other documents required by the applicable Governmental Authorities in connection therewith), and otherwise in a manner that will not interfere with or impair the proposed use of the Premises or Metra's construction of the Project thereon.

8. Metra will comply with the terms of any Settlement Agreement entered into in conjunction with the acquisition of parcels for the Project to the extent they effect possession of the parcels for construction of the Project, provided, however, that Metra has had the opportunity to review and approve such Settlement Agreement.

9. This Easement and all of the terms, conditions, rights and obligations herein contained shall inure to and be binding upon the Parties, their respective legal representatives, lessees, permittees, successors and/or assigns whether hereinabove so stated or not; but it is distinctly agreed that neither Party shall assign its rights under this Easement without first having received the prior written consent of the other Party, which consent shall not be unreasonably withheld.

10. All notices, demands and elections required or permitted to be given or made by either Party upon the other under the terms of this Easement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail, return receipt requested, with proper postage prepaid, facsimile transmission or hand delivered to 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 successful transmission if sent by facsimile transmission or on the day of delivery if hand delivered.

- (a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

- (b) Notices to Grantor shall be sent to:

The Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515
Attn: Village Manager
Phone: (630) 434-5500
Fax: (630) 434-5571

11. If, because of any act or omission of Metra or its officers, employees, contractors, subcontractors or agents, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Premises or the Metra Improvements, Metra shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Municipality sufficient to discharge such lien and any interest accrued thereon.

12. 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. No waiver of any obligation or default of a Party shall be implied from omission by the 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. 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. This Easement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

13. 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.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of this _____ day of _____, 200__.

ATTEST:

COMMUTER RAIL DIVISION OF THE
REGIONAL TRANSPORTATION AUTHORITY:

Assistant Secretary

By: _____
Philip A. Pagano
Executive Director

ATTEST:

VILLAGE OF DOWNERS GROVE

By: _____

By: _____
Brian Krajewski
Mayor

Its: _____

EXHIBIT D-1

**BELMONT ROAD GRADE SEPARATION PROJECT
TEMPORARY CONSTRUCTION EASEMENT
PROJECT AREA**

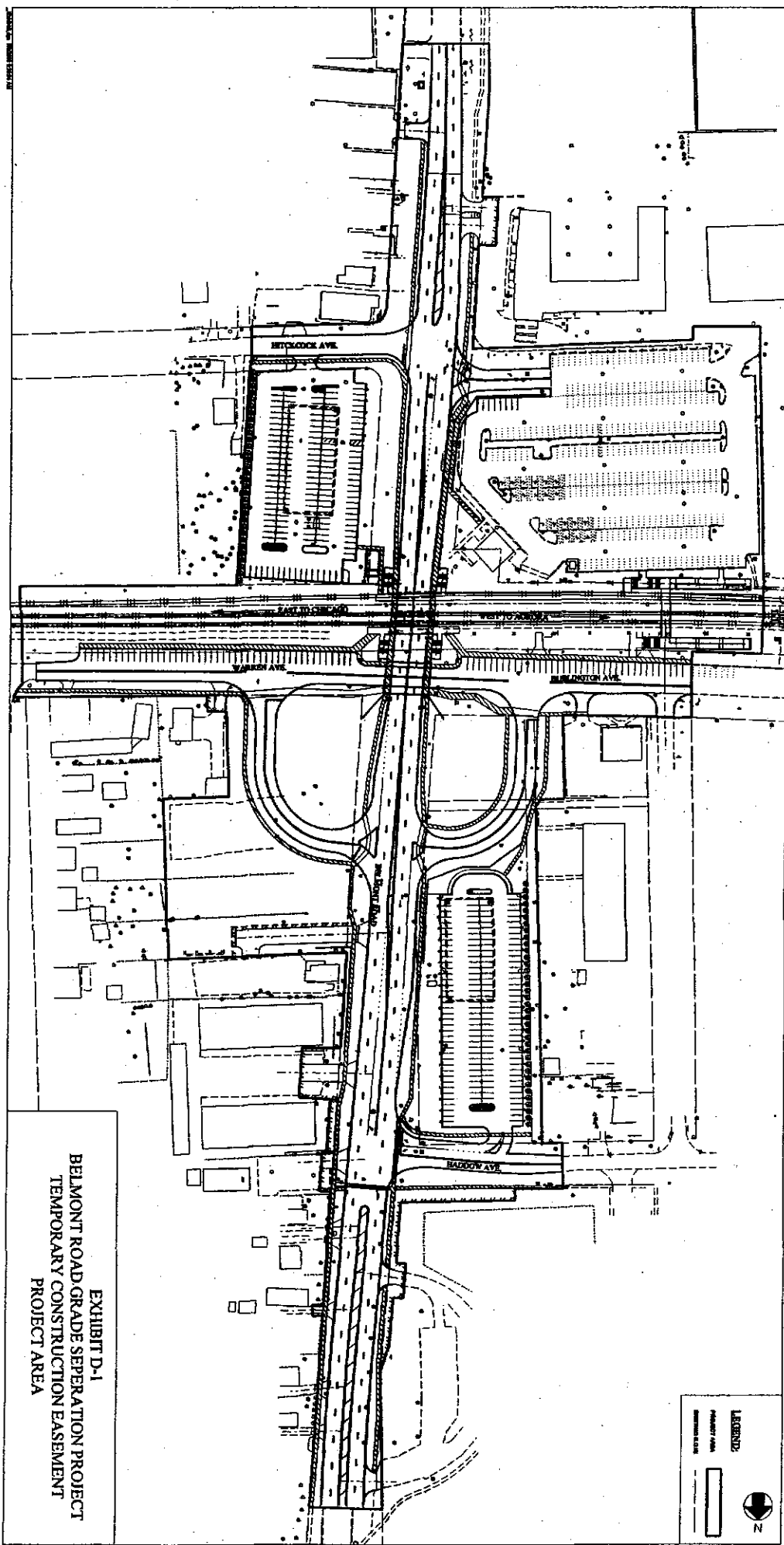



EXHIBIT D-1
 BELMONT ROAD GRADE SEPERATION PROJECT
 TEMPORARY CONSTRUCTION EASEMENT
 PROJECT AREA

LEGEND:

PROJECT AREA

EASEMENT AREA

EASEMENT AREA



 N

EXHIBIT "E"

AGREEMENT FOR CONSTRUCTION, OPERATION AND MAINTENANCE OF COMMUTER FACILITIES IN DOWNERS GROVE, ILLINOIS

This Agreement ("**Agreement**") made this ____ day of _____, 20____, 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, ("**Municipality**"). Metra and the Municipality are hereinafter sometimes individually referred to as a "**Party**" and jointly referred to as the "**Parties**".

RECITALS

A. Metra and Municipality desire to have new commuter rail parking facilities and related improvements delineated on **Exhibit "E-1,"** attached to and made a part of this Agreement ("**Parking Facilities**") containing at least two hundred ninety three (293) commuter parking spaces located on Parcels 1 and 2 ("**Parking Spaces**") constructed pursuant to that certain five-party Intergovernmental Agreement dated October 28, 2002 ("**Five-Party IGA**") on the "**Land**" as delineated on Exhibit E-1 as part of the Downers Grove Grade Separation Project at Belmont Road and the Burlington Northern and Santa Fe Railway Company ("**BNSF**") railroad right-of-way in the Municipality ("**Project**") ;

B. Funding has been obtained from Metra, state and/or federal funding sources for the Project;

C. Metra has agreed to construct said Project;

D. Municipality has agreed to operate and maintain the completed Improvements in which Metra has a right, title or interest ("**Metra Improvements**") as set forth in this Agreement; and

E. Municipality owns or controls or will own or control the Land upon which the Metra Improvements are to be constructed (the "**Premises**") as delineated on Exhibit E-2, attached to and made a part of this Agreement, subject to the easements to Metra provided for herein.

F. Municipality has determined that the construction, management, operation and maintenance of the Metra Improvements on the Premises is in the best interest of the public and serves a valid public purpose.

NOW, THEREFORE, for and in consideration of the covenants contained in this Agreement, and the foregoing Recitals, which are hereby incorporated into this Agreement, the Parties hereto agree as follows:

1. **TERM.** Municipality desires to control access to said Premises and operate and maintain said Metra Improvements. Municipality agrees that the Parking Facilities shall be used as commuter parking facilities with daily rates for public parking. Municipality's obligations and Metra's right to use the Premises under the terms and provisions of this Agreement shall commence on the date this Agreement is executed by all the Parties and shall continue in force

and effect for a period of forty (40) years from the date that the Parking Facilities or any portion thereof open for use by Metra commuters ("**Use Term**") unless otherwise terminated as provided under the terms and conditions of this Agreement. By mutual agreement, the Parties shall have the right to extend the Use Term for an additional forty (40) years at the end of the initial Use Term by giving the other party prior written notice of such extension.

If required by the federal or local grant funding agency, the Parties to this Agreement recognize Metra's right to require Municipality to assign this Agreement, or transfer title to any real or personal property owned by Municipality and associated with the Metra Improvements constructed pursuant to this Agreement, or to directly dispose of any real or personal property financed with Federal assistance funds, in accordance with applicable federal circulars and regulations, as may be appropriate in the event the facilities are no longer used for their intended purpose.

2. CONSTRUCTION.

(a) Metra, its contractors, subcontractors, architects, engineers, employees and agents are hereby granted an irrevocable right-of-entry on the Premises to oversee and inspect the Metra Improvements during the Use Term.

(b) Municipality and its contractors, subcontractors and agents shall not use nor occupy said Premises for any purpose other than to erect, locate, construct and inspect the Metra Improvements and to use and maintain Metra Improvements for commuter rail parking or railroad support purposes. Prior to commencement of construction, all plans and specifications for the said Metra Improvements must be approved in writing by both Parties hereto. No other buildings, structures, additions, alterations or improvements shall be erected on or made to the Premises by Municipality or Metra without the prior express permission in writing by the other Party.

(c) In all contracts executed by Municipality for maintenance of the Premises (including snow removal) or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located 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 the Metra, the Regional Transportation Authority ("**RTA**"), and the Northeast Illinois Regional Commuter Railroad Corporation ("**NIRCRC**"), their respective directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on behalf of or with the authority of Metra, 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.

(d) In all contracts executed by Metra, the Regional Transportation Authority ("**RTA**"), and the Northeast Illinois Regional Commuter Railroad Corporation ("**NIRCRC**") for construction of the Premises or for the re-construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located on the Premises, or to be located on such Premises, Metra, RTA and NIRCRC will require appropriate clauses to be inserted requiring contractors to indemnify, hold harmless and defend the Municipality, its directors, administrators, officers, employees, agents, successors, assigns and all other persons, firms and corporations acting on behalf of or with the authority of Municipality, 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.

3. USE OF PREMISES.

(a) Municipality hereby grants to Metra, its successors and assigns, for the benefit of Metra and the general public, nonexclusive perpetual easements for access to and use of a portion of the Premises (“**Metra Easement Parcels**”) as delineated on Exhibit E-2 for commuter parking and railroad support purposes, in accordance with the provisions of those certain easements, 1) Easement for Parking and Access and 2) Easement for Railroad Purposes and Access (the “**Easement Agreements**”) attached to the Intergovernmental Agreement to which this Agreement is attached as Exhibits B and C respectively and which are attached to and made a part of this Agreement by reference, and the provisions of this Agreement. The Parties agree upon acquisition of Parcel 1 by the Municipality, Metra shall by quit claim deed convey Metra’s interest in the Premises (the “**Metra Acquisition Parcels**”) to the Municipality and Municipality shall simultaneously execute and deliver the Easement Agreements to Metra. The Parties agree to cause the quit claim deed and the Easement Agreements to be placed of record with the DuPage County Recorder promptly after the full execution and delivery of these Agreements.

(b) Municipality hereby grants to Metra the nonexclusive right to regulate and control the people who enter said Premises and their conduct and reserves the right to enter upon said Premises at any time and to eject therefrom any disorderly person or persons.

(c) Municipality shall use its best efforts to insure that the Parking Facilities are available to both residents of Municipality and nonresidents for parking. Parking lot fees, if any, set and collected by Municipality, shall be standardized for all patrons of the Parking Facilities and Municipality shall under no circumstances discriminate against nonresidents of the Municipality in setting parking fees. The Project Facilities shall be operated as a daily fee parking lot with spaces available to Metra commuters on a first come-first served basis. The fee to park in the Parking Facilities for Metra commuters shall not exceed Three Dollars (\$3.00) per space per day, unless otherwise agreed to in writing by Metra’s Executive Director after consultation with Municipality. Except as set forth in this Agreement and in the Easement for Parking and Access, there shall be no restrictions on use of the Parking Facilities by non-rail customers imposed by Metra.

4. MAINTENANCE, ACCESS AND RELOCATION

(a) Municipality, at its own cost and expense, shall manage the Metra Improvements and shall be responsible for the performance of "**Routine Maintenance**" throughout the Use Term. "Routine Maintenance" shall mean and include, but shall not be limited to, snow removal, insurance, lighting upkeep, sealing and patching pavement, patrolling the Premises and payment of utility expenses associated with the operation of the Metra Improvements. Municipality shall also be responsible for capital improvements to the Metra Improvements including but not limited to major rehabilitation, excavation, demolition of structures, new construction, light standard placement, or replacement necessitated by damage to a structure. In the event Municipality fails to manage, operate, or maintain the Metra Improvements in accordance with the terms and provisions of this Agreement, Metra may provide, or cause to be provided, such management, operation and maintenance services and Municipality shall reimburse Metra for the cost of said management, operation and maintenance services within thirty (30) days of Municipality's receipt of a written demand for payment from Metra. If any damage to the Metra Improvements results, the Municipality agrees that Metra may require the Municipality to restore the Metra Improvements to their original condition or refund Metra's interest in the Metra Improvements in accordance with Section 13 below.

(b) Municipality, at its own cost and expense, shall be responsible for the "**Standard Maintenance**" of all landscaping, if any, on and along the Metra Improvements. For purposes of this Agreement, Standard Maintenance shall mean watering, weeding, mowing, trimming, and mulching as dictated by the specific plantings on the Premises.

(c) Municipality agrees to provide access to the Premises to Metra and the public over and through the existing roadways and easements should such access be deemed necessary by Metra. Municipality further agrees that Metra shall not be responsible for the care or maintenance (including snow removal) of said roadways.

(d) In order to preserve Metra 's rights at all times to the number of commuter parking spaces as herein provided ("**Required Spaces**"), if at any time the Parking Facilities do not provide Metra with the Required Spaces, Metra reserves the right to relocate the Parking Spaces, or the deficient portion thereof, as the case may be, at its own cost and expense, to a location acceptable to Municipality in the vicinity of the Premises with no liability for damages to Municipality's interest in the Parking Facilities resulting from such relocation; provided, however, that Metra shall give Municipality sixty (60) days prior written notice of its intention to relocate the existing Parking Facilities or portion thereof. If all or any of the Parking Spaces are relocated pursuant to this Section 4(d), Municipality agrees to execute and deliver to Metra an easement agreement (the "**Easement Agreement for Relocated Parking Spaces**"), in the form and content of Exhibit B to the IGA, attached hereto by reference, (with such changes as are necessary to conform such instrument to the relevant facts) promptly upon the request of Metra. The Parties shall cause the Easement Agreement for Relocated Parking Spaces to be placed of record with the DuPage County Recorder promptly after its full execution and delivery.

5. REPORTING. If during the Use Period the Metra Improvements are not used in mass transportation service, whether by planned withdrawal, misuse or casualty loss, Municipality shall immediately notify Metra in writing.

6. SIGNS. With the exception of directional or operational signs, the Municipality shall not post or place any signs on the Premises without having first received Metra's approval of the content, design and location of the sign.

7. COMPLIANCE (LEGAL AND INSURANCE).

(a) Municipality shall not use or permit upon the Premises anything that will invalidate any policies of insurance held by Metra or Municipality now or hereinafter carried on or covering the Premises or any other improvements thereon. Municipality shall manage, operate, maintain and use the Premises and other improvements thereon in compliance with the requirements of all local, state and federal ordinances, laws, rules and regulations in effect during the Use Term.

(b) Prior to entering upon the Premises, Municipality agrees to furnish insurance in form and in such amounts as required by Metra's Risk Management Department (312-322-6991) and shall deliver to Metra's Risk Management Department certificates of insurance or such other documentation acceptable to Metra's Risk Management Department evidencing the acquisition of the required insurance. Such policies of insurance or self-insurance shall include commercial general liability, automobile, workers compensation, and railroad's protective liability insurance coverage during the performance of any construction, rehabilitation or repair work within fifty (50) feet of railroad tracks, all as stated on **Exhibit "E-3,"** attached to and made a part of this Agreement ("**Insurance Requirements**"). To the extent permitted by law, said insurance shall show Metra, RTA, the NIRCRC, their respective directors, administrators, officers, employees, agents, successors, and assigns, as additional insureds and shall be endorsed to assume the contractual obligations of Municipality as set forth in this Agreement. A duplicate copy of such insurance policy or a certificate of insurance and signed copy of a report showing established insurable value shall be furnished to Metra and must show on the insurance policy or the certificate of insurance that Metra will be properly notified in writing at least thirty (30) days prior to any modification or cancellation of such policy.

(c) Municipality and its agents shall not permit the existence of any nuisance, dangerous or hazardous conditions, or allow dangerous, explosive, flammable, or combustible materials on the Premises which would increase or tend to increase the risk of fire; and further, the Municipality or its agent shall keep, observe and comply with all federal, state and local rules, regulations, ordinances, and laws having jurisdiction over the Premises. If, as a result of the Municipality's occupancy of the Premises hereunder, any such rule, regulation, ordinance or law is violated by any act or omission occasioned by the Municipality or its employees, or those acting on behalf of or with the authority of the Municipality shall protect, hold harmless, defend and indemnify Metra, RTA and NIRCRC from and against any and all losses, penalties, fines, costs, damages or expenses, including court costs and attorneys' fees, caused by, resulting from, or connected with such violation or violations.

(d) Municipality and its agents agree to use their reasonable best efforts to prevent the occurrence of contamination, hazardous materials or any related environmental damage or condition on the Premises during the Use Term. Should any contamination or other environmental condition occur or result from Municipality's use or occupancy of the Premises which is caused by the Municipality or its employees, or those acting on behalf of or with the authority of Municipality will be responsible for all costs associated with its mitigation, cleanup and any related liability. Municipality specifically agrees to indemnify, defend and hold harmless Metra, RTA and NIRCRC from all such loss, damages, costs or liabilities, including court costs and attorneys' fees, arising from Municipality's use or occupancy of the Premises.

(e) Municipality's failure to obtain or to cause its contractors to obtain proper insurance coverage or to insure Metra, the RTA or the NIRCRC as additional insureds shall not,

at any time, operate as a waiver to Metra's right to indemnification and defense against any claims, damages or injuries covered under the terms and provisions of this Agreement.

8. INDEMNIFICATION AND WAIVER.

(a) To the fullest extent permitted by law, the Municipality hereby assumes and agrees to release, acquit, waive any rights against and forever discharge the Metra, the RTA, NIRCRC, or their respective directors, officers, agents or employees (the "Indemnitees") and all other persons, firms and corporations acting on behalf of or with the authority of the Indemnitees from and against any and all claims, demands or liabilities imposed upon them by law or otherwise of every kind, nature and character on account of personal injuries, including death at any time resulting therefrom, and on account of damage to or destruction of property, arising from any accident or incident which may occur to or be incurred by the Municipality, its employees, officers, agents and all other persons acting on its behalf while on the Premises except to the extent caused by the negligence of the Indemnitees. Notwithstanding anything in this Agreement to the contrary, the waivers contained in this paragraph shall survive termination of this Agreement.

(b) To the fullest extent permitted by law, the Municipality agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all liabilities, losses, damages, costs, payments and expenses of every kind and nature (including court costs and attorneys' fees) claims, demands, actions, suits, proceedings, judgments or settlements, arising out of or in any way relating to or occurring in connection with Municipality's use of or the condition of the Premises except to the extent caused by the negligence of the Indemnitees. Metra agrees to notify the Municipality in writing within a reasonable time of any claim of which it becomes aware which may fall within this indemnity provision. The Municipality further agrees to defend the Indemnitees against any claims, suits, actions or proceedings filed against any of them with respect to the subject matter of this indemnity provision, whether such claims, suits, actions or proceedings are rightfully or wrongfully made or filed; provided, however, that the Indemnitees may elect to participate in the defense thereof at their own expense or may at their own expense employ attorneys of their own selection to appear and defend the same on behalf of the Indemnitees. The Municipality shall not enter into any compromise, or settlement of any such claims, suits, actions or proceedings without the consent of Metra, which consent shall not be unreasonably withheld. Notwithstanding anything in this Agreement to the contrary, the indemnities contained in this paragraph shall survive termination of this Agreement.

(c) The indemnification and hold harmless provisions set forth in this Agreement shall survive termination of this Agreement and shall not be construed as an indemnification or hold harmless against and from the negligence of Metra, RTA or NIRCRC with respect to any party performing work on the Premises to the extent such violates the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 et seq.

9. CONTRACTOR INDEMNIFICATION AND INSURANCE.

(a) In all contracts executed by Municipality for maintenance of the Premises (including snow removal) or for the construction, rehabilitation, improvement, repair or maintenance of structures, facilities or improvements located 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 and NIRCRC, 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 cause appropriate clauses to be inserted in all such contracts requiring contractors to procure and maintain comprehensive policies of insurance, insuring contractor, Metra, RTA and NIRCRC, their directors, employees, agents, 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 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.

10. LIENS. If, because of any act or omission of Municipality or its officers, employees, contractors, subcontractors or agents, any mechanic's lien or other lien, charge, or order for the payment of money shall be filed against any portion of the Premises or the Metra Improvements, Municipality shall, at its own cost and expense, cause the same to be discharged of record within thirty (30) days or provide a bond or security acceptable to Metra sufficient to discharge such lien and any interest accrued thereon.

11. ASSIGNMENT. This Agreement shall bind and inure to the benefit of the respective successors or assigns of Municipality and Metra, if any. Except for transfers or assignments to successor public agencies or to a receiver, master, sheriff, trustee in bankruptcy or other assignee by operation of law, neither Municipality nor Metra shall assign this Agreement or any interest therein, or sublet the same, without the written consent of the other Party. Such consent will not be unreasonably withheld.

12. UTILITIES. Municipality will pay for all heat, water, gas, electricity and other utility expense incurred with respect to operation or maintenance of the Premises or the Metra Improvements.

13. VALIDITY. The invalidity or unenforceability of any provision of this Agreement shall not effect or impair any other provision of this Agreement.

14. METRA IMPROVEMENTS. The Municipality shall own the Metra Improvements constructed on the Premises including, without limitation, the Parking Spaces, and all other materials used to improve the Premises and related or appurtenant facilities, equipment and fixtures, subject to the easement granted to Metra in the Easement Agreements. In the event this Agreement is terminated for any reason by Municipality and Metra has not defaulted under the terms and conditions of this Agreement or Municipality defaults under the terms and conditions of the Agreement and, as a result of such Municipality default, Metra is forced to terminate this Agreement, Metra shall be compensated by Municipality for the portion of the Metra Improvements paid for by Metra taken out of commuter or railroad use. Compensation shall be based upon the remainder of the period ("**Use Period**") beginning on the date ("**Use Commencement Date**") which the Metra Improvements are first used in the facilitation of commuter parking services or for railroad purposes and ending on the later of the expiration of: (a) twenty (20) years from such date; or (b) if such actual useful life (as determined by Metra in its sole discretion) is more than twenty (20) years, the end of the actual useful life of the Parking Facilities. In either item (a) or (b) of the preceding sentence, compensation to Metra shall be in an amount equal to the amount of the Grant, reduced by that percentage of the Use Period which has expired before such termination. Such payment shall be made in full within ninety (90) days after Municipality's termination of this Agreement or interest at a rate of one and one-half percent

(1½%) per month shall accrue on any unpaid balances due from the date payment is due until paid. In the event this Agreement is terminated for any reason by Metra and Municipality has not defaulted under the terms and conditions of this Agreement or Metra defaults under the terms and conditions of this Agreement and, as a result of such Metra default, Municipality is forced to terminate this Agreement, Municipality shall not be required to compensate Metra for the Metra Improvements.

15. REVENUES.

(a) All parking fees or other revenue derived from Municipality's use of the Premises ("**Revenues**") shall first be utilized for Routine Maintenance, Standard Maintenance and administrative expenses incurred from the operation of the Metra Improvements. The remainder shall be deposited in a capital improvement account to be used for future renovation or rehabilitation of the Metra Improvements. Upon the termination of this Agreement, the balance of the unexpended Revenues accumulated with respect to the Premises shall be deposited with Metra for Metra's future operation and maintenance of the Metra Improvements.

(b) Municipality agrees that all fees collected for the use of the Parking Facilities shall be accounted for separately. Municipality shall establish and maintain adequate accounting records of all Revenues based on generally accepted accounting principles consistent with the manner Municipality maintains records of its other accounts in order to insure compliance with this Agreement. Municipality shall permit and shall require its contractors to permit Metra, RTA, NIRCRC or any other agency authorized to perform such audit and inspection, to inspect all work, material and other data and records with regard to the Revenue collected and to audit the books and accounts of Municipality and its contractors with respect to said Revenues. Municipality shall make available to Metra an annual audit of its records relating to the Revenue collected and shall make its records available to Metra at mutually convenient times. Furthermore, Municipality shall immediately notify Metra if the Parking Facilities are to be used in a manner substantially different from that intended by this Agreement. At the option of Metra, Metra and Municipality shall conduct a yearly joint inspection of the Premises to assure compliance with the terms of this Agreement.

16. LICENSE TO OPERATE. Municipality shall pay for the cost of any licenses, permits or fees required by federal, state or local rule, regulation, ordinance or law necessary to manage, operate and maintain the Metra Improvements.

17. IMPROVEMENTS. Municipality shall not make any improvements to the Premises without having first obtained the prior written consent of Metra. Municipality shall submit to Metra all plans and specifications for improvements on or to any portion of the Premises (improvements shall not include such items of Routine Maintenance and Standard Maintenance as described in section 4(a) of this Agreement). To the extent required by union contracts, Metra reserves the right to have its employees, agents or independent contractors perform such work set forth in the plans and specifications it approves and Municipality agrees to pay the cost of all such improvements performed by or on behalf of Metra, whether by Metra's employees, agents or independent contractors, at the rates charged to Metra.

18. 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 commercial courier, certified or registered mail, return receipt requested, with proper postage prepaid or sent by facsimile transmission by Metra 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. Such notices, demands, elections and other instruments shall be considered as delivered to recipient on the day of delivery if sent by commercial courier, on the second business day after deposit in the U.S. Mail if sent by certified or registered mail or on the first business day after successful transmission if sent by facsimile transmission.

Notices to Metra shall be mailed to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

Notices to Municipality shall be mailed to:

The Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515
Attn: Village Manager
Phone: (630) 434-5500
Fax: (630) 434-5571

19. ENTIRE AGREEMENT. All of the representations and obligations of Metra are contained herein. Metra and Municipality agree that no change or modification to this Agreement, or any exhibits or attachments hereto, shall be of any force or effect unless such amendment is dated, reduced to writing, executed by both Parties and attached to and made a part of this Agreement. No work shall be commenced and no costs or obligations incurred as a consequence of any amendment to this Agreement or any attachments hereto unless and until such amendment has been executed and made a part of this Agreement.

20. SEVERABILITY. Metra and Municipality agree that if any provision of this Agreement is held to be invalid for any reason whatsoever, the remaining provisions shall not be affected thereby if such remainder would then continue to conform to the terms, purposes and requirements of applicable law.

21. USE RESTRICTIONS. Municipality agrees that none of the Premises will be used, nor will Municipality permit them to be used, for parking within twenty-five (25) feet of the centerline of any trackage. Any portion of the Premises within twenty-five (25) feet from the centerline of any trackage shall be used only for the construction, maintenance, repair and renewal of platforms and other railroad improvements located within the railroad right of way (subject to Federal Railroad Administration rules and regulations and Metra's clearance requirements) and for no other purpose whatsoever. Any construction, rehabilitation or repair work performed on behalf of Municipality occurring within the railroad right-of-way will require flagging protection provided by Metra at Municipality's sole cost and expense. Municipality and/or its contractors shall also purchase and keep in full force and effect railroad protection liability insurance during the performance of any such work.

22. MISCELLANEOUS PROVISIONS.

(a) The captions of the Sections of this Agreement are for convenience and are not to be interpreted as part of this Agreement.

(b) 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.

(c) 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.

(d) This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois.

(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.

23. 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.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, Metra and Municipality hereby enter into this Agreement as of the date and year first above written.

VILLAGE OF DOWNERS GROVE:

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

By: _____
Brian Krajewski, Mayor

By: _____
Philip A. Pagano, Executive Director

ATTEST:

ATTEST:

By: _____
Village Clerk

By: _____
Assistant Secretary to the Board

**EXHIBIT E-1
PROJECT**

**EXHIBIT E-2
PREMISES - METRA EASEMENT PARCELS
(Same as Exhibit A-2 to the IGA)**

**EXHIBIT E-3
INSURANCE REQUIREMENTS**

**EXHIBIT B to the IGA (by Reference)
EASEMENT FOR PARKING AND ACCESS**

**EXHIBIT C to the IGA (BY Reference)
EASEMENT FOR RAILROAD PURPOSES AND ACCESS**

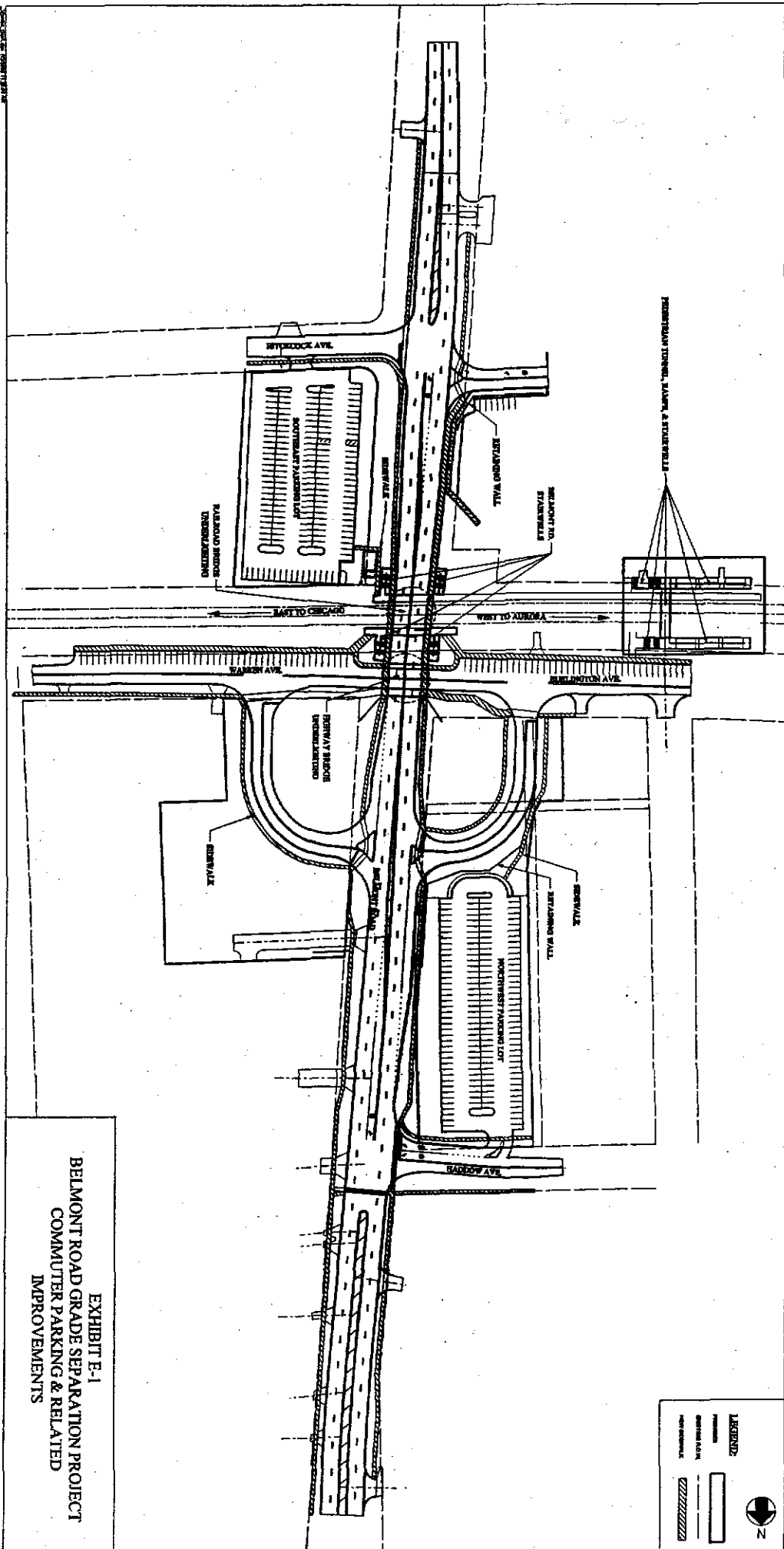


EXHIBIT E-1
 BELMONT ROAD GRADE SEPARATION PROJECT
 COMMUTER PARKING & RELATED
 IMPROVEMENTS

LEGEND
 STRUCTURE
 GENERAL PAVEMENT
 GENERAL
 UTILITY STRUCTURE

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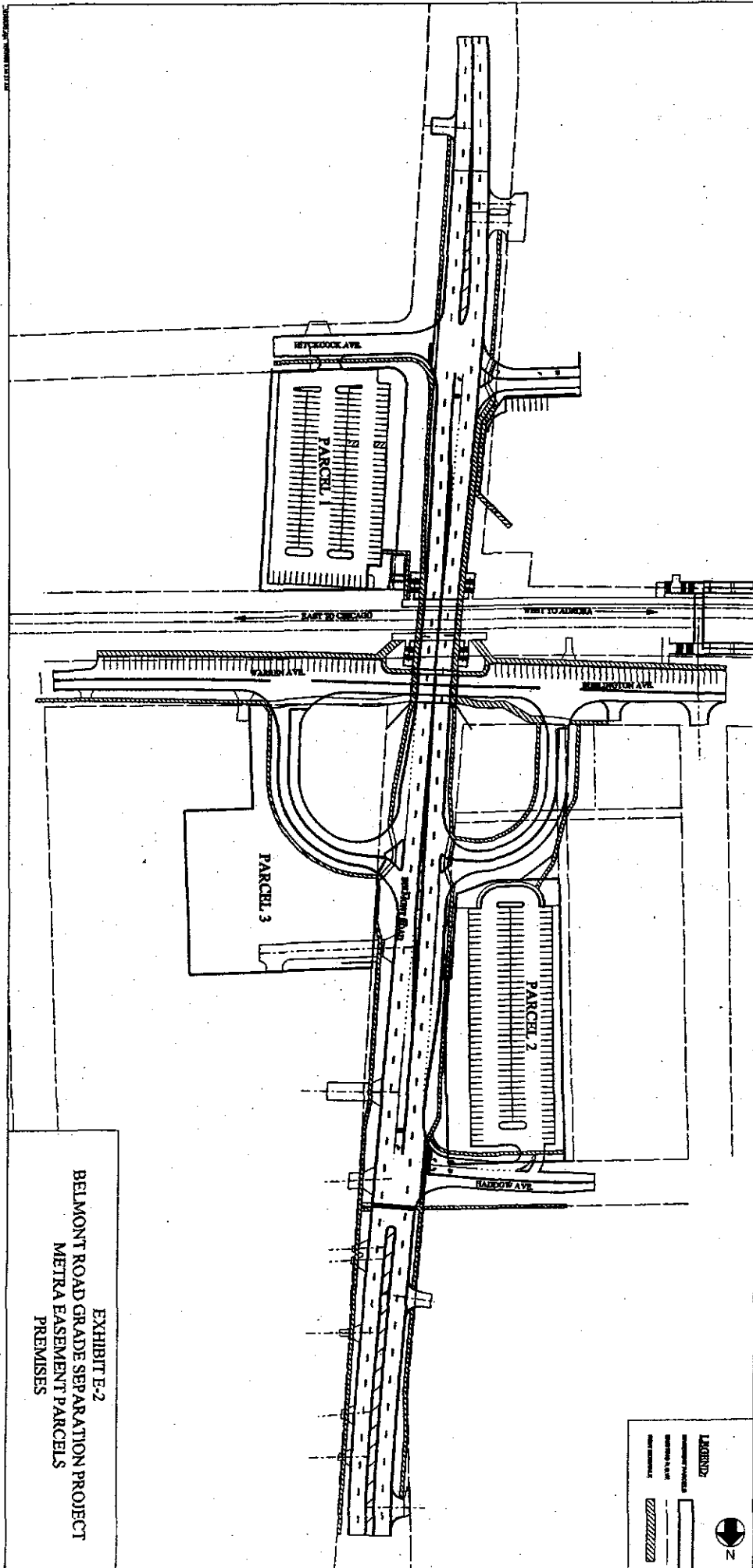


EXHIBIT E-2
 BELMONT ROAD GRADE SEPARATION PROJECT
 METRA EASEMENT PARCELS
 PREMISES

LEGEND

- EASEMENT PARCELS
- EXISTING EASEMENTS
- OTHER FEATURES

N



INSURANCE REQUIREMENTS

REQUISITION NUMBER _____

SPECIFICATION NUMBER _____

EVENT _____

DATE OF EVENT _____

The Contractor/Tenant shall take out and maintain during the life of this contract/event, the following insurance as specified by the insertion of policy limits and such other insurance as the Commuter Rail Division of the Regional Transportation Authority and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation may from time to time require.

TYPE OF COVERAGE	GENERAL POLICY HOLDER RATING OF <u>A</u> OR BETTER	FINANCIAL RATING OF <u>VII</u> OR BETTER <small>As Published By Best's Key Rating Guide</small>	AMOUNT REQUIRED
1. WORKERS' COMPENSATION: Coverage A - Statutory Coverage B - E _____	"	"	\$ <u>500,000⁰⁰</u> <small>Limits of Liability</small>
2. COMPREHENSIVE GENERAL LIABILITY (BROAD FORM): Bodily Injury Liability & Property Damage Liability (combined)	"	"	\$ <u>2,000,000⁰⁰</u> <small>Each Occurrence</small> \$ <u>4,000,000⁰⁰</u> <small>Aggregate</small>
3. EXCESS COMPREHENSIVE GENERAL LIABILITY-EXCESS OF PRIMARY LIMITS (2): Bodily Injury Liability & Property Damage Liability (combined)	"	"	\$ <u>N/A</u> <small>Each Occurrence</small> \$ <u>N/A</u> <small>Aggregate</small>
4. AUTOMOBILE LIABILITY: Bodily Injury Liability & Property Damage Liability (combined)	"	"	\$ <u>1,000,000⁰⁰</u> <small>Combined Single Limit</small>
5. OTHER INSURANCE	"	"	\$ <u>N/A</u>

Additional insured shall be as follows: The Commuter Rail Division of the Regional Transportation Authority and its affiliated separate public corporation known as the Northeast Illinois Regional Commuter Railroad Corporation, both operating under the service mark Metra, as now or exists or may hereafter be constituted or acquired including their interests in partnerships

The Consultant/Tenant shall not commence work herein until he has obtained the required insurance and has received approval of such insurance by Metra. Certificates of insurance indicating amounts and coverages in force shall be furnished to insureds, within thirty (30) calendar days after award of contract.

All policies are in effect at this time and will not be cancelled, modified, limited or allowed to expire without renewal until 30 days written notice has been given to Metra. Such notice shall be sent by certified mail to Metra, care of the Risk Management Director, 15th Floor, 547 W. Jackson, Chicago, Illinois 60661

The Contractor's/Tenants policy will insure all liabilities assumed by the contractor/tenant under the provisions of the Hold Harmless and Indemnity Clause contained in the contract. The Contractor/Tenant shall be responsible for arranging that all subcontractors/sub-tenants maintain the necessary insurance requirements.

EPB
10/13/00

COUNCIL WORKSHOP ITEM

ITEM: Belmont Grade Separation Traffic and Parking Analysis
DATE: September 30, 2002
PREPARED BY: Riccardo F. Ginex, Village Manager
PURPOSE: Recommendation on parking and traffic analysis design

DISCUSSION:

As you know, METRA has been working to finalize the design of the parking areas and traffic flow for the Belmont Grade Separation Project. In July, representatives from the Village met with METRA to inquire about resident concerns that included parking lot locations, the placement of the temporary roadway, and traffic flow around the site. Also, the Mayor inquired about the possibility of not taking Skuddlebutts Restaurant for the project.

METRA has forwarded their findings and concluded the following:

- ? They could move the parking lot on the northwest side to a more southerly direction at an increased project cost of \$372,000, but this new lot configuration would not accommodate all the required replacement parking and ingress and egress would be difficult.
- ? Skuddlebutts will not be taken but due to the need for stormwater detention for the project, the property at 1970 Hitchcock will be acquired. Parking that was going to be placed on the Skuddlebutts' site would be replaced on 1970 Hitchcock.
- ? A traffic signal was not warranted at Belmont and Hitchcock due to the fact the lights at Prairie and Curtiss provide sufficient gaps for traffic to proceed off of Hitchcock onto Belmont.

ATTACHMENT:

METRA letter

Exhibits 1 & 2

RECOMMENDATION:

Council forward a recommendation to METRA as to what design the Village would approve, so it may be submitted to the Federal Transportation Authority for a Finding of No Significant Impact.



SEP 23 2002

VILLAGE OF DOWNERS GROVE
MAYOR BRIAN KRAJEWSKI

August 27, 2002

Mayor Brian Krajewski
Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776

**Subject: Belmont Road Grade Separation Project
Additional Traffic and Parking Analysis
Metra/BNSF Project No. TR-2933**

Dear Mayor Krajewski:

At our June 27, 2002, meeting you had requested that Metra look at several options to our plan presented to you at that meeting. We have looked at those options and based on that review, two exhibits have been developed.

Both exhibits save Skuddlebutts Restaurant. Exhibit 1 moves the Northwest (NW) parking lot further to the south, Exhibit 2 leaves the NW parking lot where it was shown on the plans at our June 27th meeting.

This letter summarizes the additional parking and traffic analysis that was conducted for the Belmont Road Grade Separation Project. Metra agreed to reevaluate the parking lot distributions and perform an additional traffic analysis at Hitchcock Avenue for the project, as shown on the enclosed Exhibit 1.

The overall layout for this project was revised to preserve Skuddlebutts Restaurant and a portion of the property located at the southeast corner of the project. The current owner of Skuddlebutts Restaurant owns the entire southeast quadrant of land, which was previously being acquired and ultimately improved with detention and parking spaces. However, due to the need for stormwater detention storage for this project, additional land at 1970 Hitchcock Avenue will be acquired. This land will also be improved with a surface parking lot to accommodate replacement parking lost from not acquiring a portion of the Skuddlebutts property.

- The NW lot was moved approximately 65 feet to the south to butt up against the western access ramp with the entrance remaining at Hadow Avenue (see Exhibit 1). The lot conforms to the ordinances set forth by the Village of Downers Grove for setback requirements and off-street parking facilities. The revised NW parking lot may accommodate 142 parking spaces. Approximately 300 feet of additional retaining walls and a staircase would be required to move this parking lot a short distance to the south. It is estimated that this relocation of the NW parking lot to the south will increase the cost of the project by approximately \$372,000.

Page 2

Mayor Brian Krajewski

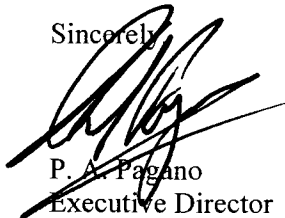
- In both Exhibits 1 & 2, the layout of the southeast parking lot was revised to fit within the parcels at 5005 Belmont Road and 1970 Hitchcock Avenue, thus avoiding the parcels occupied by Skuddlebutts Restaurant. The resulting layout may accommodate 133 parking spaces.
- Moving the NW parking lot to the northeast quadrant is not feasible. The configuration of the lot would not accommodate all of the required replacement parking spaces and ingress and egress would be difficult due to the proximity of the east access ramp.
- The unsignalized intersection on Belmont Road at Hitchcock Avenue was analyzed using the peak hour warrants for traffic signal installation (Warrant 10, Peak Hour Delay and Warrant 11, Peak Hour Volume) as found in the "Manual on Uniform Traffic Control Devices." Based on the analysis of the background traffic volumes, it was determined that a traffic signal is not warranted at this intersection. The upstream, signalized intersections at Prairie Avenue and Curtiss Street create a platoon effect at Hitchcock Avenue and provides sufficient gaps for the minor-street traffic, which should allow the intersection to operate acceptably during the AM and PM peak hours.

In summary, Metra can save Skuddlebutts Restaurant; however, the relocation of the NW parking lot and the addition of a traffic signal at the intersection of Hitchcock Avenue and Belmont Road are not warranted and should not be included in the project. Exhibit 2 is the overall project layout that Metra recommends.

Based on the above, Metra is recommending that the Village of Downers Grove approve the Exhibit 2 layout. Once approval is received, Metra will resubmit the proposed project to the FTA for a revised Finding of No Significant Impact (FONSI). Once the revised FONSI is issued, Metra will then proceed with the final design of the proposed project.

If you have any questions regarding the replacement parking or traffic analysis, please do not hesitate to call me at (312) 322-6979.

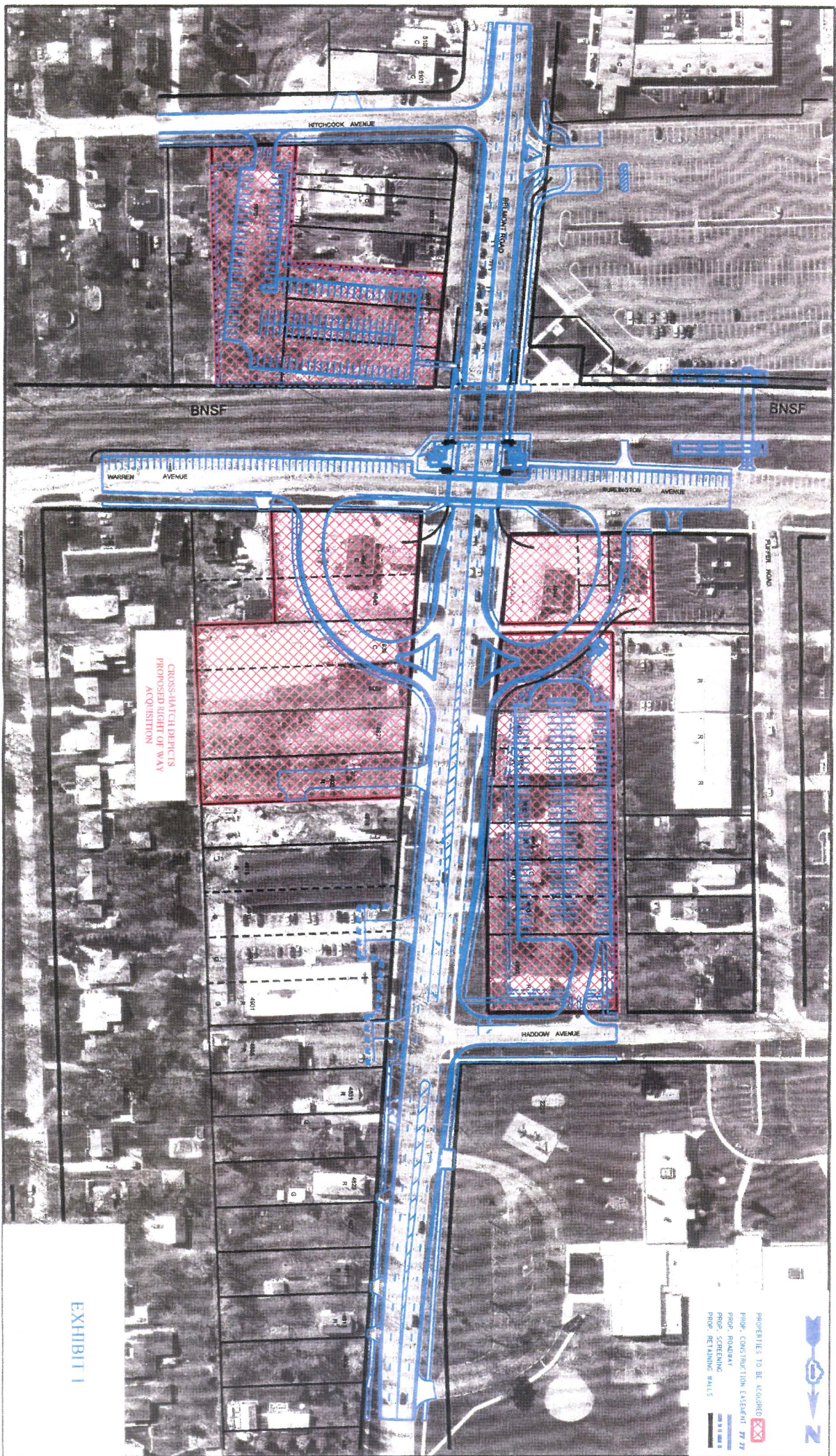
Sincerely,



P. A. Pagano
Executive Director

Encl:

cc: Robin Martel, URS





 PROPERTIES TO BE ACQUIRED 

 HIGH CONSTRUCTION EASEMENT 

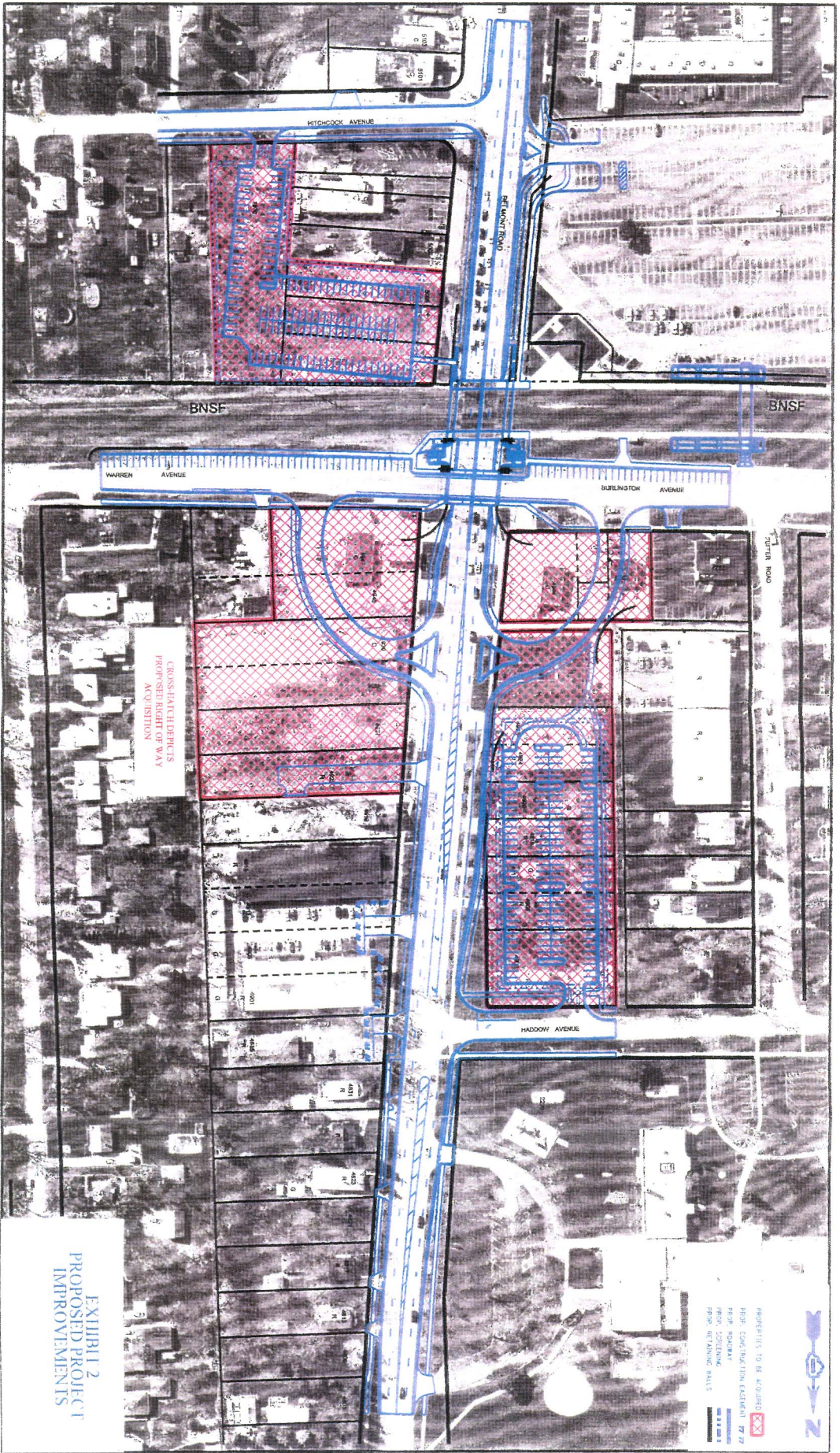
 ROAD 

 SCREENING 

 RETAINING WALLS 

CROSS-HATCH DISTRICTS
 PROPOSED RIGHT OF WAY
 ACQUISITION

EXHIBIT 1



BNSF

BNSF

WARREN AVENUE

BRELINGTON AVENUE

WARREN ROAD

HADDOW AVENUE

CROSS-STITCH DIRECT
PROPOSED RIGHT-OF-WAY
ACQUISITION

EXHIBIT 2
PROPOSED PROJECT
IMPROVEMENTS

PROPERTIES TO BE ACQUIRED
 RIGHT-OF-WAY ACQUISITION
 PROPOSED STREETS
 PROPOSED RETAINING WALLS

