

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JULY 5, 2011 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Pedestrian Underpass Agreement and Intergovernmental Agreement regarding future maintenance and ownership responsibilities of the Belmont Underpass	✓ Resolution Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

Staff has prepared a resolutions authorizing execution of a pedestrian underpass agreement between the Village, Metra and BNSF, and an Intergovernmental Agreement between the Village and DuPage County for the Belmont railroad crossing.

STRATEGIC PLAN ALIGNMENT

Strategic Plan Goals for 2011 - 2018 identified *Top Quality Infrastructure* and *Steward of Financial and Environmental Sustainability*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the July 5, 2011 Consent Agenda

BACKGROUND

The execution of these agreements is one of the final steps toward completion of the Belmont Road Grade Separation Project. The Pedestrian Underpass Agreement between the Village, Metra and BNSF sets forth the Village's operation, maintenance and ownership responsibilities of the Belmont Road Pedestrian Underpass. As a part of this agreement, BNSF Railway is also granting the Village an easement for the pedestrian underpass.

The Intergovernmental Agreement between the Village and the County of DuPage sets forth future maintenance and ownership responsibilities of certain components of the underpass project not previously addressed in the initial agreements (i.e. Belmont Road, stairwells, pump station, etc.). As part of this agreement, the Village will be conveying to the County that portion of the parking lot located at the northeast corner of Belmont Road and Hitchcock Avenue where the pump stationing has been installed. In addition, the Village will be granting the County and access easement over the entire parking lot in order for the County to access the pumping station at the northeast corner of the lot and all appurtenances located underneath the parking lot. In order to convey the pumping station property to the County the Village is also required to sign a release of easement, since the Village has previously granted Metra a blanket easement over the entire area for parking purposes.

ATTACHMENTS

Resolutions
 Agreements

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF A PEDESTRIAN UNDERPASS
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE,
BNSF RAILWAY COMPANY AND THE COMMUTER RAIL DIVISION
OF THE REGIONAL TRANSPORTATION AUTHORITY**

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

1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Municipality”), BNSF Railway Company (“BNSF”) and the Commuter Rail Division of the Regional Transportation Authority (“Metra”), for the operation, maintenance and ownership of the Belmont Road Pedestrian Underpass, as set forth in the form of the Agreement and exhibits 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 and exhibits, 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 and exhibits.

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

PEDESTRIAN UNDERPASS AGREEMENT

Belmont Metra Station Pedestrian Underpass
U.S. D.O.T. No. 078996B

This Agreement ("**Agreement**"), is executed to be effective as of this _____ day of _____, 2011 ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), the VILLAGE OF DOWNER'S GROVE, a political subdivision of the State of Illinois ("**Municipality**") and the COMMUTER RAIL DIVISION OF THE REGIONAL TRANSPORTATION AUTHORITY, a division of an Illinois municipal corporation ("**Metra**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the DuPage County, State of Illinois;

WHEREAS, BNSF owns or controls certain real property situated at or near the vicinity of Belmont Road in Downers Grove, County of DuPage, State of Illinois, at Milepost 22.7 as described or depicted on Exhibit "A" attached hereto and incorporated herein (the "**Premises**").

WHEREAS, Municipality and Metra desire to improve the existing Belmont Metra Station at-grade crossing by constructing a new pedestrian crossing at separated grades to be known as the Belmont Metra Station Pedestrian Underpass, D.O.T. No. 078996B ("**Pedestrian Underpass**"); and

WHEREAS, Metra desires to construct the Pedestrian Underpass on the Premises; and

WHEREAS, upon completion of construction of the Pedestrian Underpass by Metra, Municipality desires to own, operate and maintain the Pedestrian Underpass.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are hereby incorporated into this Agreement and the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I – SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the construction of the proposed Pedestrian Underpass (hereinafter referred to as the "**Structure**"), more particularly described on Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. BNSF has granted a temporary non-exclusive construction license to Metra for construction of the Structure pursuant to the Vehicular Underpass Agreement dated 12/14/2010 between BNSF, Metra, and DuPage County ("Belmont Road Vehicular Underpass Agreement").

ARTICLE II – BNSF OBLIGATIONS

In consideration of the covenants of Municipality and Metra set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon receiving the payment from Municipality as described in the following sentence and provided Municipality is in compliance with the terms and conditions of this Agreement, BNSF will grant to Municipality, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement. Municipality must pay BNSF the sum of one and No/100 Dollars (\$1.00) as compensation for the Easement.

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work- being as shown in the Belmont Road Vehicular Underpass Agreement. Any item of work incidental to the items included in the Belmont Road Vehicular Underpass Agreement not specifically mentioned therein may be included as a part of this Agreement upon written approval of Metra, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing flagging services as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Metra's expense, to serve as a project manager for the Project;
- (f) Construction and removal of tracks including the lining over and lining back of portions of the existing main tracks;
- (g) Construction of changes to the existing pedestrian at-grade crossing and changes to automatic warning devices;

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. Metra agrees to reimburse BNSF for work of an emergency nature caused by Metra or Metra's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Metra and Metra agrees to fully reimburse BNSF for all such emergency work.

5. BNSF may charge Metra for insurance expenses, including self-insurance expenses when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

6. During the construction of the Project, BNSF will send Metra progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement and the Belmont Road Vehicular Underpass Agreement. Metra must reimburse BNSF for completed force-account work within thirty (30) days of the date of receipt of the invoice for such work. Upon completion of the Project, BNSF will send Metra a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown in the Belmont Road Vehicular Underpass Agreement. Pursuant to this section and Article IV, Section 7 herein, Metra must pay the final invoice within ninety (90) days of the date of receipt of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or

the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Metra under this section.

ARTICLE III – METRA AND MUNICIPALITY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Metra and Municipality agree as follows:

1. Metra has furnished to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction.. Said plans and specifications are part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
2. Metra must make any required application and obtain all required permits and approvals for the construction of the Project.
3. Metra must provide for and maintain minimum vertical and horizontal clearances, as required and approved by BNSF as part of the plans and specifications for the Project.
4. Metra or Municipality must acquire all rights of way necessary for the construction of the Project.
5. Metra must make any and all arrangements for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.
6. Metra must construct the Project as shown on the attached Exhibit A and do all work ("Metra's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Metra must furnish all labor, materials, tools and equipment for the performance of Metra's Work. The principal elements of Metra's Work are as follows:
 - (a) Construction of the Structure;
 - (b) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - (c) Placement of 12 inches of sub ballast and the initial six inches of crushed rock ballast on all track roadbeds;
 - (d) Placement of a waterproof membrane on the deck of the Structure, and after the placement of such waterproofing membrane, placement of a layer of crushed rock ballast (not to exceed six (6) inches in thickness) on the deck of the Structure;
 - (e) Provide suitable drainage, both temporary and permanent;
 - (f) Provide appropriate pedestrian control during construction;

- (g) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;
7. Metra must apply and maintain said D.O.T. Crossing number 078996B in a conspicuous location on the Structure.
8. Metra's Work must be performed by Metra or Metra's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.
9. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Municipality, Municipality shall require the subcontractors to execute the Exhibit C documents except when the work is for routine non-structural maintenance including but not limited to sweeping, removing snow, changing light bulbs or for non-invasive inspection or maintenance. Prior to performing any future maintenance with its own personnel, Municipality shall: comply with all of BNSF's applicable safety rules and regulations; require any Municipality employee performing maintenance to complete the safety training program at the BNSF's Internet Website "contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C , a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
10. In order to prevent damage to BNSF trains and property, Metra and Municipality must require their contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Metra and Municipality must require their contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.
11. Metra, Municipality or their contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring or cribbing used by Metra's or Municipality's contractor shall comply with BNSF Bridge Requirements set forth on Exhibit F attached to this Agreement and incorporated herein. Additionally, the shoring and cribbing must comply with all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies.
12. Metra must include the following provisions in any contract with its contractor(s) performing work on said Project:
- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF's Roadmaster, BNSF's Signal Representative and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
 - (b) The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company (ies) in performing such rearrangements.
 - (c) Failure to mark or identify these Lines will be sufficient cause for BNSF's Roadmaster to stop construction at no cost to Metra or BNSF until these items are completed.

To the fullest extent permitted by law, In addition to the liability terms contained elsewhere in this Agreement, the contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE CAUSED BY THE NEGLIGENT, WILLFUL OR WANTON ACTS OR OMISSIONS BNSF ITS AGENTS, SERVANTS, AND EMPLOYEES.**

13. Metra must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III; (ii) the provisions set forth in Article IV; and (iii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14. Except as otherwise provided below in this Section 14, all construction work performed hereunder by Metra for the Project will be pursuant to a contract or contracts to be let by Metra, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations will be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work must have (i) executed and delivered to BNSF a letter agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Project, Metra shall have its contractor give BNSF's representative Patricia Casler four (4) weeks advance notice of the proposed times and dates for work windows. BNSF and Metra's contractor will establish mutually agreeable work windows for the Project. It is understood that BNSF will reduce train operations to two (2) tracks for portions of the construction, only in 2010 and 2011, and excluding the first and fourth quarters of those years, and that this reduction will be done upon BNSF's concurrence with the construction schedule of the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project)
- (e) The plans and specifications for the Project must be in compliance with the Bridge Requirements set forth on Exhibit F.

15. Metra must advise the appropriate BNSF Manager of Public Projects and the Municipality's Village Manager, in writing, of the completion date of the Project within thirty (30) days after such

completion date. Additionally, Metra must notify BNSF's Manager of Public Projects the Municipality's Village Manager, in writing, of the date on which Metra and/or its Contractor will meet with BNSF and Municipality for the purpose of making final inspection of the Project. In the event the parties agree that portions of the Structure were not completed in substantial compliance with the approved plans and specifications they will identify a joint punch list of said items. Upon completion of the correction of such punch list items BNSF and Municipality shall notify Metra in writing that they have accepted their portions of the Structure pursuant to Article IV, Section 11 of this Agreement.

16.(A) TO THE FULLEST EXTENT PERMITTED BY LAW, METRA HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF METRA , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY METRA , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF METRA , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) METRA'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE , (V) ANY RIGHTS OR INTERESTS GRANTED TO METRA PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE , (VI) METRA'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, OR (VII) AN ACT OR OMISSION OF METRA OR THEIR OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY METRA WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE NEGLIGENT, WILLFUL OR WANTON ACTS OR OMISSIONS OF BNSF ITS AGENTS, SERVANTS, AND EMPLOYEES.

(B) TO THE FULLEST EXTENT PERMITTED BY LAW, MUNICIPALITY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF MUNICIPALITY , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY MUNICIPALITY , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF MUNICIPALITY , ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) MUNICIPALITY'S BREACH OF THE EASEMENT GRANTED PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO MUNICIPALITY PURSUANT TO THE EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) MUNICIPALITY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY MUNICIPALITY, OR (VII) AN ACT OR OMISSION OF MUNICIPALITY OR ITS OFFICERS, AGENTS,

INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY MUNICIPALITY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE NEGLIGENT, WILLFUL OR WANTON ACTS OR OMISSIONS OF BNSF ITS AGENTS, SERVANTS, AND EMPLOYEES.

17. Metra must give BNSF's Manager of Public Projects written notice to proceed with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Metra.

ARTICLE IV – JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's approval prior to the commencement of any such changes or modifications.

2. The work hereunder must be done in accordance with the Bridge Requirements set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Metra must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability, but only for the period of delay specifically covered by such inclement weather or unforeseen railroad emergencies. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations (BNSF or its related railroads) or to protect persons or property on or near any BNSF owned property. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Metra (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Metra (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner which is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Metra fails to pay BNSF for the Temporary Construction License pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Metra or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Commuter Rail Division
of the Regional Transportation Authority
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Chief Engineering Officer
Phone: (312) 322-6922

5. Metra and Municipality must supervise and inspect the operations of all their respective contractors to assure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of the BNSF railroad. If BNSF determines that proper supervision and inspection is not being performed by Metra or Municipality, as applicable, personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Metra or Municipality corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify either of the following person for appropriate corrective action:

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

Commuter Rail Division
of the Regional Transportation Authority
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: Chief Engineering Officer
Phone: (312) 322-6922

6. BNSF's contribution for the Project will be made under the Belmont Road Vehicular Underpass Agreement executed commensurate with the date of this Agreement. Payment by Metra to BNSF for the Project will be made pursuant to and governed by the terms of the Belmont Road Vehicular Underpass Agreement.

7. Pursuant to this section and Article II, Section 6 herein, Metra must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement for the Project. BNSF's Share must be paid upon completion of the Project.

8. All expenses detailed in statements sent to Metra pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Federal Aid Highway Program Manual, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

9. The parties mutually agree that no construction activities for the Project, nor future maintenance of the Structure once completed will be permitted during the fourth quarter of each calendar year if such activities will impact train operations, as determined by BNSF in its sole discretion. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800-832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Metra gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's D.O.T. Crossing No. 078996B and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Municipality agree to the following terms upon completion of construction of the Project:

- (a) BNSF will, at its sole cost and expense, accept, own, and maintain its roadbed, track, any access gates installed pursuant to the Project, railroad drainage, and all other railroad facilities including without limitation, the ballast and items above the ballast at the pedestrian bridge, signals and warning devices.
- (b) Municipality will own and maintain, at its sole cost and expense, the Structure, the approach sidewalks, railings, stairs and ramps, and appurtenances thereto, including but not limited to lighting, drainage and any access installed pursuant to this Agreement, upon final acceptance pursuant to Article III, paragraph 15 of this Agreement. BNSF may, at its option, perform maintenance on the Structure in the event BNSF determines in its sole discretion that failure to perform such maintenance would adversely impact train operations. For all maintenance by BNSF, (excluding emergency repairs, which may be performed by BNSF at any time without notice to Municipality), BNSF will notify Municipality of the required maintenance and Municipality shall have thirty (30) days to perform said maintenance. Upon the expiration of said thirty (30) day period, BNSF may perform the maintenance at the sole cost expense of the Municipality. In the event such maintenance involves emergency repairs, BNSF will notify Municipality at its earliest opportunity. Municipality must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).
- (c) Municipality must, at Municipality's sole cost and expense, keep the Structure free from graffiti.
- (d) Municipality must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
- (e) Municipality agrees to reimburse BNSF for the cost of track surfacing due to settlement caused by the construction of the Structure for a period not to exceed two (2) years from the date of final inspection pursuant to Article III, Section 14. Metra hereby indemnifies the Municipality for costs payable to BNSF pursuant to this subsection (e) but only for that portion of the 2-year period after expiration of the contractor's warranty for the Structure.
- (f) Municipality must provide BNSF with any and all necessary permits, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (g) It is expressly understood by Municipality and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- (h) Municipality must keep the Structure and surrounding areas clean and free from birds, pigeons, scavengers, vermin, creatures and other animals.
- (i) If Municipality (including its contractors and agents) or BNSF, on behalf of Municipality, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii) any maintenance or

other work to the superstructure of the Structure, then Municipality or its contractors and/or agents must procure and maintain the following insurance coverage:

Railroad Protective Liability insurance naming only the **Railroad** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy must be issued on a standard ISO form CG 00 35 10 93 and include the following:

- ◆ Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
- ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
- ◆ Endorsed to remove any exclusion for punitive damages.
- ◆ No other endorsements restricting coverage may be added.
- ◆ The original policy must be provided to the **Railroad** prior to performing any work or services under this Agreement

As used in this paragraph, "**Railroad**" means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Municipality may participate in BNSF's Blanket Railroad Protective Liability Insurance Policy **if available** to Municipality or its contractors. The limits of coverage are the same as above

12. Municipality hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Municipality property to BNSF tracks for maintenance purposes.

13. Metra must provide one set of as built plans for the Project (prepared in **English Units**) to BNSF and Municipality, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the Bridge Requirements set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

14. Subject to the restrictions imposed by Article IV, Section 9 above, Municipality must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection or Maintenance** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. Such notification is not required for routine non-structural maintenance limited to sweeping, removing snow, changing light bulbs or for non-invasive inspection or maintenance. If the construction work hereunder is contracted, Municipality must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Municipality will be responsible for its contractor(s) compliance with such obligations.

15. BNSF may, at its expense, make future changes or additions to the railroad components of the Structure if necessary or desirable, in BNSF's sole discretion, including, without limitation the following: (i) the right to raise or lower the grade or change the alignment of its tracks, (ii) the right to lay additional track or tracks, or (iii) the right to build other facilities in connection with the operation of its railroad. Such changes or additions must not change or alter the non-railroad components of the Structure. If it becomes necessary or desirable in the future to change, alter, widen or reconstruct the non-railroad components of the Structure to accommodate railroad projects, the cost of such work, including any cost incidental to alteration of railroad or non-railroad facilities made necessary by any such changes to the Structure, will be divided between BNSF, Metra and Municipality in such shares as may be mutually agreed to by the parties hereto.

16. Municipality may, at Municipality's sole expense, alter or reconstruct the non-railroad components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic; provided, however, that any such alteration or reconstruction must not encroach further upon or occupy the surface of BNSF's right-of-way to a greater extent than is contemplated by the plans and specifications to be approved by BNSF pursuant to Article III, Section 1 herein, without obtaining BNSF's

prior written consent and the execution of a supplement to this Agreement or the completion of a separate agreement.

17. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Illinois and the Federal Highway Administration, for a period of one (1) year from the date of final BNSF invoice under this Agreement.

18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, no party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

19. In the event construction of the Project does not commence within 2 years of the Effective Date, this Agreement will become null and void.

20. Neither termination nor expiration of this Agreement will release any party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF, Metra and Municipality with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF Railway
547 West Jackson Blvd., Ste. 1509
Chicago, Illinois 60661
Attn: Manager of Public Projects
Phone: (312) 850-5680
Fax: (312) 850-5690

Municipality:

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

Metra

Commuter Rail Division
of the Regional Transportation Authority
547 W. Jackson Boulevard
Chicago, Illinois 60661

Attn: General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____
Printed Name: _____
Title: _____

WITNESS:

MUNICIPALITY

VILLAGE OF DOWNERS GROVE

By: _____
Printed Name: _____
Title: _____

WITNESS:

METRA

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

By: _____
Printed Name: _____
Title: _____

WITNESS:

Exhibit A

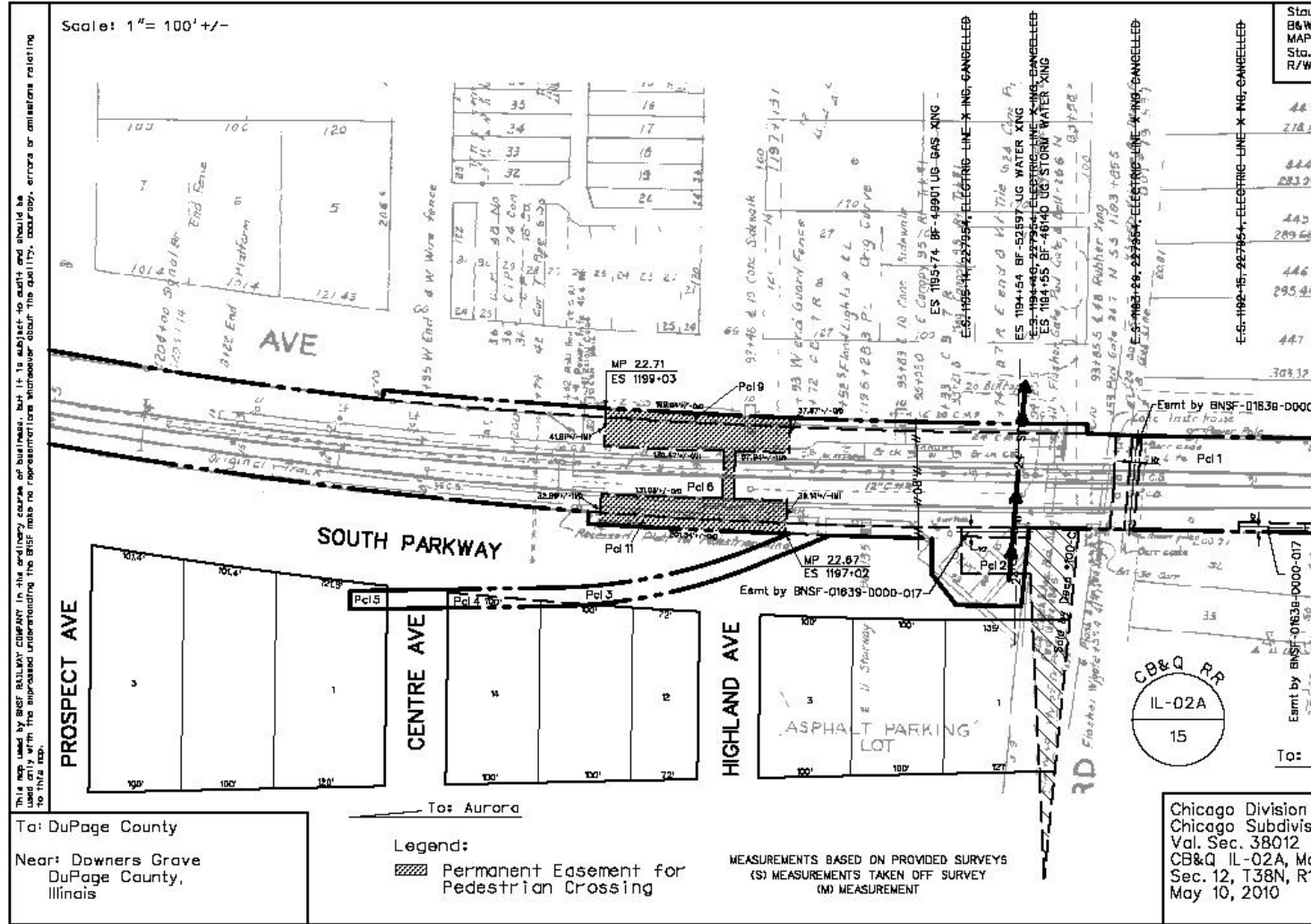


Exhibit B

EASEMENT AGREEMENT

FOR _____
(Pedestrian Underpass Agreement)

THIS EASEMENT AGREEMENT FOR _____ ("**Easement Agreement**") is made and entered into as of the ____ day of _____ 20__ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), and _____, a _____ ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of _____, County of _____, State of _____, at Mile Post _____, [Project # _____], as described or depicted on **Exhibit "A-1"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Pedestrian Underpass Agreement dated as of _____ concerning improvements on or near the Premises (the "**Underpass Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement Agreement.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

- 1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the UNDERPASS Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained or caused to be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the UNDERPASS Agreement.
- 1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantor may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the UNDERPASS Agreement.
- 1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and
- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 Term of Easement. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual. **[If this is a temporary easement replace the preceding sentence with the following:** The term of this Easement, unless sooner terminated under provisions of this Easement Agreement, shall expire on the date that is _____ after the Effective Date.]

Section 3 No Warranty of Any Conditions of the Premises. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises, and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 Nature of Grantor's Interest in the Premises. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 Improvements. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and

workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of

any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving five (5) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the UNDERPASS Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform **the following**:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Failure to Remove Improvements and Restore. Upon failure, neglect or refusal of Municipality to comply with the provisions of Subsection 9.1, BNSF may make or cause to be made such removal and restoration, and the total cost thereof shall be paid by Municipality; or, if BNSF shall so elect, it may treat the said Improvements as abandoned by Municipality and may make such disposition thereof as it may see fit.

9.3 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor reserves the right to assign this Easement Agreement to Apex Property & Track Exchange, Inc. ("**Apex**"). Apex is a qualified intermediary within the meaning of Section 1031 of the Internal Revenue Code of 1986, as amended, and Treas. Reg. § 1.1031(k)-1(g), for the purpose of completing a tax-deferred exchange under said Section 1031. Grantor shall bear all expenses associated with the use of Apex, or necessary to qualify this transaction as a tax-deferred exchange, and, except as otherwise provided herein, shall protect, reimburse, indemnify and hold harmless Grantee from and against any and all reasonable and necessary additional costs, expenses, including, attorneys fees, and liabilities which Grantee may incur as a result of Grantor's use of Apex or the qualification of this transaction as a tax-deferred transaction pursuant to Section 1031. Grantee shall cooperate with Grantor with respect to this tax-deferred exchange, and upon Grantor's request, shall execute such documents as may be required to effect this tax-deferred exchange.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the UNDERPASS Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Fort Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B-1"** (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. [IF LEGAL DESCRIPTION IS NOT AVAILABLE USE THE FOLLOWING IN PLACE OF THE PRIOR SENTENCE: As of the Effective Date, a legal description of the Premises is not available. Grantee and Grantor shall work together in good faith to establish the legal description for the Premises. Once Grantor and Grantee have approved the legal description, Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as **Exhibit "B-1"** (the "**Memorandum of Easement**").] The Memorandum of Easement shall be recorded by Grantee in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within ____ days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of Illinois without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 Intentionally deleted.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

14.7 The terms of the UNDERPASS Agreement are incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the UNDERPASS Agreement is, for whatever reason, no longer in effect.

[Signature page follows]

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,
a _____

By: _____
Name: _____
Title: _____

Exhibit A-1

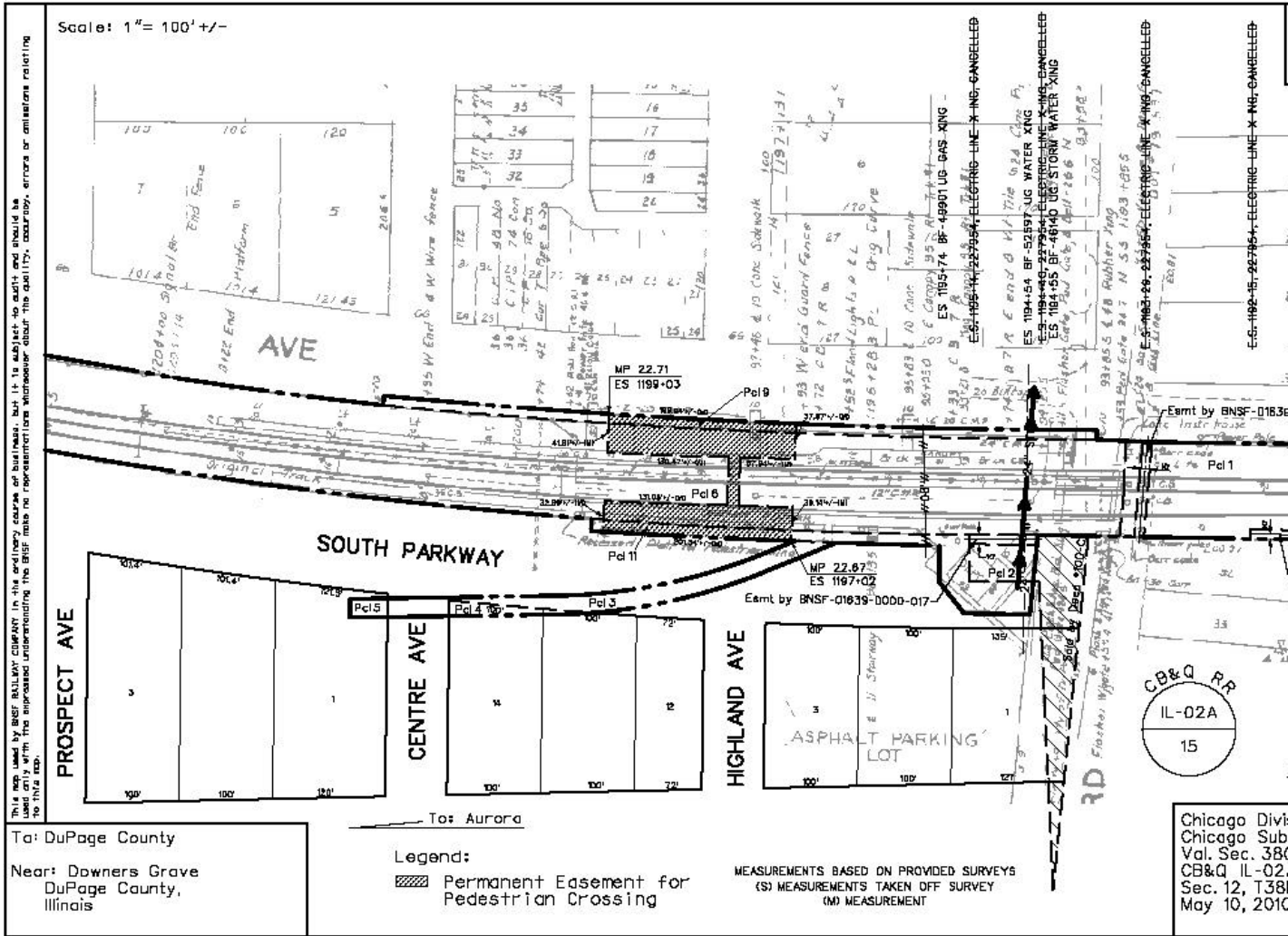


EXHIBIT "B-1"

Memorandum of Easement

THIS MEMORANDUM OF EASEMENT is hereby executed this ___ day of _____, 20___, by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and _____, a _____ ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in _____ County, _____ as described on **Exhibit "A-1"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual. Provisions regulating the use and purposes to which the Easement shall be limited, are set forth in detail in the Easement Agreement and Grantor and Grantee agree to abide by the terms of the Easement Agreement.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

[Signature page follows]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

_____,

By: _____
Name: _____
Title: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 200__, by _____
_____ (name) as _____ (title) of BNSF RAILWAY
COMPANY, a Delaware corporation.

Notary Public

(Seal)

My appointment expires: _____

STATE OF _____ §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the ___ day of _____, 200__, by _____
_____ (name) as _____ (title) of
_____, a _____.

Notary Public

(Seal)

My appointment expires: _____

Exhibit "B-1"

Exhibit C

CONTRACTOR REQUIREMENTS

1.01 General

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of _____.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1".
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations.
- **1.01.05** The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the (Agency) at _____ and Railway's Manager Public Projects, telephone number () _____ at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway, must refer to Railroad's file _____.
- **1.01.07** For any falsework above any tracks or any excavations located, whichever is greater, within twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 1 ½ horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.contractororientation.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Superintendent _____ at (_____)_____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15' Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, the following clearances shall be maintained:
 - 25' Horizontally from centerline of nearest track
 - 23'-3 1/2" Vertically above top of rail
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the (Agency) _____ and must not be undertaken until approved in writing by the Railway, and until the (Agency) _____ has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by (Agency) _____ for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Private Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by

the Contractor. The temporary crossing for use of the Contractor will be at the expense of the Contractor.

- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the Railway's Resource Operations Center at 1(800) 832-5452, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- 1.04.01 Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.contractororientation.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

1.05 Protection of Railway Facilities and Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's Roadmaster (telephone _____) a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.
- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger and protective services and devices will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When in the opinion of the Railway's Representative it is necessary to safeguard Railway's Property, employees, trains, engines and facilities.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
- **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- **1.05.03c** The cost of flagger services provided by the Railway, when deemed necessary by the Railway's representative, will be borne by the (Agency)_____. The estimated cost for one (1) flagger is \$600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, transportation, meals, lodging and supervision. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. The flagging rate in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of flagging pursuant to this paragraph.
- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed of _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railroad's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.contractororientation.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railroad's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09** The Contractor must not pile or store any materials, machinery or equipment closer than 25'-0" to the center line of the nearest Railway track. Materials, machinery or equipment must not be stored or left within 250 feet of any highway/rail at-grade crossings, where storage of the same will interfere with the sight distances of motorists approaching the crossing. Prior to beginning work, the Contractor must establish a storage area with concurrence of the Railroad's representative.
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**
- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of

depth, must be shored where there is any danger to tracks, structures or personnel.

- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

1. Accident City/St _____ 2. Date: _____ Time:
County: _____ 3. Temperature: _____ 4. Weather
(if non-Railway location)
5. Social Security #
6. Name (last, first, mi)
7. Address: Street: _____ City: _____ St. _____ Zip:
8. Date of Birth: _____ and/or Age _____ Gender:
(if available)
9. (a) Injury: _____ (b) Body Part:
(i.e. (a) Laceration (b) Hand)
11. Description of Accident (To include location, action, result, etc.):

12. Treatment:
? First Aid Only
? Required Medical Treatment
? Other Medical Treatment
13. Dr. Name _____ 30. Date:
14. Dr. Address:
Street: _____ City: _____ St: _____ Zip:
15. Hospital Name:
16. Hospital Address:
Street: _____ City: _____ St: _____ Zip:
17. Diagnosis:

**FAX TO
RAILWAY AT (817) 352-7595
AND COPY TO
RAILWAY ROADMASTER FAX**

OVERPASS EXHIBIT "C-1"

**Agreement
Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR**

BNSF RAILWAY COMPANY
Attention: Manager Public Projects

Railway File: _____

Agency Project: _____

Gentlemen:

The undersigned (hereinafter called, the "Contractor"), has entered into a contract (the "Contract") dated _____, 200_ [*****Drafter's Note: Insert the date of the contract between the Agency and the Contractor here ****] with _____ [*****Drafter's Note: insert the name of the Agency here****] for the performance of certain work in connection with the following project:

_____. Performance of such work will necessarily require contractor to enter BNSF RAILWAY COMPANY ("Railway") right of way and property ("Railway Property"). The Contract provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for _____ [insert Agency name here] (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Contract, has agreed and does hereby agree with Railway as follows:

Section 1. RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE BOILER INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and

thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

Section 2. TERM

This Agreement is effective from the date of the Contract until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

Section 3. INSURANCE

Contractor must, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the contractor. Coverage must be purchased on a post 1998 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- Bodily Injury and Property Damage
- Personal Injury and Advertising Injury
- Fire legal liability
- Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor of and acceptable to Railroad.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Railroad employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage
- Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Railroad.
- Additional insured endorsement in favor or and acceptable to Railroad.
- Separation of insureds.

- The policy shall be primary and non-contributing with respect to any insurance carried by Railroad.
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:
- Waiver of subrogation in favor of and acceptable to Railroad.
- D. Railroad Protective Liability insurance naming only the Railroad as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Shall be issued on a standard ISO form CG 00 35 10 93 and include the following:
- Endorsed to include the Pollution Exclusion Amendment (ISO form CG 28 31 10 93)
 - Endorsed to include the Limited Seepage and Pollution Endorsement.
 - Endorsed to remove any exclusion for punitive damages.
 - No other endorsements restricting coverage may be added.
 - The original policy must be provided to the Railroad prior to performing any work or services under this Agreement

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to contractor.

Other Requirements:

All policies (applying to coverage listed above) must not contain an exclusion for punitive damages and certificates of insurance must reflect that no exclusion exists.

Contractor agrees to waive its right of recovery against Railroad for all claims and suits against Railroad. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Railroad for all claims and suits. The certificate of insurance must reflect the waiver of subrogation endorsement. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against Railroad for loss of its owned or leased property or property under contractor's care, custody or control.

Contractor is not allowed to self-insure without the prior written consent of Railroad. If granted by Railroad, any deductible, self-insured retention or other financial responsibility for claims must be covered directly by contractor in lieu of insurance. Any and all Railroad liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by contractor's insurance will be covered as if contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing the Work, contractor must furnish to Railroad an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. The policy(ies) must contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Railroad in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration. This cancellation provision must be indicated on the certificate of insurance. Upon request from Railroad, a certified duplicate original of any required policy must be furnished. Contractor should send the certificate(s) to the following address:

Ebix BPO
PO Box 12010-BN
Hemet, CA 92546-8010
Fax number: 951-652-2882
Email: bnsf@ebix.com

Any insurance policy must be written by a reputable insurance company acceptable to Railroad or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provide.

Contractor represents that this Agreement has been thoroughly reviewed by contractor's insurance agent(s)/broker(s), who have been instructed by contractor to procure the insurance coverage required by this Agreement. Allocated Loss Expense must be in addition to all policy limits for coverages referenced above.

Not more frequently than once every five years, Railroad may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by contractor, contractor must require that the subcontractor provide and maintain the insurance coverages set forth herein, naming Railroad as an additional insured, and requiring that the subcontractor release, defend and indemnify Railroad to the same extent and under the same terms and conditions as contractor is required to release, defend and indemnify Railroad herein.

Failure to provide evidence as required by this section will entitle, but not require, Railroad to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section will not operate as a waiver of contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by contractor will not be deemed to release or diminish the liability of contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad will not be limited by the amount of the required insurance coverage.

For purposes of this section, Railroad means "Burlington Northern Santa Fe Corporation", "BNSF RAILWAY COMPANY" and the subsidiaries, successors, assigns and affiliates of each.

Section 4. EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with the provisions, obligations, requirements and limitations contained in the Contract and the Contractor Requirements set forth on Exhibit "C" attached to the Contract and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site.

Section 5. TRAIN DELAY

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. Damages for train delay for certain trains may be as high as \$50,000.00 per incident.

Contractor and its subcontractors must give Railway's representative (_____) _____ weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

Kindly acknowledge receipt of this letter by signing and returning to the Railway two original copies of this letter, which, upon execution by Railway, will constitute an Agreement between us.

(Contractor)

BNSF Railway Company

By: _____
Printed Name: _____
Title: _____

By: _____
Name: _____
Manager Public Projects

Contact Person: _____
Address _____

City: _____ State: ___ Zip: ___
Fax: _____
Phone: _____
E-mail: _____

Accepted and effective this _____ day of _____ 20__.

EXHIBIT D

Reserved.

Exhibit E

Reserved.

Exhibit F

Bridge Requirements

BRIDGE DESIGN, PLANS & SPECIFICATIONS:

Bridge design calculations will be submitted to BNSF for review and approval. Design calculations will be summarized on a cover sheet to state the design dead load, design live load and amount of impact and any secondary loads considered. Bridge design by other than a BNSF pre-approved consultant will be subject to a third party design check at the Municipality's expense.

For railroad bridges and culverts over waterways, BNSF will be provided with the Hydrology and Hydraulic design criteria, calculations and site specific data, including electronic data utilized in computer simulation modeling. Design considerations should include future land use changes that would increase the volume, velocity or sediment transport characteristics of the streambed flows. Design shall include sediment transport calculations and erosion control mitigation measures if necessary.

Bridge plans will be submitted to BNSF for review and approval at the 30%, 60% and 90% stage of design. The final set of plans must be approved by BNSF prior to letting of bids for the Project.

Prior to issuing any invitation to bid on construction of the structure, Metra should conduct a pre-bid meeting where prospective Contractors have the opportunity to communicate with BNSF personnel as to the site specific train speeds, train density, and general safety requirements for men and equipment working near live tracks. Any invitation to bid and specifications for the structure and the Project must be submitted to BNSF for review and approval prior to letting of bids for the Project.

BRIDGE CONSTRUCTION:

After awarding the bid, but prior to the Contractor entering BNSF right of way, the Metra should conduct a pre-construction meeting with BNSF personnel in attendance to reiterate the safety requirements of construction activity adjacent to live tracks.

During construction, BNSF will require an experienced Quality Control Inspector to be present during certain critical times of the Project, including but not limited to: driving foundation piles, erecting falsework, construction of shoring and retaining walls, placing concrete, placing soil backfill and compaction processes. Certain components, normally produced off site, will require a QC inspector to be present, including the production of precast concrete components and steel fabrication. The QC inspector will provide reports to BNSF including pile driving records, concrete compressive test records, and other such reports requested by BNSF. QC Inspection services can be provided by Metra subject to acceptance by BNSF. If the QC services provided are not acceptable, BNSF will provide an independent QC Inspection service to supplement the deficiencies. Metra shall reimburse BNSF for all costs of supplemental QC Inspection services.

Within 90 days of the conclusion of the Project and final acceptance by BNSF and Municipality, Metra will provide BNSF and Municipality with a complete electronic set of the bridge plans labeled "As Built". Those plans will reflect any and all deviations from the original plans that occurred during construction. The "As Built" plans will be submitted in Micro Station *.dgn electronic format (preferred) or AutoCAD *.dwg format. Electronic plans are to be submitted in the original format used for CAD plan preparation and not converted to another format prior to submission. The plans must show dimensioned locations of existing and relocated utilities.

BRIDGE MAINTENANCE:

BNSF will be responsible for maintenance of the track and ballast over the bridge and the earth embankment approaches. The Municipality will be responsible for maintenance of the structural components of the bridge, including deck waterproofing and paint.

For bridges over roadways, the Municipality will maintain the roadways under the bridge including signs, pedestrian walkways, fences, drains, landscaping, earth retention components, embankment slopes, erosion control, surface drainage, paint, walkways, handrails, lighting and other improvements associated with the Project. The Municipality will be responsible to post highway vertical clearance signs and maintain such signs to reflect potential future pavement profile elevation changes. Clearance signs, traffic control signals or other signs should not be attached to a load-carrying member of the railroad bridge.

For railroad bridges over waterways, the Municipality will be responsible for all aspects of channel maintenance across BNSF's right-of-way, including toe of slope erosion control where the railroad embankment meets the streambed. The Municipality will be responsible for debris removal that may accumulate at bridge piers as well as silt removal, local and general scour and remediation and streambed lateral migration and streambed degradation remediation.

Fencing and other trespass controls within BNSF's right-of-way and incorporated into the Project shall be designed and maintained by the Municipality. Graffiti removal will be the responsibility of the Municipality.

BRIDGE INSPECTION:

BNSF will conduct annual routine structural inspections of railroad bridges over public roadways and waterways at no cost to the Municipality. The Municipality shall provide traffic control under those bridges spanning roadways to enable BNSF personnel or representatives to safely conduct the annual inspections. For routine annual inspections, BNSF will give the public Municipality 7 days advance notice of traffic control requirements. In the event of an earthquake, fire, flood, damage from vehicular impacts or other emergent situations, the Municipality will provide traffic control in roadways to allow immediate inspection by BNSF personnel or representatives. Traffic control will include lane closures or other such measures to allow BNSF personnel, contractors and equipment to be safely positioned under the superstructure.

Upon the conclusion of the BNSF inspection, the Municipality will be notified of items in need of repair. If the Municipality does not complete the repairs requested by BNSF within a reasonable time period, BNSF personnel and/or contractors will perform the repairs and invoice the Municipality for the entire cost of such repairs. Regardless of the nature or cause of such maintenance and repairs, traffic control will be provided by the Municipality at no cost to BNSF to allow safe access to the bridge.

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
COUNTY OF DUPAGE AND THE VILLAGE OF DOWNERS GROVE
CH 2/BELMONT ROAD GRADE SEPARATION AT THE BURLINGTON
NORTHERN RAILROAD TRACKS SECTION 99-00173-03-GS**

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 ("Village") and the County of DuPage ("County"), for the construction of a grade separation at CH 2/Belmont Road and the Burlington Northern Railroad tracks, as set forth in the form of the Agreement and all exhibits submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Mayor, 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 and all attached exhibits and necessary documentation, 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 and all exhibits.

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 BETWEEN
THE COUNTY OF DU PAGE AND THE VILLAGE OF DOWNERS GROVE
CH 2/BELMONT ROAD
GRADE SEPARATION AT THE BURLINGTON NORTHERN RAILROAD TRACKS
SECTION 99-00173-03-GS

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2011, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the Village of Downers Grove (hereinafter referred to as the "VILLAGE"), a municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois. The COUNTY and the VILLAGE are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the parties have previously entered into an agreement with the Burlington Northern and Sante Fe Railway Company, the Commuter Rail Division of the Regional Transportation Authority and the Illinois Department of Transportation (hereinafter referred to as the "MULTI-PARTY AGREEMENT") for the construction of a grade separation at CH 2/Belmont Road and the Burlington Northern Sante Fe Railroad tracks, Section 99-00173-03-GS (hereinafter referred to as the "IMPROVEMENT"); and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate in the construction of the IMPROVEMENT because of the benefit of the IMPROVEMENT to the residents of DuPage County, the Village of Downers Grove and the public; and

WHEREAS, the COUNTY and the VILLAGE desire to enter into a separate agreement to define ownership and future maintenance responsibilities of certain components of the IMPROVEMENT that were not defined in the MULTI-PARTY AGREEMENT; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/1-101 et seq.) and the VILLAGE by virtue of its power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 et seq.) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION.

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 OWNERSHIP/FUTURE MAINTENANCE

- 2.1. The following tables define COUNTY/VILLAGE ownership and future maintenance responsibilities of certain components of the IMPROVEMENT upon completion of the IMPROVEMENT:

BELMONT ROAD	COUNTY	VILLAGE
Roadway including pavement, curb and gutter, drainage structures and storm sewers, sidewalk along Belmont Road, and parkways within Belmont Road right-of-way excluding area west of (behind) Retaining Wall F. (See Exhibit A attached hereto and incorporated by reference for limits of County's storm sewer maintenance responsibility where sewers extend beyond Belmont Road right-of-way)	100%	0%

TRAFFIC SIGNAL AT HADDOW AVENUE AND AT PRAIRIE AVENUE	COUNTY	VILLAGE
Ownership, maintenance and operation (including combination traffic signal poles)	100%	0%
Energy, including signals and intersection lighting	0%	100%

ACCESS RAMPS CONNECTING BELMONT ROAD AND BURLINGTON AVENUE/WARREN AVENUE	COUNTY	VILLAGE
Limits of roadway maintenance responsibilities extend to the edge of Belmont Road through pavement and includes pavement, curb and gutter, drainage structures and storm sewers, medians and channelizing islands, sidewalks, signing and parkways outside County right-of-way.	0%	100%

PUMP STATION	COUNTY	VILLAGE
Pump station including pump house, fencing, parking pad and primary and back-up outlet storm sewers and structures (See Exhibit A attached hereto and incorporated herein by reference)	100%	0%

RETAINING WALLS (See Exhibit B attached hereto and incorporated herein by reference)	COUNTY	VILLAGE
A, D(1) and F	100%	0%
B, C, D(2) and E	0%	100%

STAIRWELLS	COUNTY	VILLAGE
Stairwells including structural elements, railings and canopies	0%	100%

PARKING LOTS	COUNTY	VILLAGE
Parking lots including pavement, medians, underground detention system and sidewalks which directly serve the parking lots	0%	100%

VILLAGE UTILITIES	COUNTY	VILLAGE
New Watermain	0%	100%

LIGHTING	COUNTY	VILLAGE
Underpass lighting @ BNSF RR structure and at Burlington Avenue./Warren Avenue structure, combination traffic signal poles @ Haddow Avenue and at Prairie Avenue	100%	0%
New stairwells at each quadrant of the BNSF RR bridge, parking lots, boarding platforms, new access ramps, including roadway lighting within the Belmont Road right-of-way, and pedestrian tunnel and approaches	0%	100%

IMPROVED BURLINGTON AVENUE/WARREN AVENUE	COUNTY	VILLAGE
Roadway including pavement, curb and gutter, drainage structures and storm sewers, sidewalks and parkways	0%	100%

RECONSTRUCTED HITCHCOCK AVENUE AND HADDOW AVENUE	COUNTY	VILLAGE
Roadway including pavement, curb and gutter, drainage structures and storm sewers, sidewalk and parkways; maintenance shall extend to the edge of through pavement on Belmont Road	0%	100%

2.2 This AGREEMENT shall serve in lieu of a separate COUNTY permit for the water main installed as part of the IMPROVEMENT; and by execution of this AGREEMENT, the VILLAGE shall be bound to the General Terms for Highway Department Permits as they exist on the date of execution of this AGREEMENT by the COUNTY.

2.3 If, in the future, the COUNTY improves CH 2/Belmont Road which requires modernization or reconstruction of the traffic signal at Haddow Avenue and/or at Prairie Avenue, the parties hereby agree to pay a cost share of the improvement to the traffic signals based on the

number of approaches to the intersection maintained by the respective parties hereto.

- 2.4 The VILLAGE shall convey to the COUNTY, by quit claim deed and at no cost to the COUNTY, the required property for the pump station as depicted on the Plat of Survey attached hereto as Exhibit C and made a part hereof and shall also execute a partial release of the Easement for Parking and Access granted to the Commuter Rail Division of the Regional Transportation Authority for the pump station property. The VILLAGE shall also grant to the COUNTY a Grant of Permanent Easement to access and maintain the pump house and appurtenances that includes the drainage pipes and structures that extend into VILLAGE right-of-way in the parking lot in the northeast corner of Belmont Road and Hitchcock Avenue for inspection, maintenance, repair, etc. which is attached hereto as Exhibit D and made a part hereof.
- 2.5 The COUNTY and VILLAGE agree that if any major repairs or replacement of the pump station's back-up outlet storm sewers (drainage pipes and structures owned and maintained by the COUNTY referenced in Exhibit A herein) are required in the future, the COUNTY agrees to restore the VILLAGE'S parking lot to like condition.
- 2.6 If any of the maintenance performed or not performed, as set forth herein, by either party creates an immediate and serious threat to the life or safety of any person or to the safety of the property of any person and the affected party is not able to contact the other party to immediately repair the condition(s) creating such threat, the affected party shall have the right, but not the obligation, to repair such condition(s) and give the other party notice of such repair as soon as possible and the other party shall pay the affected party's costs of such repair upon presentation of an invoice from the affected party, detailing such costs within forty-five (45) days of receipt of said invoice. If a dispute should arise concerning emergency maintenance condition(s), paragraph 3.2 herein shall apply.

3.0 GENERAL

- 3.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address future maintenance responsibilities of certain components of the IMPROVEMENT and no changes to maintenance and/or jurisdiction of existing roadways and appurtenances are proposed between the parties.
- 3.2. In the event of a dispute between the COUNTY and VILLAGE representatives in carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Village Manager of the VILLAGE shall meet and resolve the issue.
- 3.3. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

4.0 ENTIRE AGREEMENT

- 4.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to future maintenance of certain components of the IMPROVEMENT, and supersedes all previous communications or understandings whether oral or written.

5.0 NOTICES

- 5.1. Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or sent by confirmed facsimile, to the party's address. The address of each party is as specified below; either party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

FOR THE VILLAGE:
Dave Fieldman
Village Manager
Village of Downers Grove

801 Burlington Avenue
Downers Grove, IL 60515
Facsimile: 630-434-5571

Cc: Village Attorney
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Facsimile: 630-434-5493

FOR THE COUNTY:
Charles Tokarski, P.E.
County Engineer
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Facsimile: 630-407-6901

6.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

6.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

7.0 ASSIGNMENT

7.1. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their representative successors and assigns.

8.0 GOVERNING LAW

8.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

8.2. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Eighteenth Judicial Circuit Court for DuPage County.

9.0 SEVERABILITY

9.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

10.0 FORCE MAJEURE

10.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

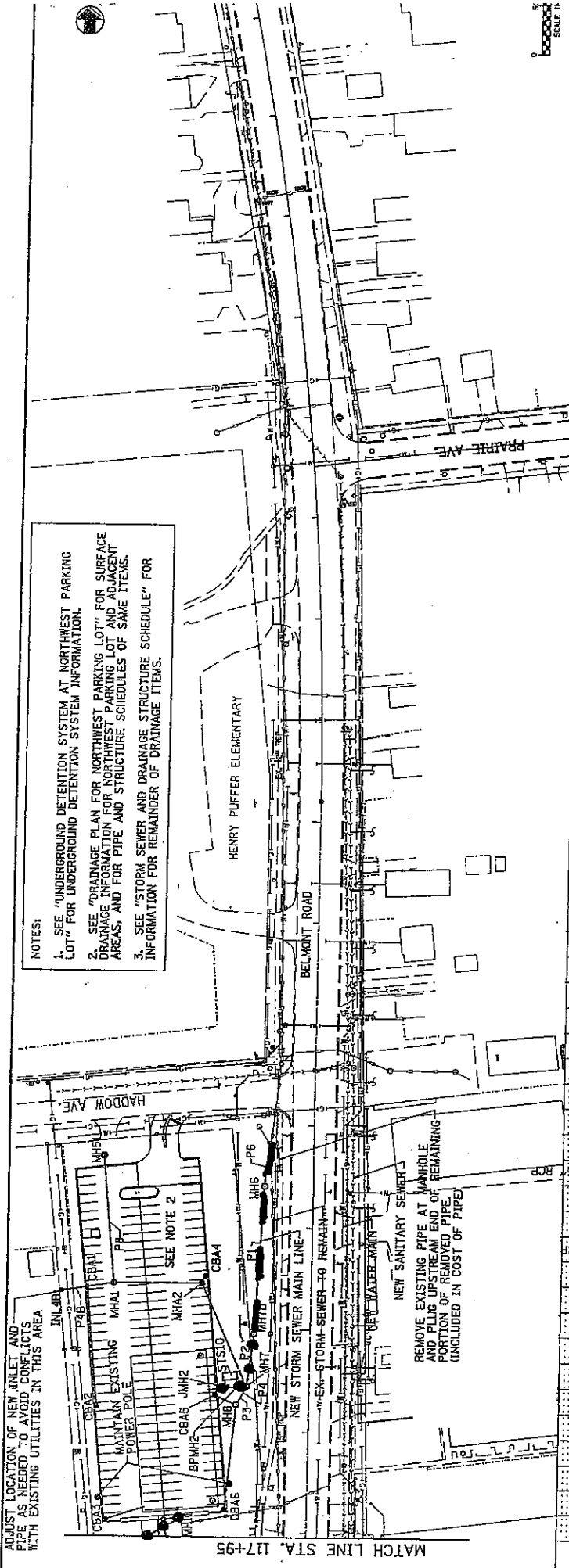
Daniel J. Cronin, Chairman
DuPage County Board

David Fieldman, Village
Manager
Village of Downers Grove

ATTEST:

Gary A. King
County Clerk

April K. Holden
Village Clerk



NOTES:

1. SEE "UNDERGROUND DETENTION SYSTEM AT NORTHWEST PARKING LOT" FOR UNDERGROUND DETENTION SYSTEM INFORMATION.
2. SEE "DRAINAGE PLAN FOR NORTHWEST PARKING LOT" FOR SURFACE DRAINAGE INFORMATION FOR NORTHWEST PARKING LOT AND ADJACENT AREAS, AND FOR PIPE AND STRUCTURE SCHEDULES OF SAME ITEMS.
3. SEE "STORM SEWER AND DRAINAGE STRUCTURE SCHEDULE" FOR INFORMATION FOR REMAINDER OF DRAINAGE ITEMS.

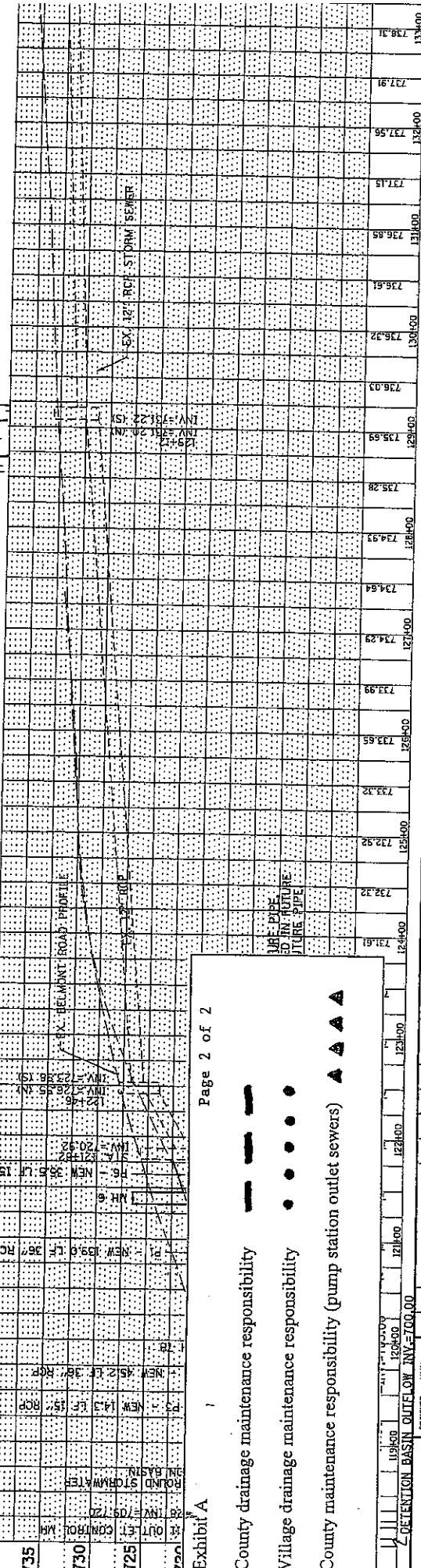


Exhibit A

Page 2 of 2

County drainage maintenance responsibility

Village drainage maintenance responsibility

County maintenance responsibility (pump station outlet sewers) ▲▲▲▲

URS
83 South Western Drive, Suite 500
Downers Grove, IL 60120-2325-0020

DESIGNED: VYX
DRAWN: VYX
CHECKED: DDL
APPROVED: DEY

MS&G
Metro Project No.
TR-2933

DATE	ISSUE	BY	DESCRIPTION

**BELMONT RD. GRADE SEPARATION
DOWNERS GROVE, ILLINOIS**

**STORM SEWER SYSTEM FOR BELMONT ROAD
DOWNERS GROVE, ILLINOIS
STORM SEWER PLAN & PROFILE
BELMONT RD. STA. 117+95 TO STA. 127+50**

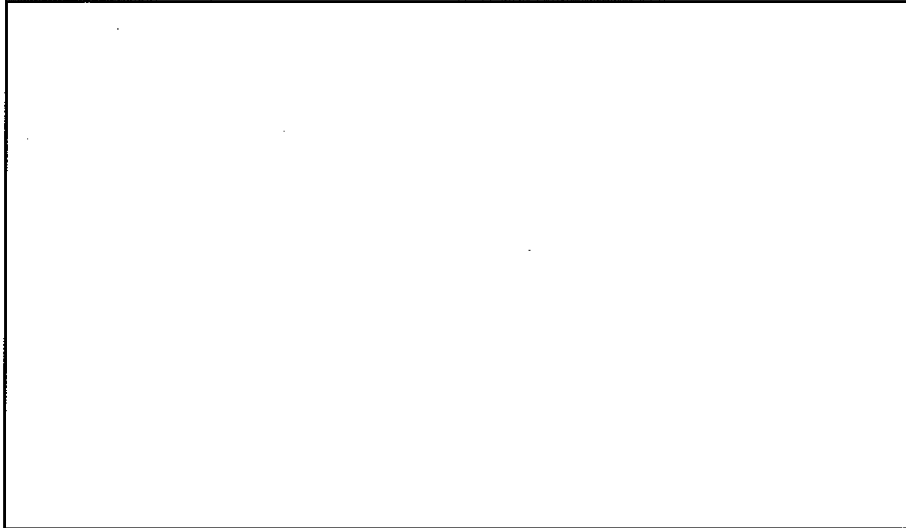
DATE: 05-18-2008 DRAWING NO.

Exhibit D

**GRANT OF- PERMANENT
EASEMENT**

ADDRESS:

Northeast corner of Belmont Road
and Hitchcock Avenue,
Downers Grove, IL



P.I.N: 08-12-215-001; 08-12-215-002;
08-12-215-003; 08-12-215-004; 08-12-215-005; 08-12-215-006 and 08-12-215-007

The undersigned VILLAGE OF DOWNERS GROVE an Illinois municipal corporation (the "VILLAGE"), in the County of DuPage and State of Illinois, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, grants, warrants and conveys to the COUNTY OF DUPAGE (the "COUNTY"), in the State of Illinois, its successors and assigns, a perpetual non-exclusive permanent easement and privilege on, over, under and across certain lands described below (the "Property") for the purpose of ingress and egress, with full and free right of entry, to access and maintain the drainage pipes and structures underneath said Property and to access and maintain the pump station and all other appurtenances installed on the adjacent real estate situated in the County of DuPage, State of Illinois, and described as follows:

See attached Exhibit A to Grant of Permanent Easement

(Affects PIN: 08-12-215-001; 08-12-215-002; 08-12-215-003; 08-12-215-004; 08-12-215-005; 08-12-215-006 and 08-12-215-007; Common Address: Northeast corner of Belmont Road and Hitchcock Avenue, Downers Grove, IL 60515)

The COUNTY shall not permit obstructions to be placed on the Property described herein without written consent of the VILLAGE; which consent shall not be unreasonably withheld and in no case shall the COUNTY permit any interference with the proper operation and maintenance of the parking facilities located on the Property. It is understood by the parties that from time to time maintenance vehicles may need to be located on the Property by the COUNTY for periods of time necessary to maintain facilities that are the responsibility of the COUNTY. The COUNTY shall provide a minimum of one (1) week's notice to the VILLAGE prior to such occasions except in the event of an emergency where notice will be provided as soon as practical. If necessary, the COUNTY shall restore the Property to like condition upon completion of any maintenance activities.

This easement is also subject to any and all recorded restrictions, covenants, easements, licenses, etc.—relating to the premises. The COUNTY acknowledges that the VILLAGE and Metra have entered into a blanket easement over all of said property for parking and railroad purposes.

This easement shall run with the land and be binding upon the owner(s) or resident(s) hereto, their heirs, successors and assigns. Upon execution, the undersigned will cause this document to be filed with the DuPage County Recorder of Deeds Office. A recorded copy of this document shall be provided to the Village Clerk.

Date: _____

VILLAGE OF DOWNERS GROVE

COUNTY OF DUPAGE

David Fieldman, Village Manager

Daniel J. Cronin, Chairman
DuPage County Board

Attest:

Attest:

April K. Holden, Village Clerk

Gary A. King, County Clerk

Subscribed and sworn to before me
this ___ day of _____, 2011 .

Subscribed and sworn to before me
this ___ day of _____, 2011.

Notary Public

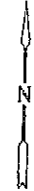
Notary Public

EXHIBIT

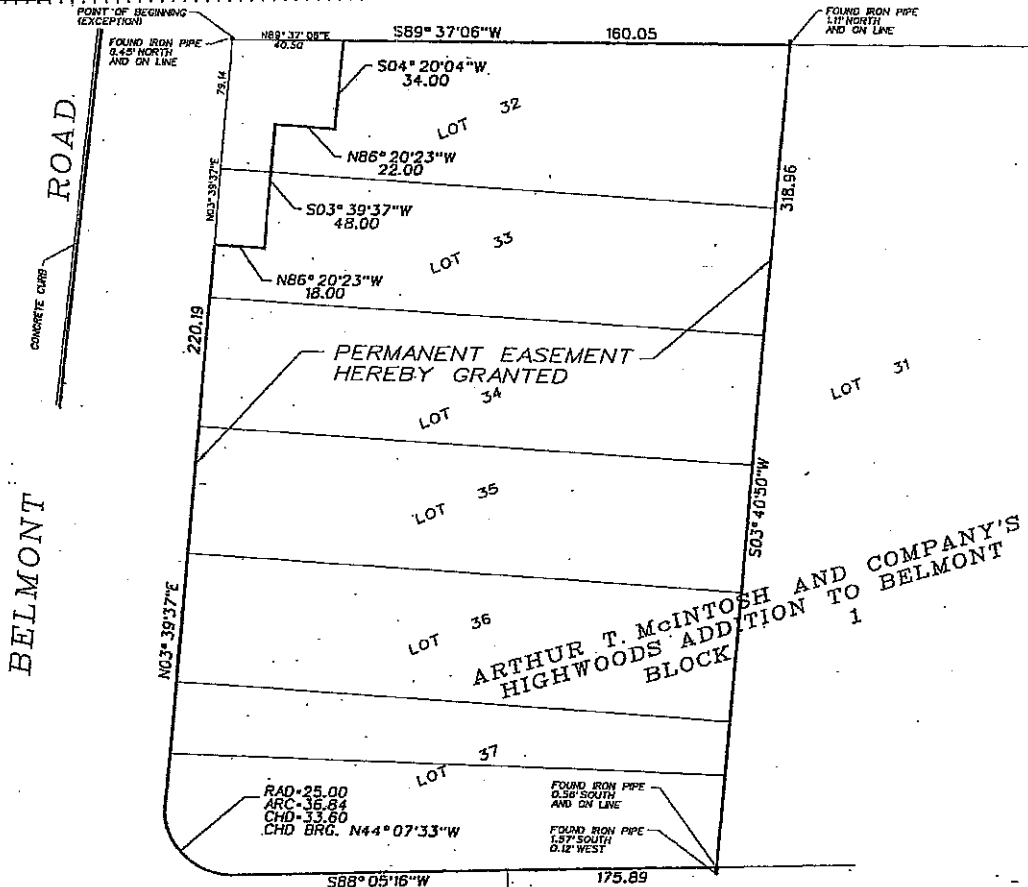
PERMANENT EASEMENT:

LOTS 32, 33, 34, 35, 36 AND 37 IN BLOCK 1 IN ARTHUR T. MCINTOSH AND COMPANY'S HIGHWOODS ADDITION TO BELMONT, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 7, TOWNSHIP 36 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN AND PART OF THE EAST HALF OF SECTION 12, TOWNSHIP 36 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924, AS DOCUMENT NO. 175033, EXCEPT THAT PART DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 32, THENCE NORTH 89 DEGREES 37 MINUTES 06 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 32 A DISTANCE OF 40.50 FEET, THENCE SOUTH 04 DEGREES 20 MINUTES 04 SECONDS WEST A DISTANCE OF 34.00 FEET, THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 22.00 FEET, THENCE SOUTH 03 DEGREES 39 MINUTES 37 SECONDS WEST A DISTANCE OF 48.00 FEET, THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 18.00 FEET, THENCE SOUTH 03 DEGREES 39 MINUTES 37 SECONDS WEST A DISTANCE OF 220.19 FEET, THENCE NORTH 03 DEGREES 39 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF LOTS 32 AND 33 A DISTANCE OF 79.14 FEET TO THE POINT OF BEGINNING IN DUPAGE COUNTY, ILLINOIS.

P.I.N.	08-12-215-001
	08-12-215-002
	08-12-215-003
	08-12-215-004
	08-12-215-005
	08-12-215-006
	08-12-215-007



CHICAGO BURLINGTON AND QUINCY RAILROAD



FIELDWORK COMPLETE 4/20/09			
EXHIBIT			
LOCATION: NORTHEAST CORNER OF BELMONT RD. AND HITCHCOCK AVE DOWNERS GROVE, ILLINOIS			
PREPARED FOR: DUPAGE COUNTY DIVISION OF TRANSPORTATION 401 COUNTY FARM ROAD WHEATON, ILLINOIS 60187 PHONE: 630.407.4000			
WEBSTER, McGRATH & AHLBERG LTD.			
WMA			
LAND SURVEYING - CIVIL ENGINEERING - LANDSCAPE ARCHITECTURE			
Over 100 Years of Service to Clients			
307 South Wacker Drive, Wheaton, Illinois 60187 (630) 407-4000 Fax: (630) 651-1180 www.wmaweb.com			
JOB #	DATE	SCALE	
41728	4/21/09	1"=30'	
SURV.	DRAWN	DESIGN	
JCV	JCV	XXX	
FILE #	C-32006-EASEMENT		SHEET #

Exhibit A
to Grant of Permant Easement

Prepared By & Return to:
DuPage County
Division of Transportation
421 N. County Farm Road
Wheaton, IL 60197

PARTIAL RELEASE OF EASEMENT FOR PARKING AND ACCESS

WHEREAS, the undersigned, Village of Downers Grove ("Grantor"), an Illinois municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois 60515, executed an Easement for Parking and Access ("Easement") on December 5, 2006 that was recorded as Document Number R2007-046943 on March 15, 2007, granting said Easement to 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"); and

WHEREAS, the County of DuPage has requested that a portion of said Easement be released for the pump station property that the Grantor is quitclaiming to the County of DuPage as a part of the Belmont Road Grade Separation Project known as Section 99-00173-03-GS; and

WHEREAS, the Grantor and the Grantee have agreed to release said property from said Easement.

NOW, THEREFORE, in consideration of Ten (\$10.00) Dollars and other good and valuable consideration, the Grantor and Grantee mutually agree herein by their respective signatures to release the following described property from said Easement:

THAT PART OF LOTS 32 AND 33 IN BLOCK 1 IN ARTHUR T. McINTOSH AND COMPANY'S HIGHWOODS ADDITION TO BELMONT, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE EAST HALF OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT NO. 175033, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 32; THENCE NORTH 89 DEGREES 37 MINUTES 06 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 32 A DISTANCE OF 40.50 FEET; THENCE SOUTH 04 DEGREES 20 MINUTES 04 SECONDS WEST A DISTANCE OF 34.00 FEET; THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 22 FEET; THENCE SOUTH 03 DEGREES 39 MINUTES 37 SECONDS WEST A DISTANCE OF 48.00 FEET; THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 18.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 33; THENCE NORTH 03 DEGREES 39 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF

LOTS 32 AND 33 A DISTANCE OF 79.14 FEET TO THE POINT OF BEGINNING IN DU PAGE COUNTY, ILLINOIS.

CONTAINING 2,173 SQUARE FEET OR 0.050 ACRES.

This Partial Release of Easement for Parking and Access shall be construed and enforced in accordance with the laws of the State of Illinois.

IN WITNESS WHEREOF, the Grantor has duly executed this Partial Release of Easement for Parking and Access as of this ____ day of _____, 2011.

VILLAGE OF DOWNERS GROVE:

By: _____
Martin T. Tully, Mayor

ATTEST: _____
April K. Holden, Village Clerk

State of Illinois)
) SS
County of DuPage)

The undersigned, a Notary Public in and for the above County and State, do hereby certify that Martin T. Tully, Mayor of the Village of Downers Grove and April K. Holden, 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 _____, 2011.

Notary Public

My commission expires:

QUIT-CLAIM DEED

(Municipality to County)

GRANTOR, the **VILLAGE OF DOWNERS GROVE**, a municipal corporation organized and existing under the laws of the State of Illinois, for and in consideration of the sum of TEN and 00/100ths DOLLARS, and other valuable consideration in hand paid, CONVEYS and QUIT-CLAIMS to

GRANTEE, **COUNTY OF DU PAGE**, an Illinois Body, Corporate and Politic, 421 N. County Farm Road, Wheaton, IL, 60187, to-wit:

THAT PART OF LOTS 32 AND 33 IN BLOCK 1 IN ARTHUR T. McINTOSH AND COMPANY'S HIGHWOODS ADDITION TO BELMONT, BEING A SUBDIVISION OF PART OF THE WEST HALF OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND PART OF THE EAST HALF OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 10, 1924 AS DOCUMENT NO. 175033, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 32, THENCE NORTH 89 DEGREES 37 MINUTES 06 SECONDS EAST ALONG THE NORTH LINE OF SAID LOT 32 A DISTANCE OF 40.50 FEET; THENCE SOUTH 04 DEGREES 20 MINUTES 04 SECONDS WEST A DISTANCE OF 34.00 FEET; THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 22.00 FEET; THENCE SOUTH 03 DEGREES 39 MINUTES 37 SECONDS WEST A DISTANCE OF 48.00 FEET; THENCE NORTH 86 DEGREES 20 MINUTES 23 SECONDS WEST A DISTANCE OF 18.00 FEET TO A POINT ON THE WEST LINE OF SAID LOT 33; THENCE NORTH 03 DEGREES 39 MINUTES 37 SECONDS EAST ALONG SAID WEST LINE OF LOTS 32 AND 33 A DISTANCE OF 79.14 FEET TO THE POINT OF BEGINNING IN DU PAGE COUNTY, ILLINOIS.

CONTAINING 2,173 SQUARE FEET OR 0.050 ACRES

Permanent Real Estate Index Number: 08-12-215-001
08-12-215-002
08-12-215-003
08-12-215-004
08-12-215-005
08-12-215-006
08-12-215-007

Subject to (a) covenants, conditions and restrictions of record; (b) public, private and utility easements. Hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of Illinois.

In Witness Whereof, said Grantor has caused these presents to be signed by its Village Mayor, and attested by its Village Clerk, this _____ day of _____, 2011.

Village of Downers

By: _____
Martin T. Tully, Mayor

Attest: _____
April K. Holden, Village Clerk

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State, aforesaid, DO HEREBY CERTIFY, that Martin T. Tully personally known to me to be the Mayor of the Village of Downers Grove, Illinois and April K. Holden personally known to me to be the Clerk of the Village of Downers Grove who are personally known to me to be same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Mayor and Clerk, they signed and delivered the said instrument pursuant to the authority given by the Downers Grove Village Board, as their free and voluntary act, and as the free and voluntary act, and deed of said Board as authorized for the uses and purposes therein set forth.

Given under my hand and official seal, this _____ day of _____ 2011.

Commission expires _____
Notary Public

Prepared By: **Robert E. Douglas, Assistant DuPage County State’s Attorney, 503 N. County Farm Road, Wheaton, IL 60187**

Tax Bill To: **DuPage County Division of Transportation, 421 N. County Farm Road, Wheaton, IL 60187**

Return To: **Robert E. Douglas, Assistant DuPage County State’s Attorney, 503 N. County Farm Road, Wheaton, IL 60187**

EXEMPT UNDER PROVISIONS OF PARAGRAPH E, SECTION 4, ILLINOIS REAL ESTATE TRANSFER ACT.

_____ Date: _____