



Mayor
C. James Carr

City Council
Alan Bolds
Liz Cory
Dave Johnson
Linda W. Johnson
Robert Mark
Tom Mouhells

City Manager
Donald B. Rose

I HEREBY CERTIFY that I am the City Clerk of the City of Wheaton, DuPage County, Illinois, and that, as such City Clerk, I have the custody of the papers, entries, records and ordinances of said City.

I FURTHER CERTIFY that the attached is a true and correct copy of the minutes of the Monday, December 20, 2004 Wheaton City Council Meeting.

I have hereunto set my hand and affixed the seal of the City this 24th day of January, 2005.

City Clerk
City of Wheaton, Illinois



WHEATON CITY COUNCIL PROCEEDINGS
WHEATON CITY HALL, COUNCIL CHAMBERS, 303 W. WESLEY ST., WHEATON, IL

December 20, 2004

1. CALL TO ORDER AND ROLL CALL

The regular Wheaton City Council Meeting was called to order at 7:00 P.M. by Mayor C. James Carr. Upon roll call, the following were:

Present: Mayor C. James Carr
Councilman Alan Bolds
Councilwoman Liz Corry
Councilman Dave Johnson
Councilwoman Linda W. Johnson
Councilman Robert Mork
Councilman Tom Mouhelis

Absent: None

City Staff Present: Donald B. Rose, City Manager
Edward J. Walsh, Jr., City Attorney
Michael G. Dzigan, Assistant City Manager
Paul G. Redman, Director of Engineering
James P. Kozik, Director of Planning & Economic Development
Chad Michaelis, Director of Information Technology
Greg Berk, Fire Chief
Donald Jirsa, Battalion Chief
Emily M. Consolazio, City Clerk

2. INVOCATION

Pastor Jay Moses, First Presbyterian Church of Wheaton, gave the invocation.

3. CEREMONIES

Councilman Mork led the assemblage in the Pledge of Allegiance.

4. REPORT OF CITY MANAGER

City Manager Rose stated that three objector petitions were received today and it will be necessary to retain legal counsel with experience in election law. At the January 3, 2005 City Council Meeting, a resolution that retains legal counsel will be placed on the Agenda for formal approval by the City Council.

5. REPORT OF CITY ATTORNEY

City Attorney Walsh stated that the December 17, 2004 edition of the *Daily Herald* contained an article regarding the Joseph Rizzo v Wheaton Police Department litigation in which Mr. Rizzo alleges erroneous incarceration. Mr. Rizzo represents himself and, for quite some time, he has tried to place proper suit papers. On August 23, 2004, papers were finally delivered to the City Clerk but the papers were still erroneous. The default order entered by the court contained

irregularities. No default order was entered against the City nor was any monetary award made. The City Attorney will be in court on Wednesday, December 22, to vacate the default order and to file an appearance on behalf of the City.

Councilman Mork clarified that, contrary to what appeared in the paper, no default was entered against the City.

City Attorney Walsh confirmed that no order of any kind was entered against the City of Wheaton; the default order was against the Police Department and individual Police Officers.

Councilman Mork asked if the default order was entered without the Police Department and/or the Police Officers being properly served.

City Attorney Walsh stated that there was incorrect service and this will be fully explained to the court so procedural matters can be clarified.

6. CITIZENS TO BE HEARD

Mr. Todd Plagman, 2017 Chatham Dr., stated that he is planning to hold a rally/fundraiser for Sgt. Joel Gomez and his family on Friday, January 14, 2005 at the Wheaton Grand Theater located at 123 N. Hale Street, Wheaton. Mr. Plagman noted that mention will also be made regarding Nicholas Larson. Mr. Plagman invited all to attend.

Councilman Mouhelis requested that Mr. Plagman keep the City Council advised of the time of the event.

Ms. Lee Prior, 217 White Oak Drive, stated that she has been teaching at Monroe Middle School for the past 14 years. Ms. Prior thanked the City Council for considering the additional funding for the pedestrian overpass but does not believe Wheaton should shoulder the entire amount—the other entities should all make additional commitments.

7. CONSENT AGENDA

Councilman Mouhelis moved and Councilwoman Corry seconded that the following action be taken on the Consent Agenda items:

1. Approve the minutes of the regular Wheaton City Council Meeting of December 6, 2004, and the minutes of the City Council Public Hearings/St. Michael Stormwater Variation (continued to January 24, 2005); and Vacation of Childs Street Right-of-Way/S&K Development, LLC, both of December 13, 2004, all as submitted.
2. Pass Ordinance No. F-0985, An Ordinance Amending Chapter 26, Businesses, Article VII, Massage Businesses.
3. Adopt Resolution R-83-04, A Resolution Authorizing the Release of Closed Session Minutes.
4. First reading of An Ordinance Amending Chapter 42-29 "Public Intoxication" of the Wheaton City Code.

5. Receive the Purchasing Agent's Recommendation and award the bid for College Avenue Train Station Coffee Supplier to: Java Connection of Wheaton, Inc. in their stated bid price of \$657.00/month rent, or \$7,884.00 per year.
6. Adopt Resolution R-84-04, A Resolution Authorizing the Disposal of Certain Surplus Property.
7. Adopt Resolution R-85-04, A Resolution Authorizing Execution of an Agreement for Material Testing Consultant/Wheaton Public Library Addition and Remodeling Project.
8. ~~Receive the Planning and Zoning Board Report Re: Zoning Application #04-44/Special Use Permit and Parking Variation/330 S. Naperville Rd./First Choice Bank.~~
9. Pass Ordinance No. F-0986, An Ordinance Amending the Wheaton Zoning Map and Granting a Special Use Permit, and a Variation to Article 22.5.23 of the City of Wheaton Zoning Ordinance to Allow the Construction of a Drive-Thru Banking Facility on a Piece of Property Commonly Known as 330 S. Naperville Road – First Choice Bank.
10. Receive the Planning and Zoning Board Report Re: Zoning Application #04-45/Rear Yard Variation/1720 Austin Ct./Fanella.
11. Pass Ordinance No. F-0987, An Ordinance Granting a Rear Yard Variation on a Certain Piece of Property Commonly Known as 1720 Austin Ct. – Fanella.
12. Receive the Planning and Zoning Board Report Re: Zoning Application #04-46/PUD Amendment/Morgan's Orchard Lake PUD/1861 Kandahar Ct./Morgan and refer it to the City Attorney for ordinance preparation.

Roll Call Vote on Consent Agenda:

Ayes:	Councilman Mouhelis
	Councilman Bolds
	Councilwoman Corry
	Councilman Johnson
	Mayor Carr
	Councilwoman Johnson
	Councilman Mork

Nays:	None
Absent:	None

Motion Carried Unanimously

8. BID AWARD RECOMMENDATION-COMPUTER SERVERS

Councilman Mork moved and Councilman Mouhelis seconded that the Director of Information Technology's recommendation be received and award the bid for Computer Servers to the low bidder, Dell Computer Corporation, in the amount of \$37,179.79.

City Manager Rose stated that this item appeared on the December 6 agenda and the City Council requested that the bid recommendation be reviewed with the City Attorney. The City

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Attorney completed his review of the bid recommendation and the Director of Information Technology is recommending the award of the bid for Computer Servers to the second low bidder, Dell Computer Corporation in the amount of \$37,179.79. The low bidder was disqualified due to not meeting specifications.

Ayes:

Roll Call Vote:

Councilman Mork
Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson

Nays:

None

Absent:

None

Motion Carried Unanimously

9. FIRST READING OF AN ORDINANCE AMENDING CHAPTER 6 -- ALCOHOLIC BEVERAGES OF THE WHEATON CITY CODE

City Manager Rose stated that the proposed ordinance appears on this evening's agenda for a first reading. The proposed ordinance amends Chapter 6 by creating a new liquor license classification relating to the retail sale of alcoholic beverages in their original package in department stores. The proposed language is similar to that for the existing Class E license (supermarkets or drug stores) however, due to the square footage of a department store, the area devoted to the sale of alcoholic beverages is stated in square feet versus a percentage of the total above grade square feet of the premises.

City Manager Rose further indicated that the proposed amendment was reviewed by the Liquor Control Commission at their November 11, 2004 meeting and, on a 3-2 vote, the Commission recommended approval of the amendment. The proposed ordinance will appear on the January 3, 2005 City Council Agenda for formal consideration.

Councilman Mouhelis asked how the 2,500 square feet was determined.

Director of Planning and Economic Development Kozik stated that, due to the size of Target, or any department type store, a specific square footage was stated versus a percentage. Additionally, the matter was discussed with Target store representatives who indicated that they probably will use less than the 2,500 square feet.

10. FIRST READING OF AN ORDINANCE AMENDING CHAPTER 42, SECTION 42, ARTICLE V-42-125 OF THE WHEATON CITY CODE

City Manager Rose stated that the proposed ordinance appears on this evening's agenda for a first reading. The proposed ordinance is being recommended to the City Council by the City Attorney as required by the Illinois Compiled Statutes which require units of local government to enact an Ethics Ordinance that is at least as restrictive as what is contained in the state Act. The

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proposed ordinance will appear on the January 3, 2005 City Council Agenda for formal consideration.

11. ADOPT RESOLUTION R-86-04, A RESOLUTION APPROVING AN AGREEMENT TO USE STRUCTURE(S) AND AN AGREEMENT TO USE AND BURN STRUCTURE(S)

Councilman Mouhelis moved and Councilwoman Corry seconded that Resolution R-86-04, A Resolution Approving an Agreement to Use Structure(s) and an Agreement to Use and Burn Structure(s) be adopted.

City Manager Rose stated that the proposed agreements are form documents which will be used by the Fire Department in the event a property owner donates their structure to the Department for training purposes prior to conducting demolition activities. The use of donated structures provides the Fire Department with opportunities for realistic, practical training activities. City staff recommends adopt of the proposed resolution.

Mayor Carr stated that the City Council has approved structural burns and asked if this process will be changed.

City Manager Rose stated that approval will now be made at the staff level, however, all adjacent property owners will still be notified of a structural burn.

	<u>Roll Call Vote:</u>
Ayes:	Councilman Mouhelis
	Councilman Bolds
	Councilwoman Corry
	Councilman Johnson
	Mayor Carr
	Councilwoman Johnson
	Councilman Mork
Nays:	None
Absent:	None

Motion Carried Unanimously

12. MONROE MIDDLE SCHOOL/PEDESTRIAN OVERPASS

Councilwoman Corry moved and Councilwoman Johnson seconded that the City allocate a maximum of \$50,000 toward the Monroe Middle School/Pedestrian Overpass Project.

Councilman Mork asked if the \$50,000 is on top of the \$13,000 already allocated or does the \$50,000 include the \$13,000.

Councilwoman Corry stated that the \$50,000 is a not-to-exceed amount so it would include the \$13,000 previously allocated.

Mayor Carr stated that the amount would actually be \$37,000 of additional funding.

Councilwoman Corry stated that, yes, the \$50,000 is a total not-to-exceed amount.

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Councilman Mork stated that he believes this issue has become political due to the fact that in 1995 the City Council approved a \$13,000 allocation by a unanimous vote and that all subsequent requests for additional funding, until now, have been turned down by the City Council. Councilman Mork is not opposed to the bridge; however, he does not believe the bridge is a primary issue of the City. Councilman Mork enumerated various essential City services (including Police personnel) and programming where funding has been cut due to budgetary constraints. Additionally, there still is not a definite amount for the cost of the project and the project cost could very well increase. If this occurs, will the City then be asked to contribute more money? Councilman Mork believes the bridge project is more of an issue for the School District, Park District and County.

Councilwoman Corry asked if the original \$13,000 contribution has been paid.

City Manager Rose stated that the amount was paid.

Councilwoman Corry stated that she believes the City should contribute an additional \$37,000 towards the bridge project. Most importantly, the bridge will provide safety for children. Councilwoman Corry noted that residents will be able to use the bridge for biking and walking purposes and it is an opportunity to do something good for the community.

Councilman Mork stated that, in reality, the \$37,000 contribution will not get the project done unless the other entities also increase their contribution.

Councilman Bolds stated that regardless of how the City Council votes this evening, the bridge project will still be under funded. Councilman Bolds asked those in favor of the additional funding if there is a cost that would be too great. Also, what will be the response if more money is needed due to additional costs for the project?

Councilwoman Corry stated that the bridge project could not go out for bid until there was enough money on the table. Once the project has been bid, the topic can be revisited.

Councilman Johnson stated that he believes the City should step up so the bridge project can go out to bid; however, there is no further commitment beyond the \$50,000.

Councilman Mouhelis stated that his limit is \$50,000 and that no more than that should be allocated.

Councilman Bolds does not believe the City should contribute more than the percentage that was originally identified.

Councilman Johnson stated that the higher contribution by the City shows that the City is willing to do its fair share.

Mayor Carr stated that he is not in favor of exceeding what was originally promised. The City promised funding years ago but going above and beyond that amount at a time when the City does not have the money is not prudent. Mayor Carr believes there should be better cost figures and engineering by now and would only vote for a \$23,000 contribution.

Councilman Mork moved and Councilman Bolds seconded to amend the motion to authorize a contribution of \$22,708.

Mayor Carr stated that he supports this funding amount.

Councilman Mork stated that this amount is consistent with the railroad's position.

Councilwoman Corry stated that she does not believe this is enough money.

Mayor Carr does not believe it is prudent to go above and beyond what the City had promised.

Councilwoman Corry stated that the membership of the City Council has changed over the years and that the City should take a leadership position.

Councilman Bolds believes that \$22,708 is enough as long as the other agencies keep their commitments. Councilman Bolds stated that Milton Township may reconsider their commitment and that the Village of Winfield may contribute some funds. Councilman Bolds noted that no one has asked the City to give beyond their commitment.

Councilwoman Johnson stated that of the \$50,000 proposed, \$13,000 has already been paid. This leaves \$37,000 versus \$22,708. The difference of a little over \$14,000 is to get the project moving forward.

Councilman Bolds indicated that without the other agencies stepping up to contribute their fair share, the project still will not go forward.

Councilman Mork believes that the City's funding above their fair share may let other agencies off the hook for increasing their contribution. If, however, all of the agencies increased their fair share contributions, then the project would move forward.

Councilman Mork also said there may be a point of order since, in 1995, the City Council took action by funding no more than \$13,000. Until the current City Council changes this, then a motion may be out of order.

City Attorney Walsh stated that he believes the motion on the floor would amend the 1995 conduct of the City Council.

Councilman Mork asked if the City Council would need to rescind or repeal the action taken in 1995.

City Attorney Walsh stated that a vote by the current City Council would modify the 1995 action.

Mayor Carr stated that the overpass is a good idea but to go over and above on funding it is not being good stewards of taxpayer money. By the City taking this action, other agencies may not step up to do their fair share.

Roll Call Vote on Motion to Amend:

Ayes:

Councilman Mork
Councilman Bolds
Mayor Carr

Nays:

Councilman Mouhelis
Councilwoman Corry

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Councilman Johnson
Councilwoman Johnson

Absent: None

Motion Failed

Ayes: Roll Call Vote on Original Motion:
Councilwoman Corry
Councilman Johnson
Councilwoman Johnson
Councilman Mouhelis

Nays: Mayor Carr
Councilman Mork
Councilman Bolds

Absent: None

Motion Carried

13. AUTHORIZE THE PURCHASE OF REPLACEMENT AERIAL LADDER TRUCK

Councilman Mouhelis moved and Councilman Johnson seconded that authorization be given for the purchase of a replacement aerial ladder truck in the amount of \$674,494.00 from Crimson Fire Apparatus.

City Manager Rose stated that this year's budget contains \$650,000 for the replacement of aerial ladder truck #412. Ladder Truck #412 was purchased in 1982 and has a 20 year life expectancy. Fire Department staff worked through the Northwest Municipal and the West Central Municipal Conference (NWMC) bid process using Wheaton's specifications to negotiate with Crimson Fire Apparatus (the lowest NWMC responsible bidder). The Fire Department is recommending the purchase of the 100 foot rear mount aerial platform truck from Crimson Fire Apparatus in the amount of \$674,494.00. While the cost of the new truck is 3.8% over the budgeted amount, the truck will be paid for upon delivery (approximately 13 months). Therefore, the over budget amount will be partially offset by the interest earned on the City's money from now until acceptance of the truck.

Councilman Mouhelis asked if arrival of the truck will be in about 13-14 months.

Fire Chief Berk confirmed delivery time.

Ayes: Roll Call Vote:
Councilman Mouhelis
Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork

Nays: None

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Absent: None

Motion Carried Unanimously

14. COUNCIL COMMENT

Councilman Mork wished Mayor Carr, his colleagues and residents a very Merry Christmas and a Happy New Year.

Councilman Mouhelis stated that he heard from Firefighter Tim Weiss who is serving in Iraq. Tim recently had a slight knee injury but he is alive and well and safe. Councilman Mouhelis thanked the men and women who are serving overseas as well as those who protect and keep the City safe.

Mayor Carr wished the staff, Council colleagues and residents a very happy holiday.

15. APPROVAL OF WARRANT

Councilman Mork moved and Councilwoman Johnson seconded that Warrant No. 406 in the amount of \$873,780.54 be approved.

Ayes:

Roll Call Vote:

- Councilman Mork
- Councilman Mouhelis
- Councilman Bolds
- Councilwoman Corry
- Councilman Johnson
- Mayor Carr
- Councilwoman Johnson

Nays:

None

Absent:

None

Motion Carried Unanimously

16. ADJOURN TO CLOSED SESSION

The Wheaton City Council adjourned to closed session for the purpose of discussing Pending Litigation (5 ILCS 120/2 (C) (11) at 8:10 P.M.

Ayes:

Roll Call Vote:

- Councilman Mork
- Councilman Mouhelis
- Councilman Bolds
- Councilwoman Corry
- Councilman Johnson
- Mayor Carr
- Councilwoman Johnson

Nays:

None

Absent:

None

Motion Carried Unanimously

The City Council returned to the open portion of their meeting at 8:41 P.M.

17. ADJOURNMENT

Councilman Mork moved and Councilman Mouhelis seconded that the regular Wheaton City Council Meeting adjourn at 8:41 P.M.

Ayes:

Roll Call Vote:

- Councilman Mork
- Councilman Mouhelis
- Councilman Bolds
- Councilwoman Corry
- Councilman Johnson
- Mayor Carr
- Councilwoman Johnson

Nays:

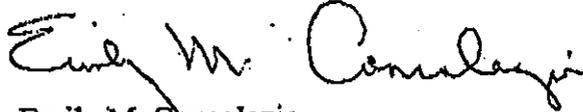
None

Absent:

None

Motion Carried Unanimously

Respectfully submitted,



Emily M. Consolazio
City Clerk



Illinois Department of Transportation

2300 South Dirksen Parkway / Springfield, Illinois / 62764

Post-it Fax Note	7671	Date	06/21/02	# of Pages	1
To	Ken Kutzka	From	Keith Sherman		
Co./Dept.	Wheaton Park Dist	Co.	IDOT		
Phone #		Phone #	217/792-0378		
Fax #	630-665-5580	Fax #			

June 21, 2002

Mr. Robert M. Speri
 Assistant Superintendent of Planning
 Wheaton Park District
 666 South Main Street
 Wheaton, IL 60187

Dear Mr. Speri:

In response to your letter of May 16, 2002, I am writing to verify that federal funds programmed in the Illinois Transportation Enhancement Program for the Wheaton CNW Railroad Overpass and Trail project remain available for the project's implementation.

Total remaining funds for the project total \$2,351,000. Of this total, federal funds total \$1,881,000; the remaining \$470,000 is the Wheaton Park District match.

If you have any questions, please contact Kathleen McNeill of this office at (217)785-8695.

Sincerely,

Keith M. Sherman
 Chief, Planning and Systems Section



STATE OF ILLINOIS
DEPT. OF NATURAL RESOURCES

SPONSOR: Wheaton Park District

PROJECT AMENDMENT #: THREE

AMENDMENT TO PROJECT AGREEMENT

THIS AMENDMENT to Project Agreement No: BP 01-297 is hereby made and agreed upon by the State of Illinois, acting through the Director of the Department of Natural Resources and by the Wheaton Park District pursuant to the Illinois Bicycle Path Grant Program (#17 IL. Adm. Code, part 3025).

The Sponsor and State of Illinois, in mutual consideration of the promises made herein and in the Project Agreement of which this is an amendment, do promise as follows: The project ending date is extended from June 30, 2005 to December 31, 2006.

That the rationale for making the contract amendment is as follows:

- The circumstances that necessitate the change in performance were not reasonably foreseeable at the time the contract was signed.
- The circumstances that necessitate the change in performance were not within the contemplation of the contract as signed.
- The circumstances that necessitate the change in performance are in the best interest of the unit of State or local government and authorized by law

Specific circumstances requiring this amendment are: *The project is co-funded with federal funds administered through IDOT. Additionally, there are five other partners associated with the project. Due to stringent federal standards, co-funded projects take much longer to design and construct. Cost estimates have increased and the partners are working to secure additional funding through the ICC Grade Crossing Protection Fund. The sponsor hopes to be out to bid by the summer of 2005 and construction is expected to be complete in 2006.*

In all other respects the Project Agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness whereof, the parties hereto have executed this amendment as the date entered below.

PROJECT SPONSOR

STATE OF ILLINOIS

WHEATON PARK DISTRICT

(Agency)

Robert Dunsmuir

(Signature)

ROBERT DUNSMUIR

(Name)

EXECUTIVE DIRECTOR

(Title)

By:

Joel Beunard

(Signature)

Director

(Title)

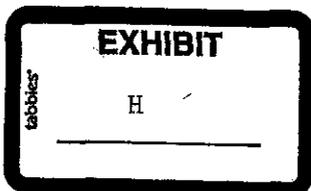
Department of Natural Resources

Date: 5-24-05

Required additional signatures for contracts and contract renewals totaling \$250,000 or more per Public Act 90-452.

Stanley Yankauski 5/23/05
DNR Chief Legal Counsel

Allen J. Sunderland 5/23/05
DNR Chief Fiscal Officer



() IDNR Copy
 Sponsor Copy

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION TRANSPORTATION DIVISION / RAIL SAFETY SECTION

Michael E. Stead

Rail Safety Program Administrator

November 5, 2004

Mr. Ken Kutska
Director of Parks and Planning
Wheaton Park District
666 S. Main Street
Wheaton, IL 60187

Dear Mr. Kutska:

This is in response to the Grade Crossing Protection Fund (GCPF) Grade Crossing Project application you recently submitted for our review and consideration. The application describes a proposed project to construct a pedestrian grade separation over the Union Pacific Railroad Company's (UP) tracks in the City of Wheaton.

After reviewing information about the status of similar projects in the Commission's current Crossing Safety Improvement Program 5-Year Plan for FY 2005-2009, this office has found a similar project that has not progressed far enough to utilize the programmed funds available this fiscal year. This office will recommend to the Commission that GCPF assistance in the amount of \$240,000, which was originally programmed for the other project, be made available to the City of Wheaton for the proposed pedestrian grade separation.

For pedestrian-rail bridge projects such as the one described in the City's application, this office typically recommends to the Commission that the GCPF be used to pay no more than 60% of the cost for that portion of the new structure spanning railroad right-of-way. Eligible project costs include work items such as preliminary engineering, construction engineering, right of way acquisition, utility relocation, construction, drainage improvements, and railroad force account work.

Please advise this office if the City's funding package for the project will be complete with the addition of the GCPF assistance. In addition, please provide a detailed cost estimate for the project, with all project-related costs for the main bridge span over UP tracks and both approaches thereto. Following receipt of notification that the City's project funding package is complete, and review of the cost information, this office will prepare and distribute a Stipulated Agreement to all parties. Upon execution of the agreement by all parties, we will arrange to have an Order submitted to the Commission for its review and approval. I urge the City to act expeditiously in providing the requested information so that the Commission will be in a position to enter an Order in this matter as soon as possible.



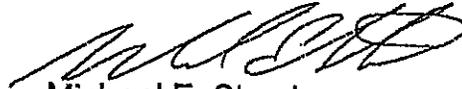
Mr. Fredrick Sherer, P.E.

November 5, 2004

Page Two

I trust this information will be helpful. If you have any questions, or need additional information, please call Chuck Broers, Senior Rail Safety Specialist, at (217) 785-8424 or cbroers@icc.state.il.us, or Brian Vercruysse, Rail Safety Specialist, at (630) 424-8750 or bvercruy@icc.state.il.us.

Very truly yours,



Michael E. Stead
Rail Safety Program Administrator

CB



December 7, 2004

Mr. Kenneth Kutska
Director of Parks & Planning
Wheaton Park District
666 South Main Street
Wheaton, IL 60187

RE: Wheaton Pedestrian Overpass

Dear Mr. Kutska:

Metra and the Union Pacific Railroad are willing to increase our contribution to the construction of the proposed pedestrian overpass near Monroe Middle School and the Lincoln Marsh. Based on the agreed upon original fair share of the local match allocation, Metra and the Union Pacific agreed to pay 8.8% of the local match.

Metra and the Union Pacific still believe our fair share of the local match is 8.8%. Presently, there is a \$300,000 local match funding shortfall. Metra and the Union Pacific are willing to increase our contribution to the local match by \$26,400. \$26,400 is 8.8% of \$300,000, the current funding shortfall.

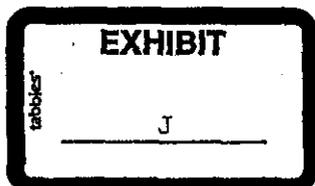
Our additional contribution will only be made if the following requirements are met:

1. The project is constructed in accordance with Union Pacific approved plans.
2. In the area of the pedestrian bridge, the Union Pacific right of way will be fenced as agreed upon in the various documents concerning this project.
3. The Metra/Union Pacific contribution is fixed and will be paid upon the completion of this project.

Sincerely,

cc: Dr. Gary Catalani, Mr. Donald Rose, Mr. Grant Eekhoff,
Mr. John Noel, Ms. Debra Olson, Mr. Chris Heidorn,
Ms. Ellen Sietmann, Hon. Peter Roskam, Hon. Randy Hultgren

(212) 229704-0021



Thomas A. Zapler
Special Representative Government Affairs, Central Region

UNION PACIFIC RAILROAD
101 N. Wacker Drive, Suite 1910, Chicago, IL 60606
ph. (312) 777-3002 fx. (312) 777-2020

TOTAL P.02

INTERGOVERNMENTAL AGREEMENT

for the Funding, Construction, Maintenance And Governance of a Bicycle/Pedestrian Overpass Over Union Pacific Railroad Company Property, and Connecting Bicycle/Pedestrian Trail

This AGREEMENT is made and entered into by and among The Board of Education of Community Unit School District 200 (the "School") with offices at 130 West Park Avenue, Wheaton, Illinois 60187; and the Wheaton Park District (the "Park") with offices at 666 South Main Street, Wheaton, Illinois 60187. The School and Park are hereinafter sometimes individually referred to as a "Party" or an "Original Party" and jointly referred to as the "Parties" or the "Original Parties". The date of this Agreement shall be the last date on which both of the Original Parties shall have signed this Agreement as indicated on the signature page of this Agreement.

Additional entities with legal authority to enter into this Agreement may be added to and included as Parties to this Agreement from time to time hereafter upon the unanimous consent of the Original Parties. The addition/inclusion of each such entity shall be reflected in a written addendum, executed by the Original Parties and such additional Party, and the rights and obligations of the Parties as set forth in this Agreement, and all amendments to this Agreement, shall be applicable to such additional Party from and after the effective date of such addendum, unless and except as otherwise specified in such addendum.

In consideration of their mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PURPOSE/PROJECT DEFINED

1.1 Each Party has determined that a public need exists for, and that it is in its and the public's best interest to participate in the financing, construction, maintenance and governance of, a bicycle/pedestrian/hiking bridge structure, including access ramps/stairs and above grade paths (collectively, the "Overpass Structure"), together with a path and adjacent retaining wall to Manchester Road, a path to Nepil Ave. and Cottonwood Ave., and fencing north of the right of way of the Union Pacific Railroad Company, successor in interest to the Chicago and Northwestern Railroad Company ("Railroad") as required by the Railroad. The Overpass Structure together with such paths, wall and fencing are hereinafter sometimes collectively referred to as the "Project." For purposes of this Agreement, the fencing north of the Railroad right of way shall be included in the term "Project" only for purposes of initial construction of the Project, but not concerning the obligation to repair or maintain, or liability for failure to repair or maintain, the Project.

1.2 The Project will link properties lying north of the Railroad right of way, currently including a substantial residential area, a portion of the Illinois Prairie Path and the Lincoln Marsh

Natural Area/Winfield Creek Greenway, with properties lying south of the Railroad right of way, currently including the DuPage County Fairgrounds, Monroe Middle School, Graf Park, DuPage County Government Center, a senior housing development, Jefferson Elementary School and a retail/office research center. Linkage will be achieved by the construction, maintenance and operation of the Overpass Structure over the Railroad right of way at a point adjacent to the DuPage County Fairgrounds and Monroe Middle School to the south, and the Lincoln Marsh/Winfield Creek Greenway on the north, via the Cooley Ave. right of way, and a system of connecting bicycle/pedestrian trails through the Lincoln Marsh/Winfield Creek Greenway to the Illinois Prairie Path on the north side of the Railroad right of way, and across Monroe Middle School to Manchester Road on the south side of the Railroad right of way. The Project will be constructed primarily on certain real property currently owned by the Park (the "Park Overpass Property") and on certain real property currently owned by the School (the "School Overpass Property"). The use of the Park Overpass Property and the School Overpass Property for the Project constitutes a recreational or conservation purpose under the provisions of the Recreational Use of Land and Water Areas Act of the State of Illinois, 745 ILCS 65/1 et.seq. and a recreational purpose under the Local Government Tort Immunity Act of the State of Illinois, 745 ILCS 10/3-106. No person shall be charged any fee for use of any portion of the Project. An easement from the City of Wheaton for temporary access to the construction area and for construction activities will be required, the agreement for which shall be substantially in the form of **Exhibit E-5** attached hereto and made a part hereof (the "Temporary Construction Easement Agreement"). Access to the Overpass Structure from Manchester Road will be obtained by the conveyance by the School to the Park of certain property owned by School (the "Manchester Access Property"), for a consideration of \$1.00, after completion of construction of the Project, and access to the Overpass Structure from the Cooley Avenue right of way will be obtained by the Park granting to the School a certain easement over and across certain property owned by the Park (the "Cooley Access Easement Property"). The School will also grant to Park a certain license agreement for access to portions of the Project area and to store construction equipment and materials (the "Temporary Construction Access and Equipment and Materials Storage License"). A more detailed description of the Project is attached to and incorporated by reference in this Agreement as **Exhibit A**. A Project Map is attached to and incorporated by reference in this Agreement as **Exhibit B-1** and a Project Site Plan is attached to and incorporated by reference in this Agreement as **Exhibit B-2**. The legal description of the Park Overpass Property is attached to and incorporated in this Agreement as **Exhibit C-1**. The legal description of the School Overpass Property is attached to and incorporated in this Agreement as **Exhibit C-2**.

1.3 In addition to the Parties, other public and private entities have determined, and additional entities may determine, that it is in their and the public's best interest to participate in the financing of the construction or operation of the Project. These entities are or will be non-party

contributors and, as such, have not exercised or assumed and will not exercise or assume any jurisdiction, direction or responsibility for the Project, its design, construction or operation or any other aspect thereof. These entities are hereinafter sometimes referred to individually as a "Non-Party Contributor" and collectively as the "Non-Party Contributors."

2. AUTHORITY

2.1 Article VII, Section 10, of the Constitution of the State of Illinois of 1970 and the Intergovernmental Cooperation Act [5 ILCS 220/1 et. seq.] provide, among other things, that units of local government and school districts (a) may contract or otherwise associate among themselves and with the State or any agency thereof to obtain or share services and to exercise, combine or transfer any power or function, in any manner not prohibited by law or by ordinance; (b) may contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law or by ordinance; (c) may appropriate funds and authorize the receipt of grants for, and use their credit, revenues and other resources to pay costs and to service debt related to, such intergovernmental activities.

2.2 The Project is located entirely or partially within the corporate boundaries of DuPage County, Milton Township, City of Wheaton, Community Unit School District 200 and Wheaton Park District.

2.3 Each Party is a unit of local government or school district and is authorized by the Constitution of the State of Illinois, the Intergovernmental Cooperation Act, and its enabling statute to enter into this Agreement and to carry out or cause to be carried out the intergovernmental activities contemplated herein.

2.4 Article VII, Section 10 of the Constitution of the State of Illinois of 1970 provides that the State shall encourage intergovernmental cooperation and use its technical and financial resources to assist intergovernmental activities.

2.5 The Federal Government and the State of Illinois have recognized the public benefits to be derived by, and have established as a goal the use of, alternative methods of transportation, including bicycle and pedestrian routes.

2.6 The State of Illinois has received federal funds authorized by the Intermodal Surface Transportation Efficiency Act of 1991 for transportation enhancement activities, including provision of facilities for pedestrians and bicycles, which it makes available to local government sponsors under the Illinois Transportation Enhancement Program ("ITEP"). The Illinois Department of Transportation ("IDOT") is the State agency responsible for the management of ITEP and funding of ITEP Projects.

3. PRELIMINARY ACTIONS

3.1 On behalf of the Original Parties, acting as the lead local government sponsor, the Park applied for Project reimbursement funding under ITEP, and IDOT has informed the Park that reimbursement funding for the Project has been approved in an amount not to exceed \$1,881,000.00, notwithstanding that in July, 2004, based on the plans and specifications approved by IDOT, the estimated cost of construction (not including construction supervision) was \$2,540,300.00. Park has obtained additional grant funding for the Project from other State of Illinois agencies.

3.2 Construction of the Project involves three phases. "Phase I" concerned type, size and location preliminary engineering work on the Project, and has been completed. "Phase II" involved the design and construction contract document on the Project, and has been completed. "Phase III" will involve the bidding for the construction, construction supervision of the Project, and the actual construction of the Project.

3.3 The Original Parties entered into a letter agreement dated as of September 12, 1995 (the "Phase I Cost Sharing Agreement"), a copy of which is attached as **Schedule 1** and incorporated by reference in this Agreement, with the following original Non-Party Contributors: DuPage County, the DuPage County Fair Association, the City of Wheaton, Milton Township and Metra, as predecessor to the Railroad, providing for the sharing of the local agency share of the Phase I type, size and location preliminary engineering services for the Project. DuPage County, the DuPage County Fair Association, the City of Wheaton, Milton Township and the Railroad as successor to Metra are hereinafter sometimes individually referred to as an "Original Non-Party Contributor" or collectively referred to as the "Original Non-Party Contributors." The Phase I Cost Sharing Agreement also indicated that the Original Parties' and the Original Non-Party Contributors' estimated total contributions to the Project would be \$170,500.00, which included the Phase I contributions, and the percentage share of said amount estimated to be contributed by each Original Party and Original Non-Party Contributor. At the time the Phase I Cost Sharing Agreement was entered into, the estimated total cost of the Project was \$871,000.00.

3.4 On behalf of the parties to the Phase I Cost Sharing Agreement, the Park entered into a "Local Agency Agreement for Federal Participation" for Phase I type, size and location preliminary engineering services (the "Phase I Local Agency Agreement") dated as of November 3, 1995.

3.5 On behalf of the parties to the Phase I Cost Sharing Agreement, the Park entered into a required IDOT form of "Preliminary Engineering Services Agreement" with CEMCON, Ltd. dated as of October 18, 1995 and a subsequent "Standard Form of Agreement Between Owner and Engineer for Preliminary Phase I Professional Engineering Services" with CEMCON, Ltd., dated as of June 19, 1996. The Park has entered into an agreement with CEMCON, Ltd. concerning the final design of the Project and contract documentation therefor, as part of Phase III (all of these agreement with CEMCON, Ltd. are hereinafter collectively referred to as the "CEMCON Agreements").

4. ALLOCATION OF COSTS

4.1 Each Original Party and Original Non-Party Contributor has made the payments set forth in **Schedule 2** attached to and incorporated by reference in this Agreement, identified as Phase I Share(s) and Phase II Share(s) in said Schedule 2. In addition, each Original Party and certain Original Non-Party Contributors have agreed to pay the amounts set forth in **Schedule 3** attached and incorporated by reference in this Agreement ("Phase III Share(s)").

4.2 All of the following shall be conditions precedent to the commencement of construction of the Project and to the existence of the Original Parties' Shortfall Funding Contribution Option, as hereinafter defined:

4.2.1 A satisfactory agreement has been entered into among the Original Parties and the Railroad regarding an air rights license for a portion of the Overpass Structure, a temporary license from the Railroad to construct the Overpass Structure utilizing and over the Railroad right of way, a permanent license for placement and repair of fencing north of the Railroad right of way, and indemnifying the Railroad for costs incurred by the Railroad caused by activities on the Project, and containing such insurance and indemnification provisions as may be acceptable to the Original Parties (the "Railroad Agreement").

4.2.2 Any necessary local, state and county permits, agreements, court or administrative orders or easements required for the construction of the Project, as determined by the Park, shall have been obtained and entered into, including but not limited to the following:

- a) an order from the Illinois Commerce Commission (the "ICC") permitting the crossing of the Railroad right of way by the Overpass Structure ;
- b) any governmental permits required for construction; and
- c) the Temporary Construction Easement Agreement with the City of Wheaton.

4.3 If, after the completion of the bidding portion of Phase III of the Project, the total cost of the actual construction of the Project, not including construction supervision, exceeds \$2,540,300.00, then either of the Original Parties, may, on notice to the other Original Party and all Non-Party Contributors, elect to terminate this Agreement, as of a date not less than ten (10) days after the date specified in such notice, and any funds held by the Park, as described in Paragraph 5.3 of this Agreement, shall be distributed pursuant to Paragraph 9.4 of this Agreement.

4.4 If this Agreement is not terminated pursuant to Paragraph 4.3 of this Agreement, and all of the conditions precedent to commencement of construction described in Paragraph 4.2 of this Agreement have occurred, the "Original Parties' Shortfall Funding Contribution Option" shall arise. The "Original Parties' Shortfall Funding Contribution Option " means an option of each of the Original Parties, by a deadline mutually determined by the School and the Park, to make, or cause the Original Non-Party Contributors or other Non-Party Contributors to make, contributions of funds which, when

added to funds paid or to be paid from or through IDOT, ICC and the Illinois Department of Natural Resources, are adequate to pay for the cost of construction and construction supervision of the Project (the "Required Local Agency Total"), provided, however, that the maximum required total contribution of each Original Party, as opposed to additional contributions which may be made pursuant to the Original Parties' Shortfall Funding Contribution Option, including all hard and soft costs, shall not exceed \$191,806.75, as calculated on **Schedule 4** attached to and incorporated by reference into this Agreement. The estimated current cost of the Project and the estimated funding from all sources is described on **Schedule 5** attached to and incorporated by reference into this Agreement. As part of the Original Parties' Shortfall Funding Contribution Option, the Original Parties shall discuss with each other the equal contributions which may be made by the Park and the School and the reasonable efforts to be made by the Park and the School to seek funding from Non-Party Contributors. If the Required Local Agency Total is not contributed by the deadline, and neither Original Party agrees, in a writing delivered to the other Original Party, to contribute funds to achieve the Required Local Agency Total, either of the Original Parties may, on notice to the other Original Party and all Non-Party Contributors, elect to terminate this Agreement, as of a date not less than ten (10) days after the date specified in such notice, and any funds held by the Park pursuant to Paragraph 5.3 of this Agreement shall be distributed pursuant to Paragraph 9.4 of this Agreement.

4.5 Notwithstanding the above stated maximum required contribution amount, a) the Parties reserve all rights each of them may have with respect to sharing the cost of legal fees incurred in connection with the preparation and implementation of this Agreement, a former agreement drafted with respect to several easements to be obtained from DuPage County, the City of Wheaton and DuPage County Fair Association, which agreement was not finally needed, the Railroad Agreement, the CEMCON Agreements, and all agreements and orders described in Paragraph 4.2 above, and b) during construction of the Project, and upon approval by both Original Parties, the Original Parties shall share equally in the cost of any additional consulting and professional fees required for the Project, including but not limited to engineering and legal fees incurred in connection with any revisions to this Agreement.

4.6 Following construction of the Project, the Original Parties shall share equally in the ownership, and in the cost, if first approved by the Parties, of maintenance, repair, reconstruction or replacement of the Project, including the Overpass Structure (collectively, the "Shared Costs"). As used in this paragraph 4.6, unless otherwise agreed between the Parties, "maintenance" means minor repair or rebuilding of any portion of the Project by either of the Parties, and does not include the cost of routine safety inspections of any portion of the Project by either of the Parties, or custodial surface maintenance of any portion of the Project, such as sweeping, by either of the Parties.

4.7 Each Party shall appropriate such funds as shall be necessary to carry out its obligations under this Agreement.

5. PROJECT ADMINISTRATION

5.1 The Park is hereby designated as and shall be the initial "Administrative Party" for the Parties under this Agreement. The Administrative Party shall have the authority and be responsible for (i) acting as the lead local agency for the benefit and on behalf of the Parties in procuring Federal and/or State funding for the Project and executing applications and agreements in connection therewith as shall be authorized by the Parties; (ii) coordinating and administering funding for the Project by the Parties and Non-Party Contributors; (iii) contracting for necessary or desirable professional services including but not limited to engineering and legal services; (iv) negotiating for and obtaining temporary construction and permanent access easements, licenses and permits, as may be necessary or desirable for the construction, maintenance, repair and reconstruction and replacement of the Project; (v) soliciting bids and awarding and administering contracts for the reconstruction and replacement of the Project, but not those for routine repair or maintenance (the Parties acknowledge that IDOT shall be responsible for the solicitation of bids for the initial construction of the Project, with the approval of the Parties); (vi) taking such other actions as it reasonably shall deem necessary or desirable to carry out the intent and effectuate the purposes of this Agreement and the Project. The Administrative Party may resign as such upon at least thirty (30) days advance written notice to the other Parties. The Administrative Party may also be changed from time to time by majority vote of the Parties. Only a Party may be the Administrative Party. There are no restrictions on the number of years, consecutive or otherwise, that a Party may serve as the Administrative Party.

5.2 An advisory entity to recommend the appropriate maintenance, repair, and eventual replacement or reconstruction of the Project is hereby created and designated the "Overpass Advisory Board" ("Advisory Board"). The Advisory Board shall not have any power as such to act or contract on behalf of the Parties; its sole function is to act in an advisory capacity, providing recommendations to the Parties in accordance with the terms and provisions of this Agreement.

5.2.1 Membership in the Advisory Board shall consist of one designated representative from each of the Parties and one designated representative from such Non-Party Contributors as shall be approved for membership on the Advisory Board by the Parties.

5.2.2 Until the Advisory Board is comprised of more than two members, unanimous vote of the members shall constitute the action of the Board. At such time as the Advisory Board is comprised of more than two members, the majority vote of the members shall constitute the action of the Board; provided, however, that if the Advisory Board has among its members entities other than the Parties, the Parties shall have sixty percent (60%), divided equally among them, of the votes entitled to be cast on any matter to come before the Board and the Non-Party Contributor

members shall have forty percent (40%), divided equally among them, of the votes entitled to be cast.

5.2.3 Whenever the Parties deem it necessary or advisable (on a date or dates to be determined by the Original Parties), the Advisory Board, in consultation with IDOT and a professional Illinois licensed engineer mutually acceptable to the Parties, shall submit written recommendations to the Parties for appropriate maintenance, repair, reconstruction or replacement of the Project.

5.2.4 The Administrative Party shall call at least one meeting of the Advisory Board annually for the purpose of establishing and considering the recommendations provided for in subparagraph 5.2.3 and such other matters as the Administrative Party shall deem appropriate. Meetings may also be called by not less than two (2) other Advisory Board members. Notice of meetings of the Advisory Board shall be in writing (personal delivery, facsimile transmission or US mail) given not less than five (5) nor more than thirty (30) days prior to the date of the meeting; provided, however, that notice of a meeting held for the purpose of discussing a bona fide emergency may be given upon twenty-four (24) hours notice. The agenda for the meeting shall accompany every notice. Notwithstanding the foregoing, attendance of an Advisory Board member at any meeting shall constitute a waiver of notice of such meeting, except where a member attends a meeting for the expressed purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The meetings of the Advisory Board shall be subject to the requirements of the Open Meetings Act of the State of Illinois.

5.3 The Administrative Party shall act as an escrowee for the Parties with respect to receiving deposits for the design and construction of the Project and any later reconstruction, replacement or repair of any portion of the Project, subject to fund accounting by the Park District. A representative of the Park, specifically Kenneth Kutska, and a representative of the School, specifically Dr. Gary Catalani, shall agree in advance to the final design of the Project and approval of contracts and change orders, and otherwise subject to applicable law; provided, however, that approvals shall not be unreasonably withheld or delayed, and that no changes to the design or construction may be required by either Party which might adversely effect the structural integrity of the Project or funding for the Project. The monies deposited by each Party and each Non-Party Contributor shall be drawn upon according to submittal of payout requests by the contractor(s) responsible for the initial construction of the Project. Each payout request shall be sent by the Administrative Party to the other Parties, accompanied by appropriate contractor's, subcontractor's and material supplier's sworn statements and mechanic's lien waivers. Upon

review and approval of each payout request by the Parties, which review and approval shall not be unreasonably withheld or delayed, the Administrative Party shall then direct IDOT to pay the appropriate payee. The Parties acknowledge that a) IDOT will actually pay the appropriate payee, b) twenty percent (20%) of each payout shall be billed by IDOT to the Administrative Party and eighty percent (80%) shall be paid by Federal Highway Administration funds ("FHWA Funds") until FHWA Funds are exhausted, and c) after FHWA Funds are exhausted, IDOT will bill the Administrative Party for one hundred percent (100%) of all payout requests. If any Party's unreasonable withholding or delay of a payout request results in the imposition of any interest or other charges from the payee to whom the payout funds are owed, the withholding or delaying Party shall be responsible for those charges. It is contemplated that Park will facilitate payment for all Project costs otherwise reimbursable from grant funding, will seek funding from the granting agencies for those payments, and that School shall not be liable to Park if any grant funding is not finally paid out from the applicable granting agency(ies). Except as provided in Paragraph 9.4, below, interest earned on funds deposited in the fund account maintained by the Park shall remain in the fund account and shall be used only for the purpose of the design and construction of the Project and the maintenance, repair, reconstruction or replacement of the Project, and if the Parties agree in writing, for payment of actual, reasonable and necessary out of pocket costs and expenses incurred by the Administrative Party.

5.4 If approved in advance by the Parties, any maintenance or repair of the Project may be performed by any of the Parties with its own personnel or through a subcontractor, and in such event the Party performing such maintenance or repair shall be reimbursed for the actual costs of such maintenance or repair incurred by such Party. Payment to the Party performing such repair shall be made by the Administrative Party out of the fund account established pursuant to Paragraph 5.3, above, following the same procedure outlined in that paragraph, except that if the repairs are performed by the Party's own personnel, a reasonably detailed invoice shall be submitted in lieu of the contractor's sworn statement and supporting lien waivers.

6. RIGHTS AND RESPONSIBILITIES

6.1. The Park shall contribute funds in accordance with Paragraph 4, above and for the short and long term maintenance of the Project, shall contribute the use of Park-owned lands for the site of the Project, and:

- 6.1.1 The Park, in cooperation and consultation with the other Parties, reserves the right to review and approve all Project design, and all engineering, construction, maintenance, and restoration contracts for the Project .
- 6.1.2 The Park shall be responsible for continued maintenance of the portion of the Project on property owned by the Park, and of the fencing located on Railroad

property north of the Railroad right of way, but the costs, if first approved by the Parties, of such maintenance shall be Shared Costs.

- 6.1.3 The Park shall not place or permit to be placed any permanent barriers on or across Project paths or the Overpass Structure precluding the use thereof by pedestrians, hikers or bicyclists. Temporary barriers may be placed in connection with maintenance, repair or reconstruction or in the event of a bona fide safety emergency.
- 6.1.4 The Park shall execute a reciprocal easement agreement with the School substantially in the form of the reciprocal easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-1**, granting to School, its successors, successors-in-title and its and their employees, agents and invitees, a non-exclusive easement across the Park Overpass Property and fifteen (15) feet of adjacent land on either side thereof, as may be applicable, appurtenant to the School Overpass Property, for passage and use for the purpose of ingress and egress to and from the School Overpass Property and for the purpose of construction, maintenance, repair and reconstruction of the Project in accordance with the provisions of this Agreement. In addition, after completion of construction of the Project, the Park shall accept a quit claim deed from the School, substantially in the form of the deed attached hereto and incorporated by reference in this Agreement as **Exhibit D-2**, conveying the Manchester Access Property from the School to the Park, and the Park shall pay one half of the cost charged by CEMCON, Ltd. to create a legal description of the Manchester Access Property and a survey thereof. Further, the Park shall execute an access easement agreement with the School, substantially in the form of the access easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-3**, whereby the School, its successors-in-title and its employees, agents and invitees are granted a non-exclusive access easement, across the Cooley Access Easement Property, appurtenant to the School Overpass Property, for the purpose of access to the Overpass Structure from the Cooley Ave right of way. The Park shall also execute the form of Temporary Construction Access and Equipment and Materials Storage License in the form of **Exhibit D-4** attached to and incorporated by reference in this Agreement, for the purposes of obtaining a license to use a portion of the School's property for construction of the Project. None of the easements described in this Paragraph 6.1.4 shall impinge on or affect the School's parking lot behind Monroe Middle School or

the School's driveway in front of Monroe Middle School; provided that the Temporary Construction Access and Equipment and Materials Storage License shall temporarily affect such driveway, as therein described.

6.1.5 The Park shall provide the Project engineer and other Project consultants with such access to Park owned properties as may be necessary to perform Project engineering and design work and shall promptly upon request provide the Project engineer and other Project consultants with such surveys, reports, studies or other information in Park's possession or under its control as may be relevant to the Project.

6.1.6 The Park shall carry out its other obligations as provided in this Agreement, including acting as the initial Administrative Party.

6.2 The School shall contribute funds in accordance with Paragraph 4, above, and for the short and long term maintenance of the Project and shall contribute the use of School-owned lands for the site of the Project, and :

6.2.1 The School, in cooperation and consultation with the other Parties, reserves the right to review and approve all Project design, and all engineering, construction, maintenance and restoration contracts for the Project.

6.2.2 The School shall be responsible for continued maintenance of the portion of the Project on property owned by the School, but the costs, if first approved by the Parties, of such maintenance shall be Shared Costs.

6.2.3 The School shall not place or permit to be placed any permanent barriers on or across Project paths or the Overpass Structure precluding the use thereof by pedestrians, hikers or bicyclists. Temporary barriers may be placed in connection with maintenance, repair or reconstruction or in the event of a bona fide safety emergency.

6.2.4 The School shall execute a reciprocal easement agreement with the Park, substantially in the form of the reciprocal easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-1**, granting to Park, its successors, successors-in-title and its employees, agents and invitees, a non-exclusive easement, across the School Overpass Property and fifteen (15) feet to the east thereof, appurtenant to the Park Overpass Property, for passage and use for the purpose of ingress and egress to and from the Park Overpass Property and for the purpose of construction, maintenance, repair and reconstruction of the Project in accordance with the provisions of this Agreement. In addition, after completion of construction of the Project, the School shall execute a quit claim

deed to the Park, substantially in the form of the deed attached to and incorporated by reference in this Agreement as **Exhibit D-2**, conveying the Manchester Access Property to the Park, and the School shall pay one half of the cost charged by CEMCON, Ltd. to create a legal description of the Manchester Access Property and a survey thereof. Further, the School shall execute an access easement agreement with the Park, substantially in the form of the access easement agreement attached to and incorporated by reference in this Agreement as **Exhibit D-3**, whereby the School, its successors-in-title and its employees, agents and invitees are granted a non-exclusive access easement, across the Cooley Access Easement Property, appurtenant to the School Overpass Property, for the purpose of access to the Overpass Structure from the Cooley Right of Way. The School shall also execute the form of Temporary Construction Access and Equipment and Materials Storage License in the form of **Exhibit D-4** attached to and incorporated by reference in this Agreement, for the purposes of granting to the Park a license to use a portion of the School's property for construction of the Project. None of the easements or licenses described in this Paragraph 6.2.4 shall impinge on or affect the School's parking lot behind Monroe Middle School or the School's driveway in front of Monroe Middle School; provided that the Temporary Construction Access and Equipment and Materials Storage License shall temporarily affect such driveway, as therein described.

- 6.2.5 The School acknowledges that the Park has previously entered into an intergovernmental agreement with the Forest Preserve of DuPage County ("Forest Preserve") for funding of land acquisition as provided by the Forest Preserve. Pursuant to the terms of the intergovernmental agreement, the School will comply with the Forest Preserve's planning review rights within the Lincoln Marsh areas.
- 6.2.6 The School shall provide the Project engineer and other Project consultants and the Administrative Party with such access to School owned properties as may be necessary to perform Project engineering and design work and shall promptly upon request provide the Project engineer and other Project consultants with such surveys, reports and other information in the School's possession or under its control as may be relevant to the Project.
- 6.2.7 The School shall carry out its other obligations as provided in this Agreement.

6.2.8 The School will advise its students and their parents of the existence and safe and proper use of the Overpass Structure. In addition, when misbehavior on the Overpass Structure by any student is reported to the School, the School shall discipline such misbehaving student in accordance with its usual procedures concerning misbehavior occurring to or from school.

6.3 The Parties shall comply with the laws, rules, regulations and requirements of all federal, state, county, municipal and other applicable governmental authorities, now in effect, or which may hereafter be in effect, that are applicable to the construction, maintenance and operation of the Project and to the performance of this Agreement, with the most stringent standards governing.

7. LIABILITIES/INDEMNIFICATION/INSURANCE

7.1 It is acknowledged by the Parties that the Non-Party Contributors have neither exercised nor assumed and will not be required to exercise or assume any jurisdiction, direction or responsibility for the Project, its design, construction, maintenance, operation or any other aspect thereof, other than to contribute funds and/or perform such other functions or take such other actions as specifically agreed by such Non-Party Contributor in a separate written instrument. Accordingly, in the event a lawsuit or administrative proceeding is brought against any one or more of the Parties in connection with the Project, and a Non-Party Contributor is joined in such lawsuit or proceeding for any reason other than its failure to perform its obligations under any such separate instrument to which it is a party, the Parties shall cooperate with the Non-Contributing Party in seeking its dismissal from such lawsuit or proceeding and use their reasonable best efforts to recover any financial damage incurred by the Non-Party Contributor from the party or parties or their attorneys wrongfully joining said Non-Party Contributor to the lawsuit or proceedings.

7.2 It is acknowledged by the Parties that the Administrative Party does not assume any liability by virtue of its acting as the Administrative Party. The other Parties shall indemnify, hold harmless and defend the Administrative Party, the members of its governing board, its officers, employees and agents, against and from any all such liability except to the extent such liability is determined by a court of competent jurisdiction to result from the Administrative Party's gross negligence or willful misconduct in the performance of its duties as the Administrative Party in accordance with this Agreement.

7.3 Except as otherwise provided below, the Parties shall share equally any and all liabilities, costs and expenses incurred, including without limitation fees of the attorneys retained by the Administrative Party in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property, arising out of, related directly or indirectly to, or in connection with the initial construction of the Project or the maintenance, repair, reconstruction and operation of the Project. Each Party shall be jointly and equally responsible (that is, each Party shall be

fifty percent (50%) responsible) for the payment of any and all liabilities, costs and expenses incurred in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property, arising out of, related directly or indirectly to, or in connection with a) the construction, maintenance, repair, reconstruction and operation of any portion of the Project (excluding the fencing north of the Railroad right of way), subject to the Park's indemnification obligations described in Exhibit D-4 attached hereto, and b) the indemnification by Park and School of the Railroad under the terms of the Railroad Agreement; provided, however, that each Party shall continue to be solely responsible for the payment of any and all liabilities, costs and expenses incurred in connection with any and all claims, demands and causes of action for injury to or death of any person, or any loss of or damage to property arising out of any condition on real property owned by either Party which does not arise out of, or relate directly or indirectly to, the maintenance, repair, reconstruction or operation of any portion of the Project. Each Party shall be solely responsible for the payment of any and all liabilities, costs and expenses (other than the Shared Costs) incurred in connection with claims made against such Party other than for personal injury or property damage as provided herein, such as claims disputing a Party's authority to participate in or to expend funds in connection with the Project, and the other Parties shall have no liability therefor by way of contribution or otherwise.

7.4 The Park shall indemnify, hold harmless, and defend each other Party, the members of its governing board, and its officers, employees, and agents from and against all liabilities, claims, demands, causes of action, costs and expenses (including without limitation legal fees and costs, i.e. reasonable attorneys' and paralegal fees and costs and court costs) arising out of or related to any injury to or death of any person or any loss of or damage to property resulting from the Park's performance of its obligations under this Agreement, or arising out of, related to or resulting from Park's breach of its obligations under this Agreement. The Park shall not be obligated or responsible to indemnify, hold harmless or defend any other Party or any third party from or against any liability, claims, demands, and causes of action arising out of or related to any injury to or death of any person, or loss of or damage to property, to the extent same result from or arise out of the negligent or wrongful acts or omissions of such other Party or third party or its agents or employees.

7.5 The School shall indemnify, hold harmless, and defend each other Party, the members of its governing board, and its officers, employees, and agents from and against all liabilities, claims, damages, causes of action, costs and expenses (including without limitation legal fees and costs, i.e. reasonable attorneys' and paralegal fees and costs and court costs) arising out of or related to any injury to or death of any person or any loss of or damage to property resulting from the School's performance of its obligations under this Agreement, or arising out of, related to or resulting from School's breach of its obligations under this Agreement. The School shall not be obligated or responsible to indemnify, hold harmless or defend any other Party or any third party from or against any liability, claims, demands, and