

JOINT STATEMENT OF UNDERSTANDINGS REGARDING THE PROPOSED CREATE PROJECT

PREAMBLE

The Chicago Regional Environmental and Transportation Efficiency Project (**CREATE**) (the Project) is a joint effort of (i) the Association of American Railroads (AAR), acting for and on behalf of The Burlington Northern and Santa Fe Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway Company (CP), CSX Transportation, Inc. (CSX), Norfolk Southern Railway Company (NS), Union Pacific Railroad Company (UP), and Commuter Rail Division of the Regional Transportation Authority (Metra), (ii) the Illinois Department of Transportation (IDOT), and (iii) the Chicago Department of Transportation (CDOT) (AAR, IDOT and CDOT are referred to collectively as the “Stakeholders”), to restructure, modernize and expand the freight and passenger rail facilities and highway grade separations in the Chicago metropolitan area (the “Region”) while reducing the environmental and social impacts of rail operations on the general public. The National Railroad Passenger Corporation (Amtrak) has been consulted in connection with the Project and may subsequently join in this effort, if it chooses to do so, on terms mutually agreeable to it and the parties hereto.

The Stakeholders recognize that the Region, as a place in the nation where six of the seven Class 1 freight railroads converge, is the predominant rail transportation hub of the United States. Nearly a quarter of the nation’s rail shipments move to or through the Region. The Region’s rail traffic (freight and passenger, including commuter) and highway traffic (commercial and personal) are all estimated to increase substantially in the future.

Over the past five years, the railroad industry has spent over \$1.2 billion benefiting the Region for capital replacement and infrastructure improvements. Further, with the creation of the Chicago Transportation Coordination Office (CTCO) and subsequent improvements in train planning and communications, the time required to move freight across the Region has improved significantly. However, to further improve velocity and to accommodate the growing demands placed upon it, including increasing intermodal traffic, railroad infrastructure in the Region must be enhanced. Expanded rail capacity will also remove the growth pressure on further highway improvements.

Freight transportation efficiency in the Region has a ripple effect on the movement of goods throughout the United States, into Canada and Mexico, and to other international destinations. Much of the traffic handled in Chicago moves to or from the Nation's coasts, including to or from every major seaport in the USA and Canada. Capacity and efficiency improvements in the Region are vital to both economic and security interests of the USA and, due to greatly increased international flows under NAFTA, also to the rest of the continent.

Chicago's growing passenger rail service is an integral part of the Region's and the nation's transportation services. It benefits the community by removing automobile traffic from roadways and, by virtue of removing automobile traffic, reducing automobile emissions. This, in turn, reduces air pollution across the metropolitan area. Existing at-grade rail crossings diminish the reliability, capacity, and growth capabilities of commuter and intercity passenger rail lines, especially on the south and southwest parts of the Region. The Project's proposed rail-over-rail grade separations will enable service to be added to these lines, improving reliability and reducing travel times. Proposed grade crossing improvements and rail/rail and rail/road grade separations also will improve safety.

The Project will include the development of five rail transportation corridors (the “Corridors”), as depicted in the drawing attached hereto as Exhibit A. Four of the Corridors (the Central Corridor, the Beltway Corridor, the Western Avenue Corridor, and the East-West Corridor) will be primarily for handling freight traffic in the Chicago metropolitan area. The Passenger Express Corridor will be primarily for handling commuter and interstate passenger traffic. The individual components (the “Components”) included in the Project are set out in the book entitled ‘CREATE: Chicago Region Environmental And Transportation Efficiency Project,’ dated June 6, 2003 (the “Plan”), which is incorporated herein by reference. The development of the Corridors will include the upgrading of existing track structure, the double-tracking or triple-tracking of certain lines, the construction of grade separations and flyovers, the installation of new or improved signaling, and various other additions and improvements totaling approximately 70 discrete projects within the Corridors. The Project also will include certain improvements (e.g., grade separation projects) on existing rail lines outside the Corridors.

This document is a Joint Statement of Understandings agreed upon by the Stakeholders as a basis for seeking funding for the Project.

I. Objectives

The Project has the following overall objectives:

1. To improve safety at proposed grade-separated locations and in rail operations;
2. To eliminate or to reduce many points of direct conflict between rail Corridors and the Region’s street and highway network, by grade-separating the crossing

points, and reducing conflicts at other crossing points by improving the velocity and flow of rail traffic;

3. To eliminate points of conflict between rail corridors, especially among the five principal Corridors, reducing congestion, delays, and adverse social and environmental impacts resulting from current inefficiencies, with points where Metra and Amtrak service are restricted by freight operations addressed in the Project by rail-over-rail grade separations;
4. To reduce fuel consumption by, and emissions from, both locomotives and waiting autos and trucks;
5. To limit the growth of traffic congestion on the Region's highways;
6. To reroute rail freight and intercity passenger operations off the rail corridor known as the St. Charles Airline, thereby reducing impacts of rail operations on the south lakefront and providing additional acreage for open space and other land uses;
7. To modernize and increase the capacity of rail facilities (track, signals, bridges, and yards) to more efficiently handle today's rail traffic and to meet the demands of future traffic increases;
8. To connect the Corridors to each other more effectively and to foster the smooth and efficient flow of goods and people within and through the Region, as well as to and from other parts of the United States, including international traffic moving through the country's major ports; and

9. To generally improve the efficiency and reliability of the Corridors to better serve national security.

II. Terms and Conditions

The Project is subject to the following overall Terms and Conditions, and the Stakeholders agree to pursue federal, state, local and private funding (in addition to the Railroads' funds)

("Additional Funding") on the basis of such Terms and Conditions:

1. The individual railroad members of AAR participating in the Project are BN, CN, CP, CSX, NS, UP, Metra, and Amtrak if it chooses to participate on mutually acceptable terms (collectively, the Participating Railroads). It is anticipated that the proposed Corridor construction will generally be on property owned by the Participating Railroads and the Switching Railroad subsidiaries of some of them, namely The Belt Railway Company of Chicago, the Baltimore & Ohio Chicago Terminal, and the Indiana Harbor Belt Railroad. The Participating Railroads agree to cause such Switching Railroads to take such actions as may be required to implement the Project on the terms set forth herein. In some instances the Project will require that third-party properties be acquired for the Project. The Participating Railroads and Amtrak will be the principal users of the Project lines.
2. The City of Chicago will participate in the Project through its Department of Transportation (CDOT), as will the State of Illinois through the Illinois Department of Transportation (IDOT).

3. In order to coordinate the Project and to assure compliance with governmental requirements, there will be a joint governance structure (Governance Structure), as agreed to by the Stakeholders.

4. The Project will include the construction and/or improvement of numerous individual Components, many of which have independent utility. However, the Project shall constitute one integrated Project that has been designed to foster improved commuter and intercity rail passenger service, improved street traffic fluidity through grade separations and other highway enhancements, a more efficient rail freight transportation system within and through the Region, with improved safety and security. Prior to or during implementation, it is anticipated that refinements in the planned Components will likely be necessary. However, Components shall not be added to or deleted from the Project or materially changed, without the unanimous consent of all Stakeholders.

5. Although the Participating Railroads will realize substantial benefits as a result of the Project, the general public will achieve the preponderance of the benefits through improved safety, air quality, security, and automobile commuting times, reduced truck congestion, continued growth of the Region's economy, and more efficient movement of rail freight across the nation and to Canada and Mexico and other international destinations. The Stakeholders agree that funding of the Project should be supplied by the various parties hereto in a manner commensurate with the distribution of these and other benefits. They further agree that substantial governmental funding will be necessary to implement the Project. IDOT and CDOT agree that the Project is a high priority for them and

commit to seek all necessary funding, and to expend such funding, if obtained, on the Project.

6. The preliminary estimated total cost of the design and construction of the Project is \$1.534 billion. Such estimate, which is based upon conceptual engineering, includes the estimated costs of environmental assessment and remediation, acquisition of third-party properties (or interests therein) required for the Project and relocation costs with respect thereto, and provision for project management, inflation and contingencies. The overall cost estimate will be refined as further information is developed. The Participating Railroads are willing to make a capital contribution over the construction period in an amount which reflects the benefits (as determined by the Participating Railroads and agreed to by CDOT and IDOT prior to the execution of this Joint Statement) they are expected to receive from the Project. Except as provided in paragraph 7 of this Section II, the parties hereto agree that the Participating Railroads' direct monetary contribution to the Project shall be \$232 million (Railroad Financial Contribution) based upon the agreement by the parties hereto as to the value of the expected benefits to the Participating Railroads. Except as provided in Section IV hereof, the Railroad Financial Contribution to the Project shall be contingent upon a binding commitment that establishes the availability, on terms and conditions satisfactory to the Participating Railroads, of all Additional Funding and of third-party properties necessary to complete the entire Project. If such commitment cannot be obtained by the targeted date for commencement of construction of the Project, changes in these Terms and Conditions, including changes in the timing for

funding the Railroad Financial Contribution and Component sequencing, satisfactory to all the Stakeholders, would be required for the Project to proceed. Additional Funding sources satisfactory to the Participating Railroads sufficient to pay for the balance of the then-current estimated project cost must be secured in order for the Railroads to be obligated to make the Railroad Financial Contribution. The Participating Railroads voluntarily are committing to contribute the Railroad Financial Contribution during Component construction for the benefits they will receive during the life of the Project, and they will own and maintain the railroad infrastructure Components once completed. Accordingly, it is the understanding of the parties hereto that the Railroad Financial Contribution to the Project shall be limited as stated above. Furthermore, the parties hereto do not intend that there be special user fees, taxes or other similar assessments targeted toward the Participating Railroads or their customers for the purpose of funding the publicly funded portion of the Project.

7. Since the Railroad Funding Contribution is limited to \$232 million, any increases in the estimated project cost developed as the result of final engineering and refining the estimated cost must be funded from Additional Funding; provided, however, that during the construction phase, the party having responsibility for construction of each Component as indicated on Exhibit B will be responsible for the on-budget and on-time completion of such Component in accordance with the plans and cost estimates based on final engineering, subject to events beyond the control of such party, including reasonably unforeseeable site conditions and *force majeure*. Additionally, an event beyond the control of such party would

occur when the lowest responsive and responsible public bid for a rail-to-rail grade separation project Component is above the final engineering estimate; provided, however, that the responsible party will, at the direction of the Stakeholders, use reasonable efforts to redesign the Component and/or to seek different assumptions reasonably acceptable to all Stakeholders that are incorporated into the design or staging of that Component. To the extent possible under applicable funding, savings on any Component (including unused contingency reserves), except on rail infrastructure Components of CN, may be used to offset overruns on other Components, such savings being first applied to Components in the same category (i.e., Railroad Components, Metra Components, and Public Components, all as further described in Exhibit B, which shall each constitute separate categories), and then subject to the approval of all the Stakeholders across such categories of Components. Because CN is the only Participating Railroad vacating its current route through Chicago and constructing a new route, CN savings, if any, on anticipated expenditures for rails, ties, ballast, signals, and related items on any of its rail infrastructure Components along the new Central Corridor route may be used only to offset overruns on such items on other rail infrastructure Components along the Central Corridor, and not for any other Project Component of any category. It is believed that the estimated Project cost includes sufficient contingencies to cover reasonably unforeseeable conditions, including *force majeure*. However, in the event of a cost overrun as the result of events beyond the control of the responsible party, including reasonably unforeseeable site conditions and *force majeure* that exceeds such

contingencies, additional funding from sources other than the Participating Railroads will be required.

8. The Stakeholders note that the success of the Project will be dependent upon public support, and agree to work cooperatively with each other, and with the appropriate federal, state, and regional officials, especially the other affected local governmental entities of the Region, to develop broad support for the Project. CDOT and IDOT shall take the lead in developing such public support.
9. To the extent that properties belonging to third parties need to be acquired (temporarily or permanently) in order to permit construction of the Project, CDOT and IDOT will take the lead in acquiring, and will acquire, such property (or interests therein), by voluntary transaction, condemnation or otherwise. All costs associated with such acquisition (including, without limitation, costs of land acquisition, permitting, environmental mitigation, and any relocation assistance) will be treated as costs of the Project. Notwithstanding the foregoing, if any Participating Railroad is liable for environmental mitigation of a pre-existing environmental condition on any such property, such Railroad shall be required to pay for such mitigation to the extent that it would be liable therefor in the absence of the Project; provided, however, that any additional mitigation costs resulting from the specific Project requirements or the Project construction shall be a Project cost. All such properties (or such interests) needed for highway-rail grade separation shall be retained by or transferred to the appropriate public entity. Any property (or such interests) so acquired that is needed for railroad rights-of-way or facilities shall be conveyed to the Participating Railroad(s) or Switching Railroad

that owns or controls such Corridor segment, subject to appropriate easements and other customary conditions and restrictions for publicly-owned highways and bridges, as a capital contribution to the Project (in addition to the Additional Funding). The Participating Railroads will convey to the public agency owning any highway or bridge, as a capital contribution to the Project (in addition to the Railroad Financial Contribution), appropriate rights, including easements or other property interests (subject to appropriate easements for Railroad access and other customary conditions and restrictions) in any Railroad property required for any project, highway or bridge that is to be publicly owned.

10. CDOT and IDOT shall also take the lead, with Participating Railroad assistance, in obtaining necessary environmental or regulatory approvals, and in performing any necessary environmental mitigation, as a cost of the Project. Notwithstanding the foregoing, if any Participating Railroad is liable for environmental mitigation of a pre-existing environmental condition on any property owned or controlled by a party hereto that is to be used for the Project, such Railroad shall be required to pay for such mitigation to the extent that it would be liable therefore in the absence of the Project; provided, however, that any additional mitigation costs resulting from the specific Project requirements or the Project construction shall be a Project cost. The Participating Railroads shall jointly or individually obtain any regulatory approvals needed from the Surface Transportation Board.
11. In accordance with the agreed Governance Structure, the Participating Railroads will be responsible for the design, construction and/or implementation of all Railroad Components, Metra will be responsible for design, construction and/or

implementation of all Metra Components, and IDOT or CDOT (or their designees) will be responsible for the design and construction of all Public Components. After completion of construction, each Component shall become the property of the party that owns or controls (via easement or otherwise) substantially all of the property on which it is constructed or installed, with the public highway portions or grade crossing safety overpasses of each grade separation owned by the appropriate public body. Each owner shall then be responsible for maintenance, operation, management and dispatch on its property.

12. CDOT and IDOT will be responsible for the Project Component entitled Viaduct Improvement/Grade Crossing Safety Program on Exhibit B hereto, receiving Project Component funding based upon an allocation to be approved by IDOT and CDOT.
13. In each case, the Participating Railroads, IDOT and CDOT shall each be permitted to review the design, construction and/or implementation of the Project Components developed by the other parties, with approvals needed from affected parties. Reviews must be accomplished in a reasonable amount of time, as determined by the Stakeholders, and approvals shall not be unreasonably withheld. In each case, the party responsible for construction shall ensure that construction does not unreasonably impair traffic flows, whether by highway or rail.
14. Sequencing of the Components shall be approximately as indicated on Exhibit C hereto, subject to such changes as may be agreed to by all the Stakeholders.

15. The Stakeholders acknowledge CN's need to access the CWI line for its Central Corridor operations and agree that the line shall be available for CN's use upon:
- (1) the satisfactory completion, in Metra and NS' reasonable judgment, of the Project's 74th Street and Englewood Components, or (2) prior to the completion of the Components, should Metra and NS determine in their sole and absolute discretion, after consulting with CN, to grant CN access to their respective properties. The Stakeholders further acknowledge the City's interest in the termination of rail operations on the St. Charles Airline. The Stakeholders agree that the termination of such operations shall occur upon (1) the satisfactory completion, in CN's judgment, of all elements of the Central Corridor, or (2) CN's determination, in consultation with the other owners of the St. Charles Airline, that the Central Corridor is completed to the level necessary for operation thereover.

III. Scope of Work

The scope of work for the Project is outlined in the Plan. CDOT and IDOT will coordinate a process to obtain comments from other governmental entities and civic organizations regarding the implementation of specific Components. Any changes in scope will require the approval of all Stakeholders.

IV. Additional Design

IDOT has agreed to contribute \$10 million and, upon IDOT's payment of such \$10 million, the Participating Railroads have agreed to contribute \$2.5 million, to developing more detailed engineering for the Components to be identified by the parties hereto within thirty (30) days of

the date hereof. The necessary documentation for such funding will be promptly executed by the parties hereto. Such contributions shall be credited against the respective parties' obligations hereunder.

V. Definitive Agreements

Except for the provisions of Article IV, which shall be enforceable upon execution of this Statement, the terms of this Joint Statement of Understandings will be implemented and become enforceable to the extent effectuated by definitive agreements, containing such terms and conditions as are mutually satisfactory to the parties hereto. If such definitive agreements have not been executed by December 31, 2004, this Statement shall be of no further force or effect.

VI. Counterparts

This Joint Statement of Understandings may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same statement.

VII. Effective Date

This Joint Statement shall be effective upon receiving the authorized signatures of each of the parties below.

VIII. Signatures

Illinois Department of Transportation: /s/ Timothy W. Martin
Date: 6/13/03

Chicago Department of Transportation: /s/ Miguel d'Escoto
Date: 6/13/03

Association of American Railroads: /s/ Ed Hamberger
Date: 6/13/03