

**THIRD AMENDMENT TO JOINT STATEMENT OF UNDERSTANDINGS
REGARDING THE PROPOSED CREATE PROGRAM**

WHEREAS, on June 13, 2003 the (i) Association of American Railroads, acting for and on behalf of The Burlington Northern and Santa Fe Railway Company (hereinafter referred to as “BNSF Railway Company”), Canadian National Railway Company, Canadian Pacific Railway Company, CSX Transportation, Inc., Norfolk Southern Railway Company, Union Pacific Railroad Company, and Commuter Rail Division of the Regional Transportation Authority (and, by amendment dated June 24, 2005, the National Railroad Passenger Corporation); (ii) the Illinois Department of Transportation, and (iii) the City of Chicago, acting by and through its Department of Transportation (“City”), entered into a Joint Statement of Understandings Regarding the Proposed CREATE Project (hereinafter referred to as “Program”) (“JSOU”) to progress a joint effort to restructure, modernize and expand the freight and passenger rail facilities and highway grade separations in the Chicago metropolitan area while reducing the environmental and social impacts of rail operations on the general public; and

WHEREAS, this joint effort, designated as the Chicago Region Environmental and Transportation Efficiency Program, or CREATE, includes the construction and/or improvement of numerous individual identified Public, Metra, and Railroad Components that are incorporated in the JSOU and that constitute the entire Program, with a preliminary estimated total cost of the design and construction of the Program set forth in the JSOU at \$1.534 billion; and

WHEREAS, the JSOU was agreed upon by the Stakeholders as a basis for seeking funding for the Program with the further understanding of the Stakeholders that the terms of the JSOU would be implemented and become enforceable to the extent effectuated by mutually acceptable definitive agreements; and if such definitive agreements were not executed by December 31,

2004 (which was extended by two previous amendments to the JSOU to December 31, 2005), the JSOU would be of no further force and effect; and

WHEREAS, notwithstanding that the availability of Additional Funding was not established as of December 31, 2005, the Stakeholders believe that certain identified Program benefits can be realized by the completion of a portion of the Program Components comprising elements of the entire Program (“Initial Components”); and

WHEREAS, the Stakeholders are willing to move forward toward implementation of the Initial Components under certain specific terms and conditions and subject to certain contingencies as described herein; and

WHEREAS, the parties are further willing to support efforts to continue to seek the Additional Funding necessary to implement the entire Program as contemplated by the JSOU.

NOW THEREFORE, the Stakeholders, as of the date hereof, hereby agree to amend the JSOU as follows:

1. The Components set forth and described in Attachment 1 hereto, with the total cost shown as \$331 million, comprise the Initial Components which will be moved forward if the conditions and contingencies stated in Sections 2 through 7 below are met.
2. The Participating Railroads’ direct monetary contribution to the Initial Components is limited to \$101 million (“Initial Components Railroad Financial Contribution”). The Initial Components Railroad Financial Contribution shall be applied to any of the Projects listed in Attachment 1 other than the Highway-Rail Grade Separations Project shown as the first Project on Attachment 1 (“Highway-Rail Grade Separations Project”); provided, however, that Amtrak’s contribution shall be applied only to

- Project P-1. (Metra's contribution is subject to the receipt of necessary State of Illinois transportation funding which has yet to be authorized.)
3. Public funds consisting of federal funds in the amount of \$100 million, or so much thereof as may be made available to IDOT by actions of the federal government including but not limited to obligation limitations, rescissions, and allocations (positive or negative) of revenue aligned budget authority, shall be contributed to any of the Projects comprising the Initial Components, other than the Highway-Rail Grade Separations Project. Such funds shall be administered and contributed through and by IDOT and shall constitute a portion of the Initial Components Additional Funding. The Initial Components Railroad Financial Contribution shall be contingent upon the availability and receipt of such public funds.
 4. As set forth in Attachment 1, the cost of the Projects, other than the Highway-Rail Grade Separations Project, is \$231 million. To cover the full costs of such Projects, funding from City in the amount of \$30 million is anticipated; and such funding shall constitute a portion of the Initial Components Additional Funding. While City believes such public funding will be forthcoming, the funding shall be subject to City's legislative authorization and the availability of federal and state funds (other than those contemplated in Sections 2 and 3 above) but shall not be a condition for the Initial Components Railroad Financial Contribution or the other portions of the Initial Components Additional Funding; provided, however, that the definitive agreements referenced in Section 6 below will address any changes in the event that any or all of such funding from City is not realized.

5. Public funding for the Highway-Rail Grade Separations Project in the amount of \$100 million shall be from IDOT and subject to Illinois legislative authorization. Such funding shall constitute a portion of the Initial Components Additional Funding; however, such funding shall not be a condition for the Initial Components Railroad Financial Contribution or the other portions of the Initial Components Additional Funding described herein; provided, however, that the definitive agreements referenced in Section 6 below will address any changes necessary in the event that any or all of such funding from IDOT is not realized. Funding for the Highway-Rail Grade Separations Project will be provided as set forth in Attachment 1. The City's funding could be expended on the Highway-Rail Grade Separations Project if: (a) such funding is necessary to complete such Project; (b) at least \$25 million of City's funding has been made available for the other Projects listed in Attachment 1, other than OP-5; and (c) all of the Stakeholders agree.
6. Pursuant to Article V of the JSOU, the terms of the JSOU, as amended, will be implemented and become enforceable to the extent effectuated by definitive agreements, containing such terms and conditions as are mutually satisfactory to the Stakeholders. Article V of the JSOU, as previously amended, is hereby further amended by deleting, in the fifth line, the date of "December 31, 2005" and inserting in lieu thereof the date of "December 31, 2009". Such definitive agreements will include, without limitation, agreements as to the amount of work to be completed, the sequence, the schedule, and the funding requirements for the progression of each of the Projects in Attachment 1 and the availability, on terms and conditions satisfactory to the Stakeholders, of the public funding referenced in Section 3 above and of all

- third party properties necessary to complete the Initial Components. The definitive agreement among the Stakeholders to replace this JSOU, as amended, shall also address: (a) the process for prioritizing or modifying the Projects in the event that the aggregate costs exceed the Initial Components Railroad Financial Contribution and the Initial Components Additional Funding, due to any shortfalls in federal funding to be contributed to the Program or due to the unavailability of any or all of the anticipated public funding from City or from IDOT; and (b) an appropriate governance structure for the Initial Components which takes into account the extent to which each of the Stakeholders have met their respective contribution targets hereunder.
7. Notwithstanding the provisions of Article IV of the JSOU, as amended, the Initial Components Railroad Financial Contribution and the Initial Components Additional Funding shall be in addition to, and not offset by, any IDOT or Participating Railroad financial contribution made in accordance with said Article IV.
 8. The Stakeholders agree to advocate that priority for any additional public funding received for a subsequent phase of the CREATE Program be given to Project P-2. This provision shall not be construed to prohibit securing or expending designated funding for other CREATE Projects in the Initial Components or any subsequent Components.
 9. In the first and second lines of the PREAMBLE of the JSOU, the word “Project” is stricken and the word “Program” is inserted in lieu thereof; and, in the JSOU and all three amendments thereto (including the titles of the documents), the term “Project”

- when used to refer to the CREATE Program shall be deleted and the term “Program” shall be inserted in lieu thereof.
10. In the JSOU and all three amendments thereto, the term “Chicago Department of Transportation” shall be replaced by “City of Chicago, acting by and through its Department of Transportation” and the term “CDOT” shall be replaced by “City” wherever such terms appear.
 11. Paragraph 7 of Article II of the JSOU is amended by striking the following in the tenth and eleventh lines: “rail-to-rail grade separation.”
 12. Paragraph 9 of Article II of the JSOU is amended by adding the following after the words “environmental mitigation” in the sixth line: “demolition of existing buildings, securing of parcels,”.
 13. Paragraph 5 of Article II of the JSOU is amended by adding at the end thereof the following sentence: “The Stakeholders acknowledge that all such government funding will represent a capital contribution to the Program and not payment in exchange for services or property provided, or to be provided, by the Participating Railroads.”
 14. Except to the extent inconsistent with the terms of this Third Amendment, all of the provisions of the JSOU will apply to the Initial Components as if: (a) the Initial Components were the Program; (b) the Initial Components Railroad Financial Contribution were the Railroad Financial Contribution; (c) the Initial Components Additional Funding were the Additional Funding and (d) Attachment 1 hereto were the Plan and Exhibit C with respect to the identification of the Components.

15. Except as otherwise provided herein, capitalized terms shall have the same meaning as in the JSOU.
16. The JSOU (including the provisions of Article V regarding definitive agreements), as previously amended and as further amended hereby, is reinstated by the Stakeholders and remains in full force and effect with respect to the Initial Components. In all other respects, no party shall have any other liability or obligation under the JSOU, as amended; provided, however, that: (1) the Stakeholders will continue to support efforts to seek the Additional Funding necessary to move forward the entire Program originally contemplated by the JSOU; and (2) if the Additional Funding is realized, the Stakeholders further agree to work, at such time, in good faith to effect a definitive agreement for the entire Program which, taking into account any changed circumstances, reflects as closely as possible the objectives, understandings, and railroad contribution limitations regarding the entire Program as set forth in the original JSOU.
17. This Third Amendment to the JSOU 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.
18. This Third Amendment to the JSOU shall be effective upon receiving the authorized signatures of each of the parties below.

Illinois Department of Transportation:

By: /s/ Milton R. Sees

Date: 2/9/09

City of Chicago, acting by and through its Department of Transportation:

By: /s/ Thomas G. Byrne

Date: 12/16/08

Association of American Railroads:

By: /s/ Edward R. Hamberger

Date: 11/24/08