

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

 X Resolution or Ordinance (Blue) _____ Waiver of First Requested
 Recommendations of Boards, Commissions & Committees (Green)
 Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David Hulseberg, Village Manager

DATE: July 25, 2011 (COW) (B of T) **Date:** August 18, 2011

TITLE: Great Western Trail Bridges
Construction & Maintenance Agreement With Union Pacific Railroad (UPRR)

SUBMITTED BY: David A. Dratnol, P.E., Village Engineer *Dratnol*

BACKGROUND/POLICY IMPLICATIONS:

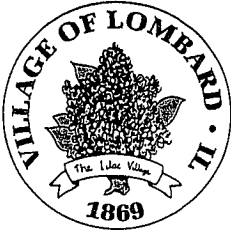
The Great Western Trail Bridges project will require two temporary and one permanent easement in the UPRR right-of-way. The cost of the easements as determined by appraisal negotiations by Mathewson Right Of Way Company, is \$84,000. UPRR requires the Village to enter into a formal Construction and Maintenance Agreement and payment for the easements up front.

FISCAL IMPACT/FUNDING SOURCE:

Amount: \$84,000
Funding Source: \$8,400 TIF Capital Projects Fund, \$75,600 GCPF
HTE Project Number: 0603
Account: 7406.809425
PW Project Number: M-06-03

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: David Hulseberg, Village Manager
Through: Carl Goldsmith, Director of Public Works *CG*
From: David A. Dratnol, P.E., Village Engineer *DAD*
Date: July 25, 2011
Subject: Great Western Trail Bridges
Construction & Maintenance Agreement With Union Pacific Railroad (UPRR)

It will be necessary to obtain two temporary easements on and one permanent easement across the UPRR right-of-way to construct the Bridge over the UPRR. The UPRR requires a Construction and Maintenance Agreement for the project.

The Village had Mathewson Right Of Way Company appraise the value of the easements and negotiate the cost with UPRR. The agreed upon value is \$84,000.00. The UPRR requires payment for the easements and execution of the Agreement. This work is covered by Grade Crossing Protection funds (GCPF). The Village will be reimbursed for 90% of the cost by GCPF.

Engineering Staff is requesting that the Board authorize the Village President to sign and the Village Clerk to attest to the Construction and Maintenance Agreement with the Union Pacific Railroad and approve the necessary funds for the easements.

DAD/pfk

c: File: M-06-03

RESOLUTION
R _____ 12

A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and the Union Pacific Railroad (UPRR) regarding construction and maintenance in easements on and over the UPRR right-of-way for the Great Western Trail Bridges project as attached hereto and marked Exhibit "A"; and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 18th day of August, 2011.

Ayes; _____

Nays: _____

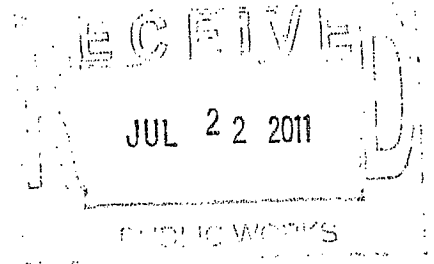
Absent: _____

Approved this 18th day of August, 2011.

William J. Mueller
Village President

ATTEST:

Brigitte O'Brien
Village Clerk



June 15, 2011

UPRR Folder No. 2655-59

VILLAGE OF LOMBARD
PAUL KUEMNLENZ
255 E WILSON AVE
LOMBARD IL 60148-3931

Dear Paul Kuenlenz:

RE: Great Western Trail Overpass.

Please refer to the above subject matter and the documentation to cover the construction project. Attached hereto are two originals of a Construction and Maintenance, for the public road crossing construction project. Please return to me all of the above executed documentation for Railroad execution.

Also please furnish payment in the amount of **\$84,000**. Please include your check with the return of the documents. To ensure proper application of your check, please indicate the folder number listed above on your check. This agreement will not be accepted by the Railroad Company until the initial payment is received. If you require formal billing, you may consider this letter as a formal bill.

In compliance with the Internal Revenue Services' new policy regarding their Form 1099, I certify that 94-6001323 is the Railroad Company's correct Federal Taxpayer Identification Number and that Union Pacific Railroad Company is doing business as a corporation.

After approval of the Contractor's Right of Entry Agreement and insurance certificate, one fully executed counterpart of the agreement will be returned to you. In no event should you begin work until you have received your counterpart of the fully executed agreement.

Under the Contractor's Right of Entry Agreement, the Contractor is required to procure certain insurance and insurance endorsements including but not limited to, Railroad Protective Liability Insurance (RPLI) for the duration of this project. As a service to you, Union Pacific is making this coverage available to you through Marsh USA. If you decide that acquiring the RPLI coverage from Marsh USA is of benefit to you, please contact Bill Smith (800) 729-7001; or e-mail: william.j.smith@marsh.com.

Real Estate Department
UNION PACIFIC RAILROAD COMPANY
1400 Dodge Street, MS 1690
Omaha, Nebraska 68179-1690
1-800-521-8222



If you have any questions, please contact me.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Kathy Nesser", with a long horizontal flourish extending to the right.

KATHY NESSER
Senior Manager Contracts
Phone: (402) 544-8549
e-mail: klnesser@up.com

NEW PEDESTRIAN CROSSING
AGREEMENT
(OVERPASS GRADE SEPARATION)

BETWEEN

UNION PACIFIC RAILROAD COMPANY

AND THE

VILLAGE OF LOMBARD

COVERING THE

NEW PEDESTRIAN BRIDGE

AT

RAILROAD MILE POST 19.13 - GENEVA SUBDIVISION
DOT No.: 440 515B

IN, AT OR NEAR

LOMBARD,
DU PAGE COUNTY,
ILLINOIS

UPRR Folder No.: 2655-59

UPRR Audit No.: _____

**NEW PEDESTRIAN CROSSING
AGREEMENT
(OVERPASS GRADE SEPARATION)**

New Pedestrian Crossing – DOT No.: 440 515B
Mile Post 19.13 – Geneva Subdivision
Lombard, Du Page County, Illinois

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2011, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179-1690 (the "Railroad") and the **Village of Lombard**, to be addressed at 255 E Wilson Ave, Lombard, IL 60148-3931 (the "Political Body"),

RECITALS:

The Political Body desires to undertake as its project (the "Project"):

- the construction of a new grade separated pedestrian overpass structure (the "Structure") that will carry pedestrians over Railroad's track(s) at Railroad's Mile Post 19.13, DOT No. 440 515B, on it's Geneva Subdivision in or near Lombard, Du Page County, Illinois (the "Crossing Area") as the Crossing Area is shown on the Railroad's location print marked **Exhibit A** and the detail prints of the Structure (collectively) marked **Exhibit A-1**, and hereby made a part hereof.

Under this Agreement, the Railroad will be granting additional rights to the Political Body to facilitate the construction of the crossing area. The portion of Railroad's property that Political Body needs to use in connection with the crossing area is shown on the print marked **Exhibit A-2** being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad and the Political Body are entering into this Agreement to cover the above.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

ARTICLE 1 - LIST OF EXHIBITS

The exhibits below are attached hereto and hereby made a part hereof.

Exhibit A	Railroad Location Print
Exhibit A-1	Detailed/Specification Drawings

Exhibit A-2	Map of Property needed by Political Body
Exhibit B	Terms and Conditions
Exhibit B-1	Insurance Requirements
Exhibit C	Railroad's Material and Force Account Estimate
Exhibit D	Railroad's Minimum Requirements
Exhibit E	Railroad Form of Contractor's Right of Entry Agreement

ARTICLE 2 - EXHIBITS B, B-1 AND D.

The general terms and conditions marked **Exhibit B**, the Contractor's insurance requirements marked **Exhibit B-1**, and the Railroad's minimum overpass construction standards marked **Exhibit D**, are attached hereto and hereby made a part hereof.

ARTICLE 3- RAILROAD GRANTS RIGHT.

For and in consideration in the sum of **EIGHTY FOUR THOUSAND DOLLARS (\$84,000)** to be paid by the Political Body to the Railroad upon the execution and delivery of this Agreement and in further consideration of the Political Body's agreement to perform and abide by the terms of this Agreement including all exhibits, the Railroad hereby grants to the Political Body the right to establish or reestablish, construct or reconstruct, maintain, repair and renew the Structure over and across the Crossing Area. The temporary easement will be good for one year from the date of this agreement.

ARTICLE 4 - DEFINITION OF CONTRACTOR

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the contractor's subcontractors and the contractor's and subcontractor's respective employees, officers and agents.

ARTICLE 5 - CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE

A. If the Political Body will be hiring a Contractor to perform any work involving the Project (including initial construction and any subsequent relocation or maintenance and repair work), the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and
- provide such insurance policies, certificates, binders and/or endorsements to the Railroad before allowing any Contractor to commence any work in the Crossing Area or on any other Railroad property. The Railroad's current insurance requirements are described in **Exhibit B-1**, attached hereto and hereby made a part hereof.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth



therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

- C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

*Union Pacific Railroad Company
Real Estate Department UPRR Folder No. 2655-59
1400 Douglas Street, Mail Stop 1690
Omaha, NE 68179-1690*

- D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

ARTICLE 6 - FEDERAL AID POLICY GUIDE

- A. If the Political Body will be receiving any federal funding for the Project:
- the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference, and
 - construction work by the Political Body and Contractor shall be performed, and any reimbursement to the Railroad for work it performs, shall be made in accordance with the Federal Aid Policy Guide.
- B. If federal funding is involved, as provided in 23 CFR 646.210(b)(2), the Project is of no ascertainable benefit to the Railroad and the Railroad shall not be obligated to pay or contribute to any Project costs.

ARTICLE 7 - WORK TO BE PERFORMED BY THE RAILROAD

- A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimate:
- Flagging and Engineering Estimate dated January 28, 2011, in the amount of Sixty Five Thousand Dollars (\$65,000), marked **Exhibit C**,
- attached hereto and hereby made a part hereof (the "Estimate").
- B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.
- C. The Political Body agrees to reimburse the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, actual costs of preliminary engineering review, construction inspection, procurement of materials, equipment rental, manpower and deliveries to the job site and all of the Railroad's normal and customary additives (which shall include direct and indirect overhead costs) associated therewith.

ARTICLE 8 - PLANS

- A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications and submit such plans and specifications to the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, for review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks and, if applicable, all demolition and removal plans for the existing structure.
- B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering – Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.
- C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.
- D. Upon completion of the Structure, the Political Body, at its expense, shall furnish to the Railroad two (2) sets of reproducible "as constructed" Plans of the Structure.
- E. Notwithstanding the Railroad's approval of the Plans, the Railroad shall not be responsible for the design, details, permitting or construction of the Structure.

ARTICLE 9 - THE RAILROAD'S SPECIFICATIONS

The Political Body, at its expense, shall ensure that the Contractor shall comply with all of the terms and conditions contained in the Railroad's Minimum Requirements that are described in **Exhibit D** and other special guidelines that the Railroad may provide to the Political Body for this Project.

ARTICLE 10 - EFFECTIVE DATE; TERM; TERMINATION.

- A. This Agreement shall become effective as of the date first herein written, or the date work commences on the Project, whichever is earlier, and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.
- B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the date of this Agreement, or from the date that the Railroad has executed this Agreement and returned it to the Political Body for its execution, whichever is applicable.
- C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

**ARTICLE 11 - CONDITIONS TO BE MET BEFORE POLITICAL BODY CAN
COMMENCE WORK.**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- The Railroad and Political Body have executed this Agreement.
- The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements set forth in the Contractor's Right of Entry Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in duplicate as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
(Federal Tax ID #94-6001323)

By _____

ATTEST:

VILLAGE OF LOMBARD

_____ By _____

Title: _____

(Seal)

Pursuant to Resolution/Order No. _____
dated _____, 200____,
hereto attached.