

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: 9/12/07 (COW) (B of T) Date: September 20, 2007

TITLE: Intergovernmental Agreement with Metra, Railroad Fence

SUBMITTED BY: Wesley B. Anderson, Director of Public Works

BACKGROUND/POLICY IMPLICATIONS:

See Attached

FISCAL IMPACT/FUNDING SOURCE:

None

Review (as necessary):

Village Attorney X _____
Finance Director X *William T. Lichter*
Village Manager X *W. B. Anderson*
Date 9/12/07
Date 9/12/07

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: William T. Lichter, Village Manager

From: Wesley B. Anderson, Director of Public Works

Date: September 11, 2007

Subject: Intergovernmental Agreement with Metra Regarding the Railroad Right of Way Fence

In January 2007 the Village completed the construction of a fence along the railroad right of way in the area from Westmore-Meyers Road to Western Avenue. Metra agreed to, and has reimbursed the Village \$20,000 for installing the fence. Metra, as part of the agreement for contributing to the cost of constructing the fence, requires the Village to assume responsibility for maintaining the fence. The requirement for the Village to maintain the fence is also included in our agreement with Union Pacific. Metra has drafted an Intergovernmental Agreement documenting the requirement.

The proposed Intergovernmental Agreement with Metra is attached. The Village Attorney has reviewed the agreement and concurs with the terms and language.

Public Works requests that the Agreement be presented to the Board of Trustees at their September 20, 2007 meeting. Public Works recommends the Board of Trustees approve the attached Intergovernmental Agreement with Metra.

R E S O L U T I O N
R 08

**A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT**

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Intergovernmental Agreement between the Village of Lombard and Metra, 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 contract as attached hereto.

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

Adopted this 20th day of September, 2007

Ayes: _____

Nays: _____

Absent: _____

Approved this 20th day of September, 2007

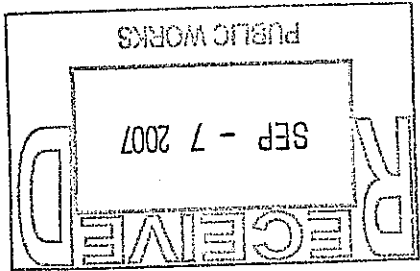
William J. Mueller
Village President

ATTEST:

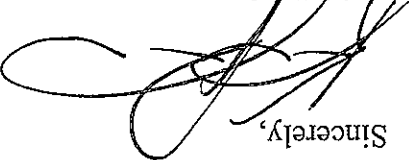
Brightie O'Brien
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney



Keith Pardonnet
Metra Law Department

Sincerely,


Please find following this cover, two originals of the Intergovernmental Agreement between the Village and Metra that we talked about. The attached agreement allows for Metra's financial participation and the Village's continued maintenance of the fence. I included the corrections that the Village's attorney suggested.

Please return two signed originals, a fully executed original of the Agreement will be returned to you for your files. Again, thank you for pursuing this project. Should you have any questions concerning this matter, please contact me at (312) 322-6779.

Mr. Anderson,

Mr. Wes Anderson
Director of Public Works
Village of Lombard
255 East Wilson
Lombard, IL 60148

September 5, 2007



2. **METRA'S OBLIGATIONS.** Metra desires to assist in the development of the Railroad Safety Buffer Fence Project ("Project") by making the following commitment: Metra will contribute Twenty Thousand Dollars (\$20,000) for partial payment of the cost of the Project. The Project includes: the installation of a commercial grade, welded ornamental steel, Montage Plus,

1. **RECITALS INCORPORATED.** The Recitals set forth above are specifically incorporated as substantive and material terms and provisions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements contained in this Agreement, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

AGREEMENT

E. A mutual goal of the Municipality and Metra is to promote public safety and a respect for property by reducing the number of people trespassing on railroad property.

powers.

D. The Municipality is authorized to cooperate with Metra in the exercise of its

C. Metra has the authority to cooperate with other governmental agencies and desires to contribute toward the payment for the installation and have the Municipality maintain a certain fence on right-of-way owned by the Union Pacific Railway Corporation ("UP").

B. The Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes public agencies in Illinois to exercise jointly with any other public agency any power or powers, privileges, functions or authority which may be exercised by a public agency, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings.

A. The Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and school districts may contract among themselves in any manner not prohibited by law or by ordinance.

RECITALS:

THIS INTERGOVERNMENTAL AGREEMENT, made and entered into this ____ day of _____, 2007, (dated solely for reference purposes) by and between the Village of Lombard, an Illinois municipal corporation ("Municipality"), and Northeast Illinois Regional Commuter Railroad Corporation, an Illinois public corporation, Commuter Rail Division of the Regional Transportation Authority, a division of an Illinois municipal corporation ("Metra"). The Municipality and Metra are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties."

(For Metra's contribution toward the Railroad Safety Buffer Fence Project and the Village of Lombard's continued maintenance of the fence.)

INTERGOVERNMENTAL AGREEMENT

(b) Neither Party shall assign this Agreement to any person or entity without the prior written consent of the other party.

(a) The Parties agree to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in furthering the objectives of this Agreement, and the intent of the Parties as reflected by the terms of this Agreement, including, without limitation, the enactment of such resolutions and ordinances, the execution of such permits, applications and agreements, and the taking of such other actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement, and as may be necessary to give effect to the objectives of this Agreement and the intentions of the Parties as reflected by the terms of this Agreement.

4. **JOINT OBLIGATIONS.**

(b) To the extent permitted by law, the Municipality agrees to defend, indemnify, and hold harmless Metra and UP, their respective agents and employees, from and against any and all claims, damages, liabilities, suits, judgments, expenses, costs and attorneys' fees resulting from personal injury, including death, or property damage, arising or resulting from the Municipality's or its contractor's performance or nonperformance of installation, Maintenance or the use of or construction or presence upon the UP right-of-way by the Municipality or its employees, officers, agents, contractors, or such other persons, firms, or corporations acting on behalf of or with the authority of the Municipality, except to the extent that such is the result of Metra's or UP's or their officer's, agent's or employee's willful and wanton, or intentionally tortious conduct. The indemnities contained in this Section shall survive termination of this Agreement.

(a) The Fence having been installed by the contractor, Peerless Fence and Supply Company, the Municipality shall, at its sole cost and expense, regularly inspect, maintain, and repair the Fence during its useful life ("Maintenance"), and such Maintenance shall be for a minimum of twenty (20) years from the date the installation of the Fence was completed, April 13, 2007 ("Completion Date").

3. **MUNICIPALITY'S OBLIGATIONS.** Municipality desires to participate in the development of the Project, in part, by making the following commitments:

The Fence includes 2 double swing gates in the section on the southern side of the UP right-of-way and 1 double swing gate in the section on the northern side of the UP right-of-way to allow access for maintenance and landscaping.

Genesis Style fence ("Fence"). The Fence is in 6-foot high, 8-foot wide panels with 3 rails and has 2-1/2" posts and 3/4" pickets with flat tops. The Fence is located in 2 sections: 1) on the southern side of the UP right-of-way, beginning at a private fence on the property located at 132 Western Avenue, 19 feet from the southern edge of the railroad ties of the southern-most tracks, and continuing 1499 feet east, parallel to the tracks, to the Municipality limits at Westmore Avenue; and 2) on the northern side of the UP right-of-way, beginning at a private fence of the property located at 705 Prairie Avenue, 40 feet from the center-line of the northern-most tracks, and continuing 250 feet east, parallel to the tracks, to Westwood Avenue. The location of the Fence is depicted on Exhibit "A," which is incorporated and made a part of this Agreement. The Fence includes 2 double swing gates in the section on the southern side of the UP right-of-way and 1 double swing gate in the section on the northern side of the UP right-of-way to allow access for maintenance and landscaping.

(c) Municipality and Metra agree that this Agreement is for the benefit of the Parties and not for the benefit of any third party beneficiary. No third party shall have any rights or claims against Metra or the Municipality arising from this Agreement.

5. **TERMINATION.** Metra's contribution toward the Project is dependent upon the Municipality's long term commitment to provide for the Maintenance of the Fence. Accordingly, if the Municipality shall terminate this Agreement before the end of the useful life of the Fence or default on its obligations after notice and a 7-day opportunity to cure such default, the Municipality shall reimburse Metra a prorated share of Metra's Twenty Thousand Dollar (\$20,000) contribution, less five percent (5%) per year beginning on the Completion Date.

6. **NOTICES.** All notices, demands, elections, and other instruments required or permitted to be given or made by either Party upon the other under the terms of this Agreement or any statute shall be in writing. Such communications shall be deemed to have been sufficiently served if sent by certified or registered mail with proper postage prepaid, hand delivered or sent by facsimile transmission, with proof of successful transmission sent by regular mail by the sending Party at the respective addresses shown below, or to such other party or address as either Party may from time to time furnish to the other in writing.

Such notices, demands, elections and other instruments shall be considered delivered to recipient on the second business day after deposit in the U.S. Mail, on the day of delivery if hand delivered or on the first business day after successful transmission if sent by facsimile transmission.

(a) Notices to Metra shall be sent to:

Commuter Rail Division
547 W. Jackson Boulevard
Chicago, Illinois 60661
Attn: General Counsel
Phone: (312) 322-6699
Fax: (312) 322-6698

(b) Notices to Municipality shall be sent to:

Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148
Attn: Village Manager
Phone: (630) 620-5717
Fax: (630) 620-8222

SIGNATURES ON NEXT PAGE

8. **COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument.

(f) The execution, delivery of, and performance under this Agreement is pursuant to authority, validity and duly conferred upon the Parties and signatories hereto.

(e) If any provision of this Agreement, or any paragraph, sentence, clause, phrase or word or the application thereof is held invalid, the remainder of this Agreement shall be construed as if such invalid part was never included, and this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law provided that the Agreement, in its entirety as so reconstituted, does not represent a material change to the rights or obligations of the Parties. In the event of any conflict or inconsistency between the terms set forth in the body of this Agreement and the terms set forth in any exhibit hereto, the terms set forth in such exhibit shall govern and control.

(d) This Agreement, together with the exhibits attached hereto (all of which are incorporated herein by this reference), constitutes the entire Agreement between the Parties with respect to the subject matter hereof. No changes, modifications or alterations to this Agreement shall be effective without the written consent and authorization of the Parties.

(c) This Agreement shall be governed by the laws of the State of Illinois. This Agreement provides for the development and maintenance of real estate located within the State of Illinois, and is to be performed within the State of Illinois. Accordingly, this Agreement, and all questions of interpretation, construction, and enforcement hereof, and all controversies hereunder shall be governed by the applicable statutory and common law of the State of Illinois.

(b) Section captions used in this Agreement are for convenience only and shall not affect the construction of this Agreement. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine and neuter shall be freely interchangeable. In the event the time for performance hereunder falls on a Saturday, Sunday or holiday, the actual time for performance shall be the next business day.

(a) This Agreement and the rights and obligations accruing hereunder are binding upon the Parties and their respective heirs, legal representatives, successors and assigns. No waiver of any obligation or default of Municipality shall be implied from omission by Metra to take any action on account of such obligation or default, and no express waiver shall affect any obligation or default other than the obligation or default specified in the express waiver and then only for the time and to the extent therein stated.

7. GENERAL.

IN WITNESS WHEREOF, this Agreement is entered into by and between the Parties hereto as of the date and year first above written.

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

VILLAGE OF LOMBARD

By: Philip A. Pagano, Executive Director

By: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Its: _____



250 linear feet of fencing, 40' from center-line of northern-most track.

Exhibit "A"

1499 linear feet of fencing, 19' from southern-most edge of the railroad ties.

Pointer: 41°53'32.982"N | 87°59'49.56"W | elev: 709ft | Streaming | 100% | Eye alt: 2436 ft

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