

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

District \_\_\_\_\_

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

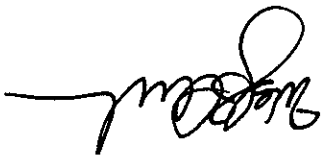
**TO :** PRESIDENT AND BOARD OF TRUSTEES

**FROM:** William T. Lichter, Village Manager

**DATE :** November 30, 2006 **B of T :** December 7, 2006

**SUBJECT:** Addendum to Union Pacific Railroad Beautification Agreement

**SUBMITTED BY:** Wes Anderson, Director of Public Works



**BACKGROUND/POLICY IMPLICATIONS:**

Addendum allowing installation of barrier fence along Union Pacific Right-of-Way.

**Fiscal Impact/Funding Source:**

Review (as necessary):

Finance Director

Village Manager

\_\_\_\_\_ *William T. Lichter* \_\_\_\_\_  
Date 11/30/06

**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.

Log # 060696



To: William T. Lichter, Village Manager

From: Wesley B. Anderson, Director of Public Works

Date: November 30, 2006

Subject: Addendum to the Beautification Agreement with Union Pacific for Installation of the Fence

Union Pacific has approved the Village's request for installing a fence along the Railroad Right of Way between Chase and Westmore on the south, and Westwood and the first property to the west on the north.

Union Pacific's Regional Engineer stated this week that Union Pacific would be providing \$20,000 towards installation of the fence. He also stated that his next meeting with Metra on additional funding from Metra is scheduled for December 8<sup>th</sup>.

Public Works recommends the Village sign the addendum to the Beautification Agreement allowing installation of the fence. Request you present this addendum to the Board of Trustees for approval at their December 7<sup>th</sup> Board meeting.

R  
RESOLUTION

A RESOLUTION AUTHORIZING  
AMENDMENT OF AN AGREEMENT

WHEREAS, the Board of Trustees of the Village of Lombard on October 7, 1999 adopted a resolution authorizing signature of President and Clerk on an agreement between the Village of Lombard and Union Pacific Railroad Company; and

WHEREAS, an amendment to said contract is required to legally bind the parties;

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 President and Village Clerk are hereby directed and authorized to execute an amendment to the contract with Union Pacific Railroad Company substantially in the form and manner of Exhibit "A" attached hereto and made a part hereof.

Adopted this 7th day of December, 2006.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this 7th day of December, 2006.

ATTEST:  
William J. Mueller  
Village President

Brigette O'Brien  
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer  
Village Attorney

- A. The Union Pacific Railroad will permit a fence to be installed on the south side of our right-of-way as per your letter of October 30, 2006 marked Exhibit B.
- B. We only permit additional fencing to be installed on the north side of our tracks if that fence is located on our northern right-of-way line 40' from the centerline of the northern-most track.
- C. The Village agrees that the Village will own and maintain the fence and will not seek any contribution for fence maintenance. The Union Pacific will consider making a contribution to the purchase/installation of the fence once we receive a copy of the executed contract or paid

In addition, the Union Pacific will only allow the fence to be installed under the following terms:

The October 7, 1999 lease remains in full force and effect. If the fence is installed, all work related to the installation will be governed by the lease.

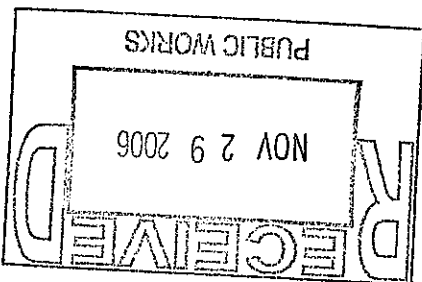
When executed by an authorized representative of Lombard, this letter agreement will become an addendum to the Lombard/Union Pacific Railroad Right-of-Way Landscape Beautification Lease dated October 7, 1999 (copy enclosed).

Dear Mr. Anderson:

RE: Lombard Fence

Westley Anderson, P.E.  
 Director of Public Works  
 Village of Lombard  
 255 E. Wilson Avenue  
 Lombard, IL 60148-3926

November 27, 2006



Thomas A. Zapler  
 Special Representative Government Affairs, Central Region

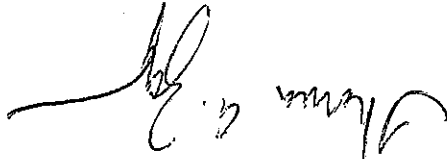
Witness: \_\_\_\_\_

Accepted by: \_\_\_\_\_

VILLAGE OF LOMBARD

cc: Rick Sturm  
Tom Andryuk

Enclosure

Sincerely,  


Please call me if you have any questions regarding this letter agreement, or if the Village would like the agreement modified in any way.

to have all fiber optic and signal cables located and to determine if a flag person is needed when the fence is being installed. The Union Pacific will contribute the cost of a flag person if one is needed for the project.

Mr. Tom Andryuk  
Manager Field Engineering  
Union Pacific Railroad  
500 W. Madison, Suite 3610  
Chicago, IL 60661

Before any work is started on the fencing project, the Village will contact:

Mr. Rick Sturm  
Director Track Maintenance  
Union Pacific Railroad  
500 W. Madison, Suite 3610  
Chicago, IL 60661

bill. The contract or bill should be sent to:

RAILROAD RIGHT-OF-WAY  
LANDSCAPE BEAUTIFICATION LEASE

"Company") hereby leases to the VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS (hereinafter called "Lessee") to use for planting, pruning and otherwise maintaining landscaping ("Landscape Beautification") the entire Union Pacific right-of-way in Lombard, Illinois (the "Premises"), subject to the express terms and conditions of this Lease, the Specifications (the "Specifications") attached hereto as Exhibit A and hereby made a part hereof. This Lease (the "Lease") shall become effective October 7, 1999 and shall run for a period of one year and thereafter unless terminated as hereinafter provided.

Lessee agrees to pay Company as rent for the Premises the sum of TEN AND NO/100 DOLLARS (\$10.00) per year payable annually in advance. Nothing herein shall limit or modify the terms and conditions of any other agreement between Company and Lessee for use of Company's right-of-way or any portion of the Premises for other than Landscape Beautification.

This Lease is given upon the following express terms and conditions herein, including the Specifications, and should the Lessee at any time violate any of said terms or conditions, or use or attempt to use the Premises for any other or different purpose than that stated herein, then the Company may, at its option, immediately terminate this Lease.

As a material consideration for entering into this Lease and without which Company would not enter into same, Lessee covenants and agrees to indemnify, save harmless and protect the Company and the Commuter Rail Division of the Regional Railway Authority ("Metra") from and against any and all loss, damage, injury, claim, demand, fine, lawsuit, judgment and/or liability, and any and all costs, expenses and legal fees in connection therewith by reason of injuries to or death of persons and/or loss of or damage to property and/or violation of any law, ordinance or regulation ("Claim") to the extent such Claim arises out of or is connected with Lessee's Landscape Beautification of the Premises or any act or omission of (1) Lessee, its officers, employees, contractors, or agents, and/or (11) and other person(s) performing any work or service for or on behalf of the Lessee on or about said Premises or arising out of their presence on said Premises. Notwithstanding the foregoing, the Lessee shall not be obligated to indemnify and hold harmless Company and Metra for personal injury, death and/or property damage to the extent arising out of the acts or omissions of Company, Metra or the officers, employees, agents or contractors of either Company or Metra.

Company reserves the right to use, occupy and enjoy the Premises and its tracks, property and right-of-way, for such purpose, in such manner, and at such time as it shall desire, the same as if this instrument had not been executed by it, including the right to lease or license any of the Premises for commercial or industrial purposes without any prior notification to Lessee.

Company, its agents, employees and authorized contractors shall have the right to enter the Premises or any part thereof, at all reasonable hours, for the purpose of inspecting the Premises to determine if Lessee is complying with all terms and conditions of this Lease and/or to determine through inspection and/or testing if any hazardous condition, pollution or contamination is present or

Lessee accepts the Premises subject to the rights of any party, including Company, in and to any existing permits or licenses. Lessee further accepts the Premises subject to rights of any party, including Company, in and to any existing telephone, telegraph, or other wires, and poles and facilities of any kind whatsoever, whether or not of record. Company reserves the right to maintain or relocate its existing facilities, or to construct and thereafter maintain new facilities, in the vicinity of the Premises with no liability for damages to Lessee's interests or Premises resulting from such beautification activities. Lessee recognizes and assumes all responsibility for all present and future environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee in performance of Landscape Beautification (the foregoing hereinafter referred to as "Lessee Landscape Beautification Operations"). Lessee, therefore, agrees to indemnify and hold harmless Company, its officers, agents, and employees from any and all liability, fines penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Company seeking to hold Company liable for any investigation, response or cleanup costs, penalties or damages, whether personal property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any respect aggravated or altered by Lessee Landscape Beautification Operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental Protection Agency or companion state agency. Lessee further agrees to undertake at its own expense any investigation, response or cleanup of any contamination of the Premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee Landscape Beautification Operation and to promptly notify Company of any event, notice, claim, demand or litigation which involves or alleges contamination of the Premises, the groundwater thereunder or a discharge or release therefrom to adjacent property. Lessee agrees to waive any and all statutes or limitations applicable to any controversy or dispute arising out of this paragraph, and Lessee further agrees that it will not raise or plead a statute of limitations defense against Company in any action arising out of Lessee's failure to comply with this paragraph.

Lessee recognizes and assumes all responsibility for all present and future environmental liability or responsibility imposed under applicable environmental laws, regulations or any other similar requirements relating to any contamination of the Premises or groundwater thereunder or discharge or release to adjacent property arising from or in any respect aggravated or altered by any operations or activities by, or any equipment or facilities used by or permitted on the Premises by Lessee in performance of Landscape Beautification (the foregoing hereinafter referred to as "Lessee Landscape Beautification Operations"). Lessee, therefore, agrees to indemnify and hold harmless Company, its officers, agents, and employees from any and all liability, fines penalties, claims, demands, loss or lawsuits brought by any third party or governmental agency under any theory of law against Company seeking to hold Company liable for any investigation, response or cleanup costs, penalties or damages, whether personal property or environmental, for any contamination of any property or groundwater thereunder or discharge or release to adjacent property arising out of or in any respect aggravated or altered by Lessee Landscape Beautification Operations. Lessee agrees that the above indemnity extends to any liability resulting from or arising out of Lessee's implementation of any investigation, response or cleanup plan approved by the United States Environmental Protection Agency or companion state agency. Lessee further agrees to undertake at its own expense any investigation, response or cleanup of any contamination of the Premises and groundwater thereunder arising from or in any respect aggravated or altered by any Lessee Landscape Beautification Operation and to promptly notify Company of any event, notice, claim, demand or litigation which involves or alleges contamination of the Premises, the groundwater thereunder or a discharge or release therefrom to adjacent property. Lessee agrees to waive any and all statutes or limitations applicable to any controversy or dispute arising out of this paragraph, and Lessee further agrees that it will not raise or plead a statute of limitations defense against Company in any action arising out of Lessee's failure to comply with this paragraph.

threatened. Lessee agrees to cooperate with Company in any such inspection and to provide at Company's request any and all permits, reports, or records of any kind, relating to any materials used, stored, treated or disposed of on the premises.

Either party hereto shall have the right at any time to cancel this lease by giving ten (10) days' notice in writing. At the expiration for the time limited by said notice, the lessee shall promptly, and in the manner directed by company, restore the premises to the condition it was in prior to the leasing of same. Upon default of the Lessee to do so, the Company may accomplish the same and so restore the premises, and the Lessee will promptly pay to the Company for the cost and expense of such restoration. In addition, at termination Lessee shall provide evidence, reasonably satisfactory to Company, that the condition of the Premises and all improvements thereon attributable to the acts and/or omissions of Lessee during the term of this Lease comply with all applicable laws, regulations and standards.

IN WITNESS WHEREOF, the parties have executed these presents on October 7, 1999.

UNION PACIFIC RAILROAD COMPANY

BY: *J. F. Neenan*  
Title: SR LTR - REAL ESTATE

VILLAGE OF LOMBARD  
BY: *[Signature]*  
Title: Village President

(Municipal Seal)

Municipal Clerk  
BY: *[Signature]*  
Title: Village Clerk

Resolution/Ordinance number  
Resolution 37-00



SPECIFICATIONS

Unless otherwise modified by Order of the Illinois Commerce Commission:

1. No planting or other landscaping material shall be allowed within 16 feet of the edge of the nearest tie nor allowed to grow into this zone other than grass or ground cover, which will not grow in excess of three (3) feet in height.
2. Any planting or other landscape material done on the railroad right-of-way within 500 feet of any grade crossing shall be maintained so as not to exceed a height of three (3) feet.
3. Any grading or future planting done on Company's property must be approved in writing by Company's Engineering Department located at 500 West Madison, Suite 3610, Chicago, Illinois 60661.
4. Any work done on Company's property closer than 16 feet from the edge of the nearest tie will require a flagman provided by Company at Lessee's expense.
5. There is to be no interference with Company facilities, including pole lines, drainage structures and signal apparatus.
6. There is to be no adverse effect to visibility or drainage on Company property.
7. Lessee shall not construct or permit to be constructed any building, structure, excavation or any other obstruction without the written consent of Company's Engineering Department.
8. The Union Pacific Railroad Company will not, in any way, share in the cost of landscaping or for any improvements to the area covered by this lease.
9. The Union Pacific Railroad Company will not be responsible for any damage to the landscaping or improvements.

EXHIBIT B

VILLAGE OF LOMBARD  
255 E. Wilson Avenue  
Lombard, IL 60148-3926  
(630) 620-5700 FAX: (630) 620-8222  
TDD: (630) 620-5812  
www.villageoflombard.org



Village President  
William J. Mueller

Village Clerk  
Brigitte O'Brien

Trustees  
Greg Alan Gron, Dist. 1  
Richard J. Tross, Dist. 2  
John "Jack" T. O'Brien, Dist. 3  
Steven D. Sebbj, Dist. 4  
Kenneth M. Florey, Dist. 5  
Rick Soderstrom, Dist. 6

Village Manager  
William T. Lichter

I am forwarding the attached information to your attention in regards to the type of fencing that the Village of Lombard Board of Trustees has approved for installation within Union Pacific Right-of-Way. This same information was also forwarded to Richard Sturm of the Union Pacific for his approval on September 29, 2006. It is our understanding that this project will be approved under the terms of the Railroad Right-of-Way Landscape Beautification Lease Agreement that currently exists between the Village of Lombard and Union Pacific. Therefore, the Village of Lombard is requesting your formal approval for the Village to proceed with the installation of the Montage Plus fencing.

Dear Mr. Zapler,

October 30, 2006

Tom Zapler  
Union Pacific  
Room 1910  
101 N. Wacker Drive  
Chicago, IL 60606

The attached maps show the planned locations for the fence, which would be installed nineteen (19) feet from the edge of the railroad ties, and would run continuously from the east side of Westmore Ave. There will be two double-swing gates to allow for our landscape contractor and maintenance crews to access both sides of the fence for maintenance. The Village Board is also looking at potentially constructing perpendicular extensions from the proposed fence to the existing fence, which would prevent thoroughfare between the two fences. There would also be a small section of fence and one access gate installed on the north side of the Union Pacific right-of-way. The attached information includes catalog sheets, specifications and my department's recommendation to the Village Board for the fence contractor. If this project is acceptable, please memorialize your approval in a letter to myself.

"Our shared *Vision* for Lombard is a community of excellence exemplified by its government working together with residents and business to create a distinctive sense of spirit and an outstanding quality of life."  
"The *Mission* of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."

Sincerely,  
Wesley H. Anderson, P.E.  
Director of Public Works  
Attachments

NOV - 3