

Item #3:
Resolution Approving Indian Creek Club Mitigation Landscaping

VILLAGE OF LONG GROVE

ORDINANCE NO. 2010-O-__

**RESOLUTION APPROVING INDIAN CREEK CLUB LANDSCAPE PLANS
FOR GRAND TRUNK CORPORATION MITIGATION FUNDS**

Adopted by the
President and Board of Trustees
of
the Village of Long Grove
this __th Day of November, 2010

Published in pamphlet form by direction
and authority of the Village of Long Grove
Lake County, Illinois
this __th day of November, 2010

VILLAGE OF LONG GROVE

RESOLUTION NO. 2010-R-__

**RESOLUTION APPROVING INDIAN CREEK CLUB LANDSCAPE PLANS
FOR GRAND TRUNK CORPORATION MITIGATION FUNDS**

WHEREAS, the Grand Trunk Corporation is the owner of the U.S. rail operating subsidiaries of Canadian National Railway Company ("**GTC**"); and

WHEREAS, GTC and the Village of Long Grove entered into a Memorandum of Agreement (the "**MOA**") on July __, 2010 outlining GTC's commitment to provide funding for certain measures to mitigate noise and safety issues relating to GTC train traffic within the Village, which MOA is attached hereto as Exhibit A; and

WHEREAS, pursuant to Section A.II of the MOA, GTC has agreed to provide \$200,000.00 ("**Mitigation Funds**") for fencing and/or vegetation projects to shield residential and park properties that are adjacent to the GTC right-of-way within the Village; and

WHEREAS, the MOA provides that the Village may administer distribution of Mitigation Funds to adjacent property owners for completion of such eligible projects; and

WHEREAS, the MOA further provides that the Village shall submit to GTC plans for the use of Mitigation Funds and distribution of Mitigation Funds to adjacent property owners, and GTC shall commit to disburse Mitigation Funds to the Village within 90 days of receipt of a plan that is consistent with the MOA; and

WHEREAS, the President and Board of Trustees have determined that Mitigation Funds will be distributed to adjacent property owners in the Village based on each property's proportional share of the total linear feet of frontage along the GTC right-of-way within the Village, with up to 5 percent of such distribution reserved to the Village for

expenses and costs incurred by the Village in administering the Mitigation Fund distribution; and

WHEREAS, the Indian Creek Club is a residential development containing four residential properties and certain park areas adjacent to the GTC right-of-way that are eligible to receive Mitigation Funds; and

WHEREAS, properties within the Indian Creek Club have a total of approximately 2,800 linear feet of frontage along the GTC right-of-way, which comprises approximately two-thirds of the total linear feet of frontage along the GTC right-of-way within the Village; and

WHEREAS, the President and Board of Trustees have determined that the Indian Creek Club and its property owners, are eligible to receive two-thirds of the Mitigation Funds (which amount is \$133,333.32) for appropriate mitigation projects; and

WHEREAS, the Indian Creek Homeowners Association (the "***Indian Creek HOA***"), has requested allocation of Mitigation Funds, on behalf of its eligible property owners, for installation of landscaping to mitigate noise and safety issues associated with GTC's railroad operations and has submitted to the Village plans for such landscaping (the "***Landscape Plans***"), which are attached hereto as Exhibit B; and

WHEREAS, the President and Board of Trustees have determined that the Landscape Plans are consistent with the MOA and that installation of the improvements described therein (the "***Landscape Improvements***") is an appropriate use of Mitigation Funds; and

WHEREAS, the President and Board of Trustees have further determined that it is in the best interests of the Village and its residents to approve the Landscape Plans and direct the Village Manager to prepare an agreement for the distribution of Mitigation Funds, up to \$133,333.32, for the installation of the Landscape Improvements, subject to the conditions set forth in this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LONG GROVE, LAKE COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: Recitals. The foregoing recitals are hereby incorporated herein as findings of the Village Board of Trustees.

Section 2: Approval of Landscape Plans. The President and Board of Trustees hereby approve the Landscape Plans attached hereto as Exhibit B. The Village Manager is hereby authorized and directed to submit to GTC the Landscape Plans, in accordance with Section A.II of the MOA, and to cause such other actions as are necessary or convenient to occur to allow the disbursement of Mitigation Funds from GTC to the Village to proceed.

Section 3: Distribution of Mitigation Funds. The Village Manager is directed to prepare an agreement, in consultation with Village Counsel, for the distribution of Mitigation Funds in an amount not exceeding \$133,333.32 to the Indian Creek HOA for installation of the Landscape Improvements, subject to the disbursement from GTC to the Village of at least \$133,333.32, as provided in Section A.II of the MOA. Up to 5 percent of the funds distributed to the Indian Creek HOA under such agreement shall be reserved to the Village for payment of costs and expenses incurred by the Village in administering the Mitigation Fund distribution.

Section 4: Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED THIS __ DAY OF _____, 2010.

AYES:

NAYS:

ABSENT:

APPROVED THIS __ DAY OF _____, 2010.

Village President

ATTEST:

Village Clerk

EXHIBIT A
MEMORANDUM OF AGREEMENT

MEMORANDUM OF AGREEMENT

This **MEMORANDUM OF AGREEMENT** ("Memorandum") is made and entered into this 13th day of July, 2010, by and between the **Village of Long Grove**, an Illinois municipal corporation ("Long Grove") and **Grand Trunk Corporation**, a wholly owned U.S. subsidiary and owner of the U.S. rail operating subsidiaries of Canadian National Railway Company (collectively, "GTC"), and co-applicant in the filing before the Surface Transportation Board ("STB") in STB Finance Docket No. 35087. This Memorandum sets out certain commitments GTC is prepared to make to address the following issues resolved by the parties related to existing train traffic and changes in train traffic anticipated as a result of the CN/EJ&EW transaction ("Transaction"), authorized by the STB on December 24, 2008 in STB Finance Docket No. 35087, and the corresponding agreement by Long Grove that these commitments by GTC resolve any outstanding concerns Long Grove has related to the Transaction. The specific terms of this Memorandum between GTC and Long Grove are summarized below, and will be effective upon the execution of this Memorandum by duly authorized representatives of Long Grove and GTC.

A.

I Quiet Zones

- (A) GTC will fund additional measures required to maintain the existing Quiet Zone designation on the EJ&EW line acquired by GTC within the limits of Long Grove should the retention of the designation be jeopardized by additional train volumes on the line resulting from the transaction. This provision will be limited for a period of 10 years from the date of acquisition by GTC of control of EJ&EW.

II Safety Mitigation.

GTC will provide \$ 200,000 for and safety/privacy fencing and/or vegetation shields for adjacent residential and park properties within Long Grove. These funds include all costs for the improvements including design and engineering. Long Grove may use these funds for any combination of mitigation elements constructed on non-railroad property, but immediately adjacent to the right of way. In addition, Long Grove may utilize any portion of these funds to administer a mitigation fund for distribution to adjacent property owners. Long Grove or adjacent property owners will be responsible for the construction, ownership and maintenance of all improvements. Long Grove must include improvements to separate the recreational path on the east side of the Indian Creek subdivision from the EJ&EW railroad property. Long Grove and/or the respective homeowners association may use up to 25% of these funds for recreational equipment or improvements to the park in the Indian Creek subdivision.

Within one year from the effective date of this agreement, Long Grove shall submit a specific plan for use of the funds, along with any criteria for disbursement if funds are distributed to individual property owners. GTC will commit to disburse these funds within 90 days of the

receipt of the plan that is consistent with this agreement. Long Grove will be responsible for providing a semi annual report to GTC of all expenditures.

At its sole expense, GTC will stake the limits of its property lines within Long Grove for areas specified by the Village in order to assist residents in construction and placement of fencing or vegetation. Upon execution of GTC's standard form right of entry agreement, the Village of Long Grove may allow its residents and their contractors to access property owned or operated by GTC's subsidiary EJ&E for movement of fencing and/or vegetation materials to the resident's adjacent property on five (5) consecutive days, to be jointly agreed by GTC and Long Grove. No such movement shall take place without a flagman being present, to be provided by GTC at GTC's expense for a maximum of five days.

III Emergency Response and Training

GTC will provide training at no cost to Long Grove for their designated emergency response provider. All training will be completed within a 3-year span. Some training will be limited to qualified candidates submitted by Long Grove. This does not preclude additional training in subsequent years for new employees and as refresher.

IV Communications

GTC will fund at its sole expense the establishment of a specific emergency protocol and dispatching view capability on behalf of Long Grove at the single most impacted agency dispatching emergency vehicles across the EJ&EW line. GTC shall bear the cost of the hardware, software and communication equipment in order to provide specific emergency protocol and dispatching view capabilities at the appropriate dispatch facility.

B.

CONDITIONS FOR GTC'S OBLIGATIONS UNDER THIS MEMORANDUM OF AGREEMENT

- I. **The commitments of GTC set forth in this Agreement are conditioned upon the following:**
 - A. Upon execution of this Memorandum, GTC will fulfill its commitments contained in this agreement within a three-year period after the effective date of this agreement, unless otherwise specified herein. Long Grove will accept funds committed for mitigation and complete installation of improvements or distribution of said funds within the same three-year period.
 - B. Long Grove agrees that it shall not make submissions in the STB proceeding or in appellate proceedings without GTC's prior review and approval except in support of this agreement and/or the STB's decision approving the Transaction.

II. Confidentiality

This negotiated Memorandum and its terms shall be confidential, except to the extent disclosure may be essential for consideration by the Long Grove corporate authorities at a public meeting and as otherwise required by law and only after notice to, and consultation between GTC and Long Grove, and except that it may be submitted to the STB's Section of Environmental Analysis ("SEA"), subject to a request that it be kept confidential by SEA and the STB.

III. Sole Remedy

It is the intent of the parties to this Memorandum that the STB require GTC's compliance with this agreement in lieu of any additional or inconsistent mitigation that the STB might otherwise impose regarding environmental impacts in Long Grove. SEA has asked that CN provide copies of any formalized agreements between GTC and affected communities, and the parties agree that GTC shall provide a copy of this Memorandum to SEA upon execution.

Agreed To:

GTC

By:

Erin T. Jakubski
GTC
Director
Title

Date: 8/26/10

Agreed To:

Village of Long Grove

By:

Maria Roda
President

Date: 8/23/10

EXHIBIT B
LANDSCAPE PLANS

#9878902_v3



Proposal #6383

September 4, 2010

| Submitted To |
|---|
| Barbara Lube Indian Creek HOA - Foster Premier 750 West Lake Cook Road Suite 190 Buffalo Grove, IL 60089 |

| Project |
|-----------------------------------|
| Indian Creek HOA - Foster Premier |

Countryside Industries submits this proposal for your consideration

Installation of Wood Chips to New Trees

\$3,475.00_____

Deliver and Install Wood Chip Mulch to the base of newly installed Trees along berm. Depth of Mulch will be approximately 2".

Terms & Conditions

Upon receipt of your authorization, we will commence work on the proposed additional work and coordinate completion with you. All invoices will be payable within 30 days of receipt. You agree to pay Countryside a one and one half percent (1½%) service charge per month (18% annual) on any overdue balance. You agree to reimburse and indemnify Countryside for all costs of collection, including, but not limited to all attorney fees, court costs and/or collection agency fees. Your failure to pay any invoices, service charges or collection costs when due shall permit Countryside Industries to delay or cease performance of any uncompleted work, contracted or otherwise, until payment in full is made for all such past due invoices, service charges and collection costs, without penalty or recourse against Countryside. To the extent this provision conflicts with any prior contract or contract term between you and Countryside, this provision shall control.

| Acceptance | |
|--|---------------------------|
|  _____ Kris Guy Countryside Industries, Inc. | 09/04/10 _____ Date |
| _____ Barbara Lube Indian Creek HOA - Foster Premier | _____ Date |



Proposal #6382

September 4, 2010

| Submitted To |
|---|
| Barbara Lube Indian Creek HOA - Foster Premier 750 West Lake Cook Road Suite 190 Buffalo Grove, IL 60089 |

| Project |
|-----------------------------------|
| Indian Creek HOA - Foster Premier |

Countryside Industries submits this proposal for your consideration

CNR Mitigation - Tree Installation

\$116,250.00 _____

Prepare entryway and access trail into bermed area along railroad tracks using heavy equipment such as Skid Steer Tractors;

Deliver and Install the following Plant Material along existing berm and other required locations to help mitigate railway impact. *While all Plant Material can vary in height from nurseries, this proposal provides Evergreens 6' in height.*

- (60) Shade Trees, 2.5" caliper, varieties such as Freeman Maple, Weeping Willow and Honeylocust;
- (180) Evergreen Trees, 6', varieties such as Austrian Pine, Green or Blue Spruce and Norway Maple;
- (135) Ornamental Trees, 7' tall on average, varieties such as (2") Flowering Crabapple, Shadblow Serviceberry and Washington Hawthorn.

Total number of Trees to be Installed: 375; calculates to \$310.00 per installed Tree.

Note: Other varieties may be substituted upon further conversation and consideration after this preliminary proposal. Final cost can be determined upon a full and final review of the planting locations and total quantity of Trees to be installed. Time (season) of installation may also have an impact on final completion of project, among other factors. Tree guarantee may be unattainable due to the lack of watering resources and scope of project as well as challenges in applying anti-desiccant products (treatments to retain moisture in plants during adverse conditions).

Soil from excavated planting hole will be left on site and rough graded along berm.

Water management gel (such as Hortasorb) will be installed in each planting hole to assist in the retention of water at the root zone for specified plant.

Terms & Conditions

Upon receipt of your authorization, we will commence work on the proposed additional work and coordinate completion with you. All invoices will be payable within 30 days of receipt. You agree to pay Countryside a one and one half percent (1½%) service charge per month (18% annual) on any overdue balance. You agree to reimburse and indemnify Countryside for all costs of collection, including, but not limited to all attorney fees, court costs and/or collection agency fees. Your failure to pay any invoices, service charges or collection costs when due shall permit Countryside Industries to delay or cease performance of any uncompleted work, contracted or otherwise, until payment in full is made for all such past due invoices, service charges and collection costs, without penalty or recourse against Countryside. To the extent this provision conflicts with any prior contract or contract term between you and Countryside, this provision shall control.

| Acceptance | |
|--|---------------------------|
|  _____ Kris Guy Countryside Industries, Inc. | 09/04/10 _____ Date |
| _____ Barbara Lube Indian Creek HOA - Foster Premier | _____ Date |



Proposal #6101

September 4, 2010

| Submitted To |
|---|
| Barbara Lube Indian Creek HOA - Foster Premier 750 West Lake Cook Road Suite 190 Buffalo Grove, IL 60089 |

| Project |
|-----------------------------------|
| Indian Creek HOA - Foster Premier |

Countryside Industries submits this proposal for your consideration

CNR Mitigation - Tree Installation

\$131,250.00 _____

Prepare entryway and access trail into bermed area along railroad tracks using heavy equipment such as Skid Steer Tractors;

Deliver and Install the following Plant Material along existing berm and other required locations to help mitigate railway impact. *While all Plant Material can vary in height from nurseries, this proposal provides Evergreens 8' in height.*

- (60) Shade Trees, 2.5" caliper, varieties such as Freeman Maple, Weeping Willow and Honeylocust;
- (180) Evergreen Trees, 8', varieties such as Austrian Pine, Green or Blue Spruce and Norway Maple;
- (135) Ornamental Trees, 7' tall on average, varieties such as Flowering Crabapple, Shadblow Serviceberry and Washington Hawthorn.

Total number of Trees to be Installed: 375; calculates to \$350.00 per installed Tree.

Note: Other varieties may be substituted upon further conversation and consideration after this preliminary proposal. Final cost can be determined upon a full and final review of the planting locations and total quantity of Trees to be installed. Time (season) of installation may also have an impact on final completion of project, among other factors. Tree guarantee may be unattainable due to the lack of watering resources and scope of project as well as challenges in applying anti-desiccant products (treatments to retain moisture in plants during adverse conditions).

Soil from excavated planting hole will be left on site and rough graded along berm.

Water management gel (such as Hortasorb) will be installed in each planting hole to assist in the retention of water at the root zone for specified plant.

Terms & Conditions

Upon receipt of your authorization, we will commence work on the proposed additional work and coordinate completion with you. All invoices will be payable within 30 days of receipt. You agree to pay Countryside a one and one half percent (1½%) service charge per month (18% annual) on any overdue balance. You agree to reimburse and indemnify Countryside for all costs of collection, including, but not limited to all attorney fees, court costs and/or collection agency fees. Your failure to pay any invoices, service charges or collection costs when due shall permit Countryside Industries to delay or cease performance of any uncompleted work, contracted or otherwise, until payment in full is made for all such past due invoices, service charges and collection costs, without penalty or recourse against Countryside. To the extent this provision conflicts with any prior contract or contract term between you and Countryside, this provision shall control.

| | | | |
|--|--|--|---------------|
|  _____ Kris Guy Countryside Industries, Inc. | <u>Acceptance</u> 09/04/10 _____ Date | _____ Barbara Lube Indian Creek HOA - Foster Premier | _____ Date |
|--|--|--|---------------|