

R E S O L U T I O N

DT-0028-09

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE AND THE VILLAGE OF LOMBARD
CH 47/ILLINOIS PRAIRIE PATH
REPLACEMENT OF BRIDGE OVER THE EAST BRANCH OF THE DU PAGE RIVER
SECTION 99-00313-03-BT

WHEREAS, the County of DuPage (hereinafter "COUNTY") and the Village of Lombard (hereinafter "VILLAGE") in order allow pedestrian and bicyclists to safely cross the East Branch of the DuPage River desire to reconstruct the bridge that carries CH 47/Illinois Prairie Path over the East Branch of the DuPage River (hereinafter referred to as the "IMPROVEMENT"); and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate in the construction of the IMPROVEMENT because of the benefit of the IMPROVEMENT to the residents of the COUNTY, the citizens of the VILLAGE and the Illinois Prairie Path users; and

WHEREAS, access options to the IMPROVEMENT site are limited and the COUNTY desires the use of the VILLAGE'S access road which serves the Glenbard Waste Treatment Facility between Hill Avenue and the Illinois Prairie Path (hereinafter referred to as the "ACCESS ROAD") as generally depicted in Exhibit A attached hereto and incorporated herein in order to construct said IMPROVEMENT; and

WHEREAS, the VILLAGE is agreeable to the COUNTY'S request for access subject to certain conditions; and

WHEREAS, the COUNTY by virtue of its power set forth in the Counties Code, (55 ILCS 5/1001 et seq.), and the "Illinois Highway Code" (605 ILCS 5/1-101 et seq.) and the VILLAGE by virtue of its power set forth in the Municipal Code, (65 ILCS 5/1-1-1 et seq.), are authorized to enter into Agreements and Contracts; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article VII, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (605 ILCS 220/1 et seq.); and

WHEREAS, an Agreement has been prepared and is attached that outlines the rights and responsibilities of the COUNTY and the VILLAGE relative to the use and restoration of the Access Road; and

WHEREAS, the Agreement must be executed to define the rights and responsibilities of the COUNTY and the VILLAGE related to the IMPROVEMENT.

NOW, THEREFORE, BE IT RESOLVED by the County Board of DuPage County, that the Clerk and Chairman of the said Board be hereby directed and authorized to execute the above referenced Agreement with the VILLAGE; and

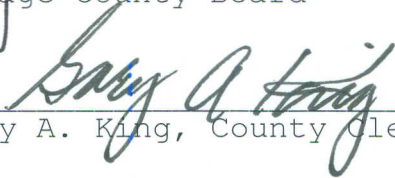
BE IT FURTHER RESOLVED that one (1) original of this Resolution and Agreement be sent to the Village of Lombard through the Division of Transportation.

Enacted and approved this 19th day of May, 2009 at Wheaton, Illinois.



Robert J. Schillerstrom, Chairman
DuPage County Board

ATTEST:



Gary A. King, County Clerk

Ayes: 16
Absent: 2

INTERGOVERNMENTAL AGREEMENT BETWEEN THE
THE COUNTY OF DU PAGE AND THE VILLAGE OF LOMBARD
CH 47/ILLINOIS PRAIRIE PATH
REPLACEMENT OF THE BRIDGE OVER THE EAST BRANCH
OF THE DU PAGE RIVER
SECTION 99-00313-03-BT

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 12th day of May, 2009, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the Village of Lombard, (hereinafter referred to as the "VILLAGE"), a municipal corporation with offices at 255 East Wilson Avenue, Lombard, Illinois. The COUNTY and the VILLAGE are hereinafter sometimes individually referred to as a "Party" or together as the "Parties."

RECITALS

WHEREAS, the COUNTY, in order to allow pedestrians and bicyclists to safely cross the East Branch of the DuPage River desire to reconstruct the bridge that carries CH 47/Illinois Prairie Path over the East Branch of the DuPage River (hereinafter referred to as the "IMPROVEMENT"); and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate in an effort to construct the IMPROVEMENT because of the immediate benefit of the IMPROVEMENT to the residents of DuPage County and the Village of Lombard; and

WHEREAS, access options to the IMPROVEMENT site are limited and the COUNTY desires the use of the VILLAGE'S access road which serves the Glenbard Waste Treatment Facility between Hill Avenue and the Illinois Prairie Path (hereinafter referred to as the "ACCESS ROAD") as generally depicted in Exhibit A attached hereto and incorporated herein in order to construct said IMPROVEMENT; and

WHEREAS, the VILLAGE is agreeable to the COUNTY'S request for access subject to certain conditions; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/1-101 et seq.) and the VILLAGE by virtue of its power set forth in the Municipal Code (65 ILCS 1/1-1 et seq.) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each Party to the other, the Parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION.

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 SCOPE

- 2.1. The scope of the IMPROVEMENT shall include but is not limited to the reconstruction of the bridge that carries CH 47/Illiois Prairie Path over the East Branch of the DuPage River and other appurtenant work.

3.0 RESPONSIBILITIES - JOINT

- 3.1. The COUNTY and the VILLAGE agree to cooperate in and make every effort to cause the construction of the IMPROVEMENT.
- 3.2. The COUNTY and VILLAGE representatives, as referenced hereinafter, shall inspect the ACCESS ROAD prior to the start of the IMPROVEMENT to establish the condition of the ACCESS ROAD prior to construction of the IMPROVEMENT.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall act as the lead agency and be responsible for completing all preliminary and design engineering, awarding of contract(s), permit processing, utility coordination, construction engineering and construction of the IMPROVEMENT.
- 4.2. The COUNTY shall administer the contract for the construction of the IMPROVEMENT and agrees to administer the IMPROVEMENT in the best interests of both parties.
- 4.3. The COUNTY and/or its contractor(s) shall be permitted to use the ACCESS ROAD to construct the IMPROVEMENT at no cost to the COUNTY. The COUNTY and/or its contractor(s) shall, upon completion of the IMPROVEMENT, restore the ACCESS ROAD to a like-kind condition as established prior to the start of construction of the IMPROVEMENT and the COUNTY shall bear all costs necessary for the restoration of the ACCESS ROAD.
- 4.4. The COUNTY agrees that the restoration of the ACCESS ROAD shall be subject to approval in writing or via e-mail by the VILLAGE which approval shall not be unreasonably withheld.
- 4.5. The COUNTY has previously named the VILLAGE as an additional insured for construction of the IMPROVEMENT as evidenced by a copy of the Certificate of Insurance attached in Exhibit B and incorporated herein.

5.0 RESPONSIBILITIES OF THE VILLAGE

- 5.1. The VILLAGE agrees to allow the COUNTY and/or its contractor(s) use of the ACCESS ROAD as generally depicted in Exhibit A (attached) to construct the IMPROVEMENT at no cost to the COUNTY except as referenced hereinabove.

6.0 MAINTENANCE

- 6.1. The COUNTY and the VILLAGE agree that existing maintenance responsibilities of the IMPROVEMENT and/or ACCESS ROAD shall not be altered by this AGREEMENT.

7.0 INDEMNIFICATION

7.1. The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the VILLAGE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.1.1. The COUNTY and the VILLAGE acknowledge that the COUNTY has made no representations, assurances or guaranties regarding the COUNTY'S or any successor's or assign's authority and legal capacity to indemnify the VILLAGE as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the VILLAGE, or any person or entity claiming a right through VILLAGE, or in the event of change in the laws of the State of Illinois governing COUNTY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not effect the validity and enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

7.2. The VILLAGE shall, to the extent permitted by law, indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the VILLAGE'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The VILLAGE does not hereby waive any defenses or immunity available to it with respect to third parties.

7.2.1. The COUNTY and the VILLAGE acknowledge that the VILLAGE has made no representations, assurances or guaranties regarding the VILLAGE'S or any successor's or assign's authority and legal capacity to indemnify the COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the VILLAGE, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through COUNTY, or in the event of change in the laws of the State of Illinois governing VILLAGE'S or any successor's or assign's indemnification authority, such occurrence(s) shall not effect the validity and enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

7.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, under this paragraph or paragraph 7.1, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY'S participation in its defense shall not remove VILLAGE'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

7.4. Nothing contained herein shall be construed as prohibiting the VILLAGE, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The VILLAGE'S participation in its defense shall not remove COUNTY'S duty to indemnify, defend, and hold the VILLAGE harmless, as set forth above.

7.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The VILLAGE'S and COUNTY'S indemnification under Section 7.0 hereof

shall terminate when the IMPROVEMENT and restoration of the ACCESS ROAD are complete and the COUNTY and VILLAGE assume its maintenance responsibilities as set forth in Section 6.1 above.

8.0 GENERAL

- 8.1. It is understood and agreed by the Parties hereto that no changes to existing maintenance and/or jurisdiction are proposed as a part of this AGREEMENT.
- 8.2. In the event of a dispute between the COUNTY and VILLAGE representatives in carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Village Manager of the VILLAGE shall meet and resolve the issue.
- 8.3. No later than fourteen (14) days after the execution of this AGREEMENT, each Party shall designate a representative to the other Party who shall serve as the full time representative of said Party during the construction of the IMPROVEMENT and use of the ACCESS ROAD. Each representative shall have authority, on behalf of such Party, to receive notices and make inspections relating to the terms covered in this AGREEMENT. Representatives shall be readily available to the other Party.
- 8.4. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

9.0 ENTIRE AGREEMENT

- 9.1. This AGREEMENT represents the entire AGREEMENT between the Parties with respect to the IMPROVEMENT and the ACCESS ROAD, and supersedes all previous communications or understandings whether oral or written.

10.0 NOTICES

- 10.1. Any notice required hereunder shall be deemed properly given to the Party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or sent by confirmed facsimile, to the

Party's address. The address of each Party is as specified below. Either Party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

If to the VILLAGE:

Village Manager
David A. Hulseberg
Village of Lombard
255 East Wilson Avenue
Lombard, IL 60148
Facsimile: 630.620.8222

If to the COUNTY:

Charles Tokarski, P.E.
County Engineer
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Facsimile: 630.407.6901

11.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

11.1. No modification or amendment to this AGREEMENT shall be effective until approved by the Parties in writing.

12.0 ASSIGNMENT

12.1. This AGREEMENT shall be binding upon and inure to the benefit of the Parties hereto and their representative successors and assigns.

13.0 GOVERNING LAW

13.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

13.2. The forum for resolving any disputes concerning the Parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Eighteenth Judicial Circuit Court for DuPage County.

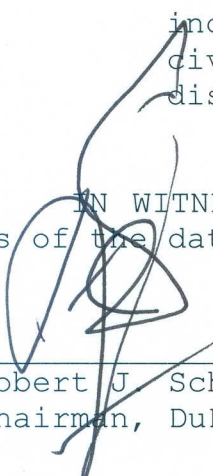
14.0 SEVERABILITY

14.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.


15.0 FORCE MAJEURE

15.1 Neither Party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their reasonable control, including, but not limited to, Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

IN WITNESS whereof, the Parties set their hands and seals as of the date first written above.



Robert J. Schillerstrom, Chairman
Chairman, DuPage County Board



William Mueller, President
Village of Lombard

ATTEST:



Gary A. King
County Clerk

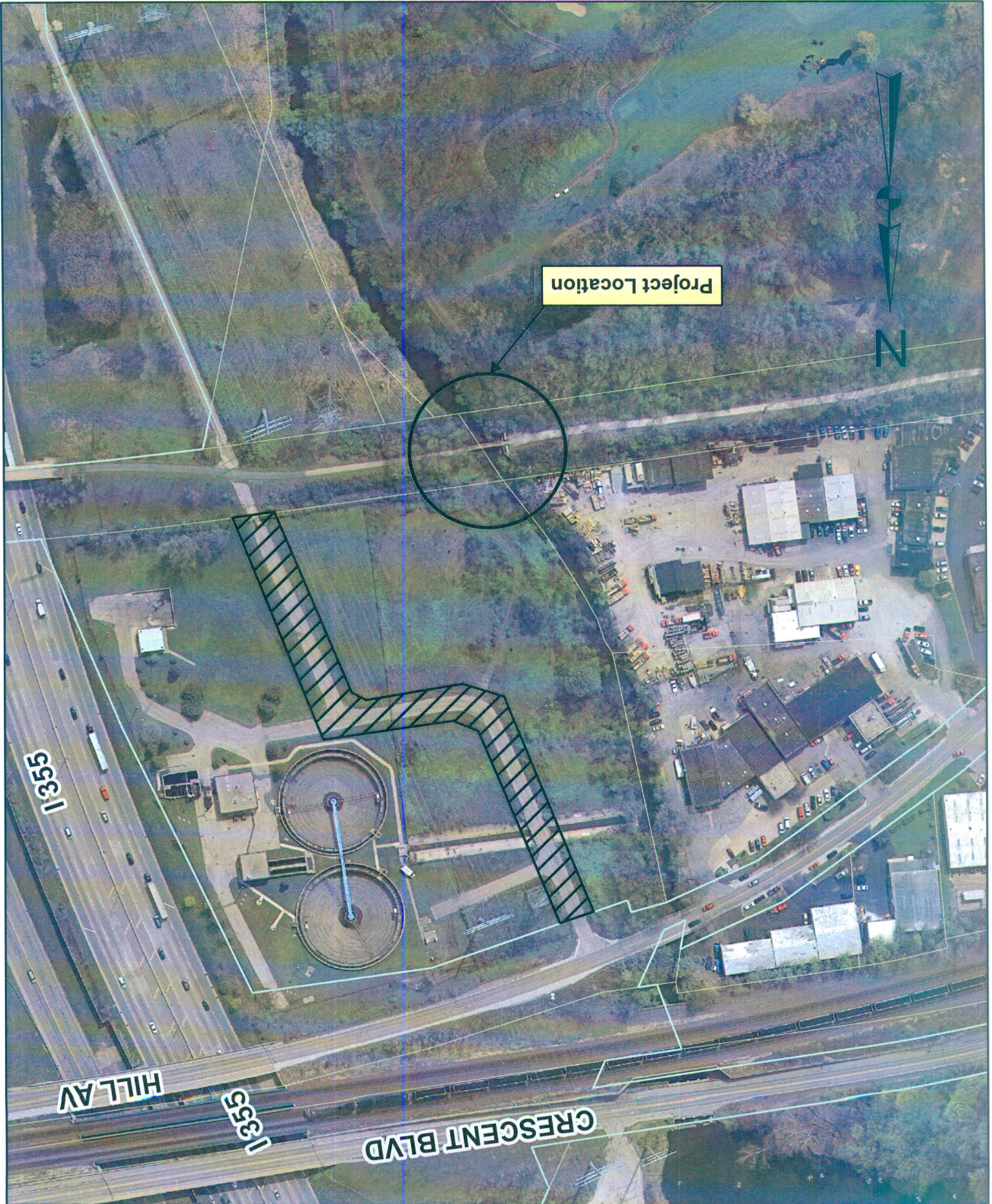
ATTEST:



Barbara A. Johnson Deputy
Brigitte O'Brien
Acting Village Clerk

Exhibit A

Access Road



ACORD™ CERTIFICATE OF LIABILITY INSURANCE

OP ID JB
DCONS-1

DATE (MM/DD/YYYY)
03/24/09

PRODUCER
Columbian Agency
www.columbianagency.com
1005 Laraway Road
New Lenox IL 60451
Phone: 815-485-4100

INSURED

D Construction, Inc.
1488 S. Broadway
Coal City IL 60416

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

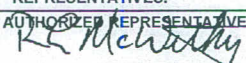
INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	Ace American Ins Co	
INSURER B:	Illinois National	
INSURER C:	Travelers Property Cas	
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> <u>Per Loc/Per Proje</u> GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	OGLG20314230	04/05/08	04/05/09	EACH OCCURRENCE	\$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
					MED EXP (Any one person)	\$ 10,000
					PERSONAL & ADV INJURY	\$ 1,000,000
					GENERAL AGGREGATE	\$ 2,000,000
					PRODUCTS - COMP/OP AGG	\$ 2,000,000
					Emp Ben.	1,000,000
A X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CALH08412856	04/05/08	04/05/09	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT	\$
					OTHER THAN AUTO ONLY: EA ACC	\$
					AGG	\$
B	EXCESS/UMBRELLA LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$10,000	BE7251555	04/05/08	04/05/09	EACH OCCURRENCE	\$ 20,000,000
					AGGREGATE	\$ 20,000,000
						\$
						\$
						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WLRC44512063	04/05/08	04/05/09	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
					E.L. EACH ACCIDENT	\$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	EQUIPMENT FLOATER	QT6608242B035	04/05/08	04/05/09	LEASED/ RENTED	\$500,000 \$2,500

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 IT IS AGREED THAT THOSE LISTED ON THE ATTACHED ARE ADDED AS ADDITIONAL INSURED ON THE GENERAL AND AUTOMOBILE LIABILITY ON A PRIMARY/NONCONTRIBUTORY BASIS IF REQUIRED BY WRITTEN CONTRACT WITH RESPECTS TO CONTRACT NO. 63069, DUPAGE COUNTY, SECTION 99-00313-03-BT, ROUTE CH47 (ILLINOIS PRAIRIE PATH), PROJECT ACHPP-HPP-0242 (003), DISTRICT 1 CONSTRUCTION FUNDS

CERTIFICATE HOLDER	CANCELLATION
IDOT001 ILLINOIS DEPARTMENT OF TRANSPORTATION 2300 S DIRKSEN PARKWAY SPRINGFIELD IL 62764	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

NOTEPAD:HOLDER CODE IDOT001
INSURED'S NAME D Construction, Inc.DCONS-1
OP ID JBPAGE 3
DATE 03/24/09

NAMED INSURED: D. CONSTRUCTION, INC.

CERTIFICATE HOLDER: ILLINOIS DEPARTMENT OF TRANSPORTATION

PROJECT: CONTRACT NO. 63069, DUPAGE COUNTY, SECTION 99-00313-03-BT, ROUTE
CH47 (ILLINOIS PRAIRIE PATH), PROJECT ACHPP-HPP-0242(003), DISTRICT 1
CONSTRUCTION FUNDSADDITIONAL INSURED: ILLINOIS DEPARTMENT OF TRANSPORTATION, ITS OFFICERS,
AND EMPLOYEES; DUPAGE COUNTY; DUPAGE COUNTY, DIVISION OF TRANSPORTATION;
CHRISTIAN ROGE & ASSOCIATES, INC.; BOWMAN BARETT; AND GLENBARD WASTE WATER
AUTHORITY AND THE VILLAGE OF LOMBARD

UMBRELLA LIABILITY IS A FOLLOW FORM OVER THE PRIMARY COVERAGES.

COVERAGE AND LIMITS CONFORM TO THE MINIMUM REQUIRED BY ARTICLE 107.27 OF
THE STANDARD SPECIFICATIONS FOR ROAD AND BRIDGE CONSTRUCTION.