

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: November 28, 2007 (B of T) Date: December 6, 2007

TITLE: A Resolution Authorizing the Signature of President and Clerk on a Settlement Agreement and Release with Burns and McDonnell Engineering Company, Inc.

SUBMITTED BY: David Gorman, PE, Acting Director of Public Works *DGA*

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a Settlement Agreement and Release with Burns and McDonnell Engineering Company, Inc. for the Westmore-Meyers Road Underground Utilities Project.

Fiscal Impact/Funding Source:

HTE Project Number: 0607
Account: Water/Sewer Capital Reserve Fund
PW Project Number: ST-06-03A

This Agreement will reduce the contract amount by one hundred five thousand dollars (\$105,000.00).

Review (as necessary):

Village Attorney X	(Reviewed on 11/26/07)	Date
Finance Director X	<i>Monaghan</i>	11/28/07
Village Manager X	<i>W. T. Lichter</i>	11/28/07

RESOLUTION
R _____
08

RESOLUTION AUTHORIZING THE SIGNATURE OF PRESIDENT AND CLERK
ON A SETTLEMENT AGREEMENT AND RELEASE WITH
BURNS AND MCDONNELL ENGINEERING COMPANY, INC.

WHEREAS, it is the best interest of the Village of Lombard, DuPage County, Illinois to enter into a Settlement Agreement (hereinafter the "Agreement") with Burns and McDonnell Engineering Company, Inc. relative to the Westmore-Meyers Road Underground Utility Project; and,

WHEREAS, the Agreement has been drafted and a copy is attached hereto and incorporated herein as Exhibit "A".

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 Agreement attached hereto as Exhibit "A" is hereby approved.

SECTION 2: That the Village President be and hereby is authorized and directed to sign, on behalf of the Village of Lombard, the Agreement attached hereto as Exhibit "A".

SECTION 3: That the Village Clerk be and hereby is authorized and directed to sign, on the behalf of the Village of Lombard, the Agreement attached hereto as Exhibit "A" and made part hereof.

Adopted this 6th day of December, 2007.

Ayes: _____

Nays: _____

Absent: _____

Approved this 6th day of December, 2007.

ATTEST:

William J. Mueller, Village President

Brittne O'Brien, Village Clerk

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, The Village of Lombard, Illinois ("VILLAGE") has asserted a claim including numerous subparts ("Village Claim") against Burns & McDonnell Engineering Company, Inc. ("BMCD") for damages arising out of the design engineering and resident engineering services performed pursuant to Village of Lombard Contract Nos. ST-06-03 and ST-06-03A-RE for DESIGN and RESIDENT ENGINEERING CONSTRUCTION SERVICES (including related subparts thereof) ("Contracts") related to the Westmore-Meyers Road Underground Utility Project ("Project"); and

WHEREAS, BMCD has asserted a claim against the VILLAGE for extra services performed under the Contracts for the Project ("BMCD Claim"); and

WHEREAS, there are a number of outstanding and paid invoices submitted by BMCD to the VILLAGE for services on the Project; and

WHEREAS, VILLAGE and BMCD desire to resolve all claims related to the Contracts, the Project, and unpaid invoices; and

WHEREAS, VILLAGE and BMCD (the "Parties") have reached an agreement to resolve all issues arising out of the Village Claim and the BMCD Claim as set forth herein;

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements set forth below, and other good and valuable consideration, the receipt and the sufficiency of which is hereby acknowledged by the Parties hereto, the Parties agree and stipulate as follows:

1. The Parties to this Agreement acknowledge that, except to the extent that the VILLAGE is entitled to an offset for liabilities of BMCD arising from the VILLAGE Claim, the following invoices are due and payable ("Invoices"):

officers, directors, partners, agents, servants, employees, consultants, insurers, successors,

3. VILLAGE hereby fully and unconditionally releases BMCD and their respective

ST-06-03A-RE will be paid within fifteen (15) days of receipt of final project deliverables.

ST-06-03A-RE, which is an amount equal to \$160,145.80. The \$9,129.14 retainage on Contract

BMCD the total of the Invoices less \$105,000.00 and less the \$9,129.14 retainage on Contract

2. Within ten (10) days of the effective date of this Agreement, VILLAGE will pay

Total: \$274,274.94

2007(not paid).

(41489) – Invoice 41489-4 for retainage in the amount of \$5,240.18 dated November 27, Westmore-Meyers Road Roadway Resurfacing Design Contract ST-06-03, P.O. No. 053247

amount of \$55,024.48 (not paid).

(41489) – Invoice 41489-3 sent on May 30, 2007 with back-up sent on October 18, 2007 in the Westmore-Meyers Road Roadway Resurfacing Design Contract ST-06-03, P.O. No. 053247

amount of \$26,784.97 (not paid).

(41489) – Invoice 41489-2R sent on November 8, 2006 and revised on October 18, 2007 in the Westmore-Meyers Road Roadway Resurfacing Design Contract ST-06-03, P.O. No. 053247

paid).

(43257) – Invoice 43257- 4 for retainage in the amount of \$9,129.14 dated October 29, 2007 (not Westmore-Meyers Road Construction Services Contract ST-06-03A-RE, P.O. No. 055630

amount of \$43,085.40 (not paid).

(43257) – Invoice 43257-3R sent on September 27, 2007 and revised on October 12, 2007 in the Westmore-Meyers Road Construction Services Contract ST-06-03A-RE, P.O. No. 055630

amount of \$123,477.63 (not paid).

(43257) – Invoice 43257-2R sent on May 30, 2007 and revised on October 12, 2007 in the Westmore-Meyers Road Construction Services Contract ST-06-03A-RE, P.O. No. 055630

amount of \$6,890.79 (not paid).

(43257) – Invoice 43257-1R sent on November 8, 2006 and revised on October 12, 2007 in the Westmore-Meyers Road Construction Services Contract ST-06-03A-RE, P.O. No. 055630

(40487) – Invoice 40487-3R for retainage in the amount of \$4,642.32 dated November 27, 2007. Westmore- Meyer Combined Sewer Separation Design Contract ST-06-03, P.O. No. 053247

8. This Agreement may be executed in identical original counterparts, with each

writing signed by all Parties or their attorneys.

Agreement may not be modified, amended, waived, or revoked orally, but only by a
into this Agreement by reference. The terms of this Agreement are contractual in nature. This
relating to the VILLAGE Claim and the BMCD Claim. Recitals set forth above are incorporated

7. This Agreement represents the entire agreement between the Parties hereto

against a Party merely because that Party is or was the principal drafter.

accordance with the laws of the State of Illinois. Terms contained herein shall not be construed

6. The Parties agree that this Agreement shall be governed and construed in

their permitted successors, assigns and representatives.

5. This Agreement shall be binding upon, and inure to the benefit of, the Parties and

whether directly or indirectly, to the BMCD Claim, the Contracts and the Project.

now or in the future have against the VILLAGE Released Parties arising out of or relating,

direct and/or indirect and whether in tort, contract or otherwise that BMCD may have had or may

damages, costs, expenses, liabilities, claims, lawsuits, proceedings and causes of action, whether

assigns and related entities (the "VILLAGE Released Parties") from any and all debts, losses,

officers, directors, partners, agents, servants, employees, consultants, insurers, successors,

4. BMCD hereby fully and unconditionally releases VILLAGE and their respective

whether directly or indirectly, to the VILLAGE Claim, the Contracts and the Project.

may now or in the future have against the BMCD Released Parties arising out of or relating,

direct and/or indirect and whether in tort, contract or otherwise that VILLAGE may have had or

damages, costs, expenses, liabilities, claims, lawsuits, proceedings and causes of action, whether

assigns and related corporations (the "BMCD Released Parties") from any and all debts, losses,

By: _____

Name: _____

Title: _____

THE VILLAGE OF LOMBARD, ILLINOIS

By: _____

Name: *Kary F. Miller*

Title: *Associate Vice President*
BURNS & McDONNELL ENGINEERING
COMPANY, INC.

authorized officers effective as of _____, 2007.

responsibility for the BMCD Claim.
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly

12. Nothing herein shall be construed or deemed as an admission of liability on behalf of BMCD as to any responsibility for the VILLAGE Claim, or by the VILLAGE as to any

way affect the validity or enforceability of any other provisions herein.

11. The invalidity or unenforceability of any provision in the Agreement shall in no way affect the validity or enforceability of any other provisions herein.

10. The individuals signing this Agreement represent and warrant that they are duly authorized to enter into and execute this Agreement on behalf of the Parties on whose behalf they

warrant that they have the legal authority and capacity to enter into this Agreement. in connection with the BMCD Claim and the Village Claim, respectively. The Parties further

9. The Parties warrant to each other that they have the legal authority and capacity to compromise and release all claims which have been asserted or which could have been asserted

counterpart constituting the entire Agreement.