

**RESOLUTION
R 35-20**

**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 DuPage County regarding the Signal Network Improvements Phase II Design Engineering; a copy of which is attached hereto as Exhibit A and made part hereof (the "Intergovernmental Agreement"), and

WHEREAS, the Corporate Authorities deem it to be in the best interests of the Village of Lombard to approve said Intergovernmental 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 Intergovernmental Agreement, attached hereto as Exhibit A, is hereby approved, and the Village President and Clerk are and hereby authorized and directed to sign said Intergovernmental Agreement on behalf of the Village of Lombard.

Adopted this 5th day of November, 2020.

Ayes: Trustee Puccio, Foltyniewicz, Honig, Militello and Ware

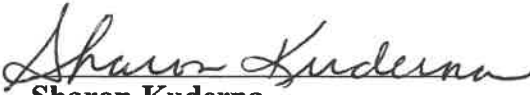
Nays: None

Absent: Trustee Whittington

Approved this 5th day of November, 2020.


Keith Giagnorio
Village President

ATTEST:


Sharon Kuderna
Village Clerk

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE VILLAGE OF LOMBARD
FOR CENTRAL SIGNAL SYSTEM EXPANSION #4
PHASE II DESIGN ENGINEERING OF SIGNAL EQUIPMENT
SECTION NO: 19-DCCSS-04-TL**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 24th day of November, 2020, 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 "MUNICIPALITY"), a non-home rule municipal corporation with offices at 255 E. Wilson Avenue, Lombard, Illinois 60148. The COUNTY and the MUNICIPALITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the COUNTY has received Congestion Mitigation Air Quality (CMAQ) funding to expand its Central Signal System (Expansion #4) under COUNTY Section Number: 19-DCCSS-04-TL (hereinafter referred to as the "PROJECT"); and

WHEREAS, the COUNTY and the MUNICIPALITY desire to cooperate in the Phase II Design Engineering of new Intelligent Transportation System equipment within the Village of Lombard because of the benefit of the PROJECT to the residents of DuPage County, the MUNICIPALITY and the public; and

WHEREAS, the COUNTY and the MUNICIPALITY desire to establish the MUNICIPALITY's costs with respect to the PROJECT; and

WHEREAS, the COUNTY, by virtue of its powers set forth in the "Counties Code" (55 ILCS 5/5-1001 *et seq.*) and the "Illinois Highway Code" (605 ILCS 5/5-101 *et seq.*) and the MUNICIPALITY by virtue of its non-home rule power set forth in the "Illinois Municipal Code" (65 ILCS 5/5-1-1 *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 Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, the COUNTY and MUNICIPALITY are public agencies as that term is defined in the Intergovernmental Cooperation Act, (5 ILCS 220/1 *et seq.*);

NOW, THEREFORE, in consideration of the 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 inserted 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 OF AGREEMENT

- 2.1. This AGREEMENT covers the Phase II design engineering of the equipment for the MUNICIPALITY's traffic signal hardware and software to establish connections to the COUNTY's Ethernet-based Central Traffic Management Systems as part of the PROJECT.

3.0 RESPONSIBILITIES - JOINT

- 3.1. The parties agree to cooperate in and make every effort to cause the design of MUNICIPALITY's signal equipment for the PROJECT.
- 3.2. The COUNTY and MUNICIPALITY acknowledge this AGREEMENT, for COUNTY Section No. 19-DCCSS-04-TL, outlines the estimated cost to the MUNICIPALITY for the Phase II design engineering of the MUNICIPALITY's traffic signal equipment for the PROJECT. Exhibit A attached hereto and incorporated herein by reference outlines the estimated cost to the MUNICIPALITY for the Phase II design engineering for the PROJECT.
- 3.3. The COUNTY and MUNICIPALITY acknowledge that this AGREEMENT is for the Phase II design engineering phase of the PROJECT only and that a separate agreement will need to be entered into that outlines the COUNTY's and MUNICIPALITY's roles, responsibilities and share of the construction and construction engineering costs relative to the PROJECT.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall be responsible for all Phase II design engineering services for the PROJECT costs except as noted hereinafter, act as the lead agency and be responsible for selecting the design consultant, awarding the consultant contract, and for completing all necessary Phase II design engineering services for the PROJECT.
- 4.2. Both the COUNTY and MUNICIPALITY agree that the COUNTY shall administer the consultant contract for the Phase II design engineering of the PROJECT. The COUNTY agrees to administer the Phase II design engineering for the PROJECT in the best interest of both parties and to keep advised officials of the MUNICIPALITY regarding the progress of the Phase II design engineering for the PROJECT and any problems encountered or changes recommended. No change order which affects the MUNICIPALITY's facilities, or MUNICIPALITY's cost, except normal minor variations up to \$25,000.00 resulting from the Phase II design engineering process of the PROJECT shall be authorized except with prior written approval by the MUNICIPALITY.
- 4.3. The COUNTY shall submit the Plans and Specifications for the PROJECT to the MUNICIPALITY for review prior to milestone submittals to IDOT. The MUNICIPALITY shall provide review comments within ten (10) business days of receipt of the Plans and Specifications. The COUNTY will correct any errors and address other reasonable comments prior to the submittal of Plans and Specifications to IDOT.

5.0 RESPONSIBILITIES OF THE MUNICIPALITY

- 5.1. The MUNICIPALITY hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under, above and in the MUNICIPALITY property or facilities within the boundaries of the PROJECT for the purpose of the Phase II design engineering for the PROJECT. The MUNICIPALITY shall retain the right of ingress and egress over said areas so long as it does not interfere with the COUNTY's work. The MUNICIPALITY reserves the right to require COUNTY personnel to be escorted by a representative of the MUNICIPALITY when accessing MUNICIPALITY facilities. Upon completion of the Phase II design engineering for the PROJECT, the right-of-entry shall terminate.

- 5.2. The MUNICIPALITY agrees to reimburse the COUNTY for the MUNICIPALITY's share of the costs of Phase II design engineering for elements of the PROJECT that are at locations owned by the MUNICIPALITY, and half the cost of the design engineering for the interconnect infrastructure located within the MUNICIPALITY limits that directly connects the COUNTY's traffic signals west, south and east of the MUNICIPALITY to the Central Signal System. The MUNICIPALITY's share for the above is estimated to be \$170,000.00 as set forth on Exhibit A.
- 5.3. The MUNICIPALITY agrees to pay the COUNTY fifty (50%) percent of the estimate of MUNICIPALITY cost upon award of the consultant contract for the Phase II design engineering services for the PROJECT. Upon completion of the PROJECT, which shall be considered to have occurred upon letting of the PROJECT by IDOT, and based upon the documentation of final costs submitted by the COUNTY and a final invoice, the MUNICIPALITY agrees to reimburse the COUNTY for the balance of the MUNICIPALITY cost within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

6.0 INDEMNIFICATION

- 6.1. The COUNTY shall to the extent permitted by law, indemnify, hold harmless and defend the MUNICIPALITY, 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 or the COUNTY'S officers, agents, employees, contractors, or officials', 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.
- 6.1.1. The COUNTY and the MUNICIPALITY 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 MUNICIPALITY 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 MUNICIPALITY, or any person or entity claiming a right through MUNICIPALITY, 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 affect the validity and enforceability of the remainder of this AGREEMENT or the parties' rights and obligations provided for therein.

6.2. The MUNICIPALITY shall 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 MUNICIPALITY or the MUNICIPALITY'S officers, agents, employees, contractors, or officials' negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The MUNICIPALITY does not hereby waive any defenses or immunity available to it with respect to third parties.

6.2.1. The COUNTY and the MUNICIPALITY acknowledge that the MUNICIPALITY has made no representations, assurances or guaranties regarding the MUNICIPALITY'S or any successor's or assign's authority and legal capacity to indemnify COUNTY as provided for in this AGREEMENT.

In the event a court of competent jurisdiction holds that the MUNICIPALITY, 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 MUNICIPALITY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

6.3. 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, who is not already an Assistant State's Attorney, 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 MUNICIPALITY'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

6.4. Neither party waives, by these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or otherwise available to it, or to the other party, under the law.

6.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The MUNICIPALITY's and COUNTY's indemnification under Section 6.0 hereof shall terminate when the Phase II design engineering for the PROJECT is completed.

7.0 GENERAL

- 7.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the Phase II design engineering relative to the PROJECT and participation of the MUNICIPALITY as a part of the PROJECT and no changes to existing highways and appurtenances maintenance and/or jurisdiction are proposed.
- 7.2. Whenever in this AGREEMENT, approval or review of either the COUNTY or MUNICIPALITY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 7.3. In the event of a dispute between the COUNTY and MUNICIPALITY representatives in the preparation of the Plans and Specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Director of Public Works of the MUNICIPALITY shall meet and resolve the issue.
- 7.4. 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 carrying out of the Phase II design engineering for the PROJECT. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the Phase II design engineering for the PROJECT covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 7.5. 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.

8.0 ENTIRE AGREEMENT

- 8.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the Phase II design engineering for the PROJECT and supersedes all previous communications or understandings whether oral or written.

9.0 NOTICES

9.1. 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 regular or certified mail, return receipt requested, postage prepaid, or sent by email, 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.

For MUNICIPALITY:

Carl Goldsmith
Director of Public Works
Village of Lombard
255 E. Wilson Avenue Lombard, IL 60148
Phone: 630.620.5740
Email: goldsmithc@villageoflombard.org

For COUNTY:

Christopher C. Snyder, P.E.
Director of Transportation/County Engineer
DuPage County Division of Transportation
421 N. County Farm Road Wheaton, IL 60187
Phone: 630.407.6900
Email: christopher.snyder@dupageco.org

10.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

11.0 ASSIGNMENT

11.1. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

12.0 GOVERNING LAW

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

12.2. 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.

13.0 SEVERABILITY

13.1. 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.

14.0 FORCE MAJEURE

14.1. Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their 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.

COUNTY OF DU PAGE



Daniel J. Cronin, Chairman
DuPage County Board

VILLAGE OF LOMBARD




Keith Giagnorio, President
Village Board

ATTEST:



Jean Kaczmarek
County Clerk

ATTEST:



Sharon Kuderna
Village Clerk

EXHIBIT A
ESTIMATED PHASE II DESIGN ENGINEERING COSTS

Estimate of Phase II Design Engineering for PROJECT	\$ 440,000.00
Estimate of COUNTY Cost	\$ 270,000.00
Estimate of MUNICIPALITY Cost	\$ 170,000.00

Resolution

DT-R-0634-20

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE, ILLINOIS
AND VILLAGE OF LOMBARD
FOR CENTRAL SIGNAL SYSTEM EXPANSION #4
PHASE II DESIGN ENGINEERING OF SIGNAL EQUIPMENT
AT VARIOUS LOCATIONS
SECTION 19-DCCSS-04-TL
(COUNTY TO BE REIMBURSED \$170,000.00)

WHEREAS, the County of DuPage (hereinafter referred to as "COUNTY") and the Village of Lombard (hereinafter referred to as "VILLAGE") are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*); and

WHEREAS, Article VII, Section 10, of the 1970 Constitution of the State of Illinois encourages and provides for units of local government to contract and otherwise associate with each other to exercise, combine or transfer any power or function; and

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

WHEREAS, the COUNTY is preparing plans and specifications for the Central Signal System Expansion #4, known as COUNTY Section No. 19-DCCSS-04-TL (hereinafter referred to as "PROJECT"); and

WHEREAS, the VILLAGE has requested that the COUNTY install upgraded equipment at VILLAGE traffic signals and facilities, and connect the existing COUNTY and VILLAGE networks as a part of the PROJECT; and

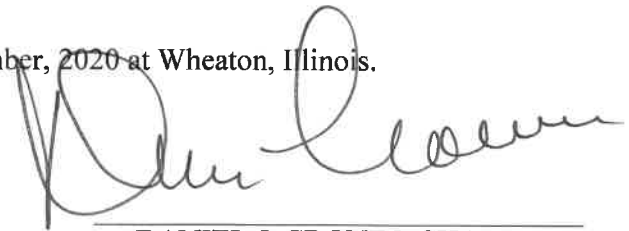
WHEREAS, an Intergovernmental Agreement has been prepared and is attached hereto that outlines the design engineering process, including financial obligations of the COUNTY and the VILLAGE related to the PROJECT; and

WHEREAS, the Intergovernmental Agreement must be executed.

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

BE IT FURTHER RESOLVED that two (2) original copies of this resolution and Intergovernmental Agreement be sent to the VILLAGE, by and through the Division of Transportation.

Enacted and approved this 24th day of November, 2020 at Wheaton, Illinois.



DANIEL J. CRONIN, CHAIRMAN
DU PAGE COUNTY BOARD

Attest: 
JEAN KACZMAREK, COUNTY CLERK

AYES 16
NAYS 0
ABSENT 2