

RESOLUTION
R 36-16

RESOLUTION AUTHORIZING THE SIGNATURE OF PRESIDENT AND CLERK ON AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE AND THE VILLAGE OF LOMBARD

WHEREAS, it is the best interest of the Village of Lombard, DuPage County, Illinois to enter into an Intergovernmental Agreement (hereinafter the "Agreement") with the DuPage County regarding pavement patching and repair of Highland Avenue; 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.

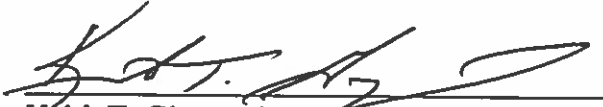
Adopted this 19th day of May, 2016.

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Johnston, Pike and Ware

Nays: None

Absent: None

Approved this 19th day of May, 2016.



Keith T. Giagnorio
Village President

ATTEST:



Sharon Kuderna
Village Clerk

Resolution

DT-R-0505-16

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE, ILLINOIS
AND THE VILLAGE OF LOMBARD
CH 9/HIGHLAND AVENUE OVER ILLINOIS ROUTE 56
BRIDGE IMPROVEMENTS
SECTION 15-00199-00-BR
(COUNTY TO BE REIMBURSED \$71,558.76)

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, in order to facilitate the free flow of traffic and to ensure the safety of the motoring public, the COUNTY and the VILLAGE desire to improve CH 9/Highland Avenue over Illinois Route 56, Section 15-00199-00-BR (hereinafter referred to as PROJECT); and

WHEREAS, as part of the project, the VILLAGE has requested that the COUNTY incorporate pavement patching and repair on the VILLAGE's leg of Highland Avenue, north of Butterfield Road, at the VILLAGE's expense; and

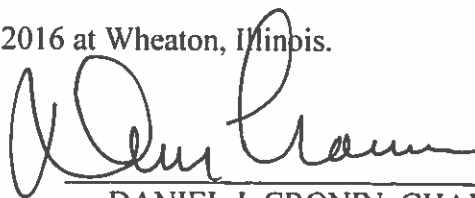
WHEREAS, an Intergovernmental Agreement has been prepared and is attached that outlines the rights and responsibilities of the COUNTY and the VILLAGE related to the PROJECT; and

WHEREAS, the Intergovernmental Agreement must be executed before the work for the VILLAGE may be initiated.

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 an original copy of this Resolution and Intergovernmental Agreement be sent to the VILLAGE, by and through the Division of Transportation.

Enacted and approved this 14th day of June, 2016 at Wheaton, Illinois.



DANIEL J. CRONIN, CHAIRMAN
DU PAGE COUNTY BOARD

Ayes: 17
Absent: 1

Attest:



PAUL HINDS, COUNTY CLERK

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE AND THE
VILLAGE OF LOMBARD
CH 9/HIGHLAND AVENUE BRIDGE OVER IL 56 (BUTTERFIELD ROAD)
SECTION NO.: 15-00199-00-BR

This Intergovernmental Agreement (hereinafter referred to as the "AGREEMENT") is entered into this 14th day of June, 2016, 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 E. 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 facilitate the free flow of traffic and to ensure the safety of the public, desires to improve CH 9/Highland Avenue Bridge Over IL 56 (Butterfield Road), Section No. 15-00199-00-BR (hereinafter referred to as "PROJECT"); and

WHEREAS, the VILLAGE has asked the COUNTY to incorporate pavement patching and repair on the VILLAGE's leg of Highland Avenue, north of Butterfield Road (hereinafter referred to as the "WORK") as depicted on Exhibit A attached hereto and incorporated herein, as a part of the PROJECT to avoid disruption to the motoring public at a later date; and

WHEREAS, the COUNTY is willing to incorporate this WORK into the Plans and Specifications for the PROJECT, that are incorporated herein by reference, subject to reimbursement by the VILLAGE; and

WHEREAS, a cost estimate, attached hereto as Exhibit B and incorporated herein, for construction of the WORK, including design and construction engineering, has been prepared for the VILLAGE, and said cost estimate of approximately \$71,558.76 is agreeable to the VILLAGE; and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate in the construction of the PROJECT because of the benefit of the

PROJECT to the residents of the COUNTY, the VILLAGE and the public; and

WHEREAS, the COUNTY and the VILLAGE desire to establish the parties' mutual PROJECT, cost and maintenance responsibilities with respect to the PROJECT; 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 "Illinois Municipal Code" (65 ILCS 5/1-1-1 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 Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.);

NOW, THEREFORE, in consideration of the foregoing, 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 IMPROVEMENTS

- 2.1. The scope of the PROJECT includes deck repairs and joint replacement/repairs of the Highland Avenue bridges over IL 56 and I-88 and other appurtenant and necessary work, as well as concrete pavement patching. The PROJECT also includes resurfacing of Highland Avenue from the I-88 south bridge approach pavement to south of 31st Street. In order to

complete the PROJECT as quickly and efficiently as possible, Highland Avenue over IL 56 will be temporarily closed.

- 2.2. The WORK for the VILLAGE includes pavement patching and repair on its leg of Highland Avenue that is north of Butterfield Road, as depicted on Exhibit A attached hereto and incorporated herein.

3.0 RESPONSIBILITIES - JOINT

- 3.1. The COUNTY and VILLAGE agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 3.2. The COUNTY and VILLAGE agree that the scope of the WORK will be added to the contract documents for the PROJECT and said contract documents are incorporated into this AGREEMENT by reference. The estimated cost to the VILLAGE for the WORK is referenced on attached Exhibit B.
- 3.3. The COUNTY and VILLAGE agree that the contract documents for the PROJECT were prepared in an effort to minimize the need to relocate VILLAGE utilities. Should field conditions result in unexpected utility conflict(s), reasonably demonstrated to have been caused based on the information provided to the COUNTY from the VILLAGE, all reasonable costs associated with resolving said utility conflict(s) shall be at the sole cost of the VILLAGE.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall act as the lead agency and be responsible for completing all design engineering, right-of-way acquisition, awarding of contract(s), permit processing, utility coordination (except as noted in paragraph 3.3 above), construction engineering and construction for the PROJECT.
- 4.2. Both the COUNTY and VILLAGE agree that the COUNTY shall administer the contract for the construction of the PROJECT, including the WORK as part thereof. The COUNTY agrees to administer the PROJECT in the best

interest of both parties and to consult with, and keep advised, officials of the VILLAGE regarding the progress of the WORK and any problems encountered or changes recommended. No change order which affects the VILLAGE'S facilities, or VILLAGE cost, except normal minor variations in quantities of pay items required to complete the WORK, shall be authorized except with prior written approval by the VILLAGE.

5.0 RESPONSIBILITIES OF THE VILLAGE

- 5.1. The VILLAGE hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the VILLAGE property within the boundaries of the PROJECT for the purpose of constructing the PROJECT, including the WORK as part thereof. The VILLAGE shall retain the right of ingress and egress over said areas so long as it does not interfere with the COUNTY'S work. Upon completion of the PROJECT, including the WORK as part thereof, the right-of-entry shall terminate.
- 5.2. The VILLAGE agrees to reimburse the COUNTY for the WORK construction costs at the actual cost incurred by the COUNTY plus the cost of any additional items required to complete the WORK via change order pursuant to the provisions of paragraph 4.2 above. This actual cost is the bid, or change order, unit price submitted by the COUNTY'S contractor for the WORK items times the actual quantity of items installed plus the cost of any additional items required as a part of the WORK authorized in writing or via e-mail by the VILLAGE.
- 5.3. The VILLAGE agrees to reimburse the COUNTY one hundred (100%) percent of the construction costs for the WORK.
- 5.4. The VILLAGE agrees to reimburse the COUNTY the actual design engineering cost of the WORK which includes additional maintenance of traffic.
- 5.5. The VILLAGE agrees to reimburse the COUNTY an additional ten (10%) of the actual final construction cost of the WORK for construction engineering.

- 5.6. The VILLAGE acknowledges that said WORK is included as an addendum to the final PROJECT plans and upon execution of this AGREEMENT, confirms that the final plans and addendum, including design of the WORK components, are acceptable to the VILLAGE.
- 5.7. Upon completion of the WORK, and based upon the documentation of actual final costs and quantities, submitted by the COUNTY, and a final invoice, the VILLAGE agrees to reimburse the COUNTY for the VILLAGE's costs associated with the WORK, and the design and construction engineering in relation thereto, within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

6.0 MAINTENANCE

- 6.1. The VILLAGE agrees that it will be responsible for all maintenance of the WORK upon completion of the PROJECT, and the COUNTY shall be responsible for all maintenance of that part of the PROJECT owned or under the jurisdiction of the COUNTY.
- 6.2. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the WORK requested by the VILLAGE as a part of the PROJECT, and no changes to maintenance and/or jurisdiction of existing roadways and appurtenances are proposed.

7.0 INDEMNIFICATION

- 7.1. The COUNTY shall to the extent permitted by law, indemnify, hold harmless and defend the VILLAGE, its elected 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 performance under or pursuant to this AGREEMENT to the extent permitted by law. 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 the 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 affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

7.2. The VILLAGE 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 VILLAGE'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. 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 COUNTY'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

the 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 affect 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, 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 VILLAGE'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
- 7.4. 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.
- 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 PROJECT, including the WORK, is completed and the VILLAGE assumes its maintenance responsibilities as set forth in paragraph 6.1 hereof.

8.0 GENERAL

- 8.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the WORK requested by the VILLAGE as a part of the PROJECT.

- 8.2. Whenever in this AGREEMENT, approval or review of either the COUNTY or VILLAGE is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 8.3. In the event of a dispute between the COUNTY and VILLAGE representatives in the preparation of the plans and specifications for the WORK, 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 VILLAGE shall meet and resolve the issue.
- 8.4. 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 construction of the PROJECT, including the WORK as part thereof. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the PROJECT, and the WORK as part thereof, as covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 8.5. 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.

9.0 ENTIRE AGREEMENT

- 9.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT, and the WORK as part thereof, 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 or 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.

Village of Lombard
255 E. Wilson Ave.
Lombard, IL 60148
ATTN: Carl Goldsmith, Director of Public Works
Phone: 630.620.5740
Facsimile: 630.620.5982
Email: goldsmithc@villageoflombard.org

County of DuPage
Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Christopher C. Snyder, P.E.
Director of Transportation/County Engineer
Phone: 630.407.6900
Facsimile: 630.407.6901
Email: Christopher.snyder@dupageco.org

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, their successors and assigns.

13.0 AUTHORITY TO EXECUTE/RELATIONSHIP

13.1. The parties hereto have read and reviewed the terms of this AGREEMENT and by their signature as affixed below represent that the signing party has the authority to execute this AGREEMENT and that the parties intend to be bound by the terms and conditions contained herein.

13.2. This AGREEMENT shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.

14.0 GOVERNING LAW

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

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

15.0 SEVERABILITY

15.1 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.

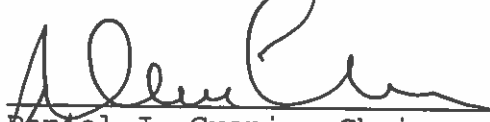
16.0 FORCE MAJEURE


16.1 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

VILLAGE OF LOMBARD

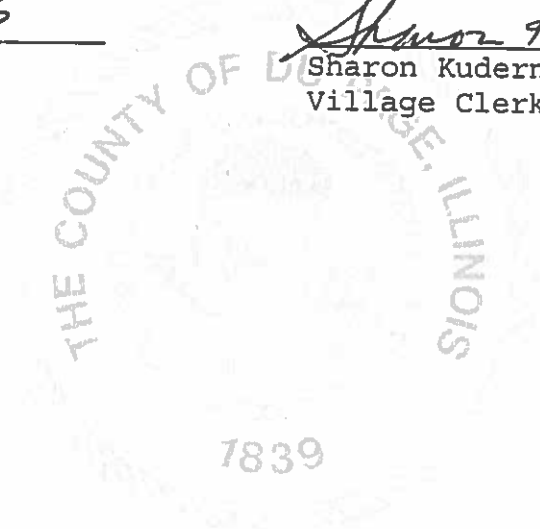

Daniel J. Cronin, Chairman
DuPage County Board


Keith T. Giagnorio
President

ATTEST:


Paul Hinds
County Clerk


Sharon Kuderna
Village Clerk



**EXHIBIT A
HIGHLAND AVENUE BRIDGE IMPROVEMENTS**

VILLAGE OF LOMBARD WORK

LIMIT OF DUPAGE COUNTY/
LOMBARD JURISDICTION
PER DT-016-89

NORTH LATERAL
EXPANSION JOINT

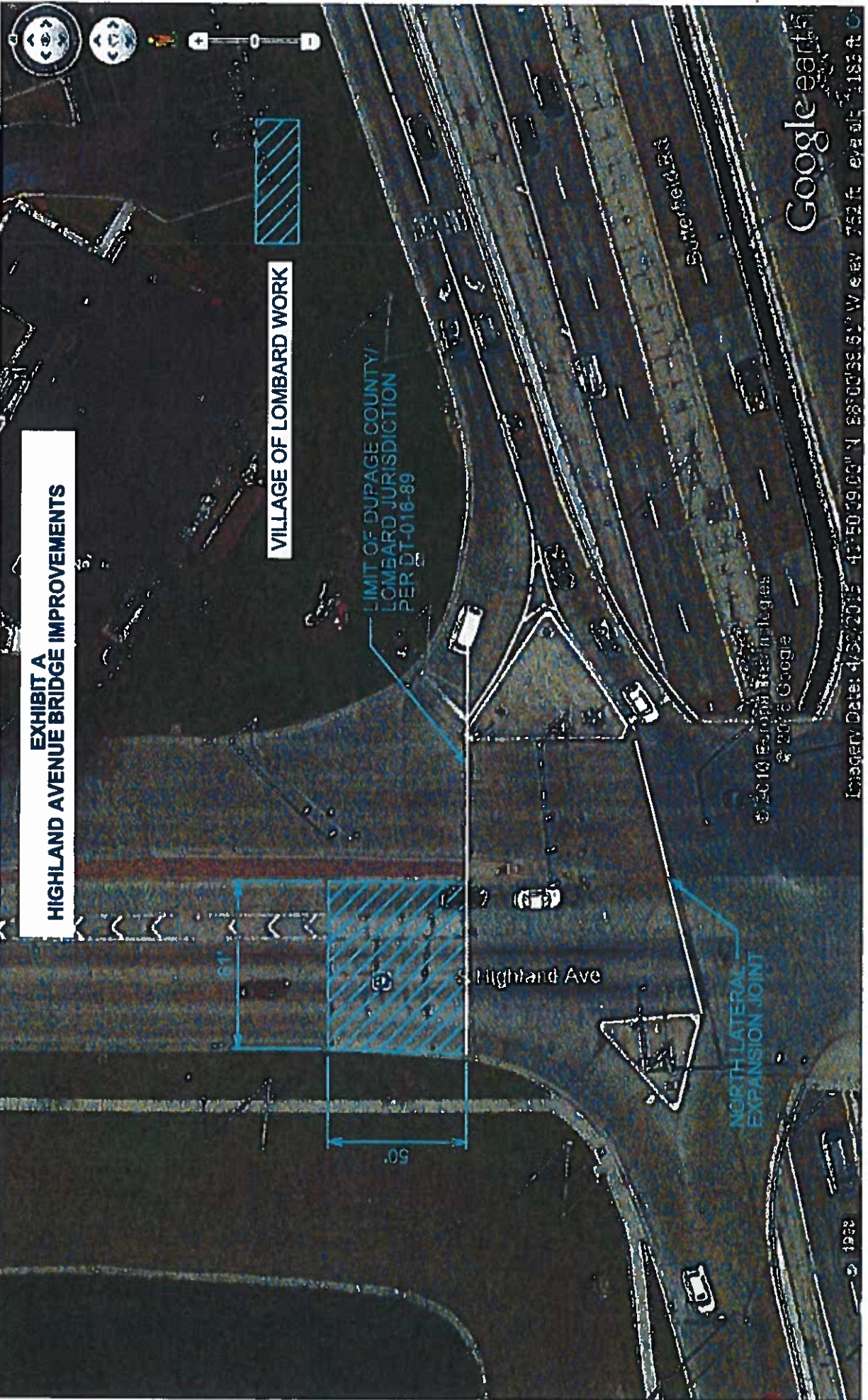
Highland Ave

61'

50'

Google earth

Imagery Date: 4/28/2015 41°50'39.00" N 88°02'38.67" W elev 752 ft



**EXHIBIT B
ESTIMATE OF VILLAGE COSTS**

Estimate of WORK construction costs:	\$50,020.69
Estimate of design engineering of the WORK including additional maintenance of traffic	\$16,536.00
Estimate of construction engineering (10% of WORK construction costs)	<u>\$ 5,002.07</u>
 ESTIMATED TOTAL OF VILLAGE COSTS:	 \$71,558.76

THE COUNTY OF DU PAGE, ILLINOIS

7839