


LEGISTAR: 210331  
DISTRICT: 3

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

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

**TO:** VILLAGE PRESIDENT AND BOARD OF TRUSTEES  
**FROM:** Scott Niehaus, Village Manager  
**DATE:** October 14, 2021 (B of T) **Date:** November 4, 2021

**TITLE:** DuPage Water Commission – AN INTERGOVERNMENTAL  
AGREEMENT REGARDING THE CONSTRUCTION AND  
INSTALLATION OF METERING STATION MS-14E

**SUBMITTED BY:** Carl S. Goldsmith, Director of Public Works 

**BACKGROUND/POLICY IMPLICATIONS:**

See attached staff memorandum

**FISCAL IMPACT/FUNDING SOURCE:**

Review (as necessary):  
Village Attorney X \_\_\_\_\_ Date \_\_\_\_\_  
Finance Director X \_\_\_\_\_ Date \_\_\_\_\_  
Village Manager X \_\_\_\_\_ Date \_\_\_\_\_

**NOTE:** All materials must be submitted to and approved by the Village  
Manager's Office by 12:00 noon, Wednesday, prior to the Agenda  
Distribution.



October 14, 2021

**TO:** Village President and Board of Trustees

**THROUGH:** Scott Niehaus, Village Manager

**FROM:** Carl Goldsmith, Director of Public Works *J*

**SUBJECT:** An Intergovernmental Agreement with the DuPage Water Commission regarding the Construction and Installation of Metering Station MS-14E

Due to the development in the south end of Lombard, the Village staff identified the need for additional water storage to improve the water system operation and reliability. Included in the Village's long-range capital improvement plan (CIP) is the construction of an elevated water storage facility to be located along Butterfield Road at the site of the former Northern Baptist Seminary Property. In order to construct the water storage facility, an additional connection to the DuPage Water Commission (DWC) system is necessary. The Village Board previously entered into an agreement with the DWC for the design engineering of the proposed connection and joint pressure adjusting/metering station.

In accordance with the Charter Customer Agreement between the Village of Lombard and the DuPage Water Commission (DWC), the design and construction of the transmission main and pressure adjusting station are performed by the DWC. The attached Intergovernmental Agreement (IGA) details the funding mechanism, the routing of the transmission main, the siting of the joint pressure adjusting/metering station and any additional stipulations between the parties. The terms of the IGA provide the following:

- The DWC will construct a metering station and transmission main that will connect to the DWC transmission main.
- The DWC will construct a pressure adjusting station that meets the Village's specifications as provided for in Exhibit A to the IGA.
- The joint facility will be located on Lot 7 of the Hoffmann Subdivision.
- The Village will be responsible for the costs for designing the joint facility; however, the DWC shall be the contracting party with the design engineering firm.
- The Village will be responsible for the costs for constructing the joint facility; however, the DWC shall be the contracting party with the design engineering firm.
- Prior to the DWC awarding the construction contract for the joint facility, the Village will be required to deposit funds in the amount of 125% of the estimated costs for construction. The deposit is to be made within 30 days of the Village acquisition of the title to Lot 7.
- Upon DWC awarding a contract for the design and construction of the joint facility, the deposit requirement shall be reduced from 125% to 110%.
- Upon completion of the project, the DWC will convey ownership of the facility to the Village.
- The DWC will have access to the site through an Easement Agreement, which is provided as Exhibit C to the IGA.

The staff is requesting that the Village Board approve An Intergovernmental Agreement with the DuPage Water Commission regarding the Construction and Installation of Metering Station MS-14E. As the easements have not been granted by Hoffmann, staff recommends that the Village Board adopt the IGA in substantially the form attached, and authorize the Village President and Clerk to execute the Easements at such time as the documents are perfected. Should you have any questions concerning this matter, please feel free to contact me. Thank you for your time and consideration of this matter.

Recommendation:

The Public Works Department recommends that the Village Board of Trustees authorize the Village President and Village Clerk to execute AN INTERGOVERNMENTAL AGREEMENT REGARDING THE CONSTRUCTION AND INSTALLATION OF METERING STATION MS-14E with the DuPage Water Commission.

## RESOLUTION

R \_\_\_\_\_ - 21

### **A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE DuPAGE WATER COMMISSION REGARDING THE CONSTRUCTION AND INSTALLATION OF METERING STATION MS-14E, ASSOCIATED PRESSURE ADJUSTING STATION AND APPURTENANCES THERETO**

**WHEREAS**, the DuPage Water Commission (the “Commission”) operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan (the “Commission Waterworks System”); and

**WHEREAS**, the Village of Lombard (the “Village”) owns and operates a water system supplying residents and other customers (the “Village Water System”), which system is connected at various points to the Commission Waterworks System; and

**WHEREAS**, the Commission and the Village have determined that it is necessary and desirable to provide an additional connection point between the Commission Waterworks System and the Village Water System in the vicinity of 600. E. Butterfield Rd., Lombard, DuPage County, IL; and

**WHEREAS**, it is in the best interest of the Commission and the Village to design and construct this connection as a joint facility (the “Joint Facility”) which would include all equipment necessary to accomplish the additional connection described above; and

**WHEREAS**, the Commission and the Village have determined that it is in their respective best interests to enter into an agreement setting forth their understandings concerning the construction and operation of the Joint Facility;

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:** The foregoing recitals are hereby incorporated herein as findings of the Village of Lombard Board of Trustees.

**SECTION 2:** An “Intergovernmental Agreement Between the DuPage Water Commission and the Village of Lombard, Illinois to Provide for the Construction of a Joint Facility,” in substantially the form attached hereto and by this reference incorporated herein and made a part hereof as Exhibit 1, shall be and it hereby is approved.

**SECTION 3:** This Resolution shall be in full force and effect from and after its adoption.

**SECTION 4:** That the President be and hereby is authorized to approve on behalf of the Village of Lombard said Agreement as attached hereto.

SECTION 5: That the Village Clerk be and hereby is authorized to approve said agreement as attached hereto.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Absent: \_\_\_\_\_

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Keith Giagnorio, Village President

ATTEST:

\_\_\_\_\_  
Elizabeth Brezinski, Village Clerk

## EXHIBIT 1

INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
DU PAGE WATER COMMISSION AND THE VILLAGE OF LOMBARD, ILLINOIS  
TO PROVIDE FOR THE CONSTRUCTION OF A JOINT FACILITY

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the DU PAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the "Commission"), and the VILLAGE OF LOMBARD, a municipal corporation created and existing under the laws of the State of Illinois (the "Village").

WITNESSETH:

WHEREAS, the Commission was formed and exists pursuant to Division 135 of Article 11 of the Illinois Municipal Code (65 ILCS 5/11-135-1 et seq.), and the Water Commission Act of 1985 (70 ILCS 3720/1 et seq.), for the purposes of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan (the "Commission Waterworks System"); and

WHEREAS, the Village operates a water system supplying residents and other customers (the "Village Water System"), which system is connected at various points to the Commission Waterworks System; and

WHEREAS, the Commission and the Village (together the "Parties") have determined that it is necessary and desirable to provide an additional connection point between the Commission Waterworks System and the Village Water System in the vicinity of [DESCRIBE]; and

WHEREAS, it is in the best interest of the Parties to design and construct this connection as a joint facility (the "Joint Facility") which would include all equipment necessary to accomplish the additional connection described above; and

WHEREAS, pursuant to the intergovernmental cooperation provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and other applicable authority, the Commission and the Village are authorized to enter into this Agreement; and

WHEREAS, the Commission and the Village each have determined that it is in their mutual best interests to enter into this Agreement;

NOW, THEREFORE, it is agreed by and between the Parties as follows:

1. The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein.

2. For purposes of this Agreement, the "Joint Facility" shall mean a facility to convey, measure, and regulate the flow of water from the Commission Waterworks System to the Village Water System and shall include the following:

a. A Metering Station, to be known as Metering Station 14e ("MS-14e"), for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Village, including certain equipment, devices, and structures, and portions of its water distribution main, including underground feeder pipe lines and related equipment to initially connect MS-14e to the existing Commission Waterworks System, and all antennas, masts, all electrical systems, including panels, conduits, raceways, duct banks, and utility services, needed solely for the operation of Commission facilities, and



all drainage systems, including drain pipes and structures, needed solely for the drainage of Commission facilities and property, and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to MS-14e, as such facilities may be relocated, replaced, extended, or improved from time to time (the "Metering Station").

b. A Type D pressure increasing station for the Village Water System in accordance with the design criteria set forth in the document entitled "Water Delivery Data DuPage Water Commission" dated April 26, 2021, and identifying Lombard as "customer", a copy of which is attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A (the "Village PAS").

c. Such other equipment and appurtenances as may be necessary for the operation and construction of the foregoing in conformance with the approved design plans therefor, as determined by the Parties.

3. The Joint Facility is expected to be located on the property selected and to be acquired and owned by the Village depicted and legally described in Exhibits B-1 and B-2, respectively, attached hereto and made a part hereof, which shall be known as Lot 7 in the Hoffmann-Lombard Subdivision, Lombard, DuPage County, IL upon recordation of a plat of subdivision therefor, adjacent to the proposed Golsocial Lombard property at 600 E. Butterfield Road in the Village of Lombard (the "Joint Facility Site"), the location of which has been reviewed and approved by the Commission subject to the terms, conditions and limitations set forth of this Agreement. In the event all necessary and insured easements for the Joint Facility Site are not granted to the Commission in

accordance with the provisions of this Agreement or the property is otherwise determined by the Commission and the Village to be unsuitable for locating the Joint Facility, the Village shall endeavor in good faith to obtain an alternative location for the Joint Facility Site acceptable to both the Commission and the Village. Notwithstanding any term in this Agreement to the contrary, if an alternative location cannot be agreed upon, or if the Village cannot acquire fee simple title to the Joint Facility Site, or the Parties are unable to obtain, provide or secure the necessary easements for the Joint Facility, by the date set forth in Section 7 of this Agreement, the Village or the Commission may terminate this Agreement, and thereafter neither Party shall be liable to the other in any manner hereunder, except for the Village's obligation to reimburse the Commission for all fees, costs, and expenses incurred or accrued by the Commission prior to the termination of this agreement, which shall survive the termination of this Agreement.

4. The Village shall be solely responsible for the costs in designing the Joint Facility. It is understood that the Commission will be the contracting party with the design engineer and will administer the design contract for the benefit of both Parties. The Commission will consult with the Village to keep the Village advised as to the progress of the design work and to address issues of mutual concern regarding the details of such design work. The final design of the Joint Facility shall be subject to the review of both Parties and subject to the approval of the Commission to the extent of the Metering Station, the Village to the extent of the Village PAS, and both Parties to the extent of the common areas of the Joint Facility. For the purposes of this Agreement, the common areas of the Joint Facility shall include those portions of the Joint Facility, such as the

structure and area grounds, which serve the needs of both Parties, but shall exclude all portions of the Joint Facility Site on which there are an elevated tank, storm sewers and sanitary sewers.

5. The Village shall be solely responsible for the costs in constructing the Joint Facility. The Commission shall solicit bids for the construction of the Joint Facility, including all equipment and appurtenances necessary for the Metering Station and the Village PAS. The Commission's standard form of bidding and construction contract documents shall be used and the cost of the Metering Station, the Village PAS, and the common areas of the Joint Facility shall be separately identified in the bidding and construction contract documents. The Commission agrees to solicit, award, and administer all contracts for the project in the best interest of both Parties, to do so in compliance with all applicable federal, State and local laws, ordinances, regulations and requirements (together the "Laws"), and to consult with, and keep advised, the Village's Director of Public Works, or his or her designee, regarding the progress of the work and any problems encountered or changes recommended. Both Parties must agree to the award of any contract for such construction work. Upon approval of both Parties, the Commission shall enter into a construction contract(s) with the selected contractor(s), and shall administer such construction contract(s) in conformance with this Agreement and the Laws. It is understood that, although the Village will not be a party to the construction contract(s), the Village will be designated as a beneficiary of any insurance, guaranty, or warranty required by the construction contract(s) and shall be specifically named as an additional insured on the general liability, owner's/contractor's protective liability, builder's

risk, and excess or umbrella policies of insurance required by the construction contract(s). The Village's Director of Public Works shall be provided with a certificate of insurance naming the Village as an additional insured on such policies prior to the commencement of work under the construction contract(s). In addition, any change order, as well as final acceptance and approval of the completed Joint Facility, shall be subject to the approval of the Commission to the extent of the Metering Station, the Village to the extent of the Village PAS, and both Parties to the extent of the common areas of the Joint Facility. Neither Party shall be required to approve or accept any portion of the Joint Facility until all portions of the Joint Facility, including all punch list items, have been fully and properly completed.

6. The Village shall reimburse the Commission for the full actual cost incurred by the Commission in connection with (a) the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Joint Facility, including without limitation equipment required for the operation of the Joint Facility and all administrative, financing, supervisory, inspection, engineering, surveying, and legal fees, costs, and expenses associated therewith; (b) the acquisition and divestment of lands, easements, and rights of way over lands and waters necessary for the construction, installation, removal, relocation, replacement, extension, or improvement of the Joint Facility, and all administrative, title, surveying, and legal fees, costs, and expenses associated therewith; and (c) the review and processing of plans and agreements for the construction, installation, removal, relocation, replacement, extension, or improvement of the Joint Facility and in connection with the negotiation,

preparation, consideration, and review of this Agreement, including without limitation all legal, engineering, consulting, and administrative fees, costs, and expenses associated therewith. The Village shall reimburse the Commission monthly for such fees, costs, and expenses, and payment shall be due within thirty (30) days after receipt of an invoice therefor from the Commission.

7. Prior to the Commission's solicitation of bids for the construction of the Joint Facility, the Village, without charge to the Commission, shall: (a) present the Commission with adequate evidence of merchantable fee simple title to the Joint Facility Site; (b) grant to the Commission, after acquiring fee simple title to the Joint Facility Site, all necessary and insured easements for the Joint Facility Site, in substantially the form attached hereto and by this reference incorporated herein and made part hereof as Exhibit C and satisfactory to the Commission's attorneys, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing; and (c) grant to the Commission all necessary and insured easements for the appropriate location and installation of antennas and appurtenant facilities for the Commission's Supervisory Control and Data Acquisition Instrumentation System attributable to the Metering Station, free and clear of all liens, claims, encumbrances, and restrictions unless otherwise approved by the Commission in writing. Prior to the Commission's solicitation of bids for the construction of the Joint Facility, the Parties shall enter into the "Grant of Ingress, Egress and Water Main Easements" in substantially the form attached hereto and by this reference incorporated herein and made part hereof as Exhibit D. Notwithstanding any term in this Agreement to the contrary, if the Village is unable to

acquire fee simple title to the Joint Facility Site, or the Parties are unable to obtain, provide or secure the necessary easements for the construction, operation and maintenance of the Joint Facility by December 31, 2022, the Village or the Commission may terminate this Agreement, and thereafter neither Party shall be liable to the other in any manner hereunder except for the Village's obligation to reimburse the Commission for all fees, costs, and expenses incurred or accrued by the Commission prior to the termination of this agreement, which shall survive the termination of this Agreement.

8. The Village shall, as a condition precedent to the effectiveness of the Commission ordinance approving this Agreement, deposit with the Commission cash (the "Cash Deposit") in a total amount equal to one hundred twenty-five percent (125%) of the Commission's estimated costs of designing the Joint Facility. As a further condition precedent to the effectiveness of the Commission ordinance approving this Agreement, and as a condition precedent to the Commission's obligation to award any contracts for constructing the Joint Facility, the Village shall, within thirty (30) days of the Village's acquisition of fee simple title to the Joint Facility Site, increase the Cash Deposit by depositing with the Commission cash in a total amount equal to one hundred twenty-five percent (125%) of the Commission's estimated costs of constructing the Joint Facility. The Commission shall have no obligation to award any contracts for constructing of the Joint Facility if the Village has not deposited one hundred twenty-five percent (125%) of the Commission's estimated costs of constructing the Joint Facility as required by this Section.

Upon execution of all contracts necessary or required for the design and construction of the Joint Facility, the Cash Deposit may be reduced from one hundred twenty-five percent (125%) of the Commission's estimate to one hundred ten percent (110%) of the amount of the executed contracts attributable to the design and construction of the Joint Facility. The Cash Deposit shall, at all times until released or reduced as provided below, be maintained at not less than ten percent (10%) of the total deposit required by the preceding sentence. The Village shall not be entitled to interest on the Cash Deposit.

In addition, The Village shall reimburse the Commission for all costs incurred by the Commission in connection with: (i) the design of, and the review and approval of all plans and specifications for, the Metering Station and the common areas of the Joint Facility; (ii) the preparation of all bidding and contract documents for the Joint Facility; (iii) the administration of the contract for the construction of the Joint Facility; and (iv) shop drawing review and the inspection of the construction and installation of the the Lombard 14e Metering Station and the common areas of the Joint Facility, including all legal, engineering, and other consulting and administrative fees, costs, and expenses.

The Commission shall review all pay requests and supporting documents and shall direct payments to be made from the Cash Deposit of all amounts then due for the Joint Facility work each month. If at any time the Commission determines that the funds remaining in the Cash Deposit are not, or may not be, sufficient to pay in full the remaining unpaid cost of the Joint Facility, then, within ten (10) days following a demand by the Commission, the Village shall increase the amount of the Cash Deposit to an amount

reasonably determined by the Commission to be sufficient to pay such unpaid costs. The Commission shall release any amounts remaining in the Cash Deposit after final payment to the construction contractor.

9. Upon acceptance and approval of the Joint Facility by the Parties, ownership of the Village PAS and a bill of sale therefor shall be conveyed to the Village by the Commission. Immediately following such conveyance, the Village shall own and operate the Village PAS, the Village PAS shall become the sole and exclusive property of the Village, and the Village shall have all duty, responsibility, and liability to maintain and repair the Village PAS and the common areas of the Joint Facility and the Commission shall have no obligation or duty with respect thereto. Upon completion of the construction and installation of the Joint Facility, the Commission shall have all duty, responsibility, and liability to maintain and repair the Metering Station.

10. Either Party may terminate this Agreement in the event the other Party fails to comply with any term of this Agreement or any exhibit to this Agreement. Additionally, either Party may terminate this Agreement upon thirty (30) days advance written notice to the other Party in the following situations:

a. In the event the Village shall not have approved the final design of the Village PAS and the common areas of the Joint Facility on or before March 15, 2022.

b. In the event the Parties are unable to agree on the award by the Commission of a contract(s) for the construction of the Joint Facility on or before December 31, 2022.



Upon termination for any reason, this Agreement shall be void and of no effect; provided, however, that the Village shall remain responsible for all fees, costs, and expenses incurred or accrued by the Commission prior to termination of this Agreement. The obligation of the Village to reimburse the Commission as required by this Agreement is unconditional and irrevocable, payable without set off or counterclaim, and irrespective of whether lake water is ever furnished, made available, or delivered to the Village through the Joint Facility, or whether the Joint Facility is completed, operable, or operating, and notwithstanding suspension, interruption, interference, reduction, or curtailment of the supply of lake water. In the event that, following service of such notice but before actual termination, the basis for such notice is corrected, the notice shall be considered void and of no effect, and this Agreement shall continue in full force and effect.

11. The Village acknowledges and agrees that: (a) the Commission is not, and shall not be, in any way liable for damages or injuries that may be sustained as a result of the Commission's review and approval of any plans for the Joint Facility, or as a result of the issuance of any approvals, certificates, or acceptances for the development or use of any portion of the Joint Facility, or as a result of the design of the Joint Facility or the operation or maintenance of the Village PAS or the common areas of the Joint Facility; and (b) the Commission's review and approval of any such plans and issuance of any such approvals, certificates, or acceptances does not, and shall not, in any way be deemed to insure the Village, or any respective successors, assigns, tenants, or licensees, or any third party, against damage or injury of any kind at any time.

12. The Village hereby releases the Commission from, agrees that the Commission shall not be liable for, and agrees to indemnify and hold the Commission harmless from: (a) any damages resulting from failure to supply lake water or for any interruption of the lake water supply; (b) any damage to the Village Water System caused by the design of the Joint Facility or the operation or maintenance of the Village PAS or the common areas of the Joint Facility; and (c) any claims, litigation, and liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by, connected with, or in any way attributable to or arising out of, the construction and installation of the Joint Facility or the maintenance of the Village Water System, the Village PAS, or the common areas of the Joint Facility, attributable to or arising out of any act or omission of the Village, or to any exercise by the Village of any right or duty herein granted or any failure by the Village to exercise any such right or duty or to comply with any of the terms and conditions of this Agreement. The Village shall, and does hereby agree to, pay all expenses, including legal fees and administrative expenses, incurred by the Commission in defending itself with regard to any and all of the matters mentioned in this Section 12.

The Commission hereby releases the Village from, agrees that the Village shall not be liable for, and agrees to indemnify and hold the Village harmless from any claims, litigation, and liabilities for any loss or damage to property or any injury to, or death of, any person that may be occasioned by, connected with, or in any way attributable to or arising out of, the construction and installation of the Joint Facility, the maintenance of MS-14e or the Metering Station, or the common areas of the Joint Facility, attributable to

or arising out of any act or omission of the Commission, or to any exercise by the Commission of any right or duty herein granted or any failure by the Village to exercise any such right or duty or to comply with any of the terms and conditions of this Agreement.

Notwithstanding the foregoing, the Commission shall not be required to defend, indemnify or hold harmless the Village or its employees, officers or agents for the Village's or its employees', officers' or agents' own acts or omissions, and the Village shall not be required to defend, indemnify or hold harmless the Commission or its employees, officers or agents for the Commission's or its employees', officers' or agents' own acts or omissions.

Nothing contained in this Agreement is intended to be, nor shall operate as, a waiver by Village or the Commission of the rights, defenses and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

The Parties' obligations under this Section shall survive the termination or expiration of this Agreement.

13. This Agreement, and the Joint Facility provided by this Agreement, shall be deemed to supplement that certain contract entitled "Water Purchase and Sale Contract between the DuPage Water Commission and Charter Customers," dated as of July 21, 1986 (the "Charter Customer Contract"), by and between, among others, the Parties hereto, to provide for an additional point of delivery to the "Unit System," as defined in the Charter Customer Contract, of the Village. Except where expressly provided in this Agreement, nothing in this Agreement shall be construed to be, or applied in any manner, inconsistent with the terms of the Charter Customer Contract, and, if there is any conflict

or inconsistency between the terms of this Agreement and the terms of the Charter Customer Contract, then the terms of the Charter Customer Contract shall control. The Village shall at all times comply with all terms and conditions of the Charter Customer Contract, including without limitation the making of all payments due thereunder promptly to the Commission. Under no circumstances shall any dispute of any nature under this Agreement, or the Village's inability to receive water through the Metering Station provided by this Agreement, excuse, delay, or in any other way affect the Village's performances under the Charter Customer Contract, including without limitation the making of all such payments.

For the purposes of the Charter Customer Contract, and the Joint Facility provided by this Agreement, the point of delivery with respect to the Village Water System shall be a point in the water main connecting the Metering Station to the Village PAS located downstream from the inside face of the outside wall or foundation of the Metering Station a distance of ten (10) feet or where such water main enters the outside face of the outside wall or foundation of the Village PAS, whichever is closer to the Metering Station.

Notwithstanding anything to the contrary contained in the Charter Customer Contract, the Parties expressly acknowledge and agree that the Village shall not be entitled to payment or reimbursement from the Commission for the design, bidding, contracting, managing, and actual construction, installation, removal, relocation, replacement, extension, or improvement of the Joint Facility.

14. The Parties agree to meet and cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth herein. The

Parties agree and acknowledge that further details regarding the construction and operation of the Joint Facility may be subject to a future agreement.

15. This Agreement may not be assigned by any Party, in whole or in part, without the prior written consent of the other Party, which consent, with respect to the Village, shall not be unreasonably withheld.

16. In case any one or more of the provisions contained in this Agreement should be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby; provided, however, that if the remaining parts hereof may not reasonably be construed together without the part or parts so held invalid or unenforceable, the Parties agree to negotiate such reasonable amendments hereto as shall be required to most nearly conform this Agreement, as thereby amended, to the original intention of the Parties.

17. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by property addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to the Commission shall be addressed to, and delivered at, the following address:

DuPage Water Commission

600 East Butterfield Road  
Elmhurst, Illinois 60126-4642  
Attention: General Manager

Notices and communications to Lombard shall be addressed to, and delivered at,  
the following address:

Village of Lombard  
255 E. Wilson Ave.  
Lombard, Illinois 60148  
Attention: Mr. Carl Goldsmith  
Director of Public Works

IN WITNESS WHEREOF, the DuPage Water Commission and the Village of  
Lombard have caused this Agreement to be executed on their behalf by their duly  
authorized officers as of the day and year first above written.

DU PAGE WATER COMMISSION

ATTEST:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Clerk

VILLAGE OF LOMBARD

\_\_\_\_\_  
Village President

ATTEST:

\_\_\_\_\_  
Village Clerk

# EXHIBIT A

## WATER DELIVERY DATA

### DU PAGE WATER COMMISSION

Date: June 10, 2021

CUSTOMER NAME: Village of Lombard

DELIVERY POINT (DWC NODE No.): 12" Blow-Off Valve B11096 – TSW Sta. 253+43

DWC METER STATION NO. & LOCATION: Lombard MS14E

TYPE OF CUSTOMER'S FACILITY REQUIRED: Type D Pressure Increasing

LOCATION AT <sup>(1)</sup> See Exhibits B-1 and B-2, A, generally located adjacent to the proposed Golfsocial Lombard property at 600 E. Butterfield Road, Lombard.

DWC DESIGN MINIMUM HYDRAULIC GRADE <sup>(2)</sup> (USGS DATUM): 853.3 USGS

CUSTOMER'S SYSTEM OVERFLOW ELEV. (USGS) AND/OR REQUIRED HEAD <sup>(3)</sup> 913-925

CUSTOMER'S TYPE and SIZE of STORAGE FACILITY <sup>(4)</sup> 1.5 to 2.0 MG Elevated Storage Tank-TBD by Lombard

### HYDRAULIC DATA

	Flow Rate @ Customer's Proposed Facility In MGD (Provided by Lombard)	DWC Hydraulic Grade 10 ft. Downstream of DWC Meter Station USGS DATUM (Provided by DWC)
Average Day	1.72	890.3
Maximum Day	2.92	895.0
Peak Day <sup>(5)</sup>	5.15	865.9

- (1) Customer to provide location of Customer's Connection Facility
- (2) DWC design minimum hydraulic grade will fluctuate approx.  $\pm$  10 feet depending upon Commission's elevated storage water elevation.
- (3) It is customer's responsibility to verify the system overflow elevation or required head.
- (4) Customer to provide Type and Size of Storage Facility where DWC Customer Connection terminates (feeder main and metering station location)
- (5) 3 X IDNR highest average day flow or 1500 GPM minimum.

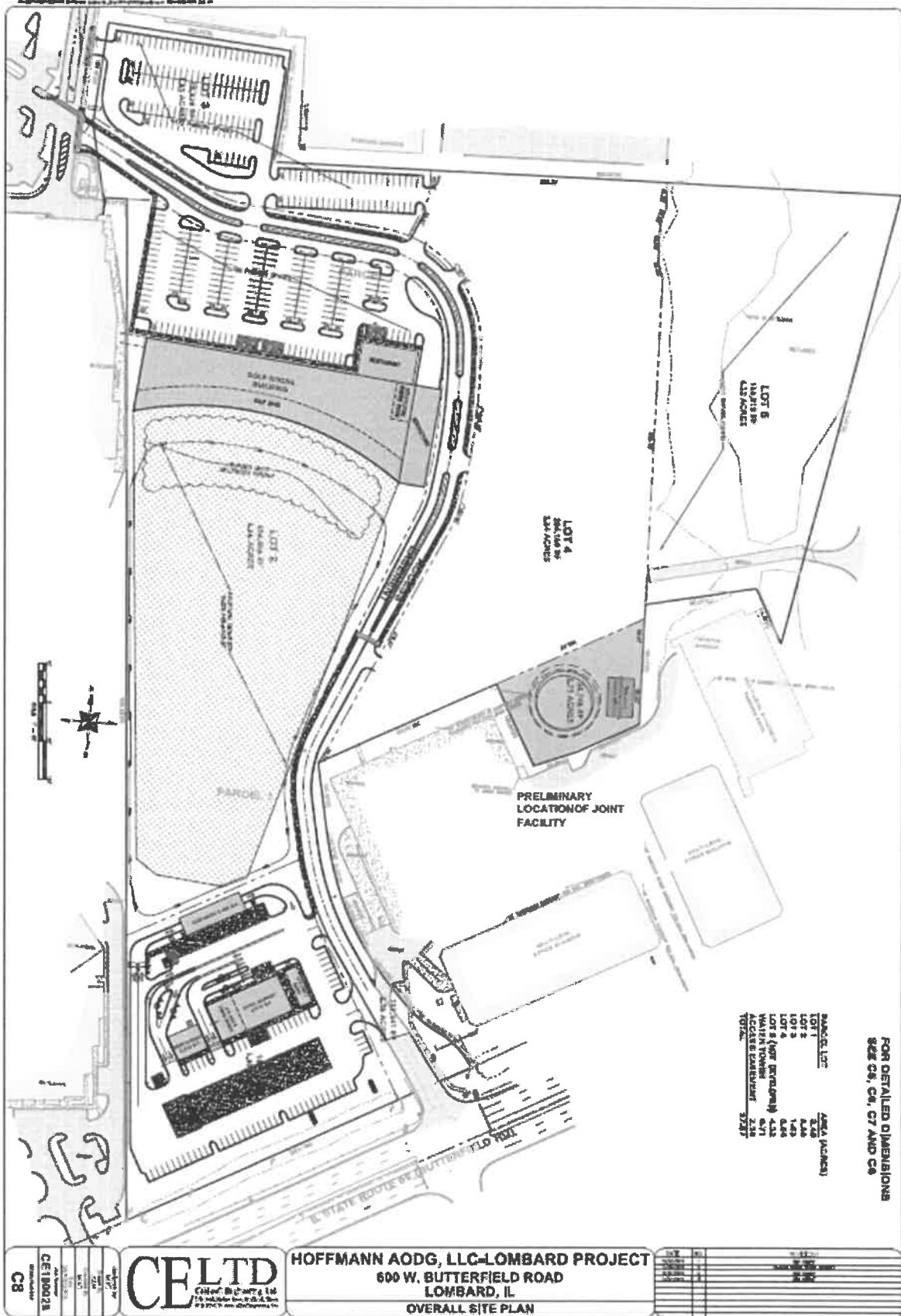


**EXHIBIT B-1**

DEPICTION OF JOINT FACILITY SITE

(attached)

EXHIBIT B-1



**CELTD**  
Cellular Engineering Ltd  
 110 W. Madison Ave., 11th Fl.  
 Chicago, IL 60602

PRELIMINARY CIVIL ENGINEERING

**HOFFMANN AODG, LLC-LOMBARD PROJECT**  
 600 W. BUTTERFIELD ROAD  
 LOMBARD, IL  
 OVERALL SITE PLAN

DATE	DESCRIPTION

## EXHIBIT B-2

### LEGAL DESCRIPTION OF JOINT FACILITY SITE

#### LOT 7

Part of Parcel 1 in Northern Baptist Theological Seminary Assessment Plat of Lot 1 in the Resubdivision of Northern Baptist Theological Seminary Subdivision, being a Subdivision of part of the Northeast Quarter of Section 29, Township 39 North, Range 11 East of the Third Principal Meridian, according to said Assessment Plat recorded August 28, 2007, as Document R2007-159301, being described as follows: Beginning at the Southeast corner of said Parcel 1; thence North 29 degrees 00 minutes 23 seconds West along the Southerly line thereof, 93.29 feet; thence South 76 degrees 32 minutes 50 seconds West along said Southerly line, 173.27 feet; thence South 02 degrees 06 minutes 47 seconds East along the East line of said Parcel 1, a distance of 22.25 feet to the Place of Beginning; thence continuing South 02 degrees 06 minutes 47 seconds East along said East line, 163.96 feet; thence South 61 degrees 02 minutes 17 seconds West along the South line of said Parcel 1, a distance of 107.78 feet; thence South 67 degrees 09 minutes 30 seconds West along said South line, 67.43 feet; thence North 29 degrees 08 minutes 45 seconds West along the West line of said Parcel 1, a distance of 138.59 feet; thence North 60 degrees 55 minutes 14 seconds East, 249.31 feet to the Place of Beginning in DuPage County, Illinois.

**EXHIBIT C**

**FORM OF METERING STATION EASEMENT AGREEMENT**

(attached)

DUPAGE WATER COMMISSION

METERING STATION

EASEMENT AGREEMENT  
(Lombard MS-14e)

PERMANENT REAL ESTATE TAX INDEX NO. \_\_\_\_-\_\_\_\_-\_\_\_\_-\_\_\_\_

Prepared by and Mail to:

DuPage Water Commission  
600 E. Butterfield Rd.  
Elmhurst, IL 60126

**METERING STATION  
EASEMENT AGREEMENT**  
(Lombard MS-14e)

THIS METERING STATION EASEMENT AGREEMENT (Lombard MS-14e) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 202\_, by and between the DUPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the "Commission") and the VILLAGE OF LOMBARD, a municipal corporation created and existing under the laws of the State of Illinois and a customer of the Commission (the "Customer").

**WITNESSETH:**

WHEREAS, the Commission and the Customer have entered into a certain Water Purchase and Sale Contract, dated as of July 21, 1986 (the "Charter Customer Contract"), as supplemented by a certain Intergovernmental Agreement to Provide for the Construction of a Joint Facility, dated as of \_\_\_\_\_, 2021 (the "Joint Facility Agreement"); and

WHEREAS, the Joint Facility Agreement provides that the Commission is to furnish, install, own, operate, maintain, and repair certain equipment and devices, together with certain structures and portions of its water distribution main, including underground feeder pipe lines and related equipment, for properly conveying and measuring the quantity of Lake Michigan water delivered by the Commission to the Customer at the additional connection point provided for under the Joint Facility Agreement (collectively referred to as the "Metering Station"); and

WHEREAS, the Joint Facility Agreement provides that the Metering Station is to be located at a site selected and provided by the Customer, subject to review and approval by the Commission; and

WHEREAS, the Customer has selected the site legally described in Exhibit 1 attached hereto and by this reference incorporated herein and made a part hereof (the "Metering Station Easement Premises") for the location of the Metering Station as generally depicted in Exhibit 2 attached hereto and by this reference incorporated herein and made a part hereof; and

WHEREAS, the Commission has reviewed the Metering Station Easement Premises and approved the same for the location of the Metering Station; and

WHEREAS, the Commission has submitted to the Customer for review the drawings and specifications for the Metering Station; and

WHEREAS, the Commission and the Customer desire to enter into this Easement Agreement in order to provide the Commission with a sufficient property interest in the Metering Station Easement Premises to fulfill the provisions and purpose of the Charter Customer Contract, as supplemented by the Joint Facility Agreement; and

WHEREAS, the Commission has duly adopted its Ordinance No. O-\_\_-0\_, being "An Ordinance Requesting the Intergovernmental Transfer of Easement Rights for the Lombard Metering Station MS-14e Site and Authorizing the Execution of the Lombard Metering Station Easement Agreement," pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq.; and

WHEREAS, the Customer has duly adopted its Resolution No. \_\_\_\_\_, being “A Resolution Approving the Intergovernmental Transfer of Easement Rights to the DuPage Water Commission,” pursuant to the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq.;

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in the exercise of their powers and authority under the intergovernmental cooperation provisions of Article VII, Section 10 of the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., and other applicable authority, the Commission and the Customer hereby agree as follows:

1. The foregoing recitals are hereby incorporated herein as substantive provisions of this Easement Agreement.

2. The Customer hereby grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, a perpetual easement to construct, furnish, install, own, operate, maintain, test, inspect, remove, repair, and replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, together with all reasonable rights of ingress and egress along or across any adjoining lands of, or under the jurisdiction and control of, the Customer. The Customer hereby further grants, conveys, warrants, and dedicates to the Commission, its successors and assigns, a perpetual access easement upon, along, and across the real property legally described in Exhibit 3 attached hereto and by this reference incorporated herein and made a part hereof (the “Access Easement Premises”).



3. The Metering Station shall be not located, constructed, or maintained in any manner not in substantial conformity with Exhibit 2 without the express consent of the Customer, which consent shall not be unreasonably withheld.

4. The Customer hereby further grants to the Commission a temporary construction easement for the installation of the Metering Station upon, along, and across the real property legally described in Exhibit 4 attached hereto and by this reference incorporated herein and made a part hereof (the "Subject Property"). Said temporary construction easement shall be used by the Commission only during periods of actual installation activity and for any necessary restoration of the Metering Station Easement Premises.

5. The Commission shall exercise the easement rights hereby granted with due care, and shall not unreasonably interfere with, damage, or harm any Customer property located upon the Subject Property.

6. After construction of the Metering Station, the Metering Station Easement Premises shall be restored in accordance with the drawings and specifications for the Metering Station.

7. The Customer hereby reserves the right to use the Metering Station Easement Premises, the Access Easement Premises, and its adjacent property in any manner that will not prevent or interfere in any way with the exercise by the Commission of the rights granted hereunder; provided, however, that the Customer shall not in any manner disturb, damage, destroy, injure, obstruct, or permit to be obstructed the Metering Station Easement Premises or the Access Easement Premises without the express prior

written consent of the Commission, nor shall the Customer permanently or temporarily improve, damage, or obstruct the Metering Station Easement Premises [or the Access Easement Premises] in any manner that would impair the exercise by the Commission of the rights hereby granted.

8. The Customer agrees to indemnify and defend the Commission with respect to any and all claims or damages to persons or property which may arise out of any acts or omissions of the Customer, or its agents or employees, arising out of any work on the Metering Station Easement Premises, the Access Easement Premises, and the Subject Property in conjunction with its rights pursuant to Paragraph 7 hereof. Except as otherwise provided in the Joint Facility Agreement, the Commission agrees to indemnify and defend the Customer with respect to any and all claims of damages to persons or property which may arise directly from the acts or omissions of the Commission, or its agents or employees, in performing any work on the Metering Station Easement Premises, the Access Easement Premises, and the Subject Property in conjunction with its rights pursuant to Paragraphs 2, 4, 5, and 6 hereof. The Customer shall provide to the Commission, and the Commission shall provide to the Customer, a certificate of insurance or proof of self-insurance coverage as evidence of its continuing ability to meet the obligation established in this Paragraph, and both shall maintain such coverage at all times. Notwithstanding the foregoing, the Commission shall not be required to defend, indemnify or hold harmless the Village or its employees, officers or agents for the Village's or its employees', officers' or agents' own acts or omissions, and the Village shall not be required to defend, indemnify or hold harmless the Commission or its employees, officers

or agents for the Commission's or its employees', officers' or agents' own acts or omissions. Nothing contained in this Agreement is intended to be, nor shall operate as, a waiver by Village or the Commission of the rights, defenses and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act. The Parties' obligations under this Section shall survive the termination or expiration of this Agreement.

9. This Easement Agreement shall constitute and stand in the place of all Customer permits required by the Commission or its contractor to construct, furnish, install, own, operate, maintain, test, inspect, repair, remove, or replace the Metering Station at, in, under, and upon the Metering Station Easement Premises, and the Customer hereby agrees to execute any and all additional documents, approvals, waivers, or consents, if any, that may be reasonably necessary for the Commission to secure any permits required from any county, state, or federal agency for or in connection with constructing, furnishing, installing, owning, operating, maintaining, testing, inspecting, repairing, removing, or replacing the Metering Station.

10. In the event that the Charter Customer Contract is terminated without renewal with respect to the Customer, the Commission shall, within 90 days execute and deliver to the Customer an appropriate document evidencing the termination of this Easement Agreement and releasing the easement rights hereby granted. The Commission may, within said 90 day period, in its own discretion, and at the Customer's expense, remove the Metering Station from the Metering Station Easement Premises. If

the Commission fails to remove the Metering Station, as aforesaid, the Customer may take title to the Metering Station.

11. All rights, title, and privileges herein granted, including all benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective grantees, successors, assigns, and legal representatives.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their proper representatives duly authorized to execute the same.

DUPAGE WATER COMMISSION

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
General Manager

VILLAGE OF LOMBARD

ATTEST:

\_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Village President

**EXHIBIT 1**

**LEGAL DESCRIPTION OF THE METERING STATION EASEMENT PREMISES**

***[TO BE SUPPLIED BY LOMBARD]***

**EXHIBIT 2**

PLANS FOR THE LOCATION OF THE METERING STATION

***[TO BE SUPPLIED BY THE COMMISSION]***

**EXHIBIT 3**

**LEGAL DESCRIPTION OF THE ACCESS EASEMENT PREMISES**

***[TO BE SUPPLIED BY LOMBARD]***

**EXHIBIT 4**

LEGAL DESCRIPTION OF THE SUBJECT PROPERTY

***[TO BE SUPPLIED BY LOMBARD]***



STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF DUPAGE    )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the General Manager of the DuPage Water Commission, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed, and delivered said instrument as his free and voluntary act, and as the free and voluntary act of said Commission, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF ILLINOIS        )  
  ) SS  
COUNTY OF DUPAGE        )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the Village Manager of the Village of Lombard, a municipal corporation, and \_\_\_\_\_, personally known to me to be the Village Clerk of said Village, and personally known to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered said instrument as their free and voluntary act, and as the free and voluntary act of said Village, for the uses and purposes therein set forth.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT D**

GRANT OF INGRESS, EGRESS AND WATER MAIN EASEMENTS

(attached)