

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

_____	Resolution or Ordinance (Blue) _____ <i>Waiver of First Requested</i>
_____	Recommendations of Boards, Commissions & Committees (Green)
<u> X </u>	Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: February 8, 2011 (B of T) DATE: February 17, 2011

TITLE: 930 E. Roosevelt Road (Shell Oil Company)

SUBMITTED BY: Carl Goldsmith, Director of Public Works

BACKGROUND/POLICY IMPLICATIONS:

The Department of Public Works transmits for your consideration a request to authorize the Village Manager to enter into an Agreement to Reimburse Costs with Shell Oil Company relative to a Highway Authority Agreement for the property located at 930 E. Roosevelt Road.

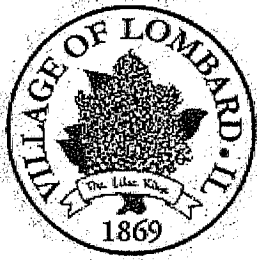
Staff recommends approval of this request.

FISCAL IMPACT/FUNDING SOURCE

Review (as necessary):

Village Attorney X _____	Date _____
Finance Director X _____	Date _____
Village Manager X _____	Date _____

NOTE: Materials must be submitted to & approved by the Village Manager's Office by 12:00 pm, Wednesday, prior to the Agenda Distribution.



February 7, 2011

TO: Village President and Board of Trustees

THROUGH: David A. Hulseberg, Village Manager

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

SUBJECT: **AGREEMENT TO REIMBURSE COSTS FOR
930 E. ROOSEVELT ROAD**

Shell Oil Company has requested that the Village of Lombard enter into an Agreement to Reimburse Costs for the consideration of reviewing a Highway Authority Agreement for the affected property at 930 E. Roosevelt Road.

Background:

This property has been operated as a gas station and the underground storage tanks leaked in the years past. This incident caused the Village right-of-way to be contaminated by the 930 E. Roosevelt Road property. This Agreement provides Shell Oil Company to make a \$4,000 prepayment to the Village of Lombard to begin reviewing the Highway Authority Agreement. Further, Shell Oil Company agrees to pay up to \$10,000 to review those documents. The Village desires to eventually enter into a Highway Authority Agreement with the 930 E. Roosevelt Road property. Village Counsel has had an opportunity to review this document and finds it acceptable.

The Village had previously entered into a Highway Authority Agreement for the same property in 2006. The basis for this request is that the Illinois EPA requires that each incident where contamination has migrated off private property and under a Village R-O-W have a control mechanism to mitigate the impact to the highway. The Highway Authority Agreement will satisfy this requirement.

Recommendation:

Staff recommends that the Village Board of Trustees approve a motion authorizing the Village Manager to enter into an Agreement to reimburse costs for the property located at 930 E. Roosevelt Road with Shell Oil Company.

The logo for Klein, Thorpe & Jenkins, Ltd. features the letters "KTJ" in a large, bold, white sans-serif font, centered within a solid black rectangular box.

KLEIN, THORPE & JENKINS, LTD.
Attorneys at Law

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Chicago, Illinois 60606-2903
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Orland Park, Illinois 60462-5353
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www.ktjlaw.com

January 17, 2011

Mr. David Hulseberg
Village Manager
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148-3969

**Re: Groundwater Ordinance Request
Shell Oil Company
930 E. Roosevelt Road
Lombard, Illinois**

Dear Dave:

As you may know, occasionally the Village is asked to enter into what is commonly referred to as a Highway Authority Agreement (HAA) when contamination has migrated off private property and under a Village highway, road or right-of-way. In these cases, I have reached a separate agreement with the requester of the groundwater ordinance to enter into an agreement to pay our legal fees and independent environmental consulting fees so that we can adequately investigate the contamination and properly advise our clients on whether to enter into the requested HAA. The agreement to reimburse costs requires the requester to submit a \$4,000.00 fee up front and to provide us with copies of all records that relate to the site.

Shell Oil Company is asking the Village for a HAA for the above-captioned site. I informed Shell Oil that before we could move forward on this issue, it must agree to reimburse the Village for all of the costs incurred by the Village in connection with the Village's preliminary determination of the issue. With respect to the above-captioned site then, enclosed please find the "Agreement to Reimburse Costs" that was signed by a representative of Shell Oil Company to reimburse the legal and consulting fees. Please have the Agreement dated, properly executed and returned to me so that I can forward a copy to the representative for Shell Oil Company. This Agreement to Reimburse Costs does not obligate the Village to enter into a HAA but only to review the request. The initial check of \$4,000 that came from Shell Oil Company was made payable to Klein, Thorpe & Jenkins, and as such, I will have that check deposited into our trust account and all payments to our firm and the Village's environmental consultant on this matter will come out of that initial deposit.

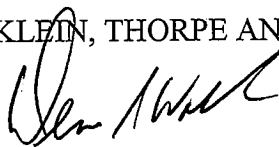
Please let me know if there is a particular environmental consultant the Village would like us to use on this site. If not, I will contact one who has done similar environmental consulting work for other villages. Once we have had the opportunity to review the documents submitted by Shell Oil, we will then be in contact with you to discuss the same.

Mr. David Hulseberg
January 17, 2011
Page 2

Of course, if you should have any questions in the meantime, please don't hesitate to call me.

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.

A handwritten signature in black ink, appearing to read "Dennis G. Walsh", written over the printed name.

Dennis G. Walsh

Enc.

AGREEMENT TO REIMBURSE COSTS

Date: _____

Requester: Equilon Enterprises LLC
d/b/a Shell Oil Products US

Affected Property: 930 E. Roosevelt Road
Lombard, Illinois

Prepayment: \$4,000.00

Maximum: \$10,000.00

Recitals

Requester has requested the Village of Lombard, Illinois ("Village"), to provide assistance in Requester's efforts to obtain a No Further Remediation letter from the Illinois Environmental Protection Agency ("IEPA"), with respect to the presence of contaminants on the Affected Property and, more particularly, to negotiate and enter into a Highway Authority Agreement with respect to certain public highways adjacent to the Affected Property;

It is in the interest of the Village and its citizens that the risks presented to public health and the environment by the presence of contaminants on real property within the Village be assessed, and that properties upon which such contaminants may be present are remediated to a level consistent with such risk assessments, so as to promote the health, welfare and economic well-being of citizens and the Village alike;

In order to evaluate the specific request for assistance, to provide the assistance (if appropriate), and also to assure that public interests and values are considered and protected in providing any assistance, particularized legal and technical expertise are required;

The expertise required is only infrequently needed, such that the Village, in order to respond to the request for assistance, would have to retain outside legal and technical consultants, rather than utilize existing Village staff;

Recognizing the unavailability of Village staff to provide the requested assistance, Requester has offered to reimburse the Village for its costs incurred in evaluating and (if appropriate) providing the requested assistance;

NOW IT IS AGREED BETWEEN REQUESTER AND THE VILLAGE:

1. **Requested Assistance.** Requester asks the Village to enter into a Highway Authority Agreement ("HAA") with the Requester, with respect to those public ways designated in the attached **Exhibit A**. It is the intention of the Requester that the HAA will meet the requirements for an institutional control and enable Requester to obtain a "no further remediation" letter from

the IEPA pursuant to Titles XVI and XVII of the Illinois Environmental Protection Act, 415 ILCS 5/57, et seq. and 5/58, et seq.

2. **Preliminary Determination.** The Village agrees to evaluate the data, information, plans and reports which Requester has generated or obtained with respect to contamination on or under the Affected Property, as well as any responses to comments received from the IEPA or the Illinois State Fire Marshal with respect to same, and any other information relating to the Affected Property to determine whether a Highway Authority Agreement can and should be provided by the Village within the requirements of law, and in accordance with the Village's obligations to protect and promote the health and welfare of its citizens. In the event the Village's preliminary determination is favorable, it will so advise the Requester, indicating the terms and conditions of a Highway Authority Agreement which the Village would be willing to enter with Requester.

3. **Negotiation of Agreement.** Following a favorable preliminary determination, the Village will in good faith negotiate a HAA with Requester, consistent with any limitations stated. The Requester understands that the Village, in negotiating and finalizing the requested HAA, is not committing to make a specific administrative or quasi-judicial decision which is required by law to be made upon an administrative record, or following a public hearing or comment period, or otherwise subject to review under Article III of the Illinois Code of Civil Procedure, 735 ILCS 5/3-101, et seq. Further, Requester understands that the Village, in providing the requested assistance, is not committing the governing body of the Village to make any specific legislative or quasi-judicial enactment or determination which is required to be made only upon the vote of that body, nor is the Village here committing its governing body to any specific determination concerning the HAA which is finally negotiated with Requester.

4. **Requester Promise to Reimburse.** Requester agrees to reimburse the Village for all of the costs of legal and technical consultants retained by the Village in connection with the Village's preliminary determination (including the preparation of this Agreement) and the negotiation of any HAA. While the Village agrees to exercise reasonable control over its incurrence of costs, it does not commit that its costs will be less than a particular sum. Provided, however, it is understood Requester does not agree to pay an amount greater than the Maximum stated above, except upon Requester's express written supplemental direction to the Village. Reimbursement of a consultant's cost shall be made to the Village Treasurer not later than thirty (30) days following the Requester's receipt of a copy of the consultant's statement.

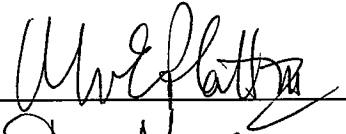
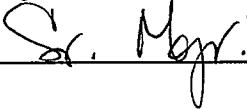
5. **Prepayment of Costs.** This Agreement shall be null and void unless Requester, within thirty (30) days after the date of this Agreement, pays to the Village Treasurer the Prepayment stated above. This is to guarantee reimbursement to the Village, but does not replace the obligations of Section 4.

6. **Termination.** This Agreement to Reimburse Costs shall terminate upon the earlier of that date that the Village issues its preliminary determination, if that determination is not to enter HAA negotiations; or, upon the date the HAA becomes effective by its terms. Otherwise, this Agreement may be terminated by either party upon three (3) days written notice to the other. All costs incurred by the Village prior to its sending or receipt of such notice are reimbursable.

On the Date shown above, the Requester and the Village, through their authorized representatives, have entered into this Agreement.

REQUESTER:

EQUILON ENTERPRISES LLC
d/b/a SHELL OIL PRODUCTS US

By: 
Its: 

VILLAGE OF LOMBARD

By: _____
Its: _____

AGREEMENT TO REIMBURSE COSTS

Date: _____

Requester: Equilon Enterprises LLC
d/b/a Shell Oil Products US

Affected Property: 930 E. Roosevelt Road
Lombard, Illinois

Prepayment: \$4,000.00

Maximum: \$10,000.00

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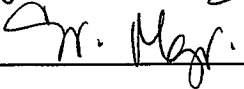
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