

**RESOLUTION
R 35-21**

**A RESOLUTION AUTHORIZING A CHANGE ORDER INVOLVING AN
INCREASE IN THE CONTRACT PRICE OF \$10,000.00 OR MORE
AND APPROVAL OF A SETTLEMENT AGREEMENT
(IL RT. 53 STORMWATER IMPROVEMENTS CONTRACT)**

WHEREAS, pursuant to Illinois Compiled Statutes, Chapter 720, Section 5/33E-9, units of local government are required to make specific findings prior to authorizing any change order relative to a contract which would increase or decrease the dollar amount of the contract by \$10,000.00 or more, or would extend or shorten the time in which the contract is to be completed by thirty (30) days or more; and

WHEREAS, Village of Lombard ("Village") staff has presented and recommended the proposed final balancing change order to the contract between the Village and Rausch Infrastructure, LLC, for the IL RT. 53 Stormwater Improvements Contract ("Contract") attached hereto as Exhibit "A" and made part hereof, to the Corporate Authorities of the Village, in order to finalize all matters related to the Contract and a related lawsuit titled *Rausch Infrastructure, LLC v. Village of Lombard*, Case No. 2018 L 000287, pending in the Eighteenth Judicial Circuit, County of DuPage, Law Division ("Lawsuit"); and

WHEREAS, said change order, attached hereto as Exhibit "A", would increase the contract price by \$409,190.00; and

WHEREAS, the "Settlement Agreement" attached hereto as Exhibit "B" and made a part hereof would settle and resolve all matters related to the Lawsuit;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That, after reviewing the explanation of Village staff as to the necessity of and reasons for the final balancing change order, attached hereto as Exhibit "A", the President and Board of Trustees find as follows:

- A. That the circumstances which necessitated said change order were not reasonably foreseeable at the time the contract was entered into.
- B. That the basis of the change order was not within the contemplation of the contract when the contract was signed.
- C. That it is in the best interests of the Village to approve the change order in its proposed form.
- D. That it is in the best interests of the Village to approve the Settlement Agreement attached hereto as Exhibit "B".

SECTION 2: That, having made the findings set forth in Section 1 above, the President and Board of Trustees hereby approve the change order attached hereto as Exhibit "A" and the Settlement Agreement attached hereto as Exhibit "B", and direct and authorize the Village

President and Village Clerk to execute said change order and Settlement Agreement on behalf of the Village.

ADOPTED this 7th day of October, 2021.

Ayes: Trustee LaVaque, Puccio, Dudek, Honig, Militello and Bachner

Nays: None

Absent: None

APPROVED by me this 7th day of October, 2021.



Keith T. Giagnorio, Village President

ATTEST:



Elizabeth Brezinski, Village Clerk

Exhibit "A"

**Proposed Change Order
to the Contract Between
the Village of Lombard
and Rausch Infrastructure, LLC**

(attached)

VILLAGE OF LOMBARD CHANGE ORDER

PROJECT NAME: IL Rte 53 Storm Water Pump Station Imp PROJECT NO.: SS-12-01
 LOCATION: Phillips Court/IL Rte 53 CHANGE ORDER: 6
 CONTRACTOR: Rausch Infrastructure LCC DATE: 10/4/2021
 DESCRIPTION OF CHANGE ORDER: Approved extra work related to dewatering

ORIGINAL CONTRACT AMOUNT:	[1]	<u>5,279,700.00</u>
TOTAL OF PREVIOUS AUTHORIZED CHANGE ORDERS:	[2]	<u>829,978.15</u>
CURRENT CONTRACT AMOUNT: ([1]+[2])	[3]	<u>6,109,678.15</u>
PROPOSED CHANGE ORDER: (PENDING APPROVAL)	[4]	<u>409,190.00</u>
PROPOSED REVISED CONTRACT AMOUNT: (PENDING APPROVAL) ([3]+[4])	[5]	<u>6,518,868.15</u>

NET OF ALL CHANGE ORDERS: (PENDING APPROVAL) ([2]+[4])	<u>\$1,239,168.15</u>
TIME EXTENSION OR REDUCTION:	<u>330 Cal Days</u>
TOTAL CONTRACT TIME:	<u>\$4,950,000.00</u>
BUDGET ESTIMATE:	<u>\$5,560,000.00</u>
ENGINEER'S ESTIMATE:	

RECOMMENDED FOR ACCEPTANCE :

<u>Ray Schwab</u>	<u>11/7/2017</u>	Approved By:
Resident Engineer	Date	Director of Finance
		Date
Contractor	Date	Approved By:
		(<small><\$10K or 25%</small>) Village Manager
		Date
<u>[Signature]</u>	<u>10/4/21</u>	Approved By:
Village Engineer	Date	(<small>>\$10K or 25%</small>) Village President
		Date
<u>[Signature]</u>	<u>10/4/2021</u>	Attest:
Director of Public Works	Date	Village Clerk
		Date
Assistant Director of Finance	Date	

It is understood that as part of this change order that the Contractor agrees that all bonds, permits, insurance and guarantees are hereby extended to incorporate this Change Order.

Exhibit "B"

**Proposed Settlement Agreement
Between the Village of Lombard
and Rausch Infrastructure, LLC**

(attached)

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of _____, 2021 between Rausch Infrastructure, LLC and the Village of Lombard regarding the Project as defined below.

RECITALS

A. There is presently pending certain Litigation concerning the construction on Lombard Contract Document Number SS-12-01, to perform the construction project known as the IL Route 53 Storm Water Pump Station Improvements, located generally on Phillips Court east of IL Route 53 (Columbine Avenue), in which Litigation Rausch Infrastructure, LLC has asserted claims against the Village of Lombard, and the Village of Lombard has asserted claims against Rausch Infrastructure, LLC.

B. It is the desire and intention of the Parties as defined below to avoid the burdens, risks and expenses resulting from further litigation relating to the Project.

BODY OF AGREEMENT

Accordingly, in consideration of the promises, covenants and undertakings hereinafter set forth, and the above recitals which are incorporated herein by reference, the Parties as defined below agree as follows:

1. Definitions. Except as otherwise expressly provided, as used in this Settlement Agreement and other settlement documents referred to herein, the following terms have the following meanings:

- a. "Agreement" means this Settlement Agreement.
- b. "Litigation" means that certain civil action concerning the Project titled *Rausch*

Infrastructure, LLC v. Village of Lombard, Case No. 2018 L 000287, pending in the Eighteenth Judicial Circuit, County of DuPage, Law Division.

- c. "Project" means Lombard Contract Document Number SS-12-01, to perform the construction project known as the IL Route 53 Storm Water Pump Station Improvements, located generally on Phillips Court east of IL Route 53 (Columbine Avenue), in the Village of Lombard, Illinois.
 - d. "Rausch" means Rausch Infrastructure, LLC, and all predecessors, successors, assigns, parents, subsidiaries, affiliates, segments, holding companies and divisions thereof and all present or former officers, employees, agents, directors and insurers.
 - e. "Village" means the Village of Lombard, the Board of Trustees of the Village of Lombard, and all present or former officers and directors of each.
 - f. The "Parties" means Rausch and the Village as defined in this Agreement.
2. This Agreement is subject to the condition precedent that all Parties execute this Agreement by October 21, 2021.
 3. The approval of the Board of Trustees of the Village is a condition precedent to this Settlement Agreement. If the Board of Trustees does not approve this Settlement Agreement by October 21, 2021, this Settlement Agreement is null and void.
 4. Subject to the express condition precedent of approval by the Board of Trustees of the Village, the Village agrees to pay to Rausch \$409,190 on or before October 21, 2021.

5. Upon payment to Rausch of all amounts due under this Agreement, the Parties release each other from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and compensation whatsoever which either of the Parties have had, now have, or which may hereafter accrue in the future on account of or in any way arising out of the Project whether known or unknown, foreseen or unforeseen, excluding only: (a) any rights related to insurance coverage, contribution or indemnity involving claims of bodily injury, disease or death, and (b) the Parties respective obligations under this Agreement. The Parties agree not to bring or maintain any action, or proceeding of any kind relating to the Project and directly or indirectly involving any of the Parties, except as necessary for purposes of subparagraphs (a) and (b) of this paragraph. All defenses to such excluded claims are reserved.

6. The Parties shall enter into all stipulations and take all acts necessary in order to implement the releases in this Agreement, including the entry of order(s) dismissing pursuant to this Agreement, all claims between the Parties in the Litigation.

7. In the event that any Party materially breaches this Agreement, that Party shall be liable for all attorneys' fees and costs incurred in enforcing this Agreement.

8. The Parties understand and agree that this Agreement is in the nature of a settlement and compromise of disputed claims. Nothing in this Agreement is to be construed as an admission of liability on the part of any of the Parties.

9. Each of the Parties shall be solely responsible for its fees and expenses incurred in connection with the Litigation.

10. This Agreement shall be governed and interpreted in accordance with the laws of the

State of Illinois. Jurisdiction over any action arising out of this Agreement shall lie exclusively in the courts of the State of Illinois and all such actions shall to the exclusion of all other venues be pursued in the Circuit Court of the Eighteenth Judicial Circuit, County of DuPage.

11. The persons executing this Agreement on behalf of each Party represent and warrant that they have the authority to execute this Agreement. Each Party represents and warrants to the other Parties that each has the sole right and authority to give the releases provided in this Agreement.

12. This Agreement may be executed in Counterparts, each of which shall be an original and all of which together shall constitute one and the same document. Electronic or facsimile signatures on counterparts shall be sufficient, to be followed by delivery of the ink signature originals.

13. This Agreement is binding upon the Parties, and their predecessors, successors and assigns, provided, however, that no rights shall accrue hereunder or for the use or benefit of any person or entity other than the Parties and their respective predecessors, successors or assigns.

14. If any provision of this Agreement is held to be invalid or unenforceable, then to the extent that such invalidity or unenforceability shall not deprive either Party of any material benefit intended to be provided by this Agreement, the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the Parties.

15. This Agreement has been prepared by the Parties and any rule of construction regarding inferences against the drafter of a document shall not apply. This Agreement shall be construed as broadly and expansively as possible to give effect to the intention of the Parties.

16. This Agreement constitutes the entire Agreement and understanding among the

Parties regarding the matters delineated in this Agreement. This Agreement shall not be modified except by an instrument of writing signed by all Parties.

AGREED:

RAUSCH INFRASTRUCTURE, LLC

AGREED:

VILLAGE OF LOMBARD

By: _____

Name: _____

Title: _____

By: _____

Name: Keith T. Giagnorio

Title: Village President

ATTEST:

Elizabeth Brezinski, Village Clerk