

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: PRESIDENT AND BOARD OF TRUSTEES
FROM: Scott Niehaus, Village Manager
DATE: February 5, 2018 BOT DATE: February 15, 2018
TITLE: A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND
VILLAGE CLERK TO EXECUTE AN EASEMENT AGREEMENT
SUBMITTED BY: Carl Goldsmith, Director of Public Works *g*

BACKGROUND/POLICY IMPLICATIONS:

The resolution authorizes the execution of a ninety-nine (99) year easement for the use of property owned by the Forest Preserve District of DuPage County to be used in conjunction with the operation of the Glenbard Wastewater Authority sanitary treatment facility.

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 2, 2018

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

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

SUBJECT: Easement Agreement between the Village of Lombard and the Forest Preserve District of DuPage County

Background

In April 2016, the Village of Lombard was notified that an easement agreement for property adjacent to the Combined Sewer Overflow (CSO) facility with the DuPage County Forest Preserve District had expired. The property was subject to an easement agreement dating back to 1966 for the property just south of the Combined Sewer Overflow facility on Hill Avenue. The Village obtained use of the property for the treatment of sanitary sewerage via a 50 year easement agreement.

Village staff has been actively working with the DuPage County Forest Preserve District that would allow for continued use of the District's property for the Combined Sewer Overflow plant. The property is used for storage following treatment at the CSO facility and is 9.5 acres in size. The Village and District have agreed to the continued use of the property via a ninety-nine (99) year non-exclusive easement. Per District policy, the Village is responsible for paying fair-market for the acreage, which is valued at \$15,000 per acre. The total cost for the easement is \$142,500 and will be paid for by the Glenbard Wastewater Authority. The Easement Agreement will be adopted by the Village Board by a Resolution authorizing the Village President and Village Clerk to execute the agreement.

Recommendation

Staff recommends that the Village President and Board of Trustees approve A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE AN EASEMENT AGREEMENT

RESOLUTION

R _____

A RESOLUTION AUTHORIZING THE VILLAGE PRESIDENT AND VILLAGE CLERK TO EXECUTE AN EASEMENT AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard prepared a document regarding the granting of an easement for the use of property in conjunction with the operation of a wastewater treatment facility as attached hereto, marked Exhibit "A" and made part hereof (the "Agreement"); and

WHEREAS, the Corporate Authorities deem it to be in the best interests of the Village of Lombard to approve said Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

SECTION 1: That the Agreement attached hereto as Exhibit "A" is hereby approved.

SECTION 2: That the Village President and the Village Clerk be and hereby are authorized and directed to execute the Agreement attached hereto as Exhibit "A", as well as any and all other documents necessary to carry out the provisions of said Agreement.

Adopted this _____ day of _____, 2018, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this _____ day of _____, 2018.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna
Village Clerk

**Prepared by: Forest Preserve
District of DuPage County
Return to: Village of Lombard
C/O Village Manager
255 E. Wilson Street
Lombard, IL 60148**

**VACANT LAND West of I-355 and
South of Crescent Boulevard in
Lombard, Illinois
P.I.N.: 05-12-404-026 & 05-12-404-027**

**AN EASEMENT AGREEMENT FOR THE OPERATION
AND MAINTENANCE OF A SANITARY TREATMENT FACILITY
WITHIN THE EAST BRANCH RIVERWAY FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this ____ day of _____, 2018, by and between the Forest Preserve District of DuPage County, a body politic and corporate (hereinafter referred to as the "FOREST PRESERVE DISTRICT") and the Village of Lombard, a municipal corporation (hereinafter referred to as "LOMBARD"). The FOREST PRESERVE DISTRICT and LOMBARD are sometimes referred herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT owns a certain 9.5 +/- acre property within the East Branch Riverway Forest Preserve (hereinafter referred to as the "District Property"); and

WHEREAS, the FOREST PRESERVE DISTRICT granted an easement to LOMBARD on March 15, 1966 for the purpose of operating a sanitary treatment facility on a portion of the District Property, which easement has now expired; and

WHEREAS, the Village of Glen Ellyn and LOMBARD jointly established, and are members of, the Glenbard Wastewater Authority (hereinafter referred to as the "GWA"), which is charged with the responsibility of treating and processing wastewater for the Village of Glen Ellyn and LOMBARD and unincorporated portions of DuPage County; and

WHEREAS, the GWA operates a sanitary treatment facility on the District Property, and the GWA has determined that the sanitary treatment facility on the District Property is an integral part of the GWA's responsibilities in regard to treating and processing wastewater; and

WHEREAS, LOMBARD requests the granting of a new easement on the District Property for the operation and maintenance of the sanitary treatment facility; and

WHEREAS, the FOREST PRESERVE DISTRICT and LOMBARD are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c) (hereinafter “Transfer Act”); and

WHEREAS, Section 2 of the Transfer Act authorizes transfers of real estate, or interests therein, between municipalities for any public purpose upon such terms as are agreed to by the corporate authorities of the respective municipalities; and

WHEREAS, in accordance with Section 2 of the Transfer Act, LOMBARD, pursuant to a duly passed ordinance, has determined that it is necessary to acquire an easement for a sanitary treatment facility over the entire District Property; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant LOMBARD an easement for the sanitary treatment facility, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing preambles and the promises, terms and conditions set forth herein, the Parties agree as follows:

1.0 INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein and made a part of this Agreement.

2.0 EASEMENT GRANTED

2.1 The FOREST PRESERVE DISTRICT hereby grants a non-exclusive easement to LOMBARD for the operation and maintenance of a sanitary treatment facility within that portion of East Branch Riverway Forest Preserve legally described on **Exhibit “A”** and depicted on **Exhibit “B”**, both being attached hereto and incorporated herein (hereinafter referred to as the “Easement Premises”) and on the terms and conditions as provided for in this Agreement. The easement granted herein shall expire ninety-nine (99) years from the date of execution of this Agreement.

2.2 LOMBARD shall notify the FOREST PRESERVE DISTRICT no less than six (6) months prior to any construction project within the Easement Premises in accordance with the notice provisions in Section 7.0 below. LOMBARD shall make any independent contractor accessing the Easement Premises aware of the terms and conditions of this Agreement.

2.3 The FOREST PRESERVE DISTRICT reserves the right to make any use of the Easement Premises, whether on, above or below its surface, for any lawful purpose, except that any structure or use shall not unreasonably interfere with the easement granted by this Agreement, the GWA’s sanitary treatment facility on the Easement Premises, or the treatment and processing of wastewater by the GWA on the Easement Premises. In this regard, the FOREST PRESERVE DISTRICT shall notify the VILLAGE no less than six (6) months prior to any construction project within the Easement Premises, including, but not limited to, the construction of the FOREST PRESERVE DISTRICT’S proposed East Branch Bicycle Trail, in accordance with the notice provisions in Section 7.0 below.

3.0 FEES AND COSTS

3.1 LOMBARD shall pay the fees as provided for in this Agreement. The easement fee to be paid by LOMBARD to the FOREST PRESERVE DISTRICT for the granting of the easement shall be based upon the market value of the Easement Premises in accordance with the FOREST PRESERVE DISTRICT'S Easement and License Ordinance (No. 96-096). The fee for the easement is \$142,500.00, which is based on \$15,000 per acre (\$15,000 X 9.5 acres = \$142,500.00). The easement fee shall be paid to the FOREST PRESERVE DISTRICT prior to the execution of this Agreement by the FOREST PRESERVE DISTRICT.

3.2 LOMBARD acknowledges that this Agreement is contingent upon the FOREST PRESERVE DISTRICT receiving the fees outlined above.

4.0 RESTORATION

4.1 If LOMBARD damages the natural areas within the Easement Premises, LOMBARD shall restore all damaged areas according to the FOREST PRESERVE DISTRICT'S specifications. If LOMBARD fails to properly restore the Easement Premises within 30 days of service of the FOREST PRESERVE DISTRICT'S written demand for the restoration work, the FOREST PRESERVE DISTRICT shall have the right to take such action as it deems necessary to perform the restoration or corrective work, which shall include the authority to (a) perform the work with its own personnel and/or; (b) engage the services of an independent contractor to perform the work. LOMBARD shall reimburse the FOREST PRESERVE DISTRICT for costs associated with said restoration or corrective work within 30 days of service of the FOREST PRESERVE DISTRICT'S written demand for payment.

5.0 INDEMNIFICATION

5.1 To the extent permitted by law, LOMBARD shall defend, save, and hold harmless the FOREST PRESERVE DISTRICT, its elected officials, officers, employees and agents from any and all claims, liabilities, causes of action, losses and damages that may at any time arise or be claimed by any person or entity as a result of bodily injury, sickness, death or property damage, or as a result of any other claim or suit of any nature whatsoever, allegedly arising out of or in any manner connected with the operation and maintenance of the sanitary treatment facility, when such bodily injury, sickness, death, property damage or other claim is allegedly caused by a negligent or intentional act or omission on the part of LOMBARD or its contractors, subcontractors, engineers, consultants, employees, or agents. In the event any person or entity obtains a judgment or settlement against the FOREST PRESERVE DISTRICT or any of its elected officials, officers, employees or agents, by reason of any negligent or intentional act or omission on the part of LOMBARD or its contractors, subcontractors, consultants, employees or agents, LOMBARD shall promptly, to the extent allowed by law, indemnify the FOREST PRESERVE DISTRICT or the elected official, officer, employee or agent, as the case may be, in the amount of said judgment or settlement and for all costs and

- expenses related thereto, including, without limitation, reasonable attorney and expert witness fees.
- 5.2 The obligation on the part of LOMBARD to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT shall survive the expiration or termination of this Agreement.
- 5.3 LOMBARD shall require each contractor who performs any work on the Easement Premises, to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT to the same extent as required of LOMBARD under Section 5.0, and LOMBARD shall include in all of its contracts a statement expressly declaring the FOREST PRESERVE DISTRICT to be a third-party beneficiary of the indemnification provision.
- 5.4 LOMBARD shall promptly pay all costs and expenses relating to any and all work within the Easement Premises and shall not allow any liens on FOREST PRESERVE DISTRICT property as a result of the work. To the extent permitted by law, LOMBARD shall defend, indemnify and hold the FOREST PRESERVE DISTRICT harmless from any and all liens, costs and expenses arising from any work performed on the Easement Premises or related to the operation and maintenance of the sanitary treatment facility.
- 5.5 Nothing contained in this Agreement is intended to be, nor shall operate as, a waiver by LOMBARD of the rights, defenses and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

6.0 BREACH OF AGREEMENT

- 6.1 If a Party reasonably believes that a breach of this Agreement has occurred or is occurring, the Party shall serve written notice thereof upon the Party committing or permitting such breach to occur, specifying in detail the breach and the facts supporting such claim. The Party alleged to have committed the breach shall have 30 days within which to cure the violation. If the Party in violation is LOMBARD, and LOMBARD fails to cure the breach within the 30-day period, the FOREST PRESERVE DISTRICT may pursue monetary damages or specific performance provided that the 30-day cure period shall be extended for a reasonable time if LOMBARD has undertaken to cure the breach within the 30-day period and continues to diligently and in good faith to complete the corrective action. Given the importance of the sanitary treatment facility to the public, remedies available to the FOREST PRESERVE DISTRICT do not and shall not include termination of this Agreement.
- 6.2 Action by either Party to enforce this Agreement shall be without prejudice to the exercise of any other rights provided herein or by law or in equity to remedy a breach of this Agreement, subject to the terms of the preceding Subsection 6.1.
- 6.3 A waiver by either Party of any breach of one or more of the terms of this Agreement on the part of the other Party shall not constitute a waiver of any subsequent or other breach of the same or other term, nor shall the failure on the part of a Party to require exact, full and complete compliance with any of the terms contained herein be construed as changing the terms of this Agreement or estopping a Party from enforcing full compliance with the provisions set forth herein. No delay, failure or omission of a Party to exercise any right, power, privilege or option arising from a breach shall impair any right, privilege or option, or be construed as a waiver or acquiescence in such breach or

as a relinquishment of any right. No option, right, power, remedy or privilege of the Parties shall be construed as being exhausted by the exercise thereof in one or more instances. The rights, power, privileges and remedies given the Parties under this Agreement and by law shall be cumulative.

7.0 NOTICES

7.1 All notices required to be given under the terms of this Agreement shall be in writing and either served by certified or registered mail, return receipt requested, properly addressed with the postage prepaid and deposited in the United States mail. Notices served upon the FOREST PRESERVE DISTRICT shall be directed to the Executive Director, Forest Preserve District of DuPage County, P.O. Box 5000, Wheaton, IL 60189-5000. Notices served upon LOMBARD shall be directed to the Village Manager, Village of Lombard, 255 E. Wilson Avenue, Lombard, IL 60148. Notices served by mail shall be effective upon receipt as verified by the United States Postal Service, by personal delivery and/or FedEx/UPS. Notwithstanding anything to the contrary, any notice by a Party alleging a breach of this Agreement shall be either served by certified or registered mail as set forth above. Either Party may designate a new location for service of notices by serving notice of the change in accordance with the requirements of this paragraph

8.0 MISCELLANEOUS TERMS

- 8.1 All rights, title and privileges herein granted for the Easement Premises, including all benefits and burdens, shall run for the term of ninety-nine (99) years and shall be binding upon and inure to the benefit of the Parties hereto, their respective successors and assigns.
- 8.2 The FOREST PRESERVE DISTRICT hereby reserves the right to use, or permit to be used, the Easement Premises in any manner that will not prevent or materially interfere with the exercise by LOMBARD of the rights granted herein.
- 8.3 If any Party initiates any legal proceeding or action, whether at law or in equity, to enforce any provision of this Agreement, the prevailing Party (as determined by the court) shall be entitled to recover its reasonable costs and expenses incurred in connection with said proceeding or action, including, but not limited to, reasonable expert witness and attorney fees.
- 8.4 LOMBARD shall be responsible for recording this Agreement, at its expense, in the Office of the Recorder of Deeds, DuPage County, and for providing the FOREST PRESERVE DISTRICT with a recorded copy.
- 8.5 The provisions set forth herein represent the entire agreement between the Parties and supersede any previous oral or written agreements, as it is the intent of the Parties to provide for a complete integration within the terms of this Agreement. No provision may be modified in any respect unless such modification is in writing, duly approved and signed by all Parties.
- 8.6 This Agreement shall be construed in accordance with the laws of the State of Illinois.
- 8.7 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, both of which shall be deemed to be one Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, with the last date of execution hereof to be inserted on page 1 hereof.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY**

VILLAGE OF LOMBARD

BY: _____
Joseph Cantore, President

BY: _____
Keith Giagnorio, President

ATTEST: _____
Judith Malahy, Secretary

ATTEST: _____
Sharon Kuderna, Village Clerk

DATE: _____

Date: _____

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN FOREST PRESERVE DISTRICT I-355 ASSESSMENT PLAT NO. 2 OF PART OF THE SOUTHEAST ¼ OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 28, 2008 AS DOCUMENT R2008-031313, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-12-404-026

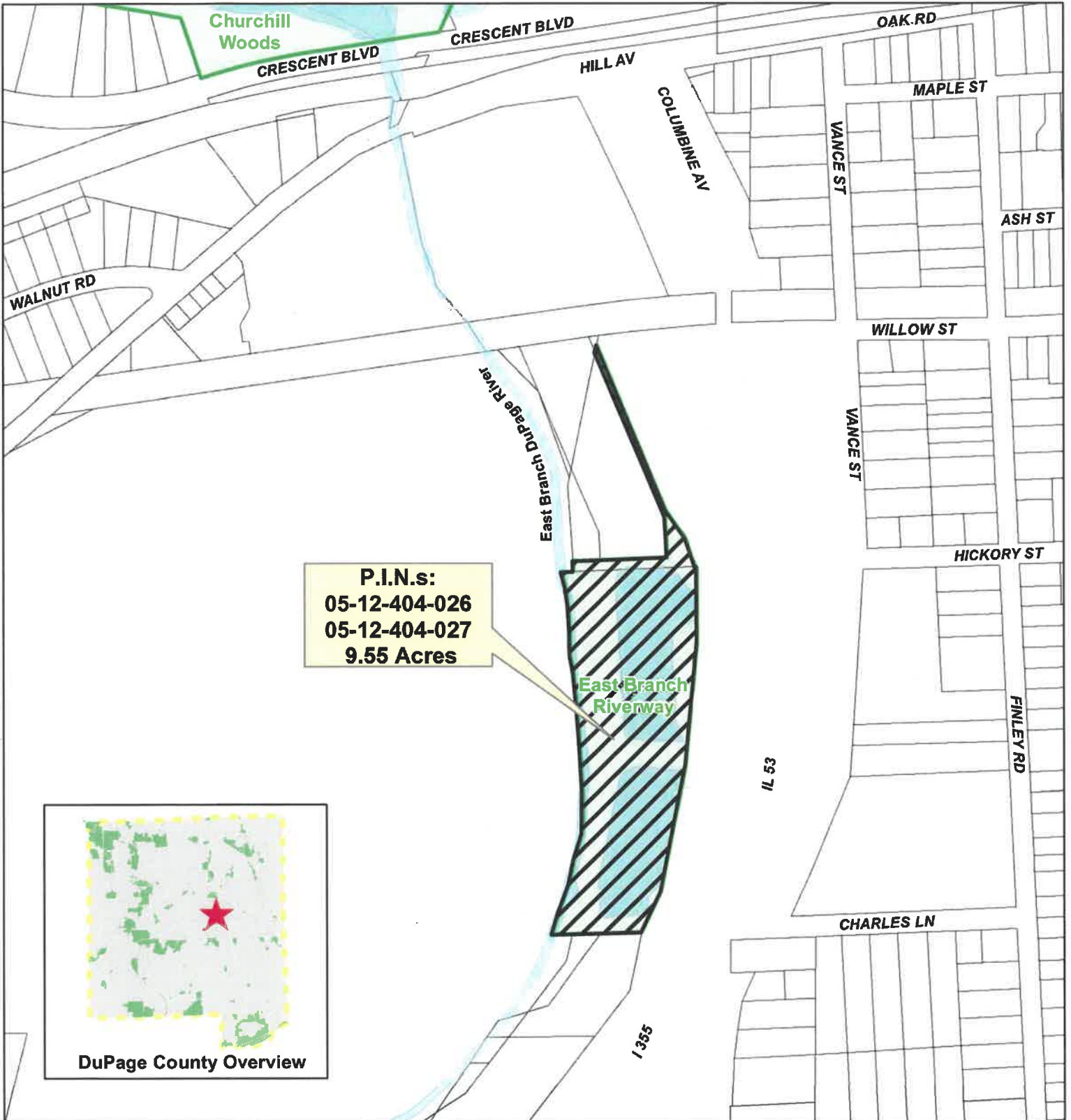
PARCEL 2:



THAT PART OF THE SOUTHEAST ¼ OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, ILLINOIS DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF THE SOUTHEAST ¼ OF SAID SECTION 12; THENCE SOUTH ALONG THE EAST LINE OF SAID SECTION 12 FOR A DISTANCE OF 1070.8 FEET, TO A POINT ON THE SOUTHERLY LINE OF THE MEYER SHAPOTKIN PROPERTY; THENCE WESTERLY ALONG SAID PROPERTY LINE WHICH FORMS AN ANGLE OF 87 DEGREES .35 MINUTES TO THE RIGHT WITH A PROLONGATION OF LAST DESCRIBED COURSE FOR A DISTANCE OF 53.1 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE STATE BOND ISSUE ROUTE NO. 53 FOR A POINT OF BEGINNING; THENCE CONTINUING WESTERLY ON THE LAST DESCRIBED COURSE TO A POINT IN THE CENTERLINE OF THE EAST BRANCH OF THE DUPAGE RIVER IN ITS PRESENT COURSE; THENCE SOUTHERLY ALONG THE CENTERLINE OF SAID RIER TO A POINT ON THE NORTHERLY LINE OF NICHOLAS SURGE'S ESTATE PROPERTY; THENCE EAST ALONG SAID PROPERTY LINE TO A POINT ON THE AFORESAID WESTERLY RIGHT OF WAY LINE OF STATE BOND ISSUE ROUTE 53 WHICH POINT IS 56.3 FEET WEST OF THE OF THE EAST LINE OF THE AFORESAID SECTION 12; THENCE NORTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE OF STATE BOND ISSUE ROUTE NO. 53 FOR A DISTANCE OF 1147.7 FEET MORE OR LESS TO THE POINT OF BEGINNING EXCEPT THAT PART TAKEN BY ILLINOIS STATE TOLL HIGHWAY AUTHORITY FOR INTERSTATE I-355 PER QUITCLAIM DEED RECORDED AUGUST 19, 2005 AS DOCUMENT R2005-180812, IN DUPAGE COUNTY, ILLINOIS.

P.I.N.: 05-12-404-027

EXHIBIT "A"

East Branch Riverway - Easement Agreement Depiction



-  FPD Bounds
-  Easement Premises

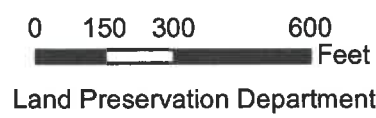


EXHIBIT "B"