

DISTRICT: All

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: April 8, 2008 (COW) (B of T) Date: April 17, 2008

TITLE: Intergovernmental Agreement Between the Village of Lombard and the County of DuPage Regarding the Water Transmission Main for the Village's South Booster Station

SUBMITTED BY: David A. Dratno, P.E., Village Engineer *MD*

BACKGROUND/POLICY IMPLICATIONS:
See attached memo.

FISCAL IMPACT/FUNDING SOURCE:
None *proj # 0707*

Review (as necessary):

Village Attorney X _____
Finance Director X *M. M. S. L. S.*
Village Manager X _____
Date *4/10/08*
Date *4/16/08*

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.



Interoffice Memo

To: William T. Lichter, Village Manager
From: David A. Dramol, P.E., Village Engineer *DD*
Through: David P. Gorman, P.E., Acting Public Works Director *DD*
Date: April 8, 2008
Subject: County of DuPage Intergovernmental Agreement

Intergovernmental Agreement between the Village of Lombard and County of DuPage Regarding the Water Transmission Main for the Village's South Booster Station

The South Booster Station Project (WA-07-01) requires the installation of water transmission mains within the right-of-way of CH 25/Meyers Road between 14th and 22nd Streets, which is under the jurisdiction of DuPage County. Prior to obtaining a highway construction permit, the DuPage County Highway Department requires an Intergovernmental Agreement with the Village of Lombard specifying:

- a) The Village shall install approximately 3,700 linear feet of twenty (20") inch ductile iron transmission water main, along with fire hydrants, valves, and vaults, in or around the southbound lanes of CH 25/Meyers Road; and
- b) The County of DuPage will mill, patch, resurface and re-stripe CH 25/Meyers Road from Butterfield Road to Roosevelt Road in 2009; and
- c) The Village shall reimburse the County of DuPage an estimated ninety-three thousand dollars (\$93,000.00) for milling and resurfacing the southbound lanes of CH 25/Meyers Road from 14th Street to 22nd Street as impacted by the water transmission main project.

Two (2) original agreements are attached for review. Please present this item on the Board of Trustee's agenda for April 17, 2008. Staff recommends approval.

If approved, please return the two (2) executed originals to Public Works Engineering for further processing.

A RESOLUTION AUTHORIZING SIGNATURE OF
PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard have received an Agreement between the Village of Lombard, and the County of DuPage regarding the Village Water Transmission Main project as attached hereto and marked Exhibit "A"; and **WHEREAS**, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such 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 Village President be and hereby is authorized to sign on behalf of the Village of Lombard said agreement as attached hereto.

SECTION 2: That the Village Clerk be and hereby is authorized to attest said agreement as attached hereto.

Adopted this 17th day of April, 2008.

Ayes: _____

Nays: _____

Absent: _____

Approved this 17th day of April, 2008.

William J. Mueller
Village President
ATTEST:

Bridgette O'Brien
Village Clerk

APPROVAL AS TO FORM:

Thomas P. Bayer
Village Attorney

WHEREAS, the COUNTY by virtue of its power set forth in "County's Code" (55 ILCS 5/1-1001 et seq.) and "Highway Code" 605 ILCS 5/1-101 et seq. and the VILLAGE by virtue of its power

coordinate and participate in a cost share of the PROJECT because of the benefit to the residents of DuPage County, the VILLAGE and the public; and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate,

WHEREAS, the VILLAGE will be required to restore the pavement as a part of the WORK; and

WHEREAS, the VILLAGE plans to make water main improvements during 2008 that will impact the southbound lanes of CH 25/Meyers Road between 14th Street and 22nd Street (hereinafter referred to as "WORK"); and

WHEREAS, the COUNTY plans to resurface sections of CH 25/Meyers Road as a part of its 2009 Pavement Maintenance Program, Section 09-00000-01-GM (hereinafter referred to as "PROJECT"); and

WHEREAS, CH 25/Meyers Road from IL 38 to 35th Street is under the jurisdiction of the COUNTY; and

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2008, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the Village of Lombard, (hereinafter referred to as the "VILLAGE"), a municipal corporation with offices at 255 East Wilson Avenue, Lombard, Illinois. The COUNTY and the VILLAGE are hereinafter sometimes individually referred to as a "Party" or together as the "Parties."

INTERGOVERNMENTAL AGREEMENT BETWEEN THE
THE COUNTY OF DU PAGE AND THE VILLAGE OF LOMBARD
CH 25/MEYERS ROAD
COUNTY 2009 PAVEMENT MAINTENANCE/VILLAGE WATER
TRANSMISSION MAIN
SECTION 09-00000-01-GM

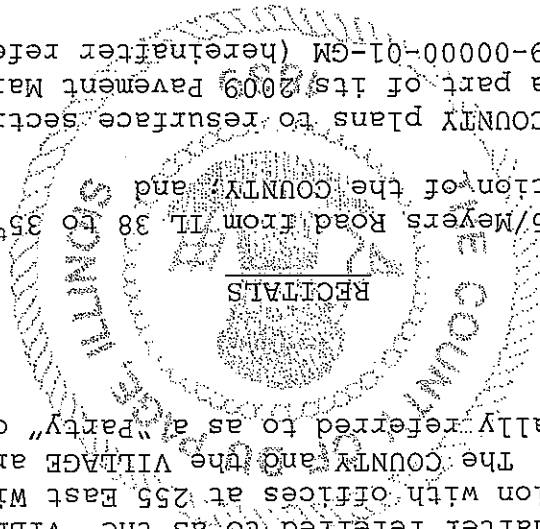


EXHIBIT A

2.3. The WORK shall be the responsibility of the VILLAGE and includes installation of a twenty (20") inch ductile iron transmission water main, along with fire hydrants, valves and valve vaults, in or adjacent to the southbound lanes of CH 25/Meyers Road from 14th Street to 22nd Street. The COUNTY authorizes the VILLAGE to perform the WORK in the right-of-way of CH 25/Meyers Road.

2.2. The PROJECT shall be the responsibility of the COUNTY and includes milling, patching, resurfacing and re-striping CH 25/Meyers Road to provide a continuous median/center turn lane from Butterfield Road to Roosevelt Road.

2.1. The COUNTY and the VILLAGE agree to cooperate in and make every effort to cause and coordinate the PROJECT and the WORK.

2.0 SCOPE

1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.

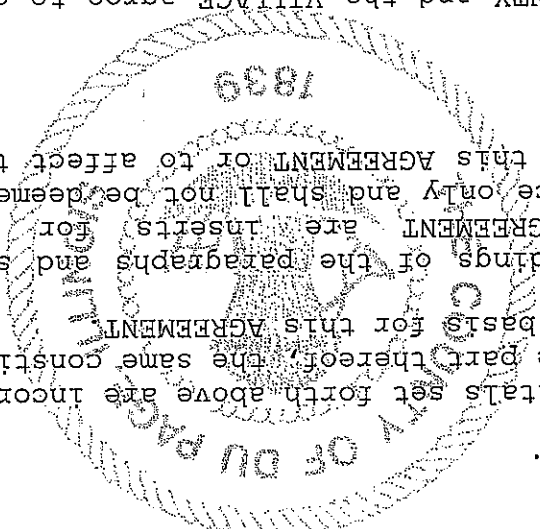
1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

1.0 INCORPORATION.

set forth in the Municipal Code (65 ILCS 1/1-1 et seq.) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each Party to the other, the Parties do hereby mutually covenant, promise and agree as follows:



4.4. The VILLAGE agrees to pay the COUNTY ninety (90%) percent of their estimated share of the costs of the PROJECT within sixty (60) days of receiving an invoice from the COUNTY after award of the PROJECT. Upon completion of the PROJECT and based upon the documentation of final costs and quantities, submitted by the COUNTY, the VILLAGE agrees to

4.3. The COUNTY estimates the cost to be reimbursed to the COUNTY by the VILLAGE is \$93,000.00, which is based on the VILLAGE being required to mill and resurface an area 16 feet wide.

4.2. The VILLAGE agrees to reimburse the COUNTY for milling and resurfacing the southbound lanes of CH 25/Meyers Road from 14th Street to north of 22nd Street (approximately 3,700 feet) impacted by the WORK, including any required repairs/patching of the southbound lanes as a result of the WORK.

4.1. The VILLAGE shall secure a permit from the COUNTY and administer the contract for the WORK and shall be responsible for all the costs related to the WORK. The VILLAGE shall ensure that the sections of CH 25/Meyers Road impacted by the WORK are restored per the approved plans and contract specifications to safely accommodate traffic through the 2008/2009 winter.

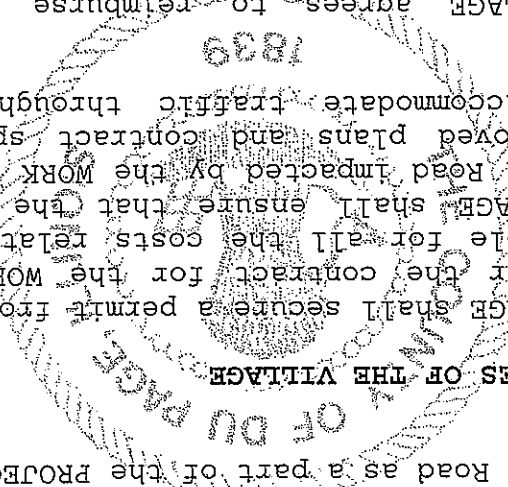
4.0 RESPONSIBILITIES OF THE VILLAGE

3.1. The COUNTY shall administer the contract for the PROJECT.

3.2. The COUNTY shall mill, patch, resurface and/or re-stripe CH 25/Meyers Road to provide a continuous median/center turn lane from Butterfield Road to Roosevelt Road as a part of the PROJECT.

3.0 RESPONSIBILITIES OF THE COUNTY

2.4. The COUNTY and VILLAGE shall administer the contracts for the PROJECT and WORK in the best interest of both Parties and keep each other advised of any problems encountered or changes necessary.



6.1.1. The COUNTY and the VILLAGE acknowledge that the COUNTY has made no representations, assurances or guarantees regarding the COUNTY'S legal capacity to indemnify the VILLAGE as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the VILLAGE, or any person or entity claiming a right through VILLAGE, or in the event of change in the laws of the State of Illinois governing COUNTY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not effect the validity and enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

6.1. The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the VILLAGE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

6.0 INDEMNIFICATION

5.1. The COUNTY agrees that it will be responsible for all maintenance of the PROJECT and the VILLAGE shall be responsible for all maintenance of the WORK after completion thereof.

5.0 MAINTENANCE

reimburse the COUNTY for the balance within sixty (60) days of receipt of an invoice from the COUNTY.

6.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, under this paragraph or paragraph 6.1, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY'S participation in its defense shall not remove VILLAGE'S duty to indemnify,

6.2.1. The COUNTY and the VILLAGE acknowledge that the VILLAGE has made no representations, assurances or guarantees regarding the VILLAGE'S legal capacity to indemnify the COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the VILLAGE, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through the State of Illinois governing VILLAGE'S or any successor's or assign's indemnification authority, such occurrence(s) shall not effect the validity and enforceability of the remainder of this AGREEMENT or the Parties rights and obligations provided for therein.

6.2. The VILLAGE shall, to the extent permitted by law, indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the VILLAGE'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The VILLAGE does not hereby waive any defenses or immunity available to it with respect to third parties.

7.4. No later than fourteen (14) days after the execution of this AGREEMENT, each Party shall designate a representative to the other Party who shall serve as the full time representative of said Party during the carrying out of the PROJECT and WORK. Each representative shall have authority, on behalf of such Party, to receive notices and make inspections

7.3. In the event of a dispute between the COUNTY and VILLAGE representatives in carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Village Manager of the VILLAGE shall meet and resolve the issue.

7.2. Whenever in this AGREEMENT, approval or review of either the COUNTY or VILLAGE is provided for, said approval or review shall not be unreasonably delayed or withheld.

7.1. It is understood and agreed by the Parties hereto that no changes to existing roadway and appurtenance maintenance and/or jurisdiction are proposed, except as noted herein.

7.0 GENERAL

6.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The VILLAGE'S and COUNTY'S indemnification under Section 6.0 hereof shall terminate when the PROJECT and WORK are complete and the COUNTY and VILLAGE assume its maintenance responsibilities as set forth in Section 5.1 above.

6.4. Nothing contained herein shall be construed as prohibiting the VILLAGE, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The VILLAGE'S participation in its defense shall not remove COUNTY'S duty to indemnify, defend, and hold the VILLAGE harmless, as set forth above.

defend, and hold the COUNTY harmless, as set forth above.

IF to the COUNTY:
 Charles Tokarski, P.E.
 County Engineer
 Dufage County Division of Transportation
 421 N. County Farm Road
 Wheaton, IL 60187
 Facsimile: 630.407.6901

IF to the VILLAGE:
 Village Manager
 Village of Lombard
 255 East Wilson Avenue
 Lombard, IL 60148
 Facsimile: 630.620.8222

9.1. Any notice required hereunder shall be deemed properly given to the Party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or sent by confirmed facsimile, to the Party's address. The address of each Party is as specified below. Either Party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

9.0 NOTICES

8.1. This AGREEMENT represents the entire AGREEMENT between the Parties with respect to the PROJECT and WORK, and supersedes all previous communications or understandings whether oral or written.

8.0 ENTIRE AGREEMENT

7.6. This AGREEMENT and the covenants contained herein shall be null and void in the event the contracts covering the PROJECT and WORK contemplated herein are not awarded within three (3) years subsequent to the execution of this AGREEMENT.

7.5. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.
 Representatives shall be readily available to the other Party.
 relating to the work covered in this AGREEMENT.

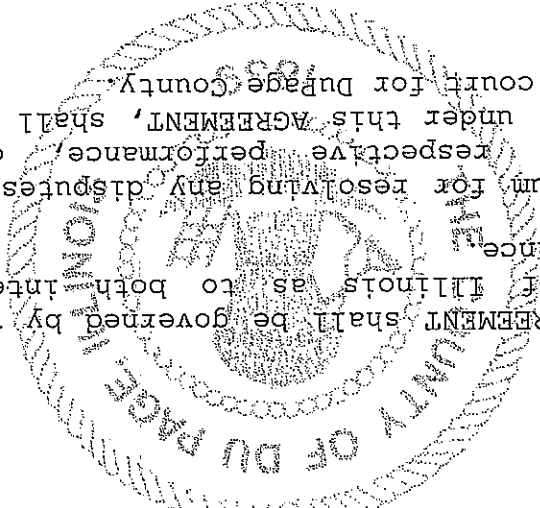
14.1 Neither Party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their reasonable control,

14.0 FORCE MAJEURE

13.1 In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

13.0 SEVERABILITY

12.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.
12.2. The forum for resolving any disputes concerning the Parties' respective performance, or failure to perform, under this AGREEMENT, shall be the judicial circuit court for DuPage County.



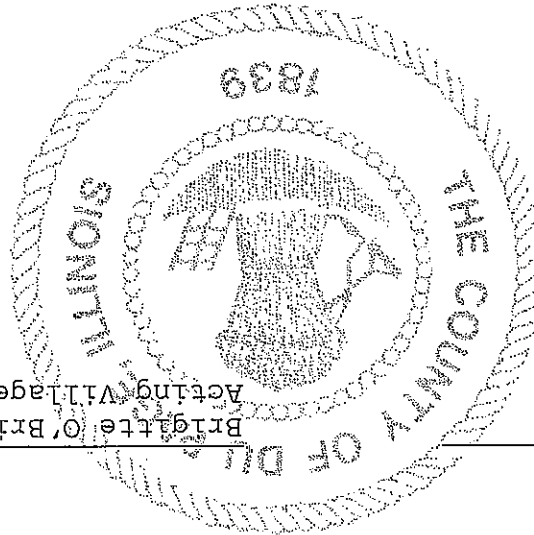
12.0 GOVERNING LAW

11.1. This AGREEMENT shall be binding upon and inure to the benefit of the Parties hereto and their representative successors and assigns.

11.0 ASSIGNMENT

10.1. No modification or amendment to this AGREEMENT shall be effective until approved by the Parties in writing.

10.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT



Gary A. King
County Clerk

Brigitte O'Brien
Acting Village Clerk

ATTEST:

Robert J. Schillerstrom
Chairman, DuPage County Board

William Mueller, President
Village of Lombard

IN WITNESS whereof, the Parties set their hands and seals as of the date first written above.

including, but not limited to, Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.