

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES  
FROM: David A. Hulseberg, Village Manager  
DATE: May 10, 2012 (B of T) Date: May 17, 2012  
TITLE: Pin Oak Community Center – Utility Connection Agreement  
SUBMITTED BY: William J. Heniff, Community Development Director *WH*

BACKGROUND/POLICY IMPLICATIONS:

Please find attached, a request to adopt a resolution authorizing the signature of the Village President and Village Clerk on a letter to Pin Oak affirming the Village's position relative to water and sanitary sewer connections.

Please place this item on the agenda for the May 17, 2012 Board of Trustees meeting.

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.



## MEMORANDUM

**TO:** David A. Hulseberg, Village Manager

**FROM:** William J. Heniff, AICP, Director of Community Development *WJA*

**DATE:** May 17, 2012

**SUBJECT:** **Pin Oak Community Center – Utility Connection Agreement**

This memorandum provides background regarding the latest activities associated with the proposed Pin Oak Community Center, proposed to be constructed by the property owner (Muslim Community Association of the Western Suburbs). Specifically, staff is seeking direction and concurrence relative to the representations to Pin Oak relative to connection to Village water and sanitary sewer services as set forth in the attached draft agreement.

### **BACKGROUND**

DuPage County received a filing in early 2011 for a conditional use for a religious institutional use for unincorporated properties located at the southwest corner of Roosevelt Road and Lawler Avenue. The subject properties are located within the ultimate municipal boundaries of the Village of Lombard.

While staff did not express objections with the proposed religious institutional use to the County, the Village raised concerns for the provision for public improvements, most notably public water and sanitary sewer services. Lombard staff represented that we would not support a connection to Glen Ellyn water and sewer facilities, which are located on the north side of Roosevelt Road and adjacent to their property. Staff did suggest that they could get Village water via a watermain extension from Lombard Toyota along Roosevelt Road and extending it down to their property and linking back to existing lines in the Pinebrook Subdivision. With respect to sanitary sewer, the preferred option is that they extend a line from Lombard Toyota site parallel to the water line and link to an existing line in Pinebrook, thereby eliminating the need for a lift station. Staff suggested that the Village could create a utilities agreement or even an annexation agreement to facilitate this approach.

In June, 2011, the Village Board approved a resolution of objection with DuPage County stating that the proposed facility should be connected to public utilities. Pin Oak and staff discussed salient points relative to a proposed utility agreement, which would be further considered should the County approve the project. Key representations made by the Village included:

1. provisions for extensions of public water main to be constructed by the developer, with recapture options and subject to the agreement provisions; and
2. to address cost constraints, provisions to not object to any connection to the Glen Ellyn sanitary sewer system until such time that sewer connections are available to the site or a ten year period has elapsed, whichever comes first.

Subsequent to the objection, DuPage County ultimately approved the petition in September, 2012. The County approval did not mandate the connection to public utilities and the approved plans depict the project to be constructed on private well and septic.

### **PROPOSED AGREEMENT**

Pin Oak is currently finalizing their plans for consideration by DuPage County. A draft utilities agreement has been prepared by staff and Pin Oak. While many of the points have been agreed upon, there are several areas that staff differs with Pin Oak and as such, staff is seeking direction from the Board. These include:

1. **Sanitary Sewer Connection** – Section 2.G. of the agreement would require Pin Oak to connect to the Village sanitary sewer system within ten years of construction completion and/or one of three other conditions. Originally staff represented that utility connections to Glen Ellyn would not be supported and that public utility connections must be through Village facilities only. However, in the spirit of cooperation, staff suggested that a temporary utility connection could be possible but there would need to be provisions to require the disconnection from Glen Ellyn and connection to Lombard facilities, either by time constraints or by other actions. Pin Oak would like the mandatory connection time period removed from the agreement, as they are concerned that if the ten year period expires they may or may not be in a position to pay for the required connections at that time. Their commitment to connect would only be based upon the provision that they connect at such time that the utilities are constructed in close proximity to their property. Staff believes the provision should remain within the draft agreement, as this representation was offered as a means to assist Pin Oak in the short term and to ensure that the property is ultimately on Lombard's sanitary sewer network. Moreover, we do not anticipate any other entity constructing sanitary sewer services to the area in the short term, which would mean that the primary connection provision would not be realized.
2. **Annexation** – The draft agreement states that upon a request by the Village, they would consent to annexation upon a request by the Village. This provision has been generally applied to properties seeking utilities from the Village. While the property is contiguous to the Village and would be served by Village utilities, they expressed concerns about this blanket provision. They also suggested that the water rate set by the Village could be another area for discussion or consideration. Staff noted that this can be discussed further as a pre-annexation agreement could be considered with the utilities agreement to address any zoning matters. However, staff does not recommend removing the annexation provision from the agreement in its entirety as it would preclude future Village Boards from considering annexing the property without the property owner's future consent.

3. **Transfer of Ownership Provisions** – While unlikely, they would like to remove the provision that mandates the connection to utilities upon the sale of the real estate. Staff believes that this provision should remain.
4. **Material Changes to the Plan** – Staff included provisions to tie the utility connection approval to the plans approved by DuPage County. This was intended as a measure to ensure that the utility connections as proposed would be for the project as contemplated. They would like some relaxation of the provision to provide for future modifications that would not trigger a non-compliance provision within the agreement. Staff believes there is room to reach accommodation on this item.
5. **Legal Fees and Expenses** – As typical with our agreements, we have required requesting parties to pay for legal review of the document and the requirement to provide a defense in the event of litigation related to the agreement. They expressed concerns about the costs or potential exposure they may have on this matter. Staff noted that this is standard language in our agreements and that the defense provisions only relate to the agreement and does not relate to Pin Oak taking on a future liability associated with the operation of the utilities. Staff can work with the respective Counsels on this matter.

#### **ACTION REQUESTED**

Please place this item on the May 17, 2012 Village Board meeting for Items for Separate Action. Staff is seeking concurrence that the representations contained in the draft utilities agreement as presented by staff reflect the wishes of the Village Board. As such, staff requests that the Village Board affirm this position by adopting a resolution authorizing the signature of the Village President and Village Clerk on a letter to Pin Oak affirming the Village's position relative to water and sanitary sewer connections.



# **DRAFT FOR DISCUSSION ONLY**

## **WATER AND SANITARY SEWER SERVICE AGREEMENT FOR PIN OAK COMMUNITY CENTER**

**THIS AGREEMENT** (hereinafter referred to as the “AGREEMENT”) is dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Village of Lombard, a municipal corporation of the County of DuPage, State of Illinois (hereinafter referred to as the “VILLAGE”), and the Pin Oak Community Center (Muslim Community Association of the Western Suburbs), (hereinafter referred to as “PIN OAK”). The VILLAGE and PIN OAK are hereinafter sometimes individually referred to herein as a “Party”, and collectively as the “Parties”.

### **WITNESSETH**

**WHEREAS**, PIN OAK is the owner of real estate located at the southwest corner of Roosevelt Road and Lawler Avenue in unincorporated Lombard, on the addresses including but not limited to 807 West Roosevelt Road, 1208 South Lawler Avenue, 1210 South Lawler Avenue, 1S055 Valley Road, and Lots 3-5 of the Glenbard Acres subdivision (cumulatively referred to as “SUBJECT PROPERTY”); said property legally described in Exhibit A attached hereto and made a part hereof; and

**WHEREAS**, PIN OAK has received various zoning and development entitlements through DuPage County for the construction, operation, use, and maintenance of a religious facility on the SUBJECT PROPERTY, as set forth within DuPage County zoning petition Z10-076 (hereinafter referred to as the “Development Petition”); and

**WHEREAS**, the SUBJECT PROPERTY is located within the VILLAGE’s extraterritorial jurisdiction and is contiguous to the VILLAGE’s corporate limits; and

**WHEREAS**, the VILLAGE adopted Resolution No. 9-12 on June 16, 2011, objecting to the Development Petition as proposed, as a result of the lack of public water and sanitary sewer infrastructure and connections being contemplated as part of the Development Petition, with the VILLAGE taking the position that the proposed plan for the religious institution use “should provide full public improvements”; and

**WHEREAS**, to address the VILLAGEs aforementioned objection, PIN OAK desires to connect to sanitary sewer and public water for the convenience and comfort of its members and to avoid the cost of water treatment, fire suppression, well, and septic systems that would otherwise not be required if such public improvements were available; and

**WHEREAS**, the VILLAGE owns and operates a public water system that could be extended to adequately serve the SUBJECT PROPERTY, with the nearest VILLAGE owned and operated public water mains being located at 725 East Roosevelt Road, at the Pinebrook subdivision, South of the Glenbard Acres subdivision; and

**WHEREAS**, the Village of Glen Ellyn (hereinafter referred “GLEN ELLYN”) owns and operates a sanitary sewer system North of the SUBJECT PROPERTY, on the North side of the

Roosevelt Road right-of-way, to which PIN OAK may also connect subject to the provisions of and approval by the VILLAGE and GLEN ELLYN, as set forth within Lombard Ordinance No. 4371, "Authorizing a Common Boundary Agreement Between the Village of Lombard and the Village of Glen Ellyn, "adopted April 22, 1996, as further updated and amended by the VILLAGE and GLEN ELLYN during 2012 (hereinafter referred to as the "Boundary Agreement");

**NOW, THEREFORE,** in consideration of the foregoing premises and in further consideration of the mutual covenants, agreements and conditions herein contained, the Parties hereto agree as follows:

### **1. PUBLIC WATER CONNECTION**

The VILLAGE and PIN OAK represent and warrant to each other as follows:

- A. The VILLAGE owns and operates a public water distribution system.
- B. The VILLAGE has sufficient capacity to provide and will provide potable water to the SUBJECT PROPERTY, such service to be substantially the same as provided to other comparable single-family and commercial areas in the VILLAGE, being provided with water by the VILLAGE in terms of quantity, pressure, quality and cost.
- C. The VILLAGE will provide the opportunity for PIN OAK to connect to its public water system at the aforementioned or other mutually agreed upon locations, and to construct mains and connections as necessary to adequately serve its facility at the SUBJECT PROPERTY, and that such permission shall remain in effect:
  - i. irrespective of how PIN OAK obtains its zoning entitlement (including but not limited to a Conditional Use, Permitted Use, or a map amendment) by DuPage County;
  - ii. even if any entitlement is conditioned upon such connection;
  - iii. subject to the SUBJECT PROPERTY being developed in substantial compliance with the development plans submitted to DuPage County as part of Z10-076, a copy of which are attached hereto as Exhibit B and made a part hereof hereinafter referred to as the "Project");
  - iv. provided that any zoning and/or development entitlements provided by DuPage County are still in full force and effect; and
  - v. provided that the construction, connection and acceptance of the public watermain extensions and service connections to the SUBJECT PROPERTY have been completed within ten (10) years from the execution of this AGREEMENT.
- D. PIN OAK and/or its contractors and assigns, shall apply for all necessary building, development and/or right-of-way construction permits from the VILLAGE as well as any other governmental entities having jurisdiction over

for any work associated with the watermain construction and water connection. Plans associated with said permits shall be designed in accordance with the VILLAGE'S Village Code, Specification Manual, and Subdivision and Development Ordinance, and specifications required of any other governmental entity having jurisdiction over said work.

- E. PIN OAK and/or its contractors and assigns, at their own and sole expense shall install water main extensions in accordance with the plans approved by the VILLAGE or any other governmental entity having jurisdiction over said work.
- F. PIN OAK shall pay all standard and customary VILLAGE water connection charges at the time of permit issuance by the VILLAGE.
- G. PIN OAK shall grant or dedicate all easements reasonably required by the VILLAGE for the construction of the necessary water main extensions serving the SUBJECT PROPERTY.

**2. SANITARY SEWER FACILITIES.**

The VILLAGE and PIN OAK represent and warrant to each other as follows:

- A. The VILLAGE owns and operates a sanitary sewer system within the VILLAGE.
- B. The VILLAGE sanitary system does not serve the SUBJECT PROPERTY with the closest point of connection to said system being a sanitary sewer line located South of the SUBJECT PROPERTY, within the Glenbard Avenue dedicated public right-of-way; said sewer line being approximately 1,300 linear feet South of the SUBJECT PROPERTY.
- C. GLEN ELLYN owns and operates a sanitary sewer line located within the Roosevelt Road right-of-way, North and West of the SUBJECT PROPERTY.
- D. The VILLAGE and GLEN ELLYN have entered into the Boundary Agreement; with said Boundary Agreement providing that the VILLAGE may consent to the connection of selected properties to the GLEN ELLYN sanitary sewer lines, subject to certain terms and conditions as set forth within the Boundary Agreement.
- E. The VILLAGE will provide written consent, in the form of a Resolution adopted by the Corporate Authorities of the VILLAGE, to GLEN ELLYN to provide for a temporary sanitary sewer connection for PIN OAK's facility proposed at the SUBJECT PROPERTY to GLEN ELLYN's sanitary sewer system, with such consent being subject to the following conditions:

- (i). PIN OAK shall, prior to receiving sanitary sewer service through the GLEN ELLYN's sanitary sewer system, also connect to the VILLAGE's public water system; and
  - (ii). PIN OAK shall design, construct and dedicate any such sanitary sewer connections and/or sanitary sewer lines, as required by the governmental entity/entities having jurisdiction over same, and shall be obligated to pay for any costs associated with the design, construction or operation of same.
- F. If, in the event that GLEN ELLYN does not permit connection to its sanitary sewer service, for any reason, PIN OAK shall be obligated to connect to the sanitary sewer system of the VILLAGE, with the VILLAGE allowing PIN OAK to connect to its sanitary sewer system, subject to compliance with all VILLAGE codes and regulations applicable thereto.
- G. Recognizing the temporary nature of the connection to GLEN ELLYN's sanitary sewer system, PIN OAK, and/or its successors and assigns, shall be obligated to disconnect from the GLEN ELLYN sanitary sewer, and connect to the VILLAGE's sanitary sewer, under the first to occur of the following events:
- (i) If a dedicated sanitary sewer line owned or operated by the VILLAGE is constructed and becomes available within 250 feet of SUBJECT PROPERTY, such length to be measured as the closest distance between the constructed line and the perimeter of the SUBJECT PROPERTY;
  - (ii) If any subsequent phases of the Project are constructed (i.e., Phase 2) and/or any additional buildings or building additions are constructed on the SUBJECT PROPERTY;
  - (iii) Upon the passage of ten (10) years from the initial date of occupancy of the PIN OAK Project; or
  - (iv) All, or any portion of the SUBJECT PROPERTY is sold, or title thereto is transferred.

When the first of the provisions set forth above occurs, the VILLAGE shall provide written notice to PIN OAK to connect to the VILLAGE's sanitary sewer system. Upon receipt of said notice, PIN OAK shall immediately take all actions as required to disconnect from GLEN ELLYN's sanitary sewer system and connect to the VILLAGE's sanitary sewer system within six (6) months of such written request. Said disconnection and connection shall be done in conformance with all applicable laws, rules and regulations. If in the event the SUBJECT PROPERTY is to be sold, or title thereto is to be otherwise transferred, PIN OAK shall inform the VILLAGE of said sale in writing prior to the closing.

3. **DEDICATION OF PUBLIC IMPROVEMENTS.** At such time that PIN OAK has completed any required public improvements that will be subject to the



jurisdiction of the VILLAGE, in accordance with the submitted and approved plans and per the VILLAGE's Subdivision Ordinance regulations, and said public improvements have been inspected and approved by the VILLAGE Engineer, the VILLAGE shall accept said public improvements subject to the two (2) year maintenance guaranty provision of the Subdivision Ordinance.

4. **ANNEXATION.** PIN OAK and the VILLAGE both recognize that the SUBJECT PROPERTY is located within the VILLAGE's extra-territorial jurisdiction and is contiguous to the VILLAGE's corporate limits. PIN OAK will not request annexation of the SUBJECT PROPERTY to any municipality other than the VILLAGE, except by with the prior written consent of the VILLAGE.

5. **VILLAGE ASSISTANCE.** The VILLAGE represents that it will provide reasonable assistance from VILLAGE staff, including consultation, communication, and attendance at meetings, subject to VILLAGE staff availability, as PIN OAK pursues grants (such as Community Development Block Grants) or other means to offset the costs of the public improvements referenced in this Agreement. Such assistance, however, shall not be interpreted to mandate VILLAGE support or approval, should PIN OAK seek approval from other entities for the Project. Except as provided in Section 2G above, the VILLAGE will, however, support time extensions, as otherwise required by the ordinances of DuPage County, to facilitate the Project and public improvements construction.

6. **GENERAL PROVISIONS.**

A. **Notices.** Notice or other writings which either Party is required to, or may wish to, serve upon the other Party in connection with this AGREEMENT shall be in writing and shall be delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to the VILLAGE  
:

President and Board of Trustees  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148

With Copies to:

Village Manager  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148  
and  
Director of Community Development  
Village of Lombard  
255 East Wilson Avenue  
Lombard, Illinois 60148

and  
Thomas P. Bayer  
Klein, Thorpe and Jenkins, Ltd.  
20 North Wacker Drive  
Suite 1660  
Chicago, Illinois 60606

If to PIN OAK :

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other individuals or entities, or such other address or addresses as either Party may from time to time designate in a written notice to the other Party.

**B. Continuity of Obligations.**

This AGREEMENT and each and all of the covenants, obligations and conditions hereof, shall inure to the benefit of and be binding upon successors and assigns of PIN OAK, as covenants running with the SUBJECT PROPERTY, and shall inure to the benefit of and be binding upon the successors in office of the officers of the VILLAGE, and any successor municipal corporation of the VILLAGE.

**C. Remedies.** The VILLAGE and PIN OAK, and their successors and assigns, covenant and agree that in the event of default of any of the terms, provisions or conditions of this AGREEMENT by either Party, or their successors or assigns, which default exists uncorrected for a period of thirty (30) days after written notice to the Party to such default, the Party seeking to enforce said provision shall have the right of specific performance and if said Party prevails in a court of law, it shall be entitled to specific performance. It is further expressly agreed by and between the Parties hereto that the remedy of specific performance herein given shall not be exclusive of any other remedy afforded by law to the Parties, or their successor or successors.

**D. Conveyances.** Nothing contained in this AGREEMENT shall be construed to restrict or limit the right of PIN OAK to sell or convey all or any portion of the SUBJECT PROPERTY, whether improved or unimproved, except as otherwise specifically set forth herein. However, should such conveyance occur, the provisions and obligations as set forth herein shall remain in full force and effect.

- E. Survival of Representation.** Each of the Parties agrees that the representations, warranties and recitals set forth in the preambles to this AGREEMENT are material to this AGREEMENT and the Parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this AGREEMENT and the same shall continue during the period of this AGREEMENT.
- F. Captions and Paragraph Headings.** The captions and paragraph headings used herein are for convenience only and are not part of this AGREEMENT and shall not be used in construing it.
- G. Reimbursement to VILLAGE for Legal and Other Fees and Expenses.**

(i) To the Effective Date of Agreement. PIN OAK, shall reimburse the VILLAGE for the following expenses incurred in the preparation and review of this AGREEMENT, and any ordinances, letters of credit or other documents relating to the SUBJECT PROPERTY:

- (a) the costs incurred by the VILLAGE for engineering services, permitting fees, and construction costs;
- (b) all reasonable attorneys' fees incurred by the VILLAGE in connection with this AGREEMENT; and
- (c) miscellaneous VILLAGE expenses, such as legal publication costs, recording fees and copying expenses.

(ii) From and After Effective Date of Agreement. Except as provided in this subsection, upon demand by VILLAGE made by and through its Director of Community Development, PIN OAK shall promptly reimburse VILLAGE for all reasonable expenses and costs incurred by VILLAGE in the administration of this AGREEMENT, including engineering fees, attorneys' fees and out-of-pocket expenses.

Such costs and expenses incurred by VILLAGE in the administration of the AGREEMENT shall be evidenced to PIN OAK upon its request, by a sworn statement of the VILLAGE; and such mutually agreed upon costs and expenses may be further confirmed by PIN OAK at its option from additional documents designated from time to time by PIN OAK relevant to determining such costs and expenses.

Notwithstanding the foregoing, PIN OAK shall in no event be required to reimburse VILLAGE or pay for any expenses or costs of VILLAGE as aforesaid more than once, whether such are reimbursed or paid through special assessment proceedings, through fees established by VILLAGE ordinances or otherwise.

(iii) In the event that any third party or parties institute any legal proceedings against PIN OAK and/or the VILLAGE, which relate to the terms of this AGREEMENT, then, in that event, the PIN OAK, on notice from VILLAGE shall assume, fully and vigorously, the entire defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however:

(a) PIN OAK shall not make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the VILLAGE; and

(b) If the VILLAGE, in its reasonable discretion, determines there is, or may probably be, a conflict of interest between VILLAGE and PIN OAK, on an issue of importance to the VILLAGE having a potentially substantial adverse effect on the VILLAGE, then the VILLAGE shall have the option of being represented by its own legal counsel. In the event the VILLAGE exercises such option, then PIN OAK shall reimburse the VILLAGE, from time to time on written demand from the Director of Community Development and notice of the amount due, for any expenses, including but not limited to court costs, reasonable attorneys' fees and witnesses' fees, and other expenses of litigation, incurred by the VILLAGE in connection therewith.

4. In the event the VILLAGE institutes legal proceedings against PIN OAK for violation of this AGREEMENT and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against PIN OAK all expenses of such legal proceedings incurred by VILLAGE, including but not limited to the court costs and reasonable attorneys' fees, witnesses' fees, etc., incurred by the VILLAGE in connection therewith (and any appeal thereof). PIN OAK may, in its sole discretion, appeal any such judgment rendered in favor of the VILLAGE against PIN OAK. The rights grant to the VILLAGE pursuant to this subsection shall be reciprocal to the PIN OAK.

**H. No Waiver or Relinquishment of Right to Enforce AGREEMENT.** Failure of either Party to this AGREEMENT to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions

herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of said Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.

- I. **VILLAGE Approval or Direction.** Where VILLAGE approval or direction is required by this AGREEMENT, such approval or direction means the approval or direction of the Corporate Authorities of the VILLAGE unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this AGREEMENT.
- J. **Recording.** This AGREEMENT, upon signing by both Parties hereto, shall be recorded by the VILLAGE in the office of the Recorder of Deeds of DuPage County, Illinois. This AGREEMENT and any amendment thereto shall be recorded by the VILLAGE at the expense of PIN OAK.
- K. **Authorization to Execute.** The officers of PIN OAK executing this AGREEMENT warrant that they have been lawfully authorized by PIN OAK's Board of Directors to execute this AGREEMENT on behalf of PIN OAK. The President and Clerk of the VILLAGE hereby warrant that they have been lawfully authorized by the Corporate Authorities of the VILLAGE to execute this AGREEMENT. PIN OAK and the VILLAGE shall deliver to each other upon request copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this AGREEMENT on behalf of the respective Parties.
- L. **Amendment.** This AGREEMENT sets forth all promises, inducements, agreements, conditions and understandings between the PIN OAK and the VILLAGE relative to the subject matter thereof, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this AGREEMENT shall be binding upon the Parties hereto unless authorized in accordance with law and reduced in writing and signed by them.
- M. **Counterparts.** This AGREEMENT may be executed in two (2) or more counterparts, each of which taken together, shall constitute one and the same instrument.
- N. **Conflict Between the Text and Exhibits.** In the event of a conflict in the provisions of the text of this AGREEMENT and the Exhibits attached hereto, the text of the AGREEMENT shall control and govern.

- O. **Definition of VILLAGE.** When the term VILLAGE is used herein it shall be construed as referring to the Corporate Authorities of the VILLAGE unless the context clearly indicates otherwise.
- P. **Execution of AGREEMENT.** This AGREEMENT shall be signed last by the VILLAGE and the President of the VILLAGE shall affix the date on which he/she signs this Agreement on Page 1 hereof, which date shall be the “Effective Date of this AGREEMENT.”
- Q. **Term of AGREEMENT.** This AGREEMENT shall be in full force and effect for a term of twenty (20) years from and after date of Effective Date of this AGREEMENT.
- R. **Venue.** The Parties hereto agree that for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement, or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

7. **Recapture of Public Improvements Construction Costs.** The Parties recognize that PIN OAK is obligated to undertake public watermain improvements, and possibly sanitary sewer improvements, as set forth in this AGREEMENT (hereinafter referred to as the “public improvements” in this Section). Pursuant to Section 154.307 of the VILLAGE’S Subdivision Ordinance, the VILLAGE shall allow for a recapture agreement relative to the public improvements in compliance with 65 ILCS 5/9-5-1 (hereinafter referred to as the “Recapture Agreement”); a copy of the format for said Recapture Agreement being attached hereto as Exhibit C and made part hereof. PIN OAK and the VILLAGE will enter into the Recapture Agreement pursuant to which PIN OAK shall be entitled to recapture a portion of its costs incurred relative to the public improvements construction from properties adjacent to the proposed public improvements which are constructed by PIN OAK, and will benefit from said public improvements. Once the actual costs of construction are known for the public improvements, the VILLAGE shall enter into the Recapture Agreement with the PIN OAK, with the dollar amount based upon the following formula:

$$\frac{\text{(Frontage of the Property in Feet)}}{\text{(Total Length of frontage along the PIN OAK constructed public improvement, inclusive of the SUBJECT PROPERTY)}} \times \text{Cost of the Public Improvements as Certified by PIN OAK’S Engineer}$$

The recapture amount shall be increased by a factor of \_\_\_\_\_ per annum, not cumulative, until paid.

For purposes hereof, the “cost of Public improvements” shall be defined as all of the costs expended by PIN OAK in constructing the public improvements that



will become subject to the jurisdiction of the VILLAGE pursuant to this AGREEMENT. The Recapture Agreement shall be recorded against each of the affected parcels, at the expense of the PIN OAK .

Additionally, PIN OAK, at its discretion, may waive its right to all or a portion of the dollar amount under the Recapture Agreement, in accordance with all applicable laws and regulations.

Said Recapture Agreement shall be for a period of twenty (20) years from the date the proposed public improvements have been accepted by the VILLAGE as part of the Village's watermain and/or sanitary sewer system(s).

**IN WITNESS WHEREOF**, the Parties hereto have caused this AGREEMENT to be executed the day and year first above written.

PIN OAK COMMUNITY CENTER (MUSLIM COMMUNITY ASSOCIATION OF THE WESTERN SUBURBS)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

VILLAGE OF LOMBARD  
DU PAGE COUNTY, ILLINOIS

\_\_\_\_\_

William J. Mueller  
Village President

ATTEST: \_\_\_\_\_

Brigitte O'Brien  
Village Clerk

**STATE OF ILLINOIS )  
COUNTY OF DU PAGE )**

I, the undersigned, a Notary Public, in and for the County and State aforesaid, do hereby certify, that WILLIAM J. MUELLER and BRIGITTE O'BRIEN, personally known to me to be respectively the Village President and Village Clerk of the Village of Lombard, DuPage County, Illinois, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk they signed and delivered the said instrument as Village President and Clerk of said Village, and caused the corporate seal of said Village to be affixed thereto, pursuant to authority given by the Board of Trustees of said Village, as their free and voluntary act, and as the free and voluntary act and deed of said VILLAGE for the uses and purposes therein set forth.

Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

**STATE OF ILLINOIS )  
COUNTY OF DU PAGE )**

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

Given under my hand and seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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

## SCHEDULE OF EXHIBITS

**RESOLUTION NO. \_\_\_\_\_-12**

**A RESOLUTION AUTHORIZING THE SIGNATURE OF THE VILLAGE PRESIDENT  
AND VILLAGE CLERK ON A LETTER RELATIVE TO UTILITY CONNECTIONS  
FOR A RELIGIOUS INSTITUTION AT THE PROPERTY LOCATED AT  
807 WEST ROOSEVELT RD, 1208 LAWLER, 1210 LAWLER,  
1S055 VALLEY ROAD, LOTS 3-5 GLENBARD ACRES  
IN UNINCORPORATED DU PAGE COUNTY**

WHEREAS, in September, 2011 DuPage County approved a request for conditional use for the construction and operation of a religious institution on the properties located at 807 West Roosevelt Road, 1208 Lawler, 1210 Lawler, 1 S 055 Valley Road, Lots 3-5 Glenbard Acres, all in Lombard, Illinois. DuPage County, Case Number Z10-076; and,

WHEREAS, the subject property is located within the Village of Lombard's corporate limits and is therefore within the Village of Lombard's planning jurisdiction pursuant to 65 ILCS 5/7-4-1; and

WHEREAS, as part of this petition the Corporate Authorities found that the proposed project has existing partial commercial zoning and the Village's plan designations for commercial uses for the site; and

WHEREAS, the Corporate Authorities found that the use would be similar to any other commercial enterprise and that the plan should provide full public improvements as part of the project approval that would commonly be required for other commercial ventures; and

WHEREAS, the Village Board filed a Resolution of Objection with DuPage County (Resolution 9-12) objecting to the petition as it did not provide for public utility connections; and

WHEREAS, as part of this development, the property owner (Muslim Community Association of the Western Suburbs) is seeking to connect to public utilities through a utilities agreement with the Village; and

WHEREAS, the Village represents that utilities connections can be supported but only through the provisions represented by and set forth by the Village to the Association.



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 President and Village Clerk are hereby authorized to sign the attached letter expressing the position of the Corporate Authorities of the Village of Lombard as it pertains to public utility connections for the proposed religious institution located at 807 West Roosevelt Road in unincorporated DuPage County.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2012.

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

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

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

Approved this \_\_\_\_\_, day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
William J. Mueller, Village President

ATTEST:

\_\_\_\_\_  
Brigitte O'Brien, Village Clerk



## VILLAGE OF LOMBARD

255 E. Wilson Ave.  
Lombard, Illinois 60148-3926  
(630) 620-5700 Fax (630) 620-8222  
www.villageoflombard.org

May 17, 2012

**Village President**  
William J. Mueller

**Village Clerk**  
Brigitte O'Brien

**Trustees**  
Greg Alan Gron, Dist. 1  
Keith T. Giagnorio, Dist. 2  
Zachary C. Wilson, Dist. 3  
Peter Breen, Dist. 4  
Laura A. Fitzpatrick, Dist. 5  
William "Bill" Ware, Dist. 6

**Village Manager**  
David A. Hulseberg

*"Our shared Vision for Lombard is a community of excellence exemplified by its government working together with residents and businesses to create a distinctive sense of spirit and an outstanding quality of life."*

*"The Mission of the Village of Lombard is to provide superior and responsive governmental services to the people of Lombard."*

Muslim Community Association of the Western Suburbs  
c/o Talha Ali  
1261 South Lloyd Avenue  
Lombard, IL 60148

### **Re: Lombard Connection to Public Utilities**

Dear Mr. Ali:

This correspondence is being provided to you to provide direction to the Muslim Community Association of the Western Suburbs as it pertains to the connection to public utilities provided by the Village of Lombard.

As you are aware, the Village has expressed its desire to have your proposed religious institution connect to public water and sanitary sewer utilities. While your subject property is currently unincorporated, it is contiguous to and within the Village's ultimate municipal boundaries. The Village has noted that the property can be served by Village utilities provided that you extend the water and sanitary sewer service lines to your property. The Village staff has set forth a framework for connections to facilitate such connections. Through these discussions and recognizing financial constraints of your organization, the Village also raised the possibility of allowing for a temporary connection to the existing Glen Ellyn sanitary sewer lines on the north side of Roosevelt Road.

In discussion of a draft agreement with Village staff, there are several areas of concern as it pertains to the proposed agreement. In consideration of these matters, the Corporate Authorities of the Village provides your organization with the following representations that would need to be incorporated into the utility agreement. These include:

1. Sanitary Sewer Connection – The Village will require Pin Oak to connect to the Village sanitary sewer system within ten years of construction completion or when one of three other conditions set forth within the draft agreement are met, whichever comes first. This provision should provide the opportunity for your organization to provide an escrow agreement to pay for the utility connections upon the expiration of the ten year period, in lieu of constructing the improvements at this time.

2. Annexation – The Village will require that the agreement provide for the annexation of the property in the future. If you want assurances regarding zoning or other entitlements associated with annexation, we can explore those opportunities within a companion annexation agreement. However, consistent with past practice, we would not be supportive of removing the annexation provision from the agreement in its entirety.
3. Transfer of Ownership Provisions – The Village would want the utility connection provision to remain if the property ownership were to change, which is consistent with the approach we have taken for other properties when utility connections were not present at a site.
4. Material Changes to the Plan – The Village will want the agreement to tie the County approval to the utility connection. This is particularly the case if there were material changes to the plan that result in additional occupancy, additional structures or other improvements that increase the intensity or change the land use of the site. The Village can work with you to address modifications that do not change the use or increase the intensity of the site.
5. Legal Fees and Expenses – While we will require reimbursement for legal review of the document and the requirement to provide a defense in the event of litigation related to the agreement, we can provide for language to ensure that your liability concerns associated with the improvements themselves is addressed.

In closing, we do want to note our desire to work with you on the utility connections but we must also ensure that such connections are to mutual benefit. As such, we believe these representations can provide you with direction and clarity on our positions associated with this matter.

If you have additional questions regarding these representations, please feel free to contact me or William Heniff, Lombard Community Development Director.

Respectfully,

VILLAGE OF LOMBARD

William J. Mueller  
Village President

Brigitte O'Brien  
Village Clerk