

030964

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

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

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: William T. Lichter, Village Manager

DATE: January 20, 2004 (COW) (B of T) Date: February 5, 2004

TITLE: Agreement to Reimburse Costs, Shell Oil, 935 E. St. Charles

SUBMITTED BY: John Burg, Assistant Director of Public Works



BACKGROUND/POLICY IMPLICATIONS:

This agreement provides for reimbursement for legal and environmental consultant costs to evaluate the impact of petroleum releases from the Shell Oil property at 935 E. St. Charles Road. Shell Oil tendered a check in the amount of \$2,000 with this agreement. The maximum reimbursement under this agreement is \$10,000. A simple motion to authorize the Village President to sign this agreement is necessary.

Fiscal Impact/Funding Source:

None

Review (as necessary):

Village Attorney X	_____	Date	_____
Finance Director X	<u>Richard J. Flood</u>	Date	<u>01/29/04</u>
Village Manager X	<u>W. T. Lichter</u>	Date	<u>1/29/04</u>

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.

LAW OFFICES
KLEIN, THORPE AND JENKINS, LTD.

SUITE 1660
20 NORTH WACKER DRIVE
CHICAGO, ILLINOIS 60606-2903

TELEPHONE (312) 984-6400
FACSIMILE (312) 984-6444
FACSIMILE (312) 606-7077

ORLAND PARK OFFICE
15010 S. RAVINIA AVE., SUITE 17
ORLAND PARK, IL 60462-3162
TELEPHONE (708) 349-3888
FACSIMILE (708) 349-1506

PATRICK A. LUCANSKY
E. KENNETH FRIKER
GERARD E. DEMPSEY
TERRENCE M. BARNICLE
BRUCE A. ZOLNA
JAMES P. BARTLEY
MICHAEL J. DUGGAN
THOMAS P. BAYER
DENNIS G. WALSH
SCOTT F. UHLER
EVERETTE M. HILL, JR.
JANET N. PETSCH
JAMES V. FEROLLO
MICHAEL T. JURUSIK
THOMAS M. MELODY

DEC 20 2003

RINDA Y. ALLISON
LANCE C. MALINA
KATHLEEN T. HENN
GEORGE A. WAGNER
JAMES G. WARGO
SUZANNE M. FITCH
MICHAEL A. MARRS
SHAWN P. LEE

OF COUNSEL
RICHARD T. WIMMER
JAMES A. RHODES

WRITER'S DIRECT DIAL
(312) 984-6410

WRITER'S E-MAIL
dgwalsh@ktjnet.com

December 19, 2003

Mr. Stanley H. Rickard
Director of Public Works
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60148

Re: Highway Authority Agreement Request
Shell Oil Company
935 E. St. Charles Road, Lombard, IL

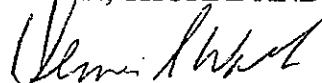
Dear Stan:

With respect to the above-captioned site, enclosed please find a copy of the "Agreement to Reimburse Costs" that was signed by a representative of Shell Oil Company to reimburse the legal and consulting fees. Please have the Agreement dated, properly executed and a copy returned to me so that I can forward a copy of the same to the representative for Shell Oil Company. Also enclosed is the initial deposit of \$2,000.00. Please let me know if there is a particular environmental consultant the Village would like us to use on this site. If not, I will contact one who has done similar environmental consulting work for other villages. As you know, I have structured these Highway Authority Agreement request matters so that the Village is reimbursed for all costs associated with them. Once we have had the opportunity to review the documents submitted by Shell Oil, we will then be in contact with you to discuss the same.

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

Very truly yours,

KLEIN, THORPE AND JENKINS, LTD.



Dennis G. Walsh

cc: William T. Lichter, Village Manager
David Hulseberg, Director of Community Development
Thomas P. Bayer

AGREEMENT TO REIMBURSE COSTS

Date: _____

Requester: SHELL OIL COMPANY

**Affected Property: 935 E. St. Charles Road
Lombard, Illinois**

Prepayment: \$2,000.00

Maximum: \$10,000.00

Recitals

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

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

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

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

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

NOW IT IS AGREED BETWEEN REQUESTER AND THE VILLAGE:

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

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

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

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

4. Requester Promise to Reimburse. Requester agrees to reimburse the Village for all of the costs of legal and technical consultants retained by the Village in connection with the Village's preliminary determination (including the preparation of this Agreement) and the negotiation of any HAA. While the Village agrees to exercise reasonable control over its incurrence of costs, it does not commit that its costs will be less than a particular sum. Provided, however, it is understood Requester does not agree to pay an amount greater than the Maximum stated above, except upon Requester's express written supplemental direction to the Village. Reimbursement of a consultant's cost shall be made to the Village Treasurer not later than seven (7) days following the Requester's receipt of a copy of the consultant's statement.

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

6. Termination. This Agreement to Reimburse Costs shall terminate upon the earlier of that date that the Village issues its preliminary determination, if that determination is not to enter HAA negotiations; or, upon the date the HAA becomes effective by its terms. Otherwise, this Agreement

may be terminated by either party upon three (3) days written notice to the other. All costs incurred by the Village prior to its sending or receipt of such notice are reimbursable.

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

REQUESTER:

SHELL OIL COMPANY

By: S. J. Kirk

Its: Regional Manager

VILLAGE OF LOMBARD

By: _____

Its: _____