

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: August 19, 2022 (BOT) Date: September 1, 2022

SUBJECT: Intergovernmental Agreement with Lombard School District 44 regarding
the use of the Village of Lombard Fuel Facility

SUBMITTED BY: Carl S. Goldsmith, Director of Public Works 

BACKGROUND/POLICY IMPLICATIONS:

A Resolution authorizing the signature of the President and Clerk on an Intergovernmental Agreement with Lombard School District 44 regarding the use of the Village of Lombard's fuel facility. The IGA provides for the Village to provide fuel at the Village's cost, but impose a surcharge of \$.10 per gallon to fund ongoing maintenance and capital expenses related to the fuel facility.

Fiscal Impact/Funding Source:

Review (as necessary):

Finance Director _____ Date _____
Village Manager _____ 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.



August 19, 2022

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

FROM: Carl Goldsmith, Director of Public Works 

SUBJECT: Intergovernmental Agreement with Lombard School District 44 regarding the use of the Village of Lombard Fuel Facility

Background

The Village of Lombard owns and maintains a fuel facility located at the Public Works facility. The fuel facility was constructed in 2016 and is used to fuel Village vehicles, as well as vehicles owned and operated by other governmental agencies. The Village currently provides fuel to the other agencies at no additional cost to those agencies beyond the cost for the fuel. The Village pays for all operating, maintenance and capital costs related to the station.

As part of the review of operations, staff has determined that it is appropriate for the other agencies to pay a portion of the costs to operate the fuel facility. As such, the attached IGA has been developed. There are currently no formal agreements with the other agencies governing the use of the fuel facility. The IGA provides the following:

- The Village shall allow access to the Lombard School District 44 for the use of the fuel facility
- The District will pay the Village a per gallon rate equal to the rate paid by the Village for each gallon of gasoline pumped by the District
- The Village will invoice the District once per month and the District shall pay the invoice within 30 days of receiving the invoice
- The Village will impose a service fee of \$.10/gallon
- The term of the agreement is five years

Based upon the average fuel consumption by Lombard School District 44 over the past three (3) years, the service fee is \$325.87. The IGA has been reviewed by the Village Attorney and is consistent with past IGAs executed by the Village. I respectfully request that this item be placed on the Village Board's agenda for the September 1, 2022 meeting.

Recommendation

Staff recommends that the Village Board of Trustees approve an Intergovernmental Agreement between the Village of Lombard and Lombard School District 44 regarding the use of the Village Fuel Facility.

RESOLUTION R 22-_____

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF LOMBARD
AND LOMBARD SCHOOL DISTRICT 44 FOR THE PURCHASE OF FUEL**

WHEREAS, the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (SILCS 220/1 et seq.) authorize Intergovernmental Agreements by and between units of Illinois Government; and

WHEREAS, the corporate authorities of the Village of Lombard, DuPage County and the Lombard School District 44 deem it reasonable and appropriate to enter into an Intergovernmental Agreement for the Purchase of Fuel; and

WHEREAS, both parties agree to the terms, conditions and pricing set forth in the Intergovernmental Agreement between the Village of Lombard and Lombard School District 44 for the Purchase of Fuel as set forth herein as Exhibit A.

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 _____, 2022, pursuant to a roll call vote as follows:

Ayes: _____

Nays: _____

Absent: _____

Approved by me this _____ day of _____, 2022.

Keith Giagnorio
Village President

ATTEST:

Elizabeth Brezinski
Village Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE VILLAGE OF LOMBARD
AND LOMBARD ELEMENTARY DISTRICT 44 FOR THE PURCHASE OF
FUEL**

THIS AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this _____ day of _____, 2022, by and between the Village of Lombard, DuPage County, Illinois (hereinafter referred to as the "Village") and Lombard Elementary District 44, DuPage County, Illinois (hereinafter referred to as the "District"), pursuant to the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

RECITALS

WHEREAS, the Village owns and operates a fueling station for storing and dispensing gasoline for its municipal vehicles (hereinafter the "Fueling Station") which is located at 1051 S. Hammerschmidt Avenue, Lombard, Illinois 60148; and

WHEREAS, the Village is able to purchase fuel for the Village Fueling Station in bulk at wholesale spot market prices; and

WHEREAS, the District desires to recognize similar fuel cost savings by purchasing gasoline for its District vehicles from the Village utilizing the Village Fueling Station; and

WHEREAS, the Village and the District believe that allowing the District to purchase gasoline for its vehicles from the Village utilizing the Village Fueling Station, are in the best interests of the residents of the Village and the residents of the District; and

WHEREAS, the Village and the District are entering into this Agreement based upon the Intergovernmental Cooperation provisions of the Illinois Constitution and the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.), and such other applicable power and authority as may exist.

NOW, THEREFORE, for and in consideration of the promises and mutual understandings and agreements of the parties hereto, as hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the Village of Lombard, DuPage County, Illinois, and Lombard Elementary District 44, DuPage County, Illinois, as follows:

Section 1. Incorporation of Recitals.

The Recitals to this Agreement and any exhibits thereto are hereby incorporated into this Agreement as if fully set forth in this Section 1.

Section 2. District Access to Village Fueling Station.

The Village agrees to allow the District to fuel its vehicles at the Village Fueling Station throughout the term of this Agreement, on the following terms and conditions:

- a) Except as otherwise provided herein, the District shall be permitted to fuel District owned vehicles at the Village Fueling Station without restriction whenever the Village Fueling Station is open and operational;
- b) The Village will assign one key fob to the District for each vehicle in the District fleet. That key fob shall be used by District personnel to access the Village Fueling Station when fuel is dispensed, in order to track the District's fuel consumption;
- c) The District shall pay the Village a per gallon rate equal to the rate paid by the Village for each gallon of gasoline pumped by the District;
- d) The District shall also pay the Village a service fee in the amount of \$0.10 per gallon ("Service Fee") for the cost of administration, operation, maintenance and future replacement of the fueling facility;
- e) The Village shall invoice the District once per month for all fuel dispensed to the District for the period since the date of the last invoice, together with the Service Fee charges. The invoiced amount shall be the per gallon (or gallon equivalent) based on the most recent fuel purchase cost paid by the Village charged by the vendor multiplied by the number of gallons (or gallon equivalent) dispensed together with the Service Fee;
- f) The District shall pay all invoices received from the Village within thirty (30) days of receipt from the Village;
- g) The Village Fueling Station shall not be used to dispense fuel into personal vehicles or containers that are not authorized or appropriate for such purposes;
- h) Village vehicles shall have priority access to fuel facilities at all times;

- i) Drivers of unmarked District vehicles shall present identification at the Village Fueling Station if requested;
- j) The Village's sale of fuel shall be limited to fuel not necessary for the Village's operations and the Village does not guarantee that there will be sufficient fuel available for District purchase, but the Village shall attempt to maintain sufficient quantities of fuel based upon the District's purchase history; and
- k) District personnel shall abide by all rules, regulations, guidelines and notices issued by the Village or posted at the Village Fueling Station.

Section 3. Repairs and Maintenance.

The Village shall be responsible for all repair and maintenance of the Village Fueling Station and the equipment related thereto, provided however the District shall be responsible for any damage caused to the Village Fueling Station or any related equipment by any District personnel. The Village reserves the right to temporarily suspend the District's use of the Village Fueling Station due to improvements thereto.

Section 4. Warranty Disclaimer and Assumption of Risk.

All fuel dispensed to the District is purchased "as-is" and the Village makes no warranty, express, implied or otherwise, including, but not limited to any warranties of merchantability or fitness for a particular purpose. The District assumes all risk of injury, damage, and/or loss sustained by the District associated with the dispensing of fuel to District owned vehicles and any and all activities of its personnel at the Village's Fueling Station.

Section 5. Term of Agreement.

The Intergovernmental Agreement shall be in effect for an initial five (5) year term commencing on October 1, 2022 and ending on September 30, 2027, and shall be automatically renewed from year to year thereafter, unless the Village or the District elect to terminate the Agreement by providing sixty (60) day written notice to the other party, prior to the end of the then current term. In the event of such notice by the Village or the District, this Agreement shall end and all rights, privileges, and understandings created hereunder shall cease at the end of the then current term. In the event of termination, the Village shall be entitled to compensation for all fuel dispensed to the District prior to the effective date of termination, and District shall return all key fobs to the Village within seven (7) calendar days of the date of termination.

Section 6. Suspension; Early Termination.

If the Village determines that the District is in default under any of the provisions of this Agreement, whether due to failure or inability to perform or any other cause

whatsoever, the Village, after written notification to the District of said non-compliance or default and failure by the Grantee to correct said violations within thirty (30) calendar days, may:

- i. Suspend or terminate this Agreement in whole or in part by written notice, and/or;
- ii. Temporarily withhold access to the Fueling Station pending correction of deficiencies by the District; or
- iii. Take other remedies legally available.

Section 7. Notice.

Any notice required under this Agreement shall be sent by certified mail, return receipt requested, with sufficient postage attached thereto and shall be deemed given on the date of the post mark and shall be sent to:

If to the Village: Director of Public Works
Village of Lombard
255 E. Wilson Avenue
Lombard, IL 60148

With a copy to: Village Attorney
Klein, Thorpe & Jenkins, Ltd.
15010 S. Ravinia Avenue, Ste 10
Orland Park, IL 60462-5353

If to the District: Lombard Elementary District 44
150 W. Madison Street
Lombard, IL 60148

With a copy to:

Section 8. Complete Agreement.

This Agreement, and any Exhibits attached hereto, shall represent the complete agreement and understanding of the parties hereto with respect to all matters regarding the subject matter of this Agreement. All prior agreements or understandings, whether written or oral, shall be of no force, effect or consequence.

Section 9. Amendment.

Any amendment to this Agreement must be in writing, signed by each of the parties, and adopted in the same manner as is required for adoption of this Agreement.

Section 10. Approval.

This Agreement shall not be effective unless each party shall approve this Agreement by ordinance or resolution after a lawful vote of its governing body.

Section 11. Indemnification.

The District agrees to save, hold harmless, indemnify, and defend the Village, its officials, officers and employees, from and against any and all claims and liability for all loss (including the quantity or quality of fuels received), damage, injury or death caused by or arising out of the performance of this Agreement or the failure to perform this Agreement except to the extent said loss, damage, injury or death is caused by the negligence of the Village, its officials, officers or employees.

Further, the District agrees to assume the entire liability for all personal injury claims suffered by its own employees and waives any limitation of liability defense based upon the Worker's Compensation Act and cases decided thereunder. The District agrees to indemnify and defend the Village and its officials, officers and employees, from and against all such loss, expense, damage or injury, including reasonable attorney fees, which the Village may sustain as a result of personal injury claims by District's employees, except to the extent those claims arise as a result of the Village's or its appointed and elected officials, officers, president and trustees, employees, attorneys, engineers and agents' own negligence.

Section 12. Insurance.

At all times while this Agreement remains in effect, the District shall procure adequate insurance and/or self-insurance to protect itself, its officers, employees and agents from any liability for bodily injury, death, and property damage in connection with the fueling of its vehicles and to provide sufficient coverage to comply with the indemnification provision set forth in Paragraph 10 of this Agreement.

Section 13. Benefit of Parties.

Notwithstanding any provision herein to the contrary, this Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or implied, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a Party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory

immunities and/or privileges of the Village and/or District; and/or any of their respective officers, employees, volunteers and/or agents; such immunities and privileges are expressly reserved.

Section 14. Severability.

This Agreement and every provision thereof, shall be considered severable. In the event that any court of competent jurisdiction may find and declare any word, phrase, clause, sentence, paragraph, provision or section or part of a phrase, clause, sentence, paragraph, provision or section of this agreement is void or unconstitutional, the remaining words, phrases; clauses; sentences, paragraphs and provisions and parts of phrases, clauses, sentences, paragraphs, provisions and sections not ruled void or unconstitutional shall continue in full force and effect.

Section 15. Multiple Counterparts.

This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which taken together shall be deemed on (1) Agreement.

Section 16. Headings.

All Section headings contained herein are for convenient reference only and shall not be deemed a part of the text of this Agreement.

Section 17. Survival.

All obligations arising prior to the termination of this Agreement and the indemnity provision shall survive the termination of this Agreement.

Section 18. No Waiver of Tort Immunities.

Nothing contained in this Agreement is intended to constitute nor shall constitute a waiver of the rights, defenses, and immunities provided or available to either Party under the Illinois Local Governmental and Governmental Employees Tort Immunity Act with respect to claims by third parties.

Section 19. Attorneys' Fees.

In the event that the Village is forced to file suit to collect unpaid invoices due the Village from the District under this Agreement, the Village shall be entitled to recover from the District the Village's court costs, expert witness fees and reasonable attorneys' fees

incurred in the course of its collection efforts.

WHEREFORE, the parties have executed this Agreement on the day and date first above written.

Village of Lombard

Lombard Elementary District 44

By: _____
Village President

By: _____
Board President

ATTEST:

ATTEST:

By: _____
Village Clerk

By: _____
Secretary