

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

 X Resolution or Ordinance (Blue) X *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: November 10, 2017 AGENDA DATE: December 7, 2017

TITLE: Ordinance for an Easement Agreement
with the DuPage Forest Preserve District

SUBMITTED BY: Carl Goldsmith, Director of Public Works *g*

BACKGROUND/POLICY IMPLICATIONS:

A permanent access easement secured from the DuPage Forest Preserve District necessary for ingress/egress for the Village's storm water facility.

FISCAL IMPACT/FUNDING SOURCE

\$2,595.00 Easement Fee (Project #: SS 10-01 520.790.715.80040)

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.



November 10, 2017

TO: Village President and Board of Trustees

THROUGH: Scott Niehaus, Village Manager

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

SUBJECT: IL Route 53 Storm Water Pump Station Improvements Permanent Easement

Attached, please find an Ordinance pertaining to a permanent easement to be granted from the DuPage Forest Preserve District.

BACKGROUND

As part of the IL Route 53 Storm Water Pump Station Improvements project, the Village has revised the function of the existing station (west of IL rt. 53). In reviewing the status of the easements for access, it was determined that the Village does not have proper legal rights to utilize property owned by the DuPage Forest Preserve District to access the station. Prior to the construction of I-355, the Village took access to the site from the east, but that access was cut off due to the construction. The Village has been using the access road off of Crescent Boulevard, but wants to perfect its access rights.

The attached Easement Agreement has been drafted that will codify the access via a permanent easement. The Village will be required to pay a fee for the access easement of \$2,595.00 for the 99 year easement. The Agreement has been reviewed by the Village Attorney.

Pursuant to State law, the ordinance must be approved by the Village before the Forest Preserve takes action. Upon Village Board approval of the Ordinance, two original signed Easement Agreements and the associated fee and deposit will be forwarded to the Forest Preserve District for approval. After Forest Preserve District approval, Village staff will take the easement agreement to the DuPage County Recorder's Office to be formally recorded.

RECOMMENDATION

Staff recommends that the Village President and Board of Trustees adopt AN ORDINANCE DECLARING THE NECESSITY FOR THE VILLAGE OF LOMBARD TO USE AND OCCUPY CERTAIN REAL ESTATE OWNED BY THE FOREST PRESERVE DISTRICT OF DUPAGE COUNTY, FOR INGRESS AND EGRESS, PURSUANT TO THE LOCAL GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.).

ORDINANCE NO. _____

**AN ORDINANCE DECLARING THE NECESSITY FOR THE VILLAGE
OF LOMBARD TO USE AND OCCUPY CERTAIN REAL ESTATE
OWNED BY THE FOREST PRESERVE DISTRICT OF DUPAGE
COUNTY, FOR INGRESS AND EGRESS, PURSUANT TO THE LOCAL
GOVERNMENT PROPERTY TRANSFER ACT (50 ILCS 605/0.01 et seq.)**

WHEREAS, the Forest Preserve District of DuPage County (the "District") owns an approximately 32-acre property, which is part of what is commonly known as the Churchill Woods Forest Preserve and is legally described in Exhibit "A" attached hereto and made part hereof (the "Churchill Woods Property"); and

WHEREAS, the Village owns and operates a stormwater pump station on a parcel of Village owned property adjacent to the Churchill Woods Property ("the Station") and gains access to the Station via a gravel driveway on the Churchill Woods Property; and

WHEREAS, the Village desires to obtain a permanent easement to secure rights of ingress to and egress from to the Station, with said permanent easement area being legally described in Exhibit "B" and depicted in Exhibit "C", both of which are attached hereto and made part hereof (the "Easement Premises"); and

WHEREAS, the District and the Village are "municipalities," as defined in Section 1 (c) of the Local Government Property Transfer Act, 50 ILCS 605/1 (c) (the "Transfer Act"); and

WHEREAS, Section 2 of the Transfer Act authorizes municipalities, pursuant to a two-thirds (2/3rds) vote of the members of its corporate authority, to convey real estate to another municipality for any municipal or public purpose of the transferee municipality and upon such terms and conditions as may be agreed to by the municipalities; and

WHEREAS, as a condition precedent to conveyance under Section 2 of the Transfer Act, the transferee municipality must first declare, by ordinance, "that it is necessary or convenient for it to use, occupy or improve the real estate held by the transferor municipality";

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Lombard, DuPage County, Illinois, as follows:

SECTION 1: The foregoing recitals to this Ordinance are hereby determined to be true and correct, and are hereby incorporated in and made part of this Ordinance.

SECTION 2: That it is necessary or convenient for the Village to acquire an easement in the Easement Premises, for the public use of ingress to and egress from the Station, all for the benefit of the Village.

SECTION 3: That Village Staff has negotiated an easement agreement, between the Village and the District, relative to the Village's acquisition of easement rights in the Easement Premises, and in relation thereto, the Corporate Authorities of the Village hereby approve the easement agreement attached hereto as Exhibit "D" and made part hereof (the "Easement Agreement"), and authorize and direct the Village President and Village Clerk to execute said Easement Agreement on behalf of the Village.

SECTION 4: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this __ day of _____, 2017.

First reading waived by action of the Board of Trustees this __ day of _____, 2017.

Passed on second reading this __ day of _____, 2017,

Ayes: _____

Nayes: _____

ABSENT: _____

APPROVED by me this __ day of _____, 2017.

Keith Giagnorio
Village President

ATTEST:

Sharon Kuderna, Village Clerk

Published by me in pamphlet form this _____ day of _____, 2017

Exhibit "A"

Churchill Woods Property

Legal Description:

LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A
SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE
THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED
JUNE 5, 1879 AS DOCUMENT NO. 26582 IN DUPAGE COUNTY, ILLINOIS.
PIN: 05-12-204-001

Exhibit "B"

Easement Premises

LEGAL DESCRIPTION (INGRESS\EGRESS EASEMENT):

THAT PART OF LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1879 AS DOCUMENT NO. 26582 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 11; THENCE NORTHWESTERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 66 DEGREES 07 MINUTES 21 SECONDS WEST, A DISTANCE OF 40.78 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 38 DEGREES 28 MINUTES 54 SECONDS WEST, 51.14 FEET; THENCE SOUTH 29 DEGREES 49 MINUTES 59 SECONDS WEST, 36.77 FEET; THENCE SOUTH 20 DEGREES 11 MINUTES 16 SECONDS WEST, 49.65 FEET; THENCE SOUTH 06 DEGREES 00 MINUTES 05 SECONDS WEST, 19.61 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CRESCENT BOULEVARD (A.K.A. GLENBARD AVENUE); THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 17.87 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE TO A POINT ON A LINE 60.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF SAID LOT 11; THENCE SOUTH 23 DEGREES 44 MINUTES 05 SECONDS WEST, 39.07 FEET TO A POINT ON THE CENTER LINE OF SAID CRESCENT BOULEVARD; THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 35.52 FEET ALONG SAID CENTER LINE TO A POINT ON A LINE 90.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID EASTERLY LINE OF LOT 11; THENCE NORTH 23 DEGREES 44 MINUTES 05 SECONDS EAST, 220.36 FEET TO A POINT ON SAID NORTHERLY LINE OF SAID LOT 11; THENCE SOUTH 66 DEGREES 07 MINUTES 21 SECONDS EAST, 49.22 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

Exhibit "C"

Easement Premises Depiction

(attached)

Exhibit "D"

Easement Agreement

**Prepared by and return to:
Forest Preserve District of
DuPage County
C/O Executive Director
P.O. Box 5000
Wheaton, IL 60189-5000**

**Vacant Land North of Crescent
Blvd. and West of I-355
P.I.N.: 05-12-204-001**

**AN EASEMENT AGREEMENT BETWEEN THE FOREST PRESERVE DISTRICT OF
DUPAGE COUNTY AND THE VILLAGE OF LOMBARD FOR INGRESS AND EGRESS
OVER A PORTION OF CHURCHILL WOODS FOREST PRESERVE**

THIS EASEMENT AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into 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 body politic and corporate, hereinafter referred to as the "VILLAGE." The FOREST PRESERVE DISTRICT and the VILLAGE are sometimes referred herein individually as a "Party," and collectively as the "Parties."

WITNESSETH:

WHEREAS, the FOREST PRESERVE DISTRICT owns Churchill Woods Forest Preserve (hereinafter referred to as "Churchill Woods"); and

WHEREAS, the VILLAGE owns a small 0.5 +/- acre property adjacent to Churchill Woods that contains a stormwater facility (hereinafter referred to as "Village Property"); and

WHEREAS, the VILLAGE desires to use an existing gravel access drive within Churchill Woods in order access the Village Property for maintenance and operation of the storm water facility; and

WHEREAS, the VILLAGE requests the granting of an easement for ingress and egress across a portion of Churchill Woods for access to the Village Property; and

WHEREAS, the FOREST PRESERVE DISTRICT and VILLAGE are municipalities as defined in Section 1(c) of the Local Government Property Transfer Act, 50 ILCS 605/1(c), hereinafter referred to as the "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, the VILLAGE, pursuant to duly passed ordinance, has determined that it is necessary to acquire an easement for ingress and egress across a portion of Churchill Woods; and

WHEREAS, the FOREST PRESERVE DISTRICT has determined that it is reasonable, necessary and in the public interest and welfare to grant the VILLAGE an easement for ingress and egress across a portion of Churchill Woods 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 hereof.

2.0 EASEMENT GRANTED

2.1 The FOREST PRESERVE DISTRICT hereby grants a non-exclusive easement to the VILLAGE upon that portion of Churchill Woods (hereinafter referred to as "Easement Premises") legally described and depicted on the Easement Exhibit attached hereto and incorporated herein as **EXHIBIT "A"** 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.

3.0 PURPOSE OF EASEMENT

3.1 The easement granted herein shall be for the use of the VILLAGE for ingress and egress within the Easement Premises for access to the Village Property for the maintenance and operation of the storm water facility. The easement rights granted herein shall not be used for any other purposes unless prior written consent is obtained from the FOREST PRESERVE DISTRICT's Executive Director.

4.0 FEES AND COSTS

4.1 The VILLAGE shall pay the fees as provided for in this Agreement. The easement fees to be paid by the VILLAGE to the FOREST PRESERVE DISTRICT for the granting of the easement shall be based on the market value of the Easement Premises in accordance with the FOREST PRESERVE DISTRICT's Easement and License Ordinance (No. 96-096). The market value of the Easement Premises has been determined to be \$2,595.00. There are no trees within the Easement Premises and as such, no tree removal fees. The total fee owed by the VILLAGE is \$2,595.00 and shall be paid to the FOREST PRESERVE DISTRICT prior to the FOREST PRESERVE DISTRICT's execution of this Agreement.

4.2 The VILLAGE acknowledges that this Agreement is contingent upon the FOREST PRESERVE DISTRICT receiving the fees outlined above.

5.0 RESTORATION

5.1 If the VILLAGE damages the gravel access drive or landscaping within the Easement Premises while accessing the Easement Premises, the VILLAGE shall restore all damaged areas according to the FOREST PRESERVE DISTRICT's specifications. If the VILLAGE fails to properly restore the Easement Premises or fails to restore any damage occurring outside the boundaries thereof 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. The VILLAGE 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.

6.0 INDEMNIFICATION

- 6.1 To the extent permitted by law, the VILLAGE 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, directly or indirectly, the ingress and egress across the Easement Premises or the performance of any subsequent repair, maintenance or other work on the Easement Premises, 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 the VILLAGE 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 the VILLAGE or its contractors, subcontractors, consultants, employees or agents, the VILLAGE 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. The VILLAGE shall not be responsible for reimbursing the FOREST PRESERVE DISTRICT for any settlement related to this Agreement unless the VILLAGE, through its corporate authorities, agrees to all settlement terms prior to any settlement agreement being executed by the FOREST PRESERVE DISTRICT. Further, the VILLAGE shall have the sole discretion to appoint counsel of its choice to defend the FOREST PRESERVE DISTRICT pursuant to the VILLAGE'S obligations under this Agreement.
- 6.2 The obligation on the part of the VILLAGE to defend, hold harmless and indemnify the FOREST PRESERVE DISTRICT shall survive the expiration or termination of this Agreement.

7.0 BREACH OF AGREEMENT

- 7.1 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 the VILLAGE and the VILLAGE fails to cure the breach within the 30-day period, this Agreement shall automatically terminate 90 days from the date of service of the aforementioned written notice, provided that the 30-day cure period shall be extended for a reasonable time if the breaching Party has undertaken to cure the breach within the 30-day period

and continues to diligently and in good faith to complete the corrective action. If termination is by the FOREST PRESERVE DISTRICT as a result of a breach by the VILLAGE, the VILLAGE shall vacate the Easement Premises and restore the property to its original condition.

7.2 Action by either Party to effectuate a termination shall be without prejudice to the exercise of any other rights provided herein or by law to remedy a breach of this Agreement.

7.3 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.

8.0 NOTICES

8.1 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 the VILLAGE 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.

9.0 MISCELLANEOUS PROVISIONS

9.1 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.

9.2 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 the VILLAGE of the rights granted herein.

9.3 If either 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.

- 9.4 The VILLAGE 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.
- 9.5 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 both Parties.
- 9.6 This Agreement shall be executed in duplicate, and each Party shall retain a fully executed original, all of which shall be deemed to be one Agreement.
- 9.7 Nothing contained in this Agreement, including, but not limited to the indemnification provisions of Section 6.0, is intended to be, nor shall operate as, a waiver by the VILLAGE or the FOREST PRESERVE DISTRICT of the rights, defenses and immunities afforded under the Local Governmental and Governmental Employees Tort Immunity Act.

IN WITNESS WHEREOF, the Parties have entered into this AGREEMENT as of the _____ day of _____, 2017.

**FOREST PRESERVE DISTRICT OF
DU PAGE COUNTY**

VILLAGE OF LOMBARD

BY: _____
Joseph Cantore, President

BY: _____
Keith Giagnorio, Village President

ATTEST: _____
Judith Malahy, Secretary

ATTEST: _____
Sharon Kuderna, Village Clerk

EXHIBIT "A"

EASEMENT PREMISES

LEGAL DESCRIPTION (INGRESS/EGRESS EASEMENT):

THAT PART OF LOT 11 IN THE COUNTY CLERK'S ASSESSMENT DIVISION, BEING A SUBDIVISION OF SECTION 12, TOWNSHIP 39 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 5, 1879 AS DOCUMENT NO. 26582 IN DUPAGE COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST EASTERLY CORNER OF SAID LOT 11; THENCE NORTHWESTERLY ALONG THE NORTHERLY LINE OF SAID LOT 11, HAVING AN ILLINOIS COORDINATE SYSTEM (EAST ZONE) GRID BEARING OF NORTH 66 DEGREES 07 MINUTES 21 SECONDS WEST, A DISTANCE OF 40.78 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 38 DEGREES 28 MINUTES 54 SECONDS WEST, 51.14 FEET; THENCE SOUTH 29 DEGREES 49 MINUTES 59 SECONDS WEST, 36.77 FEET; THENCE SOUTH 20 DEGREES 11 MINUTES 16 SECONDS WEST, 49.65 FEET; THENCE SOUTH 06 DEGREES 00 MINUTES 05 SECONDS EAST, 19.61 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF CRESCENT BOULEVARD (A.K.A. GLENBARD AVENUE); THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 17.87 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE TO A POINT ON A LINE 60.00 FEET NORTHWESTERLY OF AND PARALLEL WITH THE EASTERLY LINE OF SAID LOT 11; THENCE SOUTH 23 DEGREES 44 MINUTES 05 SECONDS WEST, 39.07 FEET TO A POINT ON THE CENTER LINE OF SAID CRESCENT BOULEVARD; THENCE SOUTH 81 DEGREES 22 MINUTES 22 SECONDS WEST, 35.52 FEET ALONG SAID CENTER LINE TO A POINT ON A LINE 90.00 FEET NORTHWESTERLY OF AND PARALLEL WITH SAID EASTERLY LINE OF LOT 11; THENCE NORTH 23 DEGREES 44 MINUTES 05 SECONDS EAST, 220.36 FEET TO A POINT ON SAID NORTHERLY LINE OF SAID LOT 11; THENCE SOUTH 66 DEGREES 07 MINUTES 21 SECONDS EAST, 49.22 FEET ALONG SAID NORTHERLY LINE TO THE POINT OF BEGINNING.

Easement Agreement – Lombard Ingress/Egress 7

