

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COUNTY OF DUPAGE AND THE VILLAGE OF DOWNERS GROVE
(MAPLE/55TH STREET RESURFACING)**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage
County, Illinois as follows:

Section 1. That the form and substance of a certain Agreement (the “Agreement”), between the Village of Downers Grove (the “Village”) and the County of DuPage (the “County”) for the resurfacing and reconstruction of Maple Avenue (Springside Avenue to Dunham Road) and 55th Street (Dunham Road to Main Street) as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

Section 2. That the Mayor and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Village Manager shall deem necessary.

Section 3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

Section 4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

Section 5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE AND THE VILLAGE OF DOWNERS GROVE
CH 17/MAPLE AVENUE
(SPRINGSIDE AVENUE TO DUNHAM ROAD)
AND
CH 35/55TH STREET
(DUNHAM ROAD TO MAIN STREET, DOWNERS GROVE)
COUNTY 2009 PAVEMENT MAINTENANCE
VILLAGE WATER MAIN
SECTION 09-00000-01-GM

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2008, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the Village of Downers Grove, (hereinafter referred to as the "VILLAGE"), a municipal corporation with offices at 801 Burlington Avenue, Downers Grove, Illinois. The COUNTY and the VILLAGE are hereinafter sometimes individually referred to as a "Party" or together as the "Parties."

RECITALS

WHEREAS, CH 17/Maple Avenue from Springside Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street, Downers Grove are under the jurisdiction of the COUNTY; and

WHEREAS, the COUNTY plans to resurface sections of CH 17/Maple Avenue and CH 35/55th Street as a part of its 2009 Pavement Maintenance Program, Section 09-00000-01-GM (hereinafter referred to as "PROJECT"); and

WHEREAS, the VILLAGE has initiated water main improvements that will impact CH 17/Maple Avenue from Springside Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street, Downers Grove (hereinafter referred to as "WATER MAIN WORK"); and

WHEREAS, the VILLAGE is required to restore the pavement as a part of the WATER MAIN WORK; and

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

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 et seq.) and "Illinois Highway Code" 605 ILCS 5/1-101 et seq. and the VILLAGE by virtue of its power set forth in the "Municipal Code" (65 ILCS 1/1-1 et seq.) are authorized to enter into this AGREEMENT; and

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

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

1.0 INCORPORATION.

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 SCOPE

- 2.1. The COUNTY and the VILLAGE agree to cooperate in and make every effort to cause and coordinate the PROJECT and the WATER MAIN WORK.
- 2.2. The PROJECT shall be the responsibility of the COUNTY and includes milling, patching, resurfacing and re-striping CH 17/Maple Avenue from Pershing Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street.

2.3. The WATER MAIN WORK shall be the responsibility of the VILLAGE and includes installation of an eight inch (8") ductile iron water main and fire hydrants along with necessary service connections, in or adjacent to the lanes of CH 17/Maple Avenue from Springside Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street, Downers Grove.

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

3.0 RESPONSIBILITIES OF THE COUNTY

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

3.2. The COUNTY shall mill, patch, resurface and re-stripe CH 17/Maple Avenue from Pershing Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street as a part of the PROJECT.

4.0 RESPONSIBILITIES OF THE VILLAGE

4.1. The VILLAGE shall secure a permit from the COUNTY and administer the contract for the WATER MAIN WORK and shall be responsible for all the costs related to the WATER MAIN WORK. The VILLAGE shall ensure that the sections of CH 17/Maple Avenue and CH 33/55th Street impacted by the WATER MAIN WORK are appropriately restored and maintained to safely accommodate traffic until the start of the PROJECT.

4.2. Cost reimbursement:

- a. The VILLAGE agrees to reimburse the COUNTY for fifty (50%) percent of the costs of milling, resurfacing and striping the lanes of CH 17/Maple Avenue from Springside Avenue to Dunham Road and CH 35/55th Street from Dunham Road to Main Street, Downers Grove, including replacement of traffic signal detection loops as deemed necessary, and including one hundred (100%) percent for any required repairs/patching

of the lanes, curb and gutter, sidewalks, etc. necessary as a result of the WATER MAIN WORK, except as noted in 4.2.b. hereinafter.

- b. As part of the WATER MAIN WORK, the VILLAGE has resurfaced the existing two (2) eastbound lanes of Maple Avenue from Springside Avenue to approximately 900 feet to the east. The COUNTY will inspect this portion of Maple Avenue jointly with the VILLAGE prior to the start of the PROJECT. If the pavement upon aforesaid inspection is in good condition, then the COUNTY will omit milling and resurfacing this section of pavement and the VILLAGE'S cost share will be decreased accordingly. However, if it is found that repairs are required, the VILLAGE'S cost share will be as noted in 4.2.a. hereinabove. It will be necessary to re-stripe the section resurfaced by the VILLAGE and install recessed pavement markers. The VILLAGE'S cost share shall be in accordance with 4.2.a. hereinabove.

4.3. The COUNTY estimates the cost to be reimbursed to the COUNTY by the VILLAGE is \$150,000.00.

4.4. The VILLAGE agrees to pay the COUNTY fifty (50%) percent of their estimated share of the costs of the PROJECT within sixty (60) days of receiving an invoice from the COUNTY after award of the PROJECT. Upon completion of the PROJECT and based upon the documentation of final costs and quantities, submitted by the COUNTY, the VILLAGE agrees to reimburse the COUNTY for the balance within sixty (60) days of receipt of an invoice from the COUNTY.

4.5. The VILLAGE agrees to complete the WATER MAIN WORK by June 1, 2009, including any required restoration to ensure a safe facility prior to the start of the PROJECT.

5.0 MAINTENANCE

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

6.0 INDEMNIFICATION

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

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

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

immunity available to it with respect to third parties.

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

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

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

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

7.0 GENERAL

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

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

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

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

7.5. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

7.6. This AGREEMENT and the covenants contained herein shall be null and void in the event the contracts covering the PROJECT and WATER MAIN WORK contemplated

herein are not awarded within three (3) years subsequent to the execution of this AGREEMENT.

8.0 ENTIRE AGREEMENT

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

9.0 NOTICES

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

If to the VILLAGE:

David Fieldman
Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Facsimile: 630.434.5571

If to the COUNTY:

Charles Tokarski, P.E.
County Engineer
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Facsimile: 630.407.6901

10.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

11.0 ASSIGNMENT

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

12.0 GOVERNING LAW

12.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

12.2. The forum for resolving any disputes concerning the Parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Eighteen Judicial Circuit Court for DuPage County.

13.0 SEVERABILITY

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

14.0 FORCE MAJEURE

14.1 Neither Party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their reasonable control, including, but not limited to, Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

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

Robert J. Schillerstrom, Chairman
DuPage County Board

Ron Sandack, Mayor
Village of Downers Grove

ATTEST:

Gary A. King
County Clerk

April K. Holden
Village Clerk

