

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
AGREEMENT BETWEEN THE COUNTY OF DUPAGE,
THE VILLAGE OF DOWNERS GROVE
AND HIGHLAND LANDMARK OFFICE PARK ASSOCIATION
FOR INTERSECTION IMPROVEMENTS AT
CH 34/31ST STREET AND CH 9/HIGHLAND AVENUE**

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

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”) and Highland Landmark Office Park Association (“Highland Landmark”), for certain intersection improvements, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager 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 Manager shall deem necessary.

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.

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 That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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

AGREEMENT
BETWEEN THE COUNTY OF DU PAGE,
THE VILLAGE OF DOWNERS GROVE
AND HIGHLAND LANDMARK OFFICE PARK ASSOCIATION
FOR INTERSECTION IMPROVEMENTS AT
CH 34/31ST STREET AND CH 9/HIGHLAND AVENUE

This Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2009, between the County of DuPage, a body corporate and politic (hereinafter referred to as the "COUNTY"), the Village of Downers Grove, a municipal corporation, (hereinafter referred to as the "VILLAGE"), and HIGHLAND LANDMARK OFFICE PARK ASSOCIATION, an Illinois not-for-profit corporation licensed to do business in the State of Illinois, (hereinafter referred to as "HIGHLAND LANDMARK"). The COUNTY, the VILLAGE and HIGHLAND LANDMARK are hereinafter sometimes individually referred to as a "Party" and jointly referred to as the "Parties."

RECITALS

WHEREAS, the Constitution of the State of Illinois, Article VII, Section 10, provides that units of local municipalities and special districts may contract among themselves in any manner not prohibited by law or by ordinance; and

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes local municipalities and special districts in Illinois to exercise jointly with any other municipality or special district any power, privilege or authority which may be exercised by a unit of local government, individually, and to enter into contracts for the performance of governmental services, activities, and undertakings; and

WHEREAS, in order to facilitate the free flow of traffic and to ensure the safety of the motoring public, the Parties desire to improve the intersection of CH 34/31st Street and CH 9/Highland Avenue (hereinafter referred to as the "PROJECT"); and

WHEREAS, the Parties desire to cooperate in an effort to construct the PROJECT because of the immediate benefit of the PROJECT to the residents of the COUNTY, the VILLAGE, and also to HIGHLAND LANDMARK; and

WHEREAS, the Parties understand that the PROJECT will be comprised of various components and each Party will materially rely upon the others to complete the obligations stated herein; and

WHEREAS, the Parties desire to set forth in this AGREEMENT their respective obligations with regard to cost participation, engineering, construction and maintenance of the PROJECT; and

WHEREAS, a cost estimate as referenced in Exhibit A has been prepared for the PROJECT and the estimated cost of approximately \$397,100.00 is agreeable to the Parties.

NOW, THEREFORE, in consideration of the 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 the 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 GENERAL

- 2.1. 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.

- 2.2. Whenever in this AGREEMENT, approval or review of any of the Parties is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 2.3. This AGREEMENT may be executed in three or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

3.0 SCOPE OF PROJECT

- 3.1. The Parties agree that the scope of the PROJECT shall include but is not limited to the following:

Construction of an additional right turn lane along westbound CH 34/31st Street at CH 9/Highland Avenue including sidewalk removal and replacement, traffic signal post replacement, drainage, light pole removal and replacement, restoration (topsoil and sodding) and other necessary and appurtenant work.

Construction of the PROJECT will be done with/on the existing right-of-way along 31st Street and/or upon/in the 25-foot permanent easement dedicated to the COUNTY and the VILLAGE for roadway, drainage, sidewalk and/or infrastructure purposes along the north right-of-way line of 31st Street.

- 3.2. The Parties agree that any changes requested in the original scope of the PROJECT shall be at the sole expense of the requesting Party.
- 3.3. The COUNTY has developed a cost estimate that is attached as Exhibit A and incorporated herein by reference.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall be the lead agency for completion of design engineering and construction of the PROJECT including construction engineering.
- 4.2. Upon award of the construction contract by the COUNTY, the COUNTY shall invoice HIGHLAND LANDMARK \$125,000.00 for its monetary contribution towards the

PROJECT. Said invoice shall be paid within sixty (60) days of receipt of an invoice from the COUNTY.

- 4.3. The COUNTY shall make the Plans and Specifications for the PROJECT available to the VILLAGE and HIGHLAND LANDMARK. The COUNTY will also provide HIGHLAND LANDMARK with a schedule of the PROJECT, particularly of the PROJECT work within any easements located on property owned by HIGHLAND LANDMARK or its owners and notify HIGHLAND LANDMARK of any changes to such schedule and endeavor, as a part of the PROJECT work, not to disturb any private utilities located in any such easements.
- 4.4. The COUNTY agrees to administer the design engineering and construction contracts including construction engineering in the best interest of all Parties and to consult with, and keep advised, officials of the VILLAGE and HIGHLAND LANDMARK regarding the progress of the PROJECT or changes recommended.

5.0 RESPONSIBILITIES OF THE VILLAGE

- 5.1. The VILLAGE shall be responsible for relocating and/or adjusting VILLAGE watermain and watermain appurtenances in conflict with the PROJECT and shall relocate or adjust said utilities in a timely manner to maintain the PROJECT schedule.
- 5.2. The VILLAGE agrees to obtain any permit(s) required for the utility work referenced in 5.1 hereinabove, including from the COUNTY, and the COUNTY shall waive any permit fees for any permits the VILLAGE is required to get from the COUNTY for the relocation and/or adjustment of VILLAGE watermain and watermain appurtenances.

6.0 RESPONSIBILITIES OF HIGHLAND LANDMARK

- 6.1. HIGHLAND LANDMARK agrees to make a monetary contribution to the COUNTY in the amount of \$125,000.00 towards the cost of the PROJECT as referenced in 4.2 hereinabove.

6.2. HIGHLAND LANDMARK shall coordinate the relocation, replacement, adjustment and/or removal of private utilities in conflict with the PROJECT, including but not limited to sprinkler system and landscape lighting, in a timely manner to maintain the PROJECT schedule provided. HIGHLAND LANDMARK shall secure applicable permits from the VILLAGE and/or the COUNTY at no cost; said permits shall not be unreasonably withheld or delayed.

6.3. The COUNTY will restore areas disturbed by the PROJECT with topsoil and sodding. Replacement of trees, bushes and other appurtenant landscaping will be the responsibility of HIGHLAND LANDMARK.

7.0 ZONING/ORDINANCES

7.1. The COUNTY and the VILLAGE acknowledge that the PROJECT is within the zoning requirements of the VILLAGE.

7.2. The COUNTY acknowledges that a Countywide Stormwater and Flood Plain Ordinance as revised in February 2006 incorporated herein by reference and as amended from time to time is in effect and a Stormwater Permit is required for the PROJECT. Said Stormwater Permit will be secured by the COUNTY and following the completion of the PROJECT will comply with the ordinance. The COUNTY acknowledges that the only COUNTY permit which may be required of HIGHLAND LANDMARK for the PROJECT is a construction permit for any relocation, replacement, adjustment and removal of HIGHLAND LANDMARK's private utilities in conflict with the PROJECT that extends into the COUNTY right-of-way. As previously referenced hereinabove, the COUNTY will not unreasonably withhold or delay issuance of said permit at no cost.

8.0 MAINTENANCE

8.1. The Parties agree that upon completion of the PROJECT, each Party will be responsible for all maintenance of that part of the PROJECT owned or under the jurisdiction of the respective Parties. The VILLAGE will continue to own, operate and

maintain the sidewalk replaced as a part of the PROJECT.

9.0 ENTIRE AGREEMENT

9.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT, and supersedes all previous communications or understandings whether oral or written.

10.0 NOTICES

10.1. 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.

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

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

HIGHLAND LANDMARK OFFICE PARK ASSOCIATION
c/o Opus Services, LLC
Suite 014
3050 Highland Parkway
Downers Grove, IL 60515
Attention: Senior Property Manager
Facsimile: 630.493.1799

11.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

12.0 ASSIGNMENT

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

13.0 GOVERNING LAW

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

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

14.0 SEVERABILITY

14.1 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.

15.0 FORCE MAJEURE

15.1 Neither party shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their 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.

COUNTY OF DU PAGE

Robert J. Schillerstrom, Chairman
DuPage County Board

ATTEST:

Gary A. King
County Clerk

VILLAGE OF DOWNERS GROVE

Ron Sandack, Mayor

ATTEST:

April K. Holden, Clerk

HIGHLAND LANDMARK OFFICE PARK ASSOCIATION

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

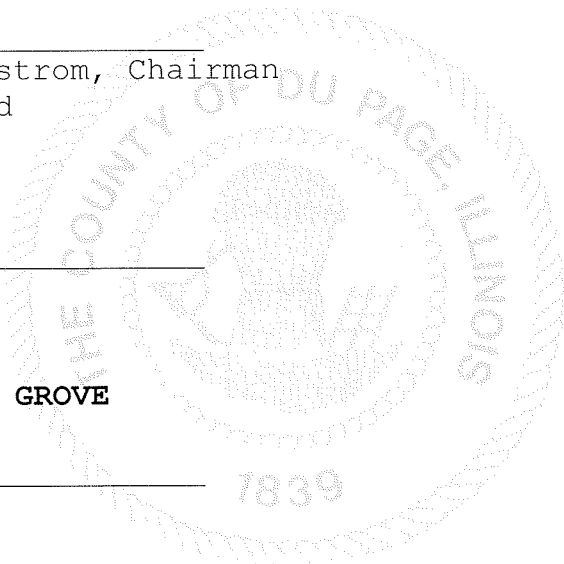


EXHIBIT A

ESTIMATED PROJECT COSTS

Design engineering	\$ 51,500.00
Construction (excluding watermain and/or appurtenant watermain relocations, adjustments, etc. to be performed by VILLAGE)	\$314,200.00
Construction engineering (10% of construction cost):	<u>\$ 31,400.00</u>
TOTAL ESTIMATED PROJECT COSTS:	\$397,100.00

