

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
MAY 1, 2012 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Intergovernmental Agreement with the County of DuPage for Improvements to 55 th Street (Clarendon Hills Rd to Dunham Rd)	✓ Resolution Ordinance Motion Discussion Only	Nan Newlon, P.E., Director of Public Works

SYNOPSIS

A resolution has been prepared authorizing an Intergovernmental Agreement (IGA) between the Village of Downers Grove and the County of DuPage for the design and construction of roadway and traffic signal improvements for 55th Street from Clarendon Hills Road to Dunham Road.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 include *Steward of Financial and Environmental Sustainability and Exceptional Municipal Services*.

FISCAL IMPACT

Per the terms of the proposed intergovernmental agreement, the Village’s contribution toward this project would be \$48,000. Sufficient budget authority is available in the Capital Projects Fund.

RECOMMENDATION

Approval on the May 1, 2012 consent agenda.

BACKGROUND

In 2011, the Village of Downers Grove and DuPage County submitted applications for Federal grant funding for the improvement of 55th Street. The scope of the project includes intersection improvements at 55th Street and Main Street and 55th Street at Fairview Avenue, resurfacing 55th Street from Dunham Road to Williams Street, signal interconnection from Dunham Road to Clarendon Hills Road, and other necessary work. The purpose of these improvements is to improve the flow of traffic on this County arterial roadway, improve safety for motorists and the public, and reduce the use of neighborhood streets for regional transportation.

The total project cost, including engineering, land acquisition, construction and construction engineering is estimated to be \$5,350,000. The County has secured federal funding in the amount of \$2,168,000 toward engineering, land acquisition and construction costs for the 55th Street and Main Street intersection improvements and traffic signal interconnect. The Village has secured federal funding in the amount of \$630,000.00 toward construction costs for the 55th Street at Fairview Avenue intersection improvements.

The proposed intergovernmental agreement includes the following terms and conditions:

- The County and Village agree to cooperate in and make every effort to cause the construction of the project.
- The County will award, enter into, finance and administer the engineering contract with the consultant, subject to Village reimbursement.
- The Village shall be the lead agency and direct the consultant for Phase I (preliminary) engineering.

- The County shall be the lead agency and fund Phase II (design) engineering, land acquisition (including title and survey work and document preparation), permit processing, utility coordination, construction engineering and construction for the project.
- The Village shall donate right-of-way or easements from Village owned property required for the project at no cost to the County.
- The Village shall reimburse the County \$48,000.00 (20%) as its share of Phase I engineering costs.

ATTACHMENTS

DuPage County Intergovernmental Agreement

RESOLUTION NO. _____

**A RESOLUTION AUTHORIZING EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE
COUNTY OF DUPAGE AND THE VILLAGE OF DOWNERS GROVE
FOR CH 35/55th STREET
(DUNHAM ROAD TO CLARENDON HILLS ROAD)**

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 Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove ("Village") and the County of DuPage ("County"), for improvements along CH35/55th Street from Dunham Road to Clarendon Hills Road, 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

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
COUNTY OF DU PAGE AND THE VILLAGE OF DOWNERS GROVE
FOR
CH 35/55th STREET
(DUNHAM ROAD TO CLARENDON HILLS ROAD)
SECTION 11-00302-04-CH

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2012, 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, the COUNTY and the VILLAGE in order to facilitate the free flow of traffic and to ensure the safety of the public desire to improve CH 35/55th Street from Dunham Road to Clarendon Hills Road, County Section 11-00302-04-CH (hereinafter referred to as "PROJECT"); and

WHEREAS, the COUNTY and the VILLAGE desire to cooperate in the development and construction of the PROJECT because of the benefit of the PROJECT to the residents of DuPage County, the VILLAGE and the motoring public; and

WHEREAS, the parties desire to formally establish their mutual responsibilities with respect to the PROJECT; 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 "Illinois Municipal Code" (65 ILCS 5/1-1-1 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 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 hereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted 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 OF PROJECT

- 2.1. The scope of the PROJECT includes, but is not limited to, intersection improvements at 55th Street and Main Street and 55th Street at Fairview Avenue, resurfacing 55th Street from Dunham Road to Williams Street, signal interconnection from Dunham Road to Clarendon Hills Road, and other necessary and appurtenant work.
- 2.2. The total PROJECT cost, including engineering, land acquisition, construction and construction engineering is estimated to be \$5,350,000.00.
- 2.3. The COUNTY has secured federal CMAQ funding in the amount of \$2,168,000.00 towards engineering, land acquisition and construction costs for the 55th Street at Main Street intersection improvements and traffic signal interconnect.
- 2.4. The VILLAGE has secured federal STP funding in the amount of \$630,000.00 toward construction costs for the 55th Street at Fairview Avenue intersection improvements.
- 2.5. The estimated PROJECT costs, funding and participation are as identified on Exhibit A attached hereto and made a part hereof.

3.0 RESPONSIBILITIES OF THE PARTIES

- 3.1. The COUNTY and VILLAGE agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 3.2. Although the County will award, enter into, finance and administer the engineering contract with the consultant, subject to VILLAGE reimbursement noted herein, the VILLAGE shall be the lead agency and direct the consultant for Phase I (preliminary) engineering.
- 3.3. The COUNTY shall be the lead agency and fund Phase II (design) engineering, land acquisition (including title and survey work and document preparation), permit processing, utility coordination, construction engineering and construction for the PROJECT, except as noted herein below.
- 3.4. The VILLAGE shall donate right-of-way or easements from VILLAGE owned property required for the PROJECT at no cost to the COUNTY via quit-claim deed(s).
- 3.5. The VILLAGE shall waive any permit fees required for the PROJECT.
- 3.6. The VILLAGE shall be responsible for any additional work items requested by the VILLAGE, including engineering, land acquisition and construction costs, and shall be the subject of an amendment to this AGREEMENT.
- 3.7. The estimated cost for Phase I engineering of the PROJECT is \$240,000.00. The VILLAGE shall reimburse the COUNTY \$48,000.00 (20%) as its share of Phase I engineering costs.
- 3.8. The COUNTY shall invoice the VILLAGE for the VILLAGE's share of Phase I engineering as follows: 50% upon award of the Phase I engineering contract and the balance upon completion of Phase I engineering. Said invoices shall be paid by the VILLAGE within sixty (60) days of receipt of said invoice from the COUNTY.

4.0 MAINTENANCE

- 4.1. The VILLAGE shall be responsible for all maintenance of that part of the PROJECT owned or under the jurisdiction of the VILLAGE and the COUNTY shall be responsible for all maintenance of that part of the PROJECT owned or under the jurisdiction of the COUNTY.
- 4.2. The COUNTY shall continue to own, operate and maintain the traffic signals at 55th Street and Main Street and 55th Street and Fairview Avenue including the right to control and regulate the sequence, phasing and timing of said traffic signals.
- 4.3. The VILLAGE shall continue to pay the energy costs for the traffic signals at 55th Street and Main Street and at 55th Street and Fairview Avenue and shall be billed directly by the energy provider.
- 4.4. The COUNTY shall continue to be responsible for maintenance of all pavement markings on 55th Street and on Main Street, south of 55th Street.
- 4.5. The VILLAGE shall continue to be responsible for maintenance of all pavement markings on Main Street, north of the edge of pavement of 55th Street, on Fairview Avenue and on side streets intersecting with 55th Street.

5.0 FUTURE MODERNIZATION/RECONSTRUCTION

- 5.1. If, in the future, the COUNTY improves 55th Street which results in the need to modernize or reconstruct the traffic signals at 55th Street and Main Street and/or 55th Street and Fairview Avenue and/or if it is determined that these signal(s) require modernization or reconstruction due to age, condition, etc., the parties hereby agree to share the cost of the improvement to the signals in proportion to the number of approaches to the intersection maintained by the respective parties.

6.0 INDEMNIFICATION

6.1. The COUNTY shall 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 to the extent permitted by law. 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 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 affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

6.2. The VILLAGE shall 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 to the extent permitted by law. 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 the COUNTY, or in the event of change in the laws of the State of Illinois governing the VILLAGE's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect 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. Neither party waives, by these indemnity requirements, any defenses or protections under the Local Government and Governmental Employees Tort Liability Act (745 ILCS 10/1 et seq.) or otherwise available to it, or to the other party, under the law.

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 survive the termination of this AGREEMENT with respect to each party's own negligent or willful acts, errors or omissions in its performance under this AGREEMENT.

7.0 GENERAL

- 7.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the PROJECT and no changes to existing highways and appurtenances maintenance and/or jurisdiction are proposed.
- 7.2. Both the COUNTY and the VILLAGE reserve the right to review reports, geometry, plans, specifications, etc. for the PROJECT.
- 7.3. In the event of a dispute between the COUNTY and the VILLAGE with respect to carrying out the terms of this AGREEMENT, the County Engineer of the COUNTY and the Village Manager of the VILLAGE or his designee shall meet and attempt to 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 to the PROJECT.
- 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 contract covering the construction work contemplated herein is not awarded within five (5) 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

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.

David Fieldman
Village Manager
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515
Phone: 630.434.5500
Facsimile: 630.434.5571

Christopher C. Snyder, P.E.
County Engineer
DuPage County
Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Phone: 630.407.6900
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, their 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 Eighteenth 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 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.

Daniel J. Cronin, Chairman
DuPage County Board

Martin T. Tully, Mayor
Village of Downers Grove

ATTEST:

Gary A. King
County Clerk

April K. Holden
Village Clerk

CH 35/55TH STREET
(DUNHAM ROAD TO CLARENDON HILLS ROAD)

EXHIBIT A

ESTIMATED PROJECT COSTS AND FUNDING

DESCRIPTION	ESTIMATED TOTAL AMOUNT	CMAQ FUNDING (County Secured)	STP FUNDING (Village Secured)	COUNTY COST	VILLAGE COST
Phase I (preliminary engineering)	\$240,000.00	\$52,000.00		\$140,000.00	\$48,000.00
Phase II (design engineering)	\$540,000.00	\$184,000.00		\$356,000.00	\$0
Land Acquisition	\$255,000.00	\$148,000.00		\$107,000.00	*
Construction (Including Construction Engineering)	\$4,315,000.00	\$1,784,000.00	\$630,000.00	\$1,901,000.00	
TOTAL PROJECT COST:	\$5,350,000.00	\$2,168,000.00	\$630,000.00	\$2,504,000.00	\$48,000.00

*Village shall donate any right-of-way or easements as may be required from Village owned property at no cost to the PROJECT/COUNTY.