

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
JUNE 12, 2012 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Intergovernmental Agreement with the County of DuPage for Improvements to the Belmont Rd. Curtiss St. Intersection	✓ 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 construction of roadway and traffic signal improvements at the intersection of Belmont Road and Curtiss Street.

STRATEGIC PLAN ALIGNMENT

The Goals for 2011 to 2018 include *Top Quality Infrastructure*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 12, 2012 Consent Agenda.

BACKGROUND

This intergovernmental agreement sets the terms for county-funded intersection improvements at Belmont Road and Curtiss Road to include widening the intersection to include left turn lanes, widening the structure over St. Joseph’s Creek and modernizing the traffic signal. The purpose of these improvements is to improve the flow of traffic on Belmont Road, a County arterial roadway, and improve safety for motorists and the public. DuPage County is funding this project. Work is anticipated to begin in early summer of 2012.

The proposed intergovernmental agreement includes the following key terms and conditions:

- The County will be responsible for completing all preliminary and design engineering, right-of-way acquisition, permit processing, letting/awarding of a construction contract, financing the construction and construction engineering.
- The County will own, operate and maintain the signal and pay for all costs associated with its future routine maintenance.
- The Village will continue to pay for all energy costs related to the signal.

ATTACHMENTS

Resolution
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 2/BELMONT ROAD AT CURTISS STREET
(SECTION 08-00173-05-CH)**

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 CH2/Belmont Road at Curtiss Street, 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 2/BELMONT ROAD AT CURTISS STREET
SECTION 08-00173-05-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 in order to facilitate the free flow of traffic and to ensure the safety of the public desires to improve CH 2/Belmont Road at Curtiss Street (hereinafter referred to as "PROJECT"); and

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

WHEREAS, the parties desire to establish the parties' mutual project cost and maintenance 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.).

WHEREAS, the COUNTY and the VILLAGE have determined that it is in their mutual best interests to enter into this AGREEMENT.

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 WORK

- 2.1. The PROJECT includes, but is not limited to, widening and resurfacing of both Belmont Road and Curtiss Street to provide left turn lanes. The PROJECT also includes the widening of the structure over St. Joseph's Creek as well as curb and gutter, sidewalks, and new storm sewers. In addition, the PROJECT also includes the modernization of the traffic signal at Belmont Road and Curtiss Street (hereinafter referred to as the "SIGNAL"), and other necessary and appurtenant work. The PROJECT construction cost is estimated to be \$1,400,000.00.

3.0 RESPONSIBILITIES - JOINT

- 3.1. The COUNTY and the VILLAGE agree to cooperate in and make every effort to cause the construction of the PROJECT.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall act as the lead agency and be responsible for completing all preliminary and design engineering, right-of-way acquisition, permit processing, letting/awarding of a construction contract, financing the construction (including payment for the relocation of Village utilities affected by the proposed improvements) and construction engineering for the PROJECT. The COUNTY shall pay any fees as set forth in the VILLAGE's Municipal Code associated with obtaining a stormwater permit from the VILLAGE.
- 4.2. Both the COUNTY and VILLAGE agree that the COUNTY shall administer the contract for the construction of the PROJECT. The COUNTY agrees to administer the PROJECT in the best interest of both parties and to consult with, and keep advised, officials of the VILLAGE regarding the progress of the PROJECT and any problems encountered or changes recommended.
- 4.3. The COUNTY shall submit the Pre-final Plans and Specifications for the PROJECT to the VILLAGE for review. The VILLAGE shall provide review comments within fourteen (14) days of receipt of the Pre-final Plans and Specifications. The COUNTY will correct any errors and address other reasonable comments prior to the re-submittal of final Plans and Specifications to the VILLAGE.
- 4.4. Upon completion of the modernization of the SIGNAL, the COUNTY shall own, operate and maintain said SIGNAL and shall provide and pay for all costs associated with the future routine maintenance of the SIGNAL. The VILLAGE will pay for all future energy costs as referenced in paragraph 5.1 hereinafter.
- 4.5. The COUNTY shall be responsible for maintenance of all pavement markings on CH 2/Belmont Road.

5.0 RESPONSIBILITIES OF THE VILLAGE

- 5.1. The VILLAGE agrees, if necessary, to issue permits for PROJECT required adjustments, relocations, modifications, etc. to utility facilities located within existing VILLAGE rights of way, and on

proposed VILLAGE rights of way which are outside areas of COUNTY jurisdiction, which are in conflict with the PROJECT at no expense to the COUNTY.

5.2. The VILLAGE agrees to continue to pay for all energy costs of the SIGNAL and shall be invoiced directly by the energy provider for the SIGNAL.

5.3. The VILLAGE shall be responsible for maintenance of all pavement markings on Curtiss Street.

6.0 FUTURE MODERNIZATION/RECONSTRUCTION

6.1. If, in the future, the SIGNAL requires modernization or reconstruction or if the COUNTY improves CH 2/Belmont Road Street which results in the need to modernize or reconstruct the SIGNAL, the parties hereby agree to share the cost of the improvement to the SIGNAL in proportion to the number of approaches to the intersection maintained by the respective parties.

7.0 MAINTENANCE

7.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the PROJECT and no changes to maintenance and/or jurisdiction of existing roadways and appurtenances are proposed except as noted herein.

8.0 INDEMNIFICATION

8.1. 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.

8.1.1. 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.

8.2. 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.

8.2.1 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.

- 8.3. 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 8.1, 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.
- 8.4. 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 8.0 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, for any claims arising during the term of this AGREEMENT. The term of this AGREEMENT shall be considered to be from the date of execution to the date the PROJECT is complete and the parties assume their maintenance responsibilities as set forth in Section 7.1 hereof.

9.0 GENERAL

- 9.1. 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.
- 9.2. In the event of a dispute between the COUNTY and VILLAGE representatives in the preparation of the Plans and Specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County

Engineer of the COUNTY and the Village Manager or designee of the VILLAGE shall meet and attempt to resolve the issue.

- 9.3. 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 construction of the PROJECT. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the work covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 9.4. 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.
- 9.5. 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 three (3) years subsequent to the execution of this AGREEMENT.

10.0 ENTIRE AGREEMENT

- 10.1. 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.

11.0 NOTICES

- 11.1. 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

12.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

13.0 ASSIGNMENT

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

14.0 GOVERNING LAW

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

14.2. 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.

15.0 SEVERABILITY

15.1 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.

16.0 FORCE MAJEURE

16.1 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

VILLAGE OF DOWNERS GROVE

Daniel J. Cronin, Chairman
DuPage County Board

Martin T. Tully, Mayor
Village of Downers Grove

ATTEST:

ATTEST:

Gary A. King
County Clerk

April K. Holden
Village Clerk