

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
12/19/2023

SUBJECT:	SUBMITTED BY:
IGA - District 58 Herrick Watermain	Scott Vasko Asst. Director of Public Works

SYNOPSIS

A resolution has been prepared to approve an Intergovernmental Agreement (IGA) between the Village and District 58 to provide funds for the Water Main Improvements as part of the work at Herrick Middle School.

STRATEGIC PLAN ALIGNMENT

The goals for 2023-2025 include *Top Quality Infrastructure*.

FISCAL IMPACT

The cost to the Village for this work is \$250,000. This item was not specifically included in the FY24 budget, but funding is available in the Water Fund under water main replacement projects.

RECOMMENDATION

UPDATE & RECOMMENDATION

This item was discussed at the December 12, 2023 Council meeting. Staff recommends approval on the December 19, 2023 Consent Agenda

BACKGROUND

The School District is making improvements to Herrick Middle School. One of the improvements to the middle school is to construct and repair their parking lot. Located under the parking lot is a Village owned 6” water main that is in need of replacement. The existing water main will be replaced with a new 8” water main, new valves, and new hydrants.

The School District will design, bid, construct, and perform construction inspection of the project in its entirety. This project is being contracted and administered by the School District, and the Village will reimburse them for the water main construction work being done.

ATTACHMENTS

Resolution
Agreement

RESOLUTION NO. ____

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE BOARD OF EDUCATION OF DOWNERS GROVE GRADE SCHOOL DISTRICT 58 AND THE VILLAGE OF DOWNERS GROVE FOR THE REPLACEMENT OF A WATERMAIN AT HERRICK MIDDLE SCHOOL

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 (the "Village") and the Board of Education of Downers Grove Grade School District 58 (the "District"), for the replacement of a water main at Herrick Middle School Quality Project, 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

**AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE BOARD OF
EDUCATION OF DOWNERS GROVE GRADE SCHOOL DISTRICT NO. 58
AND
THE VILLAGE OF DOWNERS GROVE
FOR THE REPLACEMENT OF A WATER MAIN AT HERRICK MIDDLE SCHOOL**

THIS INTERGOVERNMENTAL AGREEMENT is entered into by and between the BOARD OF EDUCATION OF DOWNERS GROVE GRADE SCHOOL DISTRICT NO. 58, with offices at 2300 Warrenville Road, Suite 200 NE, Downers Grove, IL 60515, Illinois (hereinafter referred to as the “**District**”), and the VILLAGE OF DOWNERS GROVE, ILLINOIS, an Illinois municipal corporation, (hereinafter referred to as the “**Village**”), concerning the replacement of a water main located under certain District Property as described herein.

WHEREAS, Article VII, Section 10, of the Illinois Constitution of 1970 encourages and provides for units of local government to contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, the Illinois *Intergovernmental Cooperation Act*, 5 ILCS 220/1 *et seq.* further authorizes intergovernmental cooperation; and

WHEREAS, the Village is a “unit of local government” as defined by Article VII, Section 1, of the Constitution of the State of Illinois and is authorized to contract and agree with other units of local government and school districts on matters of mutual concern; and

WHEREAS, per Article VII, Section 1, of the Constitution of the State of Illinois the Village and the District are authorized to contract and agree with each other on matters of mutual concern and may contract or otherwise associate among themselves to obtain or share services

and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance and may contract and otherwise associate with each other in any manner not prohibited by law or by ordinance; and

WHEREAS, the District owns and operates a middle school commonly referred to as “Herrick Middle School”, which is located at the address commonly known as 4435 Middaugh Ave, Downers Grove, IL 60515; and

WHEREAS, the District desires to construct and repair the parking lot of Herrick Middle School (the “**District Property**”); and

WHEREAS, the Village owns and operates a water system, which includes a 6” water main located under the parking lot of Herrick Middle School (the “**Water Main**”); and

WHEREAS, the District and the Village acknowledge that replacing the Water Main with an 8” water main and new, updated valve connections (the “**New Water Main**”) is mutually beneficial and will benefit the community at large; and

WHEREAS, the District and the Village desire to enter into this Agreement to define their respective rights and obligations with regard to removing the Water Main and installing the New Water Main, which shall be installed in the location further described on the document attached hereto as Exhibit A, (the “**Project**”).

NOW, THEREFORE, in consideration of the above stated preambles and the mutual covenants and promises hereinafter contained, the District and the Village formally covenant, agree, and bind themselves as follows to wit:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into this Agreement as if fully set forth in this Paragraph 1.

2. **Intent of Agreement.** This Agreement is intended to govern the respective obligations of the parties with regard to the Project, wherein the parties mutually agree to coordinate their efforts until the Project is Complete, as defined by paragraph 8 below.

3. **Construction Documents.** The District shall be responsible for all activities necessary to perform the removal of the Water Main and the installation of the New Water Main, including, but not limited to, drafting and publishing all public advertisement for calls for bids, the selection of firms/contractors and awarding of contracts (e.g. surveying, geotechnical, material testing, design or construction) in compliance with the applicable procurement requirements, and managing the contracts. All construction will be in conformance with the drawings and specifications prepared for the completion of the Project, which shall be mutually agreed upon by the Village and the District. It is understood that the Village will not be a party to any construction contract and will have no obligation to any contractors. Notwithstanding the above, the District shall not award a contract for any work to be performed with regard to the Project without first obtaining the Village's input on such contractor.

4. **Review of Plans & Specifications.** The Village shall review, provide input and approve all engineering plans and specifications that pertain to the Project to ensure that they meet the Village's needs and requirements.

5. **Project Contractual Provisions.** The District shall require in the Project contract documents that all contractors performing work on the Project name the Village, its individual Board members, agents, officers and employees, as additional insureds on all insurance policies, except the worker's compensation policy, the employer's liability policy and any professional liability policy, that are required of the contractors for the Project.

The Project contract documents shall reserve for the District the right to assign any of its contractual rights, including any chose in action and any warranties or guarantees related to such documents or work completed thereunder, to the Village. The District shall authorize the Village to review any Project documents and any bid documents related to the procurement of the same prior to the publication of such bid documents.

6. **Construction of Project.** The Project shall be constructed in accordance with the plans and specifications approved by the Village. The District agrees to manage the Project and to consult with, and keep advised, officials of the Village regarding the progress of the work. Notwithstanding the foregoing, the District shall authorize the Village to have a representative on-site, as appropriate given the stage of the work during Project, to observe the removal of the Water Main and installation of the New Water Main. The Village's representative may direct the District to order any contractor working on the Project to halt work if the Village's representative reasonably determines, after consulting with the District's engineer, that the contractor's performance of the work will unreasonably interfere or materially affect the integrity of the Village's water system, including but not limited to the New Water Main, regardless of whether such effect on the water system will occur or has potential to occur prior to or after the completion of the Project; provided that such direction will not unreasonably delay or unreasonably impact the District's other construction work at the District Property. All costs associated with the implementation of the Village's representative's directions under this Paragraph shall be the responsibility of the Village, unless such direction was necessary to address the District's contractor's failure to construct the Project in accordance with the approved plans and specifications, or ordinary industry practice. Further, nothing in this

Paragraph 6 shall waive the Village's right to inspect the New Water Main prior to acceptance thereof as set forth in Paragraph 7.

7. **Inspection of Work**. Upon installation of the New Water Main, but prior to the Village's acceptance of the same, the Village may inspect the work completed by the District's contractors to determine if it complies with the Project's plans and specifications. With the approval of the District, which approval shall not be unreasonably withheld, the Village may perform, at its sole cost and expense, any testing it deems advisable or necessary to inspect the integrity of the New Water Main and its potential or actual effect on the integrity of the Village's water system. To the extent that the Village's tests or inspections reveal that the work performed by the contractors does not conform with the plans and specifications for the Project and the District's engineer agrees that the work performed by the contractors does not conform with the plans and specifications for the Project, the District shall cause the contractor to correct such work so that it conforms to the Project's plans and specifications.

8. **Acceptance & Ownership of New Water Main**. Upon the completion of the Project in accordance with the plans and specifications, as reasonably determined by the District's engineer in consultation with the Village's representative, the Village accepts ownership of the New Water Main, without any further documentation required from the District, except as may be required by this Agreement. The Village shall thereafter be responsible for all maintenance and repairs of the New Water Main, and the Project shall be deemed Complete for the purposes of this Agreement.

In the event the Village or the District discovers any defective work, materials, or design post Completion, it shall be the Village's responsibility to work with the applicable contractors and or engineer to remedy such defects; no claim shall lie against the District related to the Project post

Completion. The District shall promptly notify the Village of the District's discovery of any defective work, material or design. As contemplated and authorized by Paragraph 5 of this Agreement, the District shall assign to the Village those provisions of the relevant Project contract documents that authorize the pursuit of any claims against the responsible parties or contemplate any warranty or guarantee of the Project work. The District shall have no obligation to pursue any claims post Completion; however, the District shall reasonably cooperate in good faith with the Village in any of the Village's efforts to remedy issues related to the Project. Nothing in this Agreement shall be construed as a waiver of the privileges and immunities granted unto the parties under the *Local Governmental and Governmental Employees Tort Immunity Act* (745 ILCS 10/1-101, et seq.), nor any other applicable law.

9. **Village's Access to the Project.** The District shall not undertake any replacement activities of the Herrick Middle School parking lot that would impede the Village's access to the Project before the Project is Complete.

10. **Reimbursement of Project Costs.** The Village will reimburse the District an amount not to exceed TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) for the construction of the Project, which includes, but is not limited to, preparing all required bidding documents, surveying, engineering fees, geotechnical investigations, design, material testing, and construction, within thirty (30) days of receipt from the District of paid receipts for all costs related to the same. Notwithstanding any provisions of this Agreement to the contrary, the District shall not allow any lien to be suffered against Village property in relation to the Project, and it will promptly address any action that may be related to such a lien or threat thereof.

11. **Post Completion Obligations of the Parties.** Upon completion of the Project, the Village shall be the owner of the New Water Main and the District shall not have any responsibility for the maintenance, upkeep and repair of the New Water Main or the Village water system, and the Village shall not have any responsibility for the maintenance, upkeep and repair of District Property.

12. **Entire Agreement.** This Agreement represents the entire agreement between the parties. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon necessary and proper signature of the District and the Village.

13. **Severability.** In the event that any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereto.

14. **Survival.** This Agreement shall be binding upon and inure to the benefits of the parties hereto, their successors and assigns.

15. **Governing Law.** This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of Illinois. The forum for any legal disputes between the Village and the District shall be DuPage County, Illinois.

16. **Termination of Agreement.** Either party may terminate this Agreement for convenience at any time upon delivery of thirty (30) days written notice to the other party, except if construction of the Project has commenced, which in such case, this Agreement may not be terminated under this Paragraph 16. Such notice shall be either personally delivered, sent by overnight delivery by a nationally recognized delivery service with proof of delivery, or sent by certified mail, return receipt requested. If the Village voluntarily terminates the Agreement for convenience under this Paragraph 16 prior to the commencement of construction of the Project, the Village shall reimburse the District for all reasonable costs and expenses incurred by the District directly related to the Project, including, but not limited to, engineering fees and non-refundable material expenses. If the District terminates this Agreement pursuant to this Paragraph 16, then it shall be responsible for the Project costs and expenses it incurs related to the Project. Notwithstanding the above, however, nothing in this Paragraph 16 shall preclude either party from pursuing any and all remedies available under law and equity in pursuing a breach of contract claim under this Agreement.

17. **Default.** In the event a party fails to comply with any material term of this Agreement (a “**Breaching Party**”), the non-Breaching Party shall provide written notice to the Breaching Party of the breach, which the Breaching Party shall remedy within fifteen (15) days of the receipt of said notice, or, if the breach is of such nature that it is unreasonable for it to be remedied within fifteen (15) days, the Breaching Party shall immediately take action to remedy the breach, which shall be remedied as soon as practical from the date of the receipt of the written notice. If the

Breaching Party fails to remedy the breach within the required time, the non-breaching party may pursue any and all legal and equitable remedies available, subject to the terms of this Agreement.

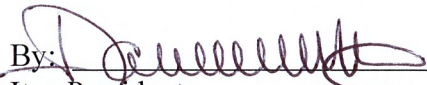
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date of the last signatory hereto set forth below.

DISTRICT:

VILLAGE:

**BOARD OF EDUCATION OF
DOWNERS GROVE GRADE SCHOOL
DISTRICT NO. 58**

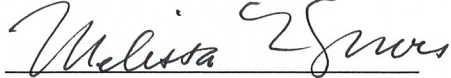
**VILLAGE OF DOWNERS GROVE,
Illinois, an Illinois municipal corporation**

By: 
Its: President
Date: Nov. 13, 2023

By: _____
Its: Mayor
Date: _____

ATTEST:

ATTEST:

By: 
Its: Secretary/Clerk
Date: Nov. 13, 2023

By: _____
Its: Village Clerk
Date: _____

1217016.1

Exhibit A

