

**VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
FEBRUARY 15, 2011 AGENDA**

| SUBJECT: | TYPE: | SUBMITTED BY: |
|---|--|---|
| Intergovernmental Agreement with the County of DuPage for the I-88 Central DuPage Bikeway (31 st Street from Highland Avenue to Meyers Road) | ✓ 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, construction and maintenance of a portion of the I-88 Central DuPage Bikeway along 31st Street from Highland Avenue to Meyers Road.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

The adopted CIP includes \$150,000 in the Capital Fund over the next five years.

UPDATE & RECOMMENDATION

This item was discussed at the February 8, 2011 Council meeting. Staff recommends approval on the February 15, 2011 active agenda.

BACKGROUND

The Village’s Bikeway Plan includes a multi-use trail along 31st Street between Highland Avenue and Meyers Road. Along with a short section of additional off-street trail on the north end of Saratoga Avenue, this will provide access for trail users to the Oakbrook trail system, the Salt Creek Greenway Trail, and the future I-88 Central DuPage Bikeway. To complete this project, Village and County staff worked together on grant applications and successfully received a Surface Transportation Program grant which will pay for 75% of the construction costs for this project. The Village’s portion of the construction costs will be due in two parts; the first half will be paid at the time the project is bid, which is anticipated for late 2012, and the remainder will be due when the project is finished in late 2013. The IGA includes the following provisions:

- The County will act as the lead Local Agency and be responsible for completing all preliminary and design engineering, right-of-way acquisition (if necessary), utility coordination, letting and awarding of the construction contract, construction engineering and any other work required to ensure the project is implemented.
- The County will provide the Village the opportunity to review the Preliminary and the Design Engineering Plans and the project Specifications.
- The County will be responsible for the cost of the project, subject to reimbursement from the Village.
- The Village agrees to reimburse the County for project costs in excess of \$825,000 up to a total amount of \$175,000.

- Upon completion the County will be responsible for all future maintenance of the Project.

ATTACHMENTS

Capital Project Sheet BW-005

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 THE I-88 CENTRAL DUPAGE BIKEWAY
CH 34/31st STREET
(HIGHLAND AVENUE TO MEYERS 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 the I-88 Central DuPage Bikeway along CH 34/31st Street from Highland Avenue to Meyers 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
I-88 CENTRAL DU PAGE BIKEWAY
CH 34/31ST STREET
(HIGHLAND AVENUE TO MEYERS ROAD)
SECTION 11-00201-02-BT

This intergovernmental agreement ("AGREEMENT") is made and entered into this _____ day of _____, 2011, by and between the County of DuPage, a body corporate and politic of the State of Illinois ("COUNTY"), with offices at 421 North County Farm Road, Wheaton, Illinois 60187, and the Village of Downers Grove, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois ("VILLAGE") with offices at 801 Burlington Avenue, Downers Grove, Illinois, 60515. 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 are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.; and

WHEREAS, Article VII, Section 10, of the 1970 Constitution of the State of Illinois encourages and provides for units of local government to contract and otherwise associate to exercise, combine or transfer any power or function; and

WHEREAS, the COUNTY desires to construct a portion of the I-88 Central DuPage Bikeway along CH 34/31st Street from Highland Avenue to Meyers Road, Section 11-00201-02-BT ("PROJECT") within the VILLAGE; and

WHEREAS, the COUNTY and the VILLAGE desire to jointly plan, design, construct and finance the PROJECT and enter into this AGREEMENT because of the immediate benefit of the PROJECT to the residents of the COUNTY and the VILLAGE; and

WHEREAS, the COUNTY shall act as the lead Local Agency for the PROJECT and shall provide initial funding for the PROJECT; and

WHEREAS, it is in the best interests of the COUNTY and the VILLAGE to clarify their rights and responsibilities with respect to the PROJECT.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree that:

1.0 RECITALS INCORPORATED

- 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 TERM OF THIS AGREEMENT

- 2.1 This AGREEMENT shall be in effect after its execution by the parties through December 31, 2015 or a date mutually agreed upon in writing between the parties without an amendment to this AGREEMENT.

3.0 SCOPE AND PROJECT COST

- 3.1 The general location of the PROJECT is shown on Exhibit A attached hereto and made a part hereof. The scope of the PROJECT includes construction of a multi-use path along CH 34/31st Street from Highland Avenue to Meyers Road including other and necessary appurtenant improvements.
- 3.2 The total PROJECT cost is estimated to be \$1,000,000 including engineering, right-of-way acquisition and construction. The COUNTY has secured federal Surface Transportation Program (STP) funds to help finance the construction of the PROJECT (75% or up to \$525,000).
- 3.3 The COUNTY will also provide bond funding for the PROJECT in the amount of \$300,000 for engineering,

right-of-way acquisition (if necessary) and local match for construction.

- 3.4 The VILLAGE will participate in the cost for engineering, right-of-way acquisition (if necessary) and local match for construction in an amount not to exceed \$175,000 as referenced in paragraph 5.2 hereinafter.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1 The COUNTY shall act as the lead Local Agency and be responsible for completing all preliminary engineering, design engineering, right-of-way acquisition (if necessary), utility coordination, letting and awarding of the construction contract, construction engineering and any other work required to ensure the PROJECT is implemented.
- 4.1 The COUNTY shall submit copies of the Preliminary (Phase I) Engineering Study and the Design (Phase II) Engineering Plans and Specifications to the VILLAGE for review.
- 4.2 The COUNTY shall be responsible for the cost of the PROJECT, subject to reimbursement from the VILLAGE as stated hereinafter.

5.0 RESPONSIBILITIES OF THE VILLAGE

- 5.1 The VILLAGE agrees to review the Preliminary (Phase I) Engineering Study as well as the Design (Phase II) Engineering Plans and Specifications and provide written review comments to the COUNTY on a timely basis.
- 5.2 The VILLAGE agrees to reimburse the COUNTY for PROJECT costs in excess of \$825,000 up to a total amount of \$175,000 as follows: Fifty percent of the VILLAGE's estimated share of PROJECT costs payable upon construction contract bid award; and the balance of the VILLAGE's share upon completion of construction of the PROJECT based on final quantities. Said amounts to be paid by the VILLAGE within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

6.0 MAINTENANCE

6.1 Upon completion of the PROJECT, the COUNTY shall be responsible for all future maintenance of the PROJECT.

7.0 INDEMNIFICATION

7.1 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.

7.2 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 affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

7.3 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.

- 7.4 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 affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.
- 7.5 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 7.1, 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.
- 7.6 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.
- 7.7 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 7.0 hereof shall terminate when the PROJECT is complete and the COUNTY assumes its maintenance responsibilities as set forth in paragraph 6.1 above.

8.0 GENERAL

- 8.1. 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 are proposed for the existing roadways and appurtenances.
- 8.2. 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.
- 8.3. 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 of the VILLAGE shall meet and resolve the issue.
- 8.4. 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 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.
- 8.5. 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.

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.

The VILLAGE:

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

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

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 NON-ASSIGNMENT

12.1. This AGREEMENT shall not be assigned by either party without the prior written consent of the other party, whose consent shall not be unreasonably withheld or delayed.

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 DUPAGE

VILLAGE OF DOWNERS GROVE

Daniel J. Cronin, Chairman
DuPage County Board

Ron Sandack, Mayor

ATTEST:

ATTEST:

Gary A. King
County Clerk

April K. Holden
Village Clerk

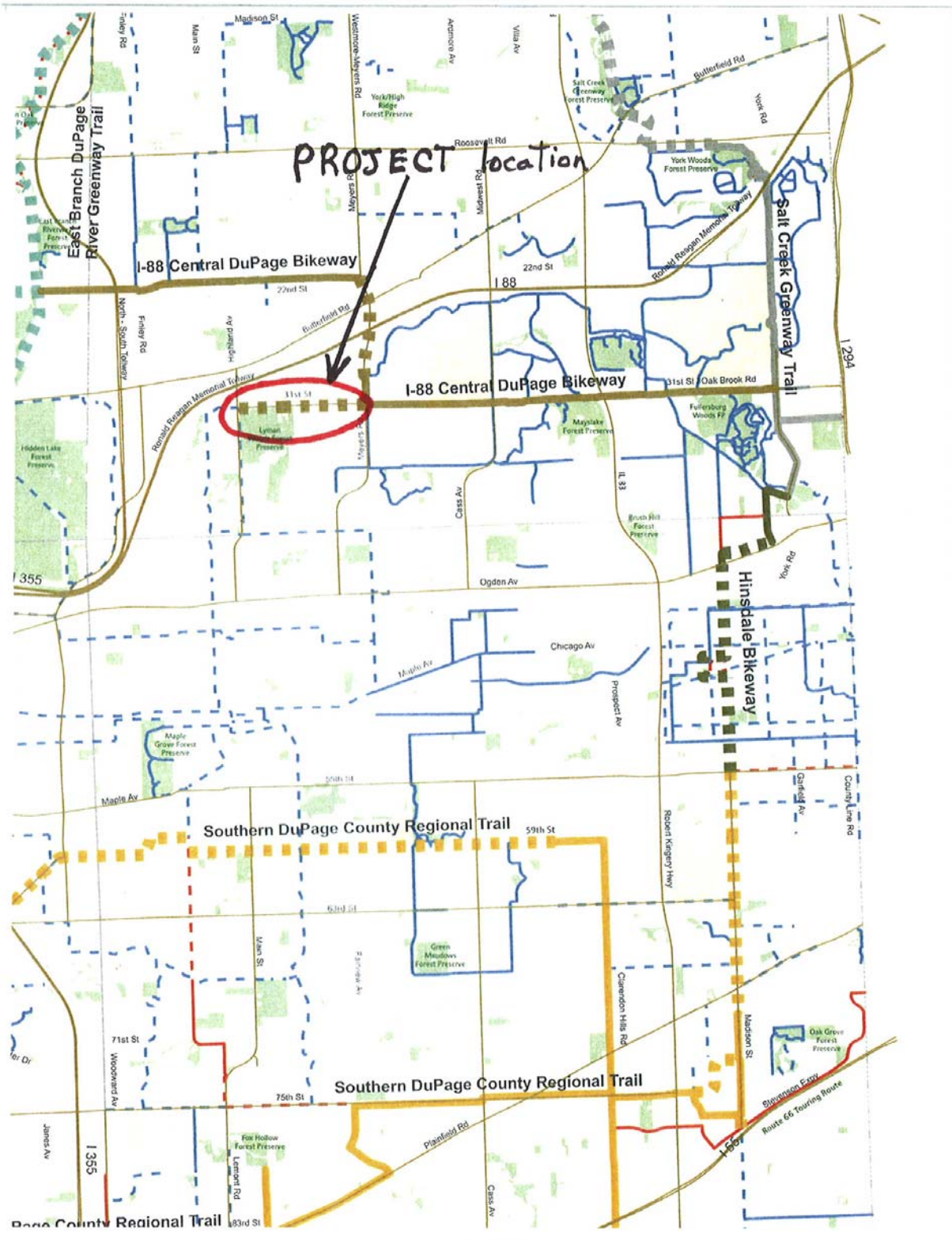


EXHIBIT A

2011-2015 Capital Project Sheet

Project # **BW-005**

Project Description 31st Street Bike Path

Project summary, justification and alignment to Strategic Plan

This project represents the Village's portion of a DuPage County bike path project, which would extend along 31st Street, from Highland Avenue to Meyers Rd.

| Cost Summary | New | Maintenance | Replacement | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | Future | TOTAL |
|-----------------------|-----|-------------|-------------|---------|---------|---------|---------|---------|--------|----------------|
| | | | | | | | | | Years | |
| Professional Services | | | | | | | | | | - |
| Land Acquisition | | | | | | | | | | - |
| Infrastructure | X | | | 25,000 | | 25,000 | 100,000 | | | 150,000 |
| Building | | | | | | | | | | - |
| Machinery/Equipment | | | | | | | | | | - |
| Other/Miscellaneous | | | | | | | | | | - |
| TOTAL COST | | | | 25,000 | - | 25,000 | 100,000 | - | - | 150,000 |

| Funding Source(s) | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | Future Yrs | TOTAL |
|---------------------------------|---------|---------|---------|---------|---------|------------|----------------|
| 220-Capital Improvements Fund ▼ | 25,000 | | 25,000 | 100,000 | | | 150,000 |
| ▼ | | | | | | | - |
| ▼ | | | | | | | - |
| ▼ | | | | | | | - |
| TOTAL FUNDING SOURCES | 25,000 | - | 25,000 | 100,000 | - | - | 150,000 |

Project status and completed work

It is anticipated that this work will occur in 2011.

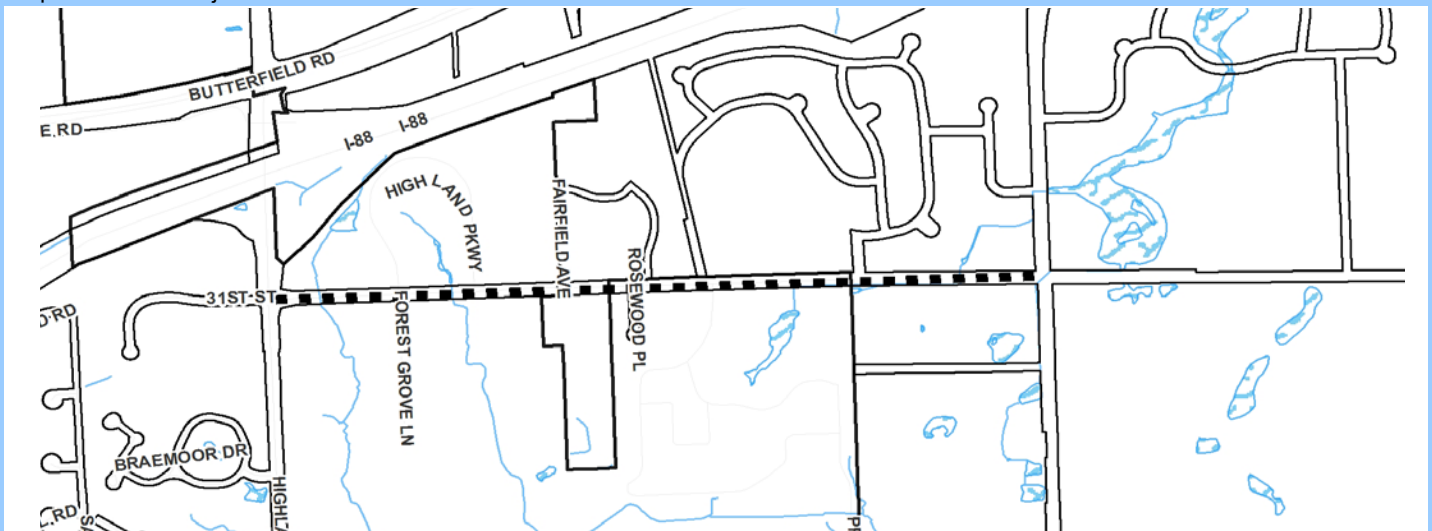
Grants (funded or applied for) related to the project.

Grant applied for STP, ITPF 50/50 split with DuPage County. \$150,000 requested is the Village's portion of the cost-share.

| Impact-annual operating expenses | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 | Future Yrs | TOTAL |
|-------------------------------------|---------|---------|---------|---------|---------|------------|-------|
| Projected Operating Expense Impact: | | | | | | | - |

Impact on the operating budget will be determined after the project is designed.

Map/Pictures of Project



Internal staff information:

Priority Score High

Project Manager: Andy Sikich

Program: 345 Department: Public Works