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**VILLAGE OF SUGAR GROVE  
BOARD REPORT**

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**TO:** VILLAGE PRESIDENT & BOARD OF TRUSTEES  
**FROM:** ANTHONY SPECIALE, DIRECTOR OF PUBLIC WORKS  
BRAD MERKEL, DEPUTY DIRECTOR OF PUBLIC WORKS  
**SUBJECT:** DISCUSSION: ROAD CONSTRUCTION AGREEMENT WITH RICH  
HARVEST FARMS  
**AGENDA:** MAY 19, 2020 REGULAR BOARD MEETING  
**DATE:** MAY 19, 2020

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**ISSUE**

Should the Village Board approve the Road Construction Agreement with Rich Harvest Farms.

**DISCUSSION**

Senator James Oberweis, at the request of Rich Harvest Farms (RHF), has secured a grant from the State of Illinois in the amount of \$200,000 to be applied to the cost of installing a left turn lane from Granart Road to the main access drive to the RHF property. The intent of the improvement is to facilitate the free flow of traffic and ensure safety of the motoring public.

The grant requires that the funds be awarded to the Village. Rich Harvest Farms has agreed to fund all costs above the grant amount.

The parties acknowledge that the current estimated cost of the project is \$275,206 exclusive of utility relocation costs, if any. The parties acknowledge that the exact timing for the receipt of the grant from the State is unknown and to facilitate the construction of the improvement, the Village and Rich Harvest Farms need to enter into a Road Construction Agreement.

Staff and Village Attorney Laura Julien Attached negotiated the attached Agreement, believe it adequately protects the Village, and recommend approval at the June 2, 2020 Board Meeting.

**COST**

The Project is budgeted in the FYE 21 budget in 35-53-7008: Streets & Row Improvements in the amount of \$200,000. That will be reimbursed by the Grant. The additional costs will be paid for by Rich Harvest Farms.

**RECOMMENDATION**

The Village Board direct staff to place the Road Construction Agreement on the June 2, 2020 Board Meeting for consideration.

## ROAD CONSTRUCTION AGREEMENT

This agreement is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 2020, (the "Effective Date") by and between Rich Harvest Farms, Co., an Illinois corporation, ("RHF") and the Village of Sugar Grove, an Illinois municipality ("Village").

### RECITALS

WHEREAS, RHF is the owner of certain property located adjacent to Granart Road, the same being a public roadway located in and under the jurisdiction of the Village; and

WHEREAS, both RHF and the Village desire to further facilitate the free flow of traffic and ensure safety of the motoring public at the intersection of Granart Road and the access drive to the property owned by RHF by installing a left turn lane from Granart Road to the access drive (hereinafter referred to as the "Improvement" or "Improvement Project"), which Improvement shall be substantially in conformance with the plan sheet attached hereto as Exhibit A; and

WHEREAS, the Village has been advised that a grant from the State of Illinois has been approved in the amount of \$200,000 to be applied to the payment of the cost of the Improvement; and

WHEREAS, the parties have agreed that the Improvement will be fully funded by a joint contribution between RHF and the Village, with the Village's portion being limited to the amount of the State grant received by the Village;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. The parties acknowledge that the current estimated cost of the Improvement Project is \$275,206 (the "Current Estimate"), exclusive of utility relocation costs, if any. The parties acknowledge that the exact timing for the receipt of the grant from the State is unknown. Accordingly, RHF agrees that, prior to the invitation to bid date, to deposit in a joint order escrow account (the "Escrow"), a sum equal to the Current Estimate. The Escrow shall be held by a title company, or another third party, mutually agreed upon by the parties.

2. At such time as the final bids for the Improvement Project are received, the Village and RHF shall jointly review the bids and determine whether to proceed with, or terminate, the Improvement Project. This determination shall be made within seven (7) business days after receipt of the final Improvement Project bids. Notwithstanding the foregoing, the Village shall have no right to terminate the Improvement Project if RHF agrees to pay the costs and expenses of the Improvement Project that exceed the Current Estimate and, within seven (7) days following the determination, deposit said excess funds into the Escrow in accordance with Section 3 below. If the Improvement Project is terminated, as provided herein, the Village shall be reimbursed for all its reasonable costs and expenses, including third-party costs, from the Escrow. The reasonableness of costs and fees shall be determined based upon the facts and circumstances of each case, however, costs and fees shall be deemed reasonable if they are in accordance with that which is customary for the work performed or services rendered. The Village estimates its fees

and costs to be reimbursed by RHF will be approximately \$3,000. In the event the Village's costs and fees exceed \$5,000 or at any time are estimated to exceed such amount, the Village shall notify RHF in writing, providing the basis for the increase in its costs and fees, and such increase shall be subject to RHF's approval, not to be unreasonably withheld.

3. Provided the Improvement Project is not terminated after receipt of the final bids, RHF shall deposit into the Escrow the difference between the Current Estimate and the total estimated costs for completion of the Improvement Project. In addition to the foregoing, RHF shall also deposit into the Escrow the amount of any utility relocation costs and/or costs in excess of the Current Estimate which are necessitated by a change order, if it is later determined that such costs will be incurred in connection with the Improvement Project. RHF shall have the right to review all change orders before the commencement of any work in connection therewith. In the event any change order increases the overall cost of the Improvement Project by more than \$50,000 RHF shall have the right to terminate this Agreement and the Village shall be reimbursed for all its reasonable costs and expenses, including third-party costs, from the Escrow.

4. The sums deposited into the Escrow by RHF are to be used to pay the costs of the Improvement Project as such costs are incurred. There shall be no more than two (2) disbursements from the Escrow in any calendar month for payment of costs and expenses of the Improvement Project. RHF and its consultants shall have the right to inspect the Improvement Project work prior to disbursements being made from the Escrow to confirm the work has progressed and the payments being made from the Escrow are for completed work.

5. At such time as the grant from the State of Illinois is received by the Village, the Village will deduct from such grant funds any third party costs incurred by the Village (including, but not limited to engineering and reasonable attorneys' fees) (the "Village Costs"), but only to the extent such Village Costs have not been paid from the Escrow. The remainder of such grant funds shall then be paid by the Village to RHF. The Village shall provide RHF with an accounting of all Village Costs which have been incurred and invoiced as of the Effective Date and on a monthly basis thereafter, on or before the end of each calendar month.

6. RHF shall obtain all required surveys, and prepare all plans and specifications meeting all requirements of the Village and the Illinois Department of Transportation ("IDOT") and furnish engineering inspection during construction. The Village agrees to implement and complete the Improvement Project, receive bids, award the contract, and cause the Improvement to be constructed in accordance with the approved plans and specifications and IDOT requirements.

7. RHF acknowledges that all work provided pursuant to the terms of this Agreement is subject to the Prevailing Wage Act [800 ILCS 130/1] unless specifically exempted by the terms of that Act.

8. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and approved assigns. It is agreed that the laws of the State of Illinois shall apply to this Agreement and that, in the event of litigation, venue shall lie in Kane County, Illinois. In the event of any litigation between the parties hereto relating to the subject matter hereof, each party shall bear its own costs and expenses..

9. This Agreement may only be modified by written modification executed by duly authorized representatives of both parties.

10. The introductory recitals included at the beginning of this Agreement are agreed to and incorporated into this Agreement.

11. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

[signatures appear on the following page]

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date and year first above written.

THE VILLAGE OF SUGAR GROVE

RICH HARVEST FARMS, CO.

By: \_\_\_\_\_  
Village President

By: \_\_\_\_\_  
President

Attest: \_\_\_\_\_  
Village Clerk

Attest: \_\_\_\_\_  
Secretary