

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE LAKE IN THE HILLS SANITARY DISTRICT AND THE
COUNTY OF MCHENRY WITH RESPECT TO THE REIMBURSEMENT
OF COSTS FOR THE RANDALL ROAD PROJECT**

THIS AGREEMENT is entered into this _____ day of _____, 2023, by and between the Lake in the Hills Sanitary District, a Sanitary District established under the Sanitary District Act of 1917 in the State of Illinois , hereinafter referred to as the DISTRICT, and the County of McHenry, Illinois acting by and through its County Board, a body politic and corporate of the State of Illinois, hereinafter referred to as the COUNTY. The DISTRICT and the COUNTY are collectively sometimes referred to as the PARTIES.

WITNESSETH

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and ensure the safety of the traveling public, is desirous of making certain roadway and non-motorized facility improvements along the Randall Road corridor between Ackman Road and Polaris Drive/Acorn Lane in the City of Crystal Lake and the Village of Lake in the Hills in Algonquin Township including road widening and reconstruction, multi-use paths, sidewalks and traffic signals, bridges and street lighting; and

WHEREAS, the above-listed construction work items, plus any other necessary associated work items, shall hereinafter be referred to as the IMPROVEMENT. The IMPROVEMENT shall also be referred to as COUNTY Section 06-00329-02-PW; and

WHEREAS, the IMPROVEMENT falls within the DISTRICT's service area and impacts DISTRICT facilities; and

WHEREAS, the IMPROVEMENT will be of immediate benefit to the residents of the COUNTY and the DISTRICT; and

WHEREAS, a general depiction and the approximate limits of the IMPROVEMENT are as indicated in EXHIBIT A to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof; and

WHEREAS, the IMPROVEMENT necessitates the relocation or adjustment to DISTRICT sanitary sewer facilities, hereinafter referred to as SEWER MODIFICATIONS; and

WHEREAS, the COUNTY and DISTRICT, in order to increase engineering efficiencies and reduce cost, desire to include the SEWER MODIFICATIONS with the IMPROVEMENT for bidding and contracting; and

WHEREAS, the IMPROVEMENT shall be constructed in substantial conformance with the final design engineering plans and specifications prepared by TranSystems (hereinafter PLANS), which by reference herein, hereby become a part hereof, and which have been provided to the DISTRICT for their review and comment; and

WHEREAS, the Constitution of the State of Illinois, Article VII, Section 10, provides that units of local government may contract among themselves in any manner not prohibited by law or by ordinance; and,

WHEREAS, the COUNTY by virtue of the authority as set forth in the Counties Code (55 ILCS 5/1-1001 et seq.), and the DISTRICT by virtue of the authority as set forth in the Sanitary District Act of 1917 (70 ILCS 2405 et seq.) are authorized to enter into this agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, made pursuant to all applicable statutes, local ordinances and authority, the COUNTY and the DISTRICT do hereby agree as follows:

**SECTION I.
Recitals/Headings**

1. The foregoing preambles are hereby incorporated herein as though fully set forth.
2. The “headings” as contained in THIS AGREEMENT are for reference only, and the actual written provisions, paragraphs and words of THIS AGREEMENT shall control.

**SECTION II.
COUNTY Commitments**

1. The COUNTY shall prepare, or cause to be prepared, a final version of the PLANS and contract letting documents for the IMPROVEMENT in accordance with COUNTY policies and standards. The DISTRICT shall have the opportunity to review and approve the PLANS prior to the letting of the IMPROVEMENT, the approvals of which shall not be unreasonably withheld by the DISTRICT.
2. The COUNTY agrees to incorporate the SEWER MODIFICATIONS into the PLANS at no cost to the DISTRICT.
3. The COUNTY shall prepare, or cause to be prepared, all necessary documents for any rights-of-ways or easements, either permanent or temporary, that may be necessary to

construct the IMPROVEMENT, inclusive of plats, deeds and legal descriptions that may be necessary to acquire those rights-of-ways or easements, either permanent or temporary.

4. The COUNTY shall cause the IMPROVEMENT to be constructed and to perform, or cause to be performed, the construction engineering supervision for the IMPROVEMENT in accordance with COUNTY procedures and requirements.
5. The COUNTY shall pay for all project costs including design engineering, surveying, land acquisition, construction, and construction engineering supervision for the IMPROVEMENT subject to reimbursement from the DISTRICT as described in EXHIBIT B to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof.
6. The COUNTY shall cause the IMPROVEMENT to be constructed in a way to ensure uninterrupted operation of DISTRICT facilities during construction activities and shall coordinate with the DISTRICT regarding maintenance and operation of DISTRICT facilities.
7. The COUNTY shall be responsible for construction and construction engineering supervision costs associated with the SEWER MODIFICATIONS within the DISTRICT's easements as described in EXHIBIT B to THIS AGREEMENT at no cost to the DISTRICT.
8. The Illinois Department of Transportation will let and award the IMPROVEMENT. The anticipated letting date for the IMPROVEMENT is November 17, 2023. (The letting date is subject to change, dependent upon project readiness and the availability of project funding.)
9. The COUNTY shall require the successful bidder to name the DISTRICT and its subsidiaries and Engineer by endorsement as an additional insured on any liability coverage required pursuant to such contracts.
10. The COUNTY shall, for itself and for those authorized by or through the COUNTY, including without limitation an authorized COUNTY contractor, and to the fullest extent permitted by law, hold harmless, indemnify and defend the DISTRICT, its commissioners, officers, agents, attorneys, employees, Engineer, contractors and successors and assigns from and against any and all losses, liabilities, expenses, claims, costs, causes, actions, litigation costs, attorneys' fees, suits and damages relating to personal or bodily injuries, death or damages or injuries to property arising from, occurring, growing out of, incident to, relating to or otherwise resulting from any alleged act or omission related to the construction, installation, or use of the IMPROVEMENT by the COUNTY, its employees and authorized agents, or any authorized COUNTY contractor, or any of their respective

officers, agents, contractors, employee or representatives (collectively, CLAIMS), except to the extent any such CLAIMS arise from the negligent acts or willful or wanton misconduct of the DISTRICT.

SECTION III.
DISTRICT Commitments

1. The DISTRICT shall continue to own, operate and maintain the sanitary sewer within the DISTRICT's service area that is located within COUNTY rights-of-ways as well as DISTRICT easements.
2. The DISTRICT shall prepare, or cause to be prepared, the necessary surveys, obtain all necessary permits and perform the necessary engineering for the SEWER MODIFICATIONS at no cost to the COUNTY. The COUNTY shall have the opportunity to review and approve the SEWER MODIFICATIONS prior to the letting of the IMPROVEMENT, the approvals of which shall not be unreasonably withheld by the COUNTY.
3. The DISTRICT shall assist with construction engineering and inspection for the SEWER MODIFICATIONS for the purposes of the DISTRICT's acceptance of the SEWER MODIFICATIONS in accordance with the PLANS and the DISTRICT's procedures and requirements.
4. The DISTRICT shall reimburse the COUNTY for construction and construction engineering supervision costs associated with the SEWER MODIFICATIONS within the COUNTY's rights-of-ways as described in EXHIBIT B to THIS AGREEMENT.
5. The DISTRICT shall reimburse the COUNTY ninety-five percent (95%) of the construction and construction engineering supervision costs associated with the SEWER MODIFICATIONS, based upon awarded unit prices, within sixty (60) days of receiving notice of the contract award.
6. The DISTRICT agrees to reimburse the balance of the construction and construction engineering supervision costs associated with the SEWER MODIFICATIONS, based upon awarded unit prices, within sixty (60) days of receiving notice by the COUNTY of substantial completion of construction of the IMPROVEMENT. Substantial completion means the construction is sufficiently complete in accordance with the PLANS so that the motoring public may travel in a normal traffic pattern, although punch list items remain to be completed.

7. The DISTRICT further agrees to pass a supplemental resolution to provide necessary funds for SEWER MODIFICATION costs if the amount appropriated proves to be insufficient, to cover said costs.

**SECTION IV.
General Provisions**

1. THIS AGREEMENT shall not be construed, in any manner or form, to limit the power or authority of the COUNTY or the COUNTY ENGINEER to maintain, operate, manage, improve, construct, reconstruct, repair, widen or expand COUNTY Highways as best determined, as provided by law.
2. Nothing contained in THIS AGREEMENT is intended or shall be construed as, in any manner or form, as creating or establishing a legal partnership or agency relationship between the PARTIES, or as establishing (i) the DISTRICT (including its elected officials, duly appointed officials, employees and agents) as the agent, representative or employee of the COUNTY, (ii) the COUNTY (including its elected officials, duly appointed officials, employees and agents) as the agent, representative or employee of the DISTRICT, for any purpose or in any manner, whatsoever. Each PARTY is and shall remain independent of the other PARTY with respect to all rights exercised and obligations performed under THIS AGREEMENT.
3. Each person executing THIS AGREEMENT warrants and represents to the PARTIES (i) that he or she has the full and complete right, power and authority to execute THIS AGREEMENT and to agree to the terms, provisions, and conditions set forth in THIS AGREEMENT on behalf of the PARTY on whose behalf he or she is executing; (ii) that all legal actions necessary to authorize him or her to execute and deliver THIS AGREEMENT have been taken; and (iii) THIS AGREEMENT does not violate any presently existing provisions of law or any applicable order, writ, injunction or decree of any court or government department, commission, board, bureau, agency or instrumentality applicable to the PARTY on whose behalf he or she is executing.
4. The Effective Date of THIS AGREEMENT will be the first day of the month following the date upon which THIS AGREEMENT has been executed by the PARTIES.
5. The provisions of THIS AGREEMENT are severable. If any provision, paragraph, section, subdivision, clause, phrase or word of THIS AGREEMENT is for any reason held to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such decision shall not affect the remaining portions of THIS AGREEMENT.

6. No claim as a third-party beneficiary under this AGREEMENT by any person, firm, or corporation, or entity shall be made, or be valid, against the PARTIES.
7. THIS AGREEMENT supersedes all oral agreements and negotiations between the PARTIES hereto relating to the subject matter hereof.
8. Any alterations, amendments, deletions, or waivers of any provision of THIS AGREEMENT shall be valid only when expressed in writing and duly executed by all PARTIES affected by such alteration, amendment, deletion, or waiver.
9. Any notice or communication required or permitted to be given under THIS AGREEMENT shall be in writing and shall be delivered: (i) personally, (ii) overnight by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, or (iv) by electronic mail. Electronic mail notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in THIS AGREEMENT, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. Mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each PARTY shall have the right to change the address or the addressee, or both, for all future notices and communications to such PARTY, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the COUNTY shall be addressed to, and delivered at, the following address:

McHenry County Division of Transportation
16111 Nelson Road
Woodstock, Illinois 60098
Attention: Mr. Joseph R. Korpalski, Jr., P.E.
Director of Transportation/County Engineer
Email: MCDOT@mchenrycountyil.gov

With a copy to:
McHenry County State's Attorney
2200 N Seminary Ave, Suite 150,
Woodstock, IL 60098
Attention: Assistant State's Attorney Tom Cahill
Email: tpcahill@mchenrycountyil.gov

Notices and communications to the DISTRICT shall be addressed to, and delivered at, the following addresses:

Lake in the Hills Sanitary District
515 Plum St.
Lake in the Hills, Illinois 60156
Attention: Tamara Mueller, District Manager
Email: tmueller@lithsd.com

With a copy to:
Storino, Ramello & Durkin
9501 W. Devon Avenue, Suite 800
Rosemont, Illinois 60018
Attention: Ann Williams
Email: awilliams@srd-law.com

The requirements of this Section shall not be deemed to invalidate any notice actually received.

10. THIS AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto, their successors and assigns. None of the PARTIES hereto shall assign, transfer, sell, grant, convey, deed, cede or otherwise give over, in any manner or form, any of its duties, obligations and/or responsibilities as heretofore set forth in THIS AGREEMENT without first obtaining the expressed written consent and permission of the remaining PARTIES.
11. THIS AGREEMENT shall be enforceable in any court of competent jurisdiction in McHenry County by each of the PARTIES hereto by any appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements, duties, responsibilities and obligations contained herein.
12. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
13. THIS AGREEMENT shall be terminable only by the mutual written agreement of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this agreement on the dates indicated.

**LAKE IN THE HILLS
SANITARY DISTRICT**

ATTEST:

Karen Thompson
District Clerk

By: _____
Jessica Reed
District President

Date: _____

COUNTY OF MCHENRY

ATTEST:

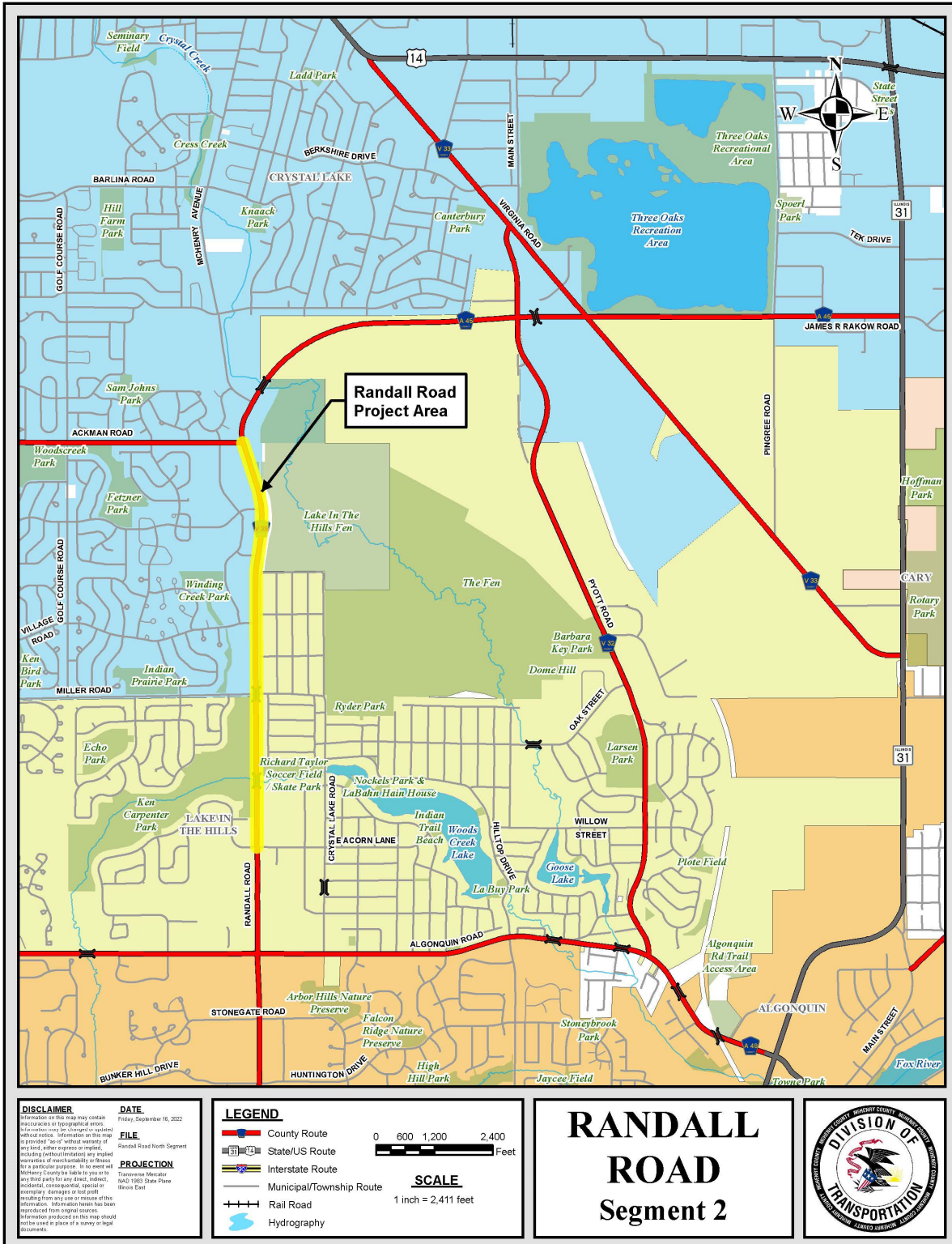
Joseph Tirio
McHenry County Clerk

By: _____
Michael Buehler
County Board Chairman

Date: _____

EXHIBIT A General Depiction of the IMPROVEMENT

The Improvement will generally be located in the area depicted in the map below.



DISCLAIMER
Information on this map may contain inaccuracies or topographical errors. Randall Road North Segment is provided "as is" without warranty of any kind, either express or implied, including (but not limited to) the accuracy of measurements or distances for a particular purpose. In the event that Millery County be liable to you or to any third party for any direct, indirect, incidental, consequential, special or exemplary damages or lost profits resulting from any use or misuse of this information, information herein has been reproduced from original sources. Information produced on this map should not be used in place of a survey or legal document.

DATE
Friday, September 16, 2022

FILE
Randall Road North Segment

PROJECTION
Transverse Mercator
NAD 1983 Data Plane
NAD 83 East

LEGEND

- County Route
- State/US Route
- Interstate Route
- Municipal/Township Route
- Rail Road
- Hydrography

0 600 1,200 2,400 Feet

SCALE
1 inch = 2,411 feet

RANDALL ROAD Segment 2



**EXHIBIT B
COST PARTICIPATION**

**Estimated Division of Costs for the
Randall Road Improvements**

North Contract (Polaris Drive/Acorn Lane to Ackman Road)

Lake in the Hills Sanitary District

Item	Estimated Cost	Portion Attributable to the County					Portion Attributable to the District				
		Maint %	Cost %	Const \$	CE 10%	Total	Maint %	Cost %	Const \$	CE 10%	Total
Sanitary Sewer Relocation (within County ROW)	\$360,000	0%	0%	\$0	\$0	\$0	100%	100%	\$360,000	\$36,000	\$396,000
Sanitary Sewer Relocation (within District Easement)	\$100,000	0%	100%	\$100,000	\$10,000	\$110,000	100%	0%	\$0	\$0	\$0
Project Totals	\$460,000			\$100,000	\$10,000	\$110,000			\$360,000	\$36,000	\$396,000

Engineer's Estimate of Probable Cost by Applied Technologies, Inc. Dated: July 20, 2023

The District's Estimated Initial Payment at Contract Award (95%)	\$376,200
The District's Estimated Final Payment at Substantial Completion (5%)	<u>\$19,800</u>
The District's Estimated Total Payment to McHenry County	\$396,000