

INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF MCHENRY AND THE
CITY OF MCHENRY FOR PHASE I ENGINEERING OF A SHARED USE AND RAILROAD
COORDINATION FOR A PATH ALONG BULL VALLEY ROAD AND ASSOCIATED
IMPROVEMENTS

THIS AGREEMENT entered into this _____ day of _____, 2017 and between the County of McHenry, Illinois, a body politic and corporate, acting by and through its County Board, hereinafter referred to as the COUNTY, and the City of McHenry, a municipal corporation, acting by and through its City Council, hereinafter referred to as the CITY.

WITNESSETH

WHEREAS, the COUNTY has jurisdiction over Bull Valley Road in the City of McHenry, from Crystal Lake Road to Illinois Route 31; and

WHEREAS, the Prairie Trail is an existing regional shared use path maintained by the McHenry County Conservation District and crosses Bull Valley Road east of Kresswood Drive; and

WHEREAS, a shared use path maintained by the CITY also exists along Charles J. Miller Road, from Illinois Route 31 to River Road; and

WHEREAS, a gap exists in the regional trail network between the Prairie Trail and Illinois Route 31; and

WHEREAS, the COUNTY and the CITY desire to construct a shared use path to become a new portion of the regional trail network which will fill such gap; and

WHEREAS, completing this gap in the regional trail network with a shared use path with safe and accessible crossings will connect residents to numerous key locations such as Centegra Medical Center, McHenry City Hall and Moraine Hills State Park; and

WHEREAS, the CITY and the COUNTY have developed a plan to complete Phase I engineering for the improvements for the shared use path as described in the attached Exhibit A, hereinafter referred to as the ENGINEERING; and

WHEREAS, the CITY and the COUNTY agree to coordinate a new pedestrian crossing with the Union Pacific Railroad as described in the attached Exhibit A, hereinafter referred to as the RAILROAD; and

WHEREAS, the total costs associated with Phase I ENGINEERING, hereinafter referred to as the COSTS, is estimated to be \$187,500; and

WHEREAS, the COUNTY and the CITY intend to jointly apply for State and Federal funding for future phases of design engineering, construction, and construction engineering, including, but not limited to, the Illinois Transportation Enhancement Program (ITEP) and Transportation Alternatives Program (TAP) federal grants

WHEREAS, the COUNTY and the CITY desire to reach an agreement regarding the funding of the COSTS; and

WHEREAS, the COUNTY and the CITY are authorized by the terms and provisions of Section 10 of Article VII of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, to enter into intergovernmental agreements, ventures, and undertakings to perform jointly any governmental purpose or undertaking any of them could do singularly;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the COUNTY and the CITY hereby mutually agree to perform as follows:

1. Recitals. The foregoing recitals are hereby incorporated and made part of this agreement as though fully set forth herein.
2. Lead Agency Engineering. The CITY shall serve as the lead agency coordinating the ENGINEERING. The ENGINEERING is designated in Exhibit A.
3. Lead Agency UPRR Coordination. The COUNTY shall serve as the lead agency coordinating with the RAILROAD. The RAILROAD is designated in Exhibit A.
4. Cost Participation. The estimated COSTS associated with the ENGINEERING and RAILROAD are \$187,500. The COUNTY shall reimburse the CITY for 80% of the actual COSTS consisting of the Phase I design ENGINEERING and the CITY shall pay the remaining 20% of the actual COSTS consisting of the design ENGINEERING. The CITY shall credit the COUNTY for 20% of the actual COSTS consisting of the RAILROAD and the COUNTY shall pay the remaining 80% of the actual COSTS consisting of the RAILROAD.
 - a. COUNTY Portion. The COUNTY's estimated portion of the COSTS for Phase I design ENGINEERING and RAILROAD is \$150,000.
 - b. CITY Portion. The CITY's estimated portion of the COSTS for Phase I design ENGINEERING and RAILROAD is \$37,500.

The CITY shall require as part of the ENGINEERING that updated estimated COSTS shall be provided no less than bi-weekly and agrees to provide the COUNTY with said information. The parties agree that should any updated estimated COSTS of the ENGINEERING exceed the original estimate, as stated herein, by more than ten percent (10%), either party may terminate this agreement without penalty or expense to any party upon written notification. However, the indemnification provisions of Sections 9 and 10 shall survive such termination for any claims or other matters that may have arisen prior to such termination. Any COSTS incurred prior to the termination shall be paid according to the allocations set forth above.

5. Solicitation Approvals. The CITY shall provide the COUNTY any proposed solicitation to select engineers or an engineering firm to develop the ENGINEERING of the shared use path within fourteen (14) days of entering into this agreement for input and recommendations. The COUNTY shall review and either approve or provide recommendations to the CITY for proposed changes to the solicitation within twenty-one (21) days of receipt. The COUNTY's approvals shall not be unreasonably withheld.

6. UPRR Railroad Agreement. The COUNTY shall enter into a separate agreement with the RAILROAD.
7. Plan Approvals. The CITY shall provide the COUNTY all ENGINEERING for the shared use path within fourteen (14) days of receipt for input and recommendations. The COUNTY shall review and either approve or provide recommendations to the CITY for proposed changes to the ENGINEERING for the shared use path within twenty-one (21) days of receipt. The COUNTY's approvals shall not be unreasonably withheld.
8. Contract Approvals. Prior to entering into any contracts for ENGINEERING of the shared use path the CITY shall provide copies of such proposed contracts to the COUNTY within fourteen (14) days of receipt for review and approval. The COUNTY shall review and either approve or provide recommendations to the CITY for proposed changes to the proposed contracts within twenty-one (21) days of receipt. The COUNTY's approvals shall not be unreasonably withheld.
9. Contract Provisions. Any contract entered into by the CITY for ENGINEERING of the shared use path and RAILROAD shall contain and extend indemnification, insurance requirements, and warranties to the CITY and COUNTY. Certificates of insurance and insurance policy endorsements shall be required by the CITY of such contractors and shall name the COUNTY as additional insureds.
10. Indemnification by the COUNTY. The COUNTY agrees to indemnify, defend, and hold harmless the CITY, its elected officials, its duly appointed officials, agents, employees, and representatives, from and against any and all claims, suits, settlements, actions, losses, expenses, damages, injuries, judgments, and demands arising from the negligent actions of the COUNTY arising from, growing out of, or connected with the ENGINEERING of the shared use path and RAILROAD.
11. Indemnification by the CITY. The CITY agrees to indemnify, defend, and hold harmless the COUNTY, its elected officials, its duly appointed officials, agents, employees, and representatives, from and against any and all claims, suits, settlements, actions, losses, expenses, damages, injuries, judgments, and demands arising from the negligent actions of the CITY arising from, growing out of, or connected with the ENGINEERING of the shared use path and RAILROAD.
12. Limitation of Authority. It is mutually agreed by and between the parties hereto that nothing contained in this agreement is intended nor shall be construed in any manner or form to limit the power or authority of the COUNTY or the Director of Transportation/County Engineer to maintain, operate, improve, construct, re-construct, repair, build, widen, or expand any COUNTY Highway as best determined and provided by law.
13. Severability. It is mutually agreed by and between the parties hereto that 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.

14. Entire Agreement. It is mutually agreed by and between the parties hereto that the agreement of the parties hereto is contained herein, and that this agreement supersedes all oral agreements and negotiations between the parties hereto relating to the subject matter hereof as well as any previous agreements presently in effect between the parties hereto relating to the subject matter hereof.
15. Modifications. It is mutually agreed by and between the parties hereto that any alterations, amendments deletions, or waivers of any provision of this agreement shall be valid only when expressed in writing and duly executed by the parties hereto.
16. Successors and Assigns. This agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns, provided however, that no party hereto shall assign any interest hereunder without the prior written consent and approval of the others and any such assignment, without said prior written consent and approval shall be null and void and of no force and effect.
17. Rights of Third Parties. Nothing herein shall be construed to create any rights or duties to third parties, it being the parties' mutual intent that there be no third party beneficiaries to this agreement. Any allocation of costs, duties and responsibilities described herein is intended only as an allocation of administrative responsibilities between the COUNTY and the CITY to facilitate the most economical use of limited public resources and not as an enlargement or diminution of any party's underlying duties or obligations lying in statute or common law.
18. Notices. Any notices required or permitted hereunder shall be sufficiently given if mailed by certified mail, return receipt requested to the parties hereto as follow:

MCHENRY COUNTY DIVISION OF TRANSPORTATION
16111 Nelson Road
Woodstock, Illinois 60098
Attention: Mr. Joseph R. Korpalski, Jr., P.E.
Director of Transportation/County Engineer

CITY OF MCHENRY
333 Green Street
McHenry, Illinois 60050
Attention: Mr. Jon Schmitt
Public Works Director

19. Jurisdiction and Venue. The terms of this agreement will be construed in accordance with the laws of Illinois, and if any disputes arise, said disputes shall be decided under the jurisdiction and governed by the laws of Illinois. The venue for any disputes involving interpretations of this agreement shall be the 22nd Judicial Circuit of the State of Illinois, McHenry County, Illinois.
20. Authorized Signatory. Each person signing below on behalf of one of the parties hereto agrees, represents and warrants that he or she has been duly and validly authorized to sign this agreement on behalf of their party.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date set forth above.

ATTEST:

CITY OF MCHENRY

Lynzi Nevitt, City Clerk
City of McHenry

Wayne S. Jett, Mayor
City of McHenry

ATTEST:

COUNTY OF MCHENRY

Joseph J. Tirio, Clerk
McHenry County

Jack D. Franks, Chairman
McHenry County Board