

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE COUNTY OF MCHENRY AND THE MCHENRY TOWNSHIP ROAD DISTRICT
FOR THE JURISDICTIONAL TRANSFER OF COUNTY HIGHWAYS LOCATED IN
MCHENRY TOWNSHIP THAT ARE PART OF THE NONDEDICATED SUBDIVISION
ROAD CONSTRUCTION PROGRAM**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ____ day of _____, 2019, by and between the COUNTY OF McHENRY, Illinois, a body politic and corporate of 2200 North Seminary Avenue, Woodstock, Illinois 60098, acting by and through its County Board, (hereinafter referred to as “COUNTY”) and the McHENRY TOWNSHIP ROAD DISTRICT, a unit of local government of 3703 North Richmond Road, Johnsburg, Illinois 60051 (hereinafter referred to as “ROAD DISTRICT”).

WITNESSETH

WHEREAS, on August 2, 2016, the COUNTY approved Resolution R-201608-82-192 creating the Nondedicated Subdivision Road Construction Program; and

WHEREAS, said resolution named specific Nondedicated Subdivision Roads (hereinafter referred to as “NSRs”) that were to immediately become part of the County Highway System upon approval by the Illinois Department of Transportation (hereinafter referred to as “IDOT”) which included the following streets, further described and depicted in Exhibit A, attached hereto and incorporated herein, (hereinafter referred to as the “McHenry Township Roads”):

1. Bay View Court from Bay View Lane to dead end;
2. Beach Drive from Lake Shore Drive to Wonder Lake Road;
3. Hilltop Drive from Beach Drive to Sunset Drive;
4. Regner Road from Bay Road to Wooded Lane;
5. Wooded Lane from Regner Road to Magellan Drive;
6. Magellan Drive from Wooded Lane to Regner Road;
7. Fair Oak Lane from Emerald Drive to River Road;
8. Mid Oak Lane from Emerald Drive to River Road;
9. Elm Oak Lane from Emerald Drive to River Road;
10. Orchard Beach Road from north of Kashmiri Avenue to Shorewood Drive;
11. Hayden Drive from Riverdale Drive to Stafford Drive;
12. Stafford Drive from south of Hayden Drive to north of Shady Hollow Lane;
13. Shady Hollow Lane from Riverdale Drive to Stafford Drive;
14. Boston Road from East Lakeshore Drive to Wonder Lake Road;
15. MacArthur Avenue from Hilltop Drive to Wonder Lake Road;
16. Lookout Drive from Harbor Road to Wonder Lake Road;
17. Nantucket Drive from East Lakeshore Drive to Wonder Lake Road;
18. Lynn Road from East Lakeshore Drive to Hilltop Drive;
19. Cambridge Road from East Lakeshore Drive to Hilltop Drive;
20. Hilltop Drive from south of Cambridge Road to north of Nantucket Drive;
21. Harbor Road from Hilltop Drive to Nantucket Drive;
22. East Lakeshore Drive from Cambridge Road to Nantucket Drive;
23. Mineral Springs Drive from dead end to River Road;
24. Clement Lodge (N) from Clement Lodge (S) to River Road;

25. Clement Lodge (S) from Mineral Springs Drive to River Road;
26. Orchard Beach Road from McHenry city limit to Kama Avenue;
27. Quinn Road from River Road to dead end;
28. Kama Avenue from Mogra Drive to Orchard Beach Road;
29. Henzada Avenue from Sterling Drive to dead end east of Mogra Drive;
30. Kashmiri Avenue from Sterling Drive to Orchard Beach Road;
31. Mogra Drive from Kama Avenue to Henzada Avenue;
32. Orchard Beach Road from Kama Avenue to north of Kashmiri Avenue;
33. MacArthur Drive from Beach Avenue to Flanders Road;
34. Howe Drive from Wonder Woods Drive to dead end;
35. Woodlane Drive from Wonder Woods Drive to Howe Drive;
36. West Lakeshore Drive from Willow Drive to north of Cross Drive;
37. Oak Drive from Wonder Woods Drive to West Lakeshore Drive;
38. Hickory Drive from Wonder Woods Drive to West Lakeshore Drive;
39. Chestnut Drive from west of Wonder Woods Drive to West Lakeshore Drive;
40. Willow Drive from West Lakeshore Drive to Cypress Drive;
41. Cross Drive from Wonder Woods Drive to West Lakeshore Drive;
42. Cypress Drive from Wonder Woods Drive to West Lakeshore Drive;
43. Hill Drive from west of Wonder Woods Drive to Wonder Woods Drive;
44. Fir Drive from west of Wonder Woods Drive to Wonder Woods Drive;
45. Lone Tree Drive from west of Wonder Woods Drive to Wonder Woods Drive; and,
46. Court Street from White Oaks Road to Cypress Drive.

WHEREAS, the McHenry Township Roads total 7.70 miles; and

WHEREAS, the NSRs, including the McHenry Township Roads, are functioning more as local streets than regional highways; and

WHEREAS, the McHenry Township Roads are within the ROAD DISTRICT limits and not within any municipal limits; and

WHEREAS, Section 5/5-105 of the Illinois Highway Code grants the authority to make changes to the county highway systems by resolution of the county board and subject to the approval of IDOT; and

WHEREAS, Section 5/5-105 of the Illinois Highway Code further states that highways removed from the county highway system which do not become part of the State of Illinois highway system shall become part of the township road system; and

WHEREAS, Section 5/6-201.3 of the Illinois Highway Code grants the authority to make changes to the township road district system to the highway commissioner; and

WHEREAS, the transfer of jurisdiction over the McHenry Township Roads will provide for the ROAD DISTRICT control of the McHenry Township Roads and will be beneficial to the residents of both the ROAD DISTRICT and the COUNTY.

WHEREAS, the COUNTY and the ROAD DISTRICT are units of local government authorized by the Illinois Constitution (ILL. CONST. ART. VII, Section 10) and

Intergovernmental Cooperation Act 5 ILCS 220/1 *et seq.* to contract with each other and otherwise agree amongst themselves and undertake certain transactions with each other to perform jointly any governmental purpose or undertaking any of them could do singularly.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and the ROAD DISTRICT mutually agree as follows:

1. Recitals. The above recitals are in integral part of this Agreement and are incorporated herein.

2. Lead Agency. The ROAD DISTRICT shall be the lead agency for purposes of this Agreement.

3. Transfer of Jurisdiction. The parties agree to transfer jurisdiction of the McHenry Township Roads from the COUNTY to the ROAD DISTRICT, subject to approval by IDOT, and the right-of-way will continue to be used as a public street or road, and the maintenance, repair, and upkeep will be accomplished as appropriate per the requirements of the Illinois Highway Code (605 ILCS 5/6-201.7, 5/6-201.8). Said transfer shall be completed as follows:

a. Upon execution of this Agreement, the ROAD DISTRICT shall authorize and approve the McHenry Township Roads be added to the ROAD DISTRICT's township road district system, accept jurisdiction over the McHenry Township Roads, and execute the applications to IDOT for approval of the changes by completing the Local Agency Agreement for Jurisdictional Transfer, attached hereto as Exhibit B and incorporated herein;

b. Upon execution of this Agreement, the COUNTY shall authorize and approve the McHenry Township Roads be deleted from the COUNTY's highway system, transfer jurisdiction over the McHenry Township Roads to the ROAD DISTRICT, and make application to IDOT for approval of the changes by completing the Local Agency Agreement for Jurisdictional Transfer, attached hereto as Exhibit B and incorporated herein;

4. Road Improvements. The parties agree all of the McHenry Township Roads shall be improved within the existing prescriptive right-of-way by the ROAD DISTRICT, unless additional right-of-way or easements are obtained by the ROAD DISTRICT as set forth in Section 5 below, prior to May 16, 2022 with the COUNTY reimbursing THREE MILLION, FOUR HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND NO/100 (\$3,465,000.00) of the total cost, as follows:

a. Road District's Duties.

i. Minimum Improvements to be Made. The ROAD DISTRICT shall, at a minimum, resurface the McHenry Township Roads, including, but not limited to, removing the top 2 inches of pavement and replacing it with 2.25 inches of pavement. The ROAD DISTRICT shall perform some nominal drainage work, as needed on the McHenry Township Roads and on a case by case basis.

ii. Engineering. The ROAD DISTRICT shall be responsible for all engineering, including, but not limited to, surveying, pavement and soil analysis, stormwater drainage analysis, roadway design, preparing plans and specifications for contract bidding and utility coordination, construction engineering services, documenting existing conditions, coordinating and attending preconstruction and construction meetings, governmental entity coordination, resident coordination, marking, measuring and documenting contract removal pavement, and observing construction is performed in general conformance with the approved plans and specifications and shall pay invoices received from an engineer qualified to perform the work pursuant to the agreement between them.

iii. Construction. The ROAD DISTRICT shall be responsible for all construction and shall pay invoices received from the lowest responsible bidder qualified to perform the construction pursuant to the agreement between them.

iv. Township Motor Fuel Tax Funds. If the ROAD DISTRICT elects to use any of its Motor Fuel Tax funds in relation to this Agreement, the ROAD DISTRICT shall comply with all IDOT and COUNTY procedures and requirements.

v. Certificates of Completion and Lien Waivers. Prior to requesting any final payments as set forth in Section 4(b) below, the ROAD DISTRICT shall certify that it has completed that portion of the improvements to the McHenry Township Roads for which it is requesting payment by providing the COUNTY an executed Certificate of Completion. Said Certificate of Completion shall be similar in substance and form to IDOT's Local Agency Certification to Accompany Engineer's Final Payment Estimate. In addition, the ROAD DISTRICT shall certify that it has paid for the work completed for that portion of the improvements to the McHenry Township Roads for which it is requesting payment by providing the COUNTY executed lien waivers to date or final lien waivers, as applicable.

vi. Invoice. The ROAD DISTRICT shall invoice the COUNTY in writing setting forth the payment amount requested.

b. County's Duties.

i. Permit Fees. The COUNTY shall waive its regular permit fees, if any, for the McHenry Township Roads; however, any fees as a result of the ROAD DISTRICT requesting any expedited review shall be the responsibility of the ROAD DISTRICT.

ii. Amounts to be Paid. The parties understand and agree that all of the improvements to the McHenry Township Roads will not be completed simultaneously, and improvements may be made to a portion of the McHenry Township Roads (such as a subdivision) pursuant to an individual contract. The ROAD DISTRICT shall provide the COUNTY a copy of each of the contracts for improvements. The COUNTY shall determine: 1) the maximum amount it will pay

on the contract, and 2) the COUNTY and the ROAD DISTRICT's proportionate share of the contract as follows:

1. Maximum Amount to be Paid. The COUNTY shall determine the length of miles of the McHenry Township Roads covered by each contract based on the length of the road as set forth in Exhibit B, the Local Agency Agreement for Jurisdictional Transfer. The COUNTY shall multiply the length in miles of the McHenry Township Roads covered by the contract by FOUR HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 (\$450,000.00) per mile. This shall be the maximum amount the COUNTY shall pay on the contract.

2. Proportionate Share. If the cost of any contract exceeds the maximum amount the COUNTY shall pay on the contract as determined in Section 4(b)(ii)(1) above, the ROAD DISTRICT shall be responsible for any and all additional amounts. The COUNTY shall determine its proportionate share of each of the contracts and the ROAD DISTRICT's proportionate share of each of the contracts. Progress payments, as set forth in Section 4(b)(iii) below, shall be made according to the parties' proportionate shares.

iii. Progress Payments. At least once each month, the ROAD DISTRICT's engineer for each contract will make a written estimate of the quantity of work performed in accordance with the contract and the value thereof at the contract unit prices. The amount of the engineer's estimate shall be approved by the ROAD DISTRICT as due for payment and the ROAD DISTRICT shall invoice the COUNTY. No amount less than one thousand dollars and no/100 (\$1,000.00) will be approved for payment other than the final payment.

Upon receipt of lien waivers to date, the COUNTY shall reimburse the ROAD DISTRICT the COUNTY's proportionate share, as determined in Section 4(b)(ii)(2) above, of the progress payment. Payment shall be due from the COUNTY to the ROAD DISTRICT fourteen (14) calendar days from the invoice date. The failure to perform any requirement, obligation, or term of this Agreement by the ROAD DISTRICT shall be reason for withholding any progress payments until the COUNTY determines that compliance has been achieved. The ROAD DISTRICT agrees to pay any costs in excess of the COUNTY's proportionate share of the progress payment.

iv. Final Payments. Upon completion of the improvements, receipt of a Certificate of Completion, and final lien waivers, the COUNTY shall reimburse the ROAD DISTRICT the remaining amount owed of the maximum amount the COUNTY shall pay on the contract as determined in Section 4(b)(ii)(1) above. Payment shall be due from the COUNTY to the ROAD DISTRICT fourteen (14) calendar days from the invoice date. The failure to perform any requirement, obligation, or term of this Agreement by the ROAD DISTRICT shall be reason for withholding the final payment until the COUNTY determines that compliance has been achieved. The ROAD DISTRICT agrees to pay any costs in excess of the

maximum amount the COUNTY shall pay on the contract. The COUNTY shall pay THREE MILLION, FOUR HUNDRED SIXTY-FIVE THOUSAND DOLLARS AND NO/100 (\$3,465,000.00) for the McHenry Township Roads, but under no circumstances shall the COUNTY pay more than said amount for the McHenry Township Roads.

5. Additional Right-of-way and/or Easements. The parties understand and agree that the COUNTY obtained jurisdiction of the prescriptive right-of-way of the McHenry Township Roads and the COUNTY is transferring this jurisdiction to the ROAD DISTRICT. It may be beneficial for the ROAD DISTRICT to obtain additional right-of-way or easements beyond the prescriptive right-of-way to further improve the McHenry Township Roads. Any additional right-of-way or easements are the sole responsibility of the ROAD DISTRICT.

6. Indemnification. The ROAD DISTRICT shall indemnify and hold harmless the COUNTY, its elected officials, agents, and employees from and against any and all lawsuits, claims, demands, liabilities, injuries, including deaths, losses and expenses, including court costs and attorneys' fees, arising out of the ROAD DISTRICT's performance of this Agreement, including the actions or conduct of its elected officials, employees, agents, independent contractors or assigns, except to the extent caused by the gross negligence or willful misconduct of the COUNTY and/or its elected officials, agents, or employees.

7. Notices. All notices required by this Agreement shall be delivered by first class, certified, or registered U.S. Mail to the respective parties at the following address:

If to the County: McHenry County Division of Transportation
 16111 Nelson Road
 Woodstock, Illinois 60098
 Attention: Joseph R. Korpalski, Jr., P.E.
 Director of Transportation/County Engineer

If to the Road District: McHenry Township Road District
 3703 North Richmond Road
 Johnsburg, Illinois 60051
 Attention: James E. Condon, P.E.

8. Parties Independent. 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 as creating or establishing a relationship as partners between the parties hereto, or as constituting the ROAD DISTRICT (including its elected officials, duly appointed officers, agents, employees and representatives) or the COUNTY (including its elected officials, duly appointed officers, agents, employees, and representatives) as agent of the other party for any purpose, or in any manner, whatsoever. The COUNTY and the ROAD DISTRICT are to be and shall remain independent of each other with respect to all services performed under this Agreement.

9. 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 ROAD

DISTRICT to facilitate the most economical use of limited public resources and not as an enlargement or diminution of either party's underlying duties or obligations lying in statute or common law.

10. Waiver. Any party's failure to insist upon strict compliance with any provision hereof or its failure to enforce any rights or remedy in any instance shall not constitute or be deemed to be a waiver of any provision, right or remedy.

11. Modification. This Agreement may be modified by mutual agreement, in writing, by the parties hereto.

12. 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 if 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.

13. Entire Agreement. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements in negotiations between the parties relating to the subject matter hereof.

14. Jurisdiction and Venue. This Agreement shall be interpreted and construed according to the laws of the State of Illinois. Venue for any action arising from this Agreement shall be in the 22nd Judicial Circuit Court, McHenry County, Illinois.

15. 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 neither party hereto shall assign any interest hereunder without written consent and approval of the other and any such assignment, without said prior written consent and approval shall be null and void and of no force or effect.

16. Authorized Signatory. The parties signing on behalf of the COUNTY and the ROAD DISTRICT represent that they have full and complete authority and are legally authorized to do so.

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IN WITNESS WHEREOF, the parties have executed this INTERGOVERNMENTAL AGREEMENT on the dates indicated.

COUNTY OF McHENRY

ATTEST

By: Jack D. Franks
Its: County Board Chairman
Dated: _____

By: Joseph J. Tirio
Its: County Clerk
Dated: _____

McHENRY TOWNSHIP
ROAD DISTRICT

ATTEST

By: James E. Condon, P.E.
Its: Highway Commissioner
Dated: _____

By: Dan Alyward
Its: Township Clerk
Dated: _____