

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

This Agreement is entered into this _____ day of _____, 2018, by and between the Village of Lake in the Hills, a municipal corporation of the State of Illinois, hereinafter referred to as the VILLAGE, 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 VILLAGE and COUNTY are collectively sometimes referred to as the PARTIES.

WITNESSETH:

WHEREAS, the COUNTY, the VILLAGE, and the Village of Algonquin, in order to facilitate the free flow of traffic, ensure safety to the motoring public, and improve capacity along the Algonquin and Randall Road corridors, desire to improve Algonquin Road and Randall Road within the VILLAGE and the Village of Algonquin, hereinafter referred to as the PROJECT; and

WHEREAS, the VILLAGE desires to install as part of the PROJECT landscaping, bicycle, pedestrian, and transit facilities, storm water facilities, water main facilities, and other aesthetic features within and outside the COUNTY right-of-way, hereinafter referred to as ACCOMMODATIONS; and

WHEREAS, the VILLAGE has approved the current plans and specifications for the PROJECT, including the ACCOMMODATIONS more fully described as Plans for Proposed Federal Aid Highway FAP Route 336: Randall Road, Harnish Drive to Polaris Drive/West Acorn Lane, Section: 06-00329-01-PW, Project: PW2V(306) (dated January 17, 2018 by Joseph R. Korpalski, Jr., February 16, 2018 by Christopher Holt, and February 21, 2018 by Anthony J. Quigley); hereinafter referred to as the PLANS and SPECIFICATIONS; and

WHEREAS, the VILLAGE has approved the current cost estimates for the PROJECT, including the ACCOMMODATIONS, which are set forth on Exhibit A attached hereto and incorporated herein, hereinafter referred to as the ESTIMATES; the PLANS, SPECIFICATIONS and ESTIMATES are collectively hereinafter referred to as the PS&E; and

WHEREAS, the COUNTY and VILLAGE, in order to increase engineering efficiencies and reduce cost, desire to bid and contract for the PROJECT, including the ACCOMMODATIONS, together, herein after referred to as the CONTRACT; and

WHEREAS, the COUNTY is acquiring a permanent easement for the VILLAGE to relocate its existing water main as part of a separate VILLAGE project, hereinafter referred to as PROPERTY; and

WHEREAS, the VILLAGE also desires to install separately by the VILLAGE gateway signs and other aesthetic features within the COUNTY right-of-way which the VILLAGE shall submit an application post construction as part of the COUNTY's permit process; and

WHEREAS, the COUNTY and the VILLAGE also desire to have bus shelters installed to promote mobility for all residents, to provide transportation choices, to preserve environmental quality, and to link transportation and land use through the assistance of Pace, the suburban bus and regional paratransit division of the Regional Transportation Authority (RTA);

WHEREAS, the COUNTY and the VILLAGE previously entered into an agreement entitled “Intergovernmental Agreement between the County of McHenry, the Village of Lake in the Hills, and the Village of Algonquin for Maintenance and Care of Certain Landscaped Median Along Algonquin Road” dated _____, 2012 which will no longer be applicable but desire to enter into this intergovernmental agreement for the new landscaping medians along Algonquin Road; and

WHEREAS, Algonquin Road and Randall Road are under the jurisdiction of the COUNTY; and

WHEREAS, the sections of Acorn Court, Acorn Lane, Commercial Drive, Crystal Lake Road, Harvest Gate Road, Oakleaf Road, Polaris Drive, and Village Hall Drive, that are located within the municipal limits of the VILLAGE are under the jurisdiction of the VILLAGE; and

WHEREAS, the COUNTY has received a Congestion Mitigation & Air Quality (CMAQ) Improvement Program Grant, hereinafter referred to as the COUNTY CMAQ GRANT, that will fund eighty percent (80%) of the CMAQ eligible construction costs associated with the construction of the PROJECT, leaving a twenty percent (20%) local match requirement remaining to be funded by the PARTIES; and

WHEREAS, an Intergovernmental Agreement between the VILLAGE and the COUNTY was previously entered into and dated January 25, 2018 by the VILLAGE and passed February 20, 2018 by the County Board (R-201802-82-054) entitled “Intergovernmental Agreement between the Village of Lake in the Hills and the County of McHenry for Right-of-way Acquisition on Randall Road” for the transference of property from the VILLAGE to the COUNTY which the PARTIES desire to incorporate herein; and

WHEREAS, an Intergovernmental Agreement is appropriate and is authorized and encouraged by Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act 5 ILCS 220/1 *et seq.*; 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 VILLAGE by virtue of the authority as set forth in the Illinois Municipal Code (65 ILCS 5/1-1-1 *et seq.*) are authorized to enter into this agreement; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES hereto 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. COUNTY’s Responsibilities. The COUNTY agrees to make the surveys; obtain all necessary right-of-way; obtain all necessary permits; has prepared PLANS and SPECIFICATIONS; receive bids and award the CONTRACT; furnish engineering inspection during construction; approve CONTRACT changes; and cause the PROJECT to be built in accordance with the PLANS, SPECIFICATIONS, and CONTRACT.

3. Payments.

- a. It is mutually agreed by and between the PARTIES that the cost proration for the PROJECT are set forth herein, including in the ESTIMATES.
- b. The VILLAGE agrees to reimburse the VILLAGE's proportionate share of the CONTRACT costs to the COUNTY within thirty (30) days of notification by the COUNTY of substantial completion of construction of the PROJECT. Substantial completion means the construction is sufficiently complete in accordance with the PLANS and SPECIFICATIONS within the municipal limits of the VILLAGE so that the motoring public may travel in a normal traffic pattern, although punch list items remain to be completed.
- c. The VILLAGE further agrees to pass a supplemental resolution to provide necessary funds for its proportionate share of the costs if the amount appropriated proves to be insufficient, to cover said costs.

4. Shared-use Path. A shared-use path shall be constructed within the COUNTY right-of-way along the east side of Randall Road and the south side of Algonquin Road as part of the PROJECT shown in the PLANS and SPECIFICATIONS as part of the CONTRACT.

- a. Cost Proration. The COUNTY shall pay one hundred percent (100%) of the CONTRACT costs associated with the construction of the shared-use path.
- b. Maintenance. It is mutually agreed by and between the PARTIES that the VILLAGE shall maintain the shared-use path at its sole cost and expense. Maintenance is defined as any activity necessary to cause the shared-use path to function in accordance with VILLAGE standards for public improvements. However, should the COUNTY reconstruct Randall Road in the future within the limits of this PROJECT, the COUNTY shall repair, as part of the reconstruction, that portion of the shared-use path corresponding with the portion of Randall Road being reconstructed.

5. Sidewalk. A sidewalk shall be constructed within the COUNTY right-of-way along the north side of Algonquin Road and the west side of Randall Road shown in the PLANS and SPECIFICATIONS as part of the CONTRACT.

- a. Cost Proration.
 - i. The COUNTY shall pay eighty percent (80%) of the CONTRACT costs associated with the construction of the sidewalk located within the VILLAGE's corporate limits; and,
 - ii. The VILLAGE shall pay twenty percent (20%) of the CONTRACT costs associated with the construction of the sidewalk located within the VILLAGE's corporate limits.
- b. Maintenance. It is mutually agreed by and between the PARTIES that the VILLAGE shall maintain the sidewalk at its sole cost and expense. Maintenance is defined as any activity necessary to cause the shared-use path and sidewalk to function in accordance with VILLAGE standards for public improvements. However, should the COUNTY reconstruct Randall Road in the future within the limits of this PROJECT, the COUNTY shall repair, as part of the reconstruction, that portion of the sidewalk corresponding with the portion of Randall Road being reconstructed and the PARTIES shall prorate the costs of the reconstruction as set forth in Section 5(a) above.

6. Landscaping. The COUNTY, the VILLAGE, and the Village of Algonquin previously entered into an agreement entitled “Intergovernmental Agreement between the County of McHenry, the Village of Lake in the Hills, and the Village of Algonquin for Maintenance and Care of Certain Landscaped Median Along Algonquin Road” dated _____, 2012. The agreement outlined the responsibilities of the parties with respect to the existing landscape median(s) located on Algonquin Road. The agreement will no longer be applicable as a result of the PROJECT, and, therefore, the PARTIES hereby terminate said agreement.

The COUNTY shall install twenty-four (24) inches of topsoil in the Algonquin Road landscaped medians between Harvest Gate Road and Randall Road shown in the PLANS and SPECIFICATIONS as part of the CONTRACT. The VILLAGE shall be permitted to install irrigation, raised planters, perennials, large shade trees, shrubs, and other landscaping in locations approved by the COUNTY. No vegetation will be permitted to overhang the curb, at a height of less than eighteen (18) feet, and/or interfere with the traffic operations on Algonquin Road or Randall Road. If this occurs, the interfering vegetation shall be removed and/or trimmed by the VILLAGE. The COUNTY reserves the right to require the removal of landscaping that poses a hazard to the motoring public and/or interferes with the routine maintenance of County right-of-way.

a. Cost Proration.

- i. The COUNTY shall pay one hundred percent (100%) of the CONTRACT costs for the topsoil.
- ii. The VILLAGE shall pay one hundred percent (100%) of the costs and any CONTRACT costs associated with the irrigation, raised planters, perennials, large shade trees, shrubs, and other landscaping.

b. Maintenance.

- i. Algonquin Road. The VILLAGE and the Village of Algonquin shall maintain the irrigation, raised planters, perennials, large shade trees, shrubs, and other landscaping within the COUNTY right-of-way in the Algonquin Road median(s) and the cost to maintain shall be borne by the VILLAGE and the Village of Algonquin equally.
- ii. All Other Landscaping. It is mutually agreed by and between the PARTIES that the VILLAGE shall maintain the irrigation, raised planters, perennials, large shade trees, shrubs, and other landscaping within the COUNTY right-of-way located within the VILLAGE’s corporate limits at its sole cost and expense other than as set forth in Section 6(b)(i) above.

Maintenance is defined as the proper care and trimming of any trees or shrubs planted, any replacement landscaping (plants and trees), watering the landscaping as required to maintain the viability of the landscaping (the use of harvested rainwater or treated effluent water should be used if available), street cleaning, storm sewer and drainage structure debris removal, and other activities as required to remove landscaping debris, and/or any repairs to the curb and gutter and drainage system damage that clearly resulted from roots from the landscaping. All landscaping maintenance shall be as specified in Exhibit B (County Right-of-way Landscaping Maintenance Specifications).

Maintenance does not include any damage caused by the COUNTY’s routine maintenance such as snow removal, with the exception of de-icing agents. The COUNTY shall make all reasonable

efforts to adopt and implement standard practices that are intended not to cause damage the landscaping. Damage caused by the COUNTY's routine maintenance is the responsibility of the COUNTY. It is understood aside from landscaping maintenance, that the COUNTY right-of-way, including the pavement, storm water management system, curbs, storm sewers, structures, detention basins, flow control features, etc. will remain the ownership and maintenance responsibility of the COUNTY.

- c. It is mutually agreed by and between the PARTIES should the COUNTY need to perform any maintenance activity or future project which impacts the landscaping in any way, then the cost to relocate the landscaping shall be borne by the VILLAGE if the VILLAGE can relocate and reuse the plant materials; otherwise the cost to replace the landscaping shall be borne by the COUNTY. The COUNTY will restore the right-of-way to the original condition with the exception of plant materials beyond turf grass. The VILLAGE shall be given thirty (30) days prior notice to the start of projects to remove and relocated the landscaping. The VILLAGE should have courtesy review on projects that may impact the landscaping.
7. Water Main Relocation. Water main relocation design and construction will be completed as shown in the PLANS and SPECIFICATIONS as part of the CONTRACT. There are additional water mains, not shown on the PLANS and SPECIFICATIONS, addressed in Section 8 below.
- a. Cost Proration.
 - i. The COUNTY shall pay twenty-five percent (25%) of the CONTRACT costs of a water main quality pipe for that portion of the water main currently located within the COUNTY's right-of-way but not in any easement granted to the VILLAGE for such purposes.
 - ii. The VILLAGE shall pay seventy-five percent (75%) of the CONTRACT costs of a water main quality pipe for that portion of the water main currently located within the COUNTY's right-of-way but not in any easement granted to the VILLAGE for such purposes. The VILLAGE shall pay one hundred percent (100%) of the remaining CONTRACT costs for the water main relocation design and construction, including CONTRACT costs of the water main quality pipe for that portion of the water main currently located outside of an easement granted to the VILLAGE for such purposes and within the COUNTY's right-of-way.
 - b. Maintenance. The VILLAGE shall maintain the water main.
8. Conflicting Water Main Relocation. There are additional water mains, not shown on the PLANS and SPECIFICATIONS, which conflict with the PROJECT, and, therefore, require to be relocated. Conflicting water main relocation that is not identified in the PLANS and SPECIFICATIONS will be done as part of a separate VILLAGE project in 2018. The COUNTY will attempt to obtain on reasonable terms, including cost, permanent easements in the area generally depicted on Exhibit C, attached hereto and incorporated herein by this reference, on behalf of the VILLAGE to facilitate the relocation of the VILLAGE water main.
- a. Cost Proration.
 - i. Conflicting Water Main Relocation VILLAGE Project. The VILLAGE shall pay one hundred percent (100%) of the costs associated with the design and construction of the conflicting water main relocation done as part of a separate VILLAGE project.

- ii. Permanent Easements. Should the COUNTY be successful in obtaining the permanent easements on behalf of the VILLAGE, the COUNTY shall pay one hundred percent (100%) of the costs associated with the permanent easements.
 - b. Maintenance.
 - i. Conflicting Water Main Relocation VILLAGE Project. The VILLAGE shall maintain the water main.
 - ii. Permanent Easements. The VILLAGE shall maintain the permanent easements in accordance with the easement provisions.
9. Gateway Sign. The COUNTY shall continue to permit a breakaway VILLAGE gateway sign north of Algonquin Road. The COUNTY shall issue a facility permit to the VILLAGE to place the gateway sign following substantial completion of the CONTRACT.
- a. Cost Proration. The VILLAGE shall pay one hundred percent (100%) of the costs associated with the removal of the existing gateway sign and its replacement.
 - b. Maintenance. It is mutually agreed by and between the PARTIES that the VILLAGE shall maintain the gateway sign at its sole cost and expense.
10. Bus Shelters. The PARTIES agree to allow bus shelters to be constructed within the COUNTY right-of-way at the bus shelter pad locations shown in the PLANS and SPECIFICATIONS. The bus shelters shall include, but shall not be limited to, bicycle racks, digital bus arrival countdown signs, LED lighting, solar panels, advertising, and receptacles for recycling and trash. The VILLAGE agrees to waive in writing any requirements of the Lake in the Hills Municipal Code, Lake in the Hills Zoning Code, the Subdivision Control Ordinance, etc. so long as the bus shelter conforms to the COUNTY's approved design for Pace bus shelters.
- a. Cost Proration. It is mutually agreed by and between the PARTIES that the VILLAGE shall not be obligated for any costs associated with the construction of the bus shelters. Further, the COUNTY may enter into a separate agreement with Pace to determine the costs and any cost proration between the COUNTY and Pace associated with the construction of the bus shelters.
 - b. Maintenance. It is mutually agreed by and between the PARTIES that the VILLAGE shall not be obligated for any costs associated with the maintenance of the bus shelters. Further, the COUNTY may enter into a separate agreement with Pace to determine the maintenance costs and any cost proration between the COUNTY and Pace associated with the maintenance of the bus shelters.
11. Noise Ordinance Waiver. In an effort to minimize the impact to traffic and businesses, portions of the PROJECT will be performed at night, generally between peak travel times. The VILLAGE agrees to waive in writing Village Ordinance 43.09(A)(4)(a) for the duration of the PROJECT, allowing "Construction Activity" to occur outside the identified hours of work.
12. Property. The COUNTY and the VILLAGE previously entered into an agreement entitled "Intergovernmental Agreement between the Village of Lake in the Hills and the County of McHenry for Right-of-way Acquisition on Randall Road" dated January 25, 2018 by the VILLAGE and passed February 20, 2018 by the COUNTY (Resolution R-201801-82-054). The agreement outlined the

transference of property from the VILLAGE to the COUNTY. The agreement will no longer be applicable as the obligations of the PARTIES are incorporated herein, and, therefore, the PARTIES hereby terminate said agreement.

The COUNTY has identified a VILLAGE owned parcel of land that needs to be acquired for construction of the PROJECT, identified as Parcel 0082, and a temporary easement that needs to be acquired for grading purposes for the PROJECT, identified as Parcel 0082T.E., hereinafter collectively referred to as the PROPERTY, legally described in Exhibit A, attached hereto and incorporated herein. The VILLAGE agrees to convey the PROPERTY to the COUNTY as follows:

- a. The full fee simple title to the PROPERTY designated as Parcel 0082 in accordance with the requirements of the Local Government Property Transfer Act, such that the PROJECT can be constructed; and,
- b. A temporary easement across and upon the PROPERTY designated as Parcel 0082T.E. for grading purposes for a period not to exceed five (5) years from the date of vesting title or until completion of construction operations, whichever occurs first.

The PARTIES agree the PROPERTY has an appraised value of Seventy-six Thousand Four Hundred and No/100 Dollars (\$76,400.00). Should the PROJECT not be constructed for any reason, the COUNTY shall return the PROPERTY to the VILLAGE and the COUNTY shall not be responsible for further damages, if any.

13. Tree Replacement. The COUNTY represents, and the VILLAGE acknowledges, that the COUNTY is responsible for the replacement of one hundred twenty-six (126) trees to be planted on property owned or under the control of the VILLAGE in accord with the McHenry County Tree Planting and Replacement Policy. Planting and establishment of the one hundred twenty-six (126) trees will be accomplished within two (2) year of the completion of the PROJECT. The VILLAGE shall plant all trees within McHenry County.
 - a. Cost Proration. The COUNTY shall credit the VILLAGE Forty-seven Thousand Two Hundred Fifty Dollars and No/100 (\$47,250.00) for the cost of the tree replacement. The COUNTY shall credit said amount within thirty (30) days of notification by the COUNTY of substantial completion of construction of the PROJECT. Substantial completion means the construction is sufficiently complete in accordance with the PLANS and SPECIFICATIONS within the municipal limits of the VILLAGE so that the motoring public may travel in a normal traffic pattern, although punch list items remain to be completed. The compensation provided by the COUNTY will constitute its total obligation for tree replacement incurred as a result of the aforementioned PROJECT.
 - b. Maintenance. It is mutually agreed by and between the PARTIES that the VILLAGE shall maintain the trees at its sole cost and expense.
14. Utility Relocation Permitting. The VILLAGE agrees to allow the COUNTY to coordinate with the utility companies on the VILLAGE's behalf and issue permits to utilities for work to be conducted on VILLAGE roadways within the limits of the PROJECT.
15. Wetland Mitigation. The PROJECT impacts 0.08 acres of isolated waters of McHenry County. This type

of wetland has a mitigation ratio of 1.5:1 resulting in a mitigation requirement of 0.12 acres. The COUNTY will meet the requirements of the County of McHenry Stormwater Management Ordinance by paying Nine Thousand Six Hundred Dollars and No/100 (\$9,600.00) into the McHenry County Planning and Development Wetland Restoration Fund.

16. COUNTY Indemnification. The COUNTY agrees to indemnify, defend, and hold harmless the VILLAGE, 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 actions of the COUNTY as provided by Illinois Law.
17. VILLAGE Indemnification. The VILLAGE 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 actions of the VILLAGE as provided by Illinois Law.
18. No Limitation on 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.
19. No Partnerships. It is mutually agreed by and between the PARTIES hereto that nothing contained in this agreement is intended nor shall be construed, as in any manner or form, creating or establishing a relationship of co-partners between the PARTIES, or as constituting the VILLAGE (including its elected officials, duly appointed officials, officers, employees, and agents) the agent, representative, or employees of the COUNTY for any purpose, or in any manner, whatsoever. The VILLAGE is to be and shall remain independent of the COUNTY with respect to all services performed under this agreement.
20. 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.
21. Entire Agreement. It is mutually agreed by and between the PARTIES hereto that the agreement of the PARTIES is contained herein, and that this agreement supersedes all oral agreements and negotiations between the PARTIES relating to the subject matter hereof as well as any previous agreements presently in effect between the PARTIES relating to the subject matter hereof.
22. Modifications. It is mutually agreed by and between the PARTIES 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.
23. Successors and Assigns. This agreement shall be binding upon and inure to the benefit of the PARTIES, their successors and assigns, provided however, that neither party hereto shall assign any interest hereunder without the prior 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 and effect.
24. Notice. Any notices required or permitted hereunder shall be sufficiently given if mailed by certified

mail, return receipt requested to the PARTIES as follow:

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

VILLAGE OF LAKE IN THE HILLS
600 Harvest Gate
Lake in the Hills, IL 60156-5995
Attention: Mr. Jennifer Clough
Village Administration

25. Choice of Venue. The terms of this agreement will be construed in accordance with the laws of Illinois. The PARTIES agree that the venue for any dispute arising under the terms of this agreement shall be the Twenty-second Judicial Circuit, McHenry County, Illinois, and if any disputes arise, said disputes shall be decided under the jurisdiction and governed by the laws of Illinois.
26. Signatories. Each person signing below on behalf on 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 executed this agreement on the dates indicated.

ATTEST:

VILLAGE OF LAKE IN THE HILLS

Crystal Ulen, Clerk
Village of Lake in the Hills

Russ Ruzanski, President
Village of Lake in the Hills

ATTEST:

COUNTY OF McHENRY

Mary E. McClellan, Clerk
McHenry County

Jack Franks, Chairperson
McHenry County Board

Date: _____