

**AGREEMENT
BETWEEN THE COUNTY OF LAKE
AND THE CENTRAL LAKE COUNTY JOINT ACTION WATER AGENCY
FOR FACILITY RELOCATIONS
IN CONJUNCTION WITH MIDLOTHIAN ROAD (COUNTY HIGHWAY 48)
ROADWAY IMPROVEMENTS**

THIS AGREEMENT is entered into this _____ day of _____, A.D. 20____, by and between the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter referred to as the COUNTY, and the CENTRAL LAKE COUNTY JOINT ACTION WATER AGENCY, an Illinois intergovernmental cooperative, acting by and through its Board of Directors, hereinafter referred to as the AGENCY. The COUNTY and the AGENCY are hereinafter referred to collectively as "parties" to THIS AGREEMENT, and either one is referred to individually as a "party" to THIS AGREEMENT.

WITNESSETH

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and ensure the safety of the motoring public, is desirous to make certain roadway improvements, including the extension of Midlothian Road (County Highway 48) and construction of a bike path along the west side of Midlothian Road northward to a point approximately 900 feet south of Illinois Route 137, following a curvilinear geometry north of Peterson Road (County Highway 20) to intercept existing Harris Road, then following a principally northward path to a point approximately 1,100 feet south of Illinois Route 137 (hereinafter the IMPROVEMENT). The IMPROVEMENT shall also be referred to as County Section 09-00244-03-FP and is generally depicted in the attached EXHIBIT A to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof; and,

WHEREAS, said IMPROVEMENT as heretofore described will be of immediate benefit to the residents of the COUNTY and to the AGENCY's member communities; and,

WHEREAS, the COUNTY has maintenance and jurisdictional authority over Midlothian Road, from Illinois Route 176 (Maple Avenue) to Illinois Route 137; and,

WHEREAS, the AGENCY owns and maintains certain potable water facilities within the project limits in conflict with the proposed IMPROVEMENT, including watermain, hydrants,

valves, vaults, cathodic monitoring stations and miscellaneous appurtenances (hereinafter FACILITIES), for which relocation or minor adjustment is necessary in order to accommodate the construction of the IMPROVEMENT (identified below as GROUP 1 RELOCATIONS, GROUP 2 RELOCATIONS and GROUP 3 RELOCATIONS), the responsibility for which is borne fully by the AGENCY; and,

WHEREAS, the AGENCY is desirous that the COUNTY should relocate and/or adjust said AGENCY-owned FACILITIES in conflict with the proposed IMPROVEMENT, for which the AGENCY shall reimburse the COUNTY as stipulated hereafter; and,

WHEREAS, the estimated total cost to the AGENCY for its obligation under THIS AGREEMENT is as indicated in EXHIBIT B to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof;

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 AGENCY do hereby enter into the following:

SECTION I.
Recitals/Headings

1. It is mutually agreed by and among the parties hereto that the foregoing preambles are hereby incorporated herein as though fully set forth.
2. It is mutually agreed by and among the parties hereto that 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.
Construction of the IMPROVEMENT

1. The COUNTY agrees to prepare, or cause to be prepared, the necessary surveys, design engineering plans and specifications and contract letting documents for the IMPROVEMENT in accordance with Lake County Division of Transportation (LCDOT)

policies and standards, with engineering design for the relocation and adjustment of certain of the AGENCY's facilities performed by the AGENCY, provided to the COUNTY, to be incorporated into the engineering plans for the IMPROVEMENT.

2. The COUNTY agrees to let and award the construction contract for the construction of the IMPROVEMENT.
3. The COUNTY agrees to cause the IMPROVEMENT to be constructed and to perform, or cause to be performed, the construction engineering supervision for the IMPROVEMENT in accordance with LCDOT procedures and requirements, with reimbursement from the AGENCY as hereinafter stipulated.
4. The COUNTY agrees to prepare, or cause to be prepared, all necessary documents for any rights-of-way or easements, either permanent or temporary, that may be necessary to construct the IMPROVEMENT, inclusive of any appraisals, plats, deeds and legal descriptions that may be necessary to acquire those rights-of-way or easements, either permanent or temporary.
5. The COUNTY agrees to record all County Highway rights-of-way that may be acquired in connection with the IMPROVEMENT.

SECTION III.

FACILITIES in Conflict with the Proposed IMPROVEMENT

1. It is mutually agreed by and among the parties hereto that the AGENCY owns and maintains certain FACILITIES in conflict with the proposed IMPROVEMENT. Among the FACILITIES are (1) a hydrant and a section of approximately eighty (80) feet of sixteen (16)-inch ductile iron watermain at approximately Station 27+00 in conflict with proposed box culverts and requiring relocation (to be relocated and installed into a casing pipe) (hereinafter GROUP 1 RELOCATIONS); (2) a section of sixteen (16)-inch watermain in conflict with proposed storm sewer at approximately Station 32+62 (hereinafter GROUP 2 RELOCATIONS); and (3) a hydrant with an auxiliary valve, two (2) air relief valve vaults and their associated piping, three (3) butterfly valve vaults, two (2) access vaults and six (6) cathodic monitoring stations, all of which shall require minor vertical and/or horizontal adjustments (hereinafter GROUP 3 RELOCATIONS).

2. During the construction of the IMPROVEMENT, the AGENCY shall supply field engineering assistance to the COUNTY and its contractor(s), as it relates to the relocation and/or adjustments of the FACILITIES. Furthermore, the AGENCY shall be responsible for the inspection of the FACILITIES and all testing of the FACILITIES prior to incorporating the newly-relocated FACILITIES into the AGENCY's potable water supply system. The COUNTY shall count and take measurements of the FACILITIES in order to establish final contract quantities for purposes of invoicing the AGENCY, pursuant to Section III.5 of THIS AGREEMENT.
3. It is mutually agreed by and among the parties hereto that, pursuant to the Lake County publication, HIGHWAY UTILITY AND FACILITY PLACEMENT ORDINANCE, as amended, the AGENCY is responsible for one-hundred percent (100%) of the costs relating to the relocation and/or adjustment of the FACILITIES. Said publication, by reference herein, is hereby made a part hereof.
4. The AGENCY agrees that by executing THIS AGREEMENT, the AGENCY concurs in the award of the construction contract by the COUNTY in accordance with the standard policies and procedures as adopted and used by LCDOT.
5. The AGENCY agrees that upon the latter of (1) award of the construction contract and (2) May 1, 2010 and within thirty (30) days of the receipt of an invoice from the COUNTY, the AGENCY will pay to the COUNTY, in a lump sum amount based on awarded contract unit prices, an amount equal to ninety-five percent (95%) of its obligation for the IMPROVEMENT. At such time, it is estimated that the AGENCY shall owe to the COUNTY an amount equal to **\$99,750.00**.

The AGENCY further agrees to pay the remaining five percent (5%) of its obligation for the IMPROVEMENT upon the completion of the IMPROVEMENT, in a lump sum amount within thirty (30) days of the receipt of an invoice from the COUNTY. Final obligation shall be based on final costs and final contract quantities at contract unit prices for actual work performed. At such time, it is estimated that the AGENCY shall owe to the COUNTY an amount equal to **\$5,250.00**.

Within fifteen (15) days of the receipt of an invoice from the COUNTY, either for the ninety-five percent (95%) payment or the five percent (5%) payment, the AGENCY may write to the COUNTY raising questions or objecting to all or a portion of the invoice. The AGENCY

shall not unreasonably exercise its right to contest the sum due. The COUNTY shall be required to respond to the AGENCY's inquiry within thirty (30) days of the receipt of the inquiry. Once the AGENCY has received the response of the COUNTY, it shall pay the amount required by the COUNTY within twenty-one (21) days thereafter; provided, however, that the payment by the AGENCY may be under protest, and the AGENCY can still choose to, thereafter, challenge the validity of the payment made. Any challenge made to the COUNTY or in Court shall be commenced within ninety (90) days after the date of a contested payment.

SECTION IV.
General Provisions

1. It is mutually agreed by and between the parties hereto that nothing contained in THIS AGREEMENT is intended or shall be construed as, in any manner or form, creating or establishing a relationship of co-partners between the parties hereto, or as constituting the AGENCY (including its elected officials, duly appointed officials, employees and agents), the agent, representative or employee of the COUNTY for any purpose or in any manner, whatsoever. The AGENCY is to be and shall remain independent of the COUNTY with respect to all services performed under THIS AGREEMENT.
2. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall not be construed, in any manner or form, to limit the power or authority of the COUNTY or the COUNTY's County Engineer to maintain, operate, improve, construct, reconstruct, repair, manage, widen or expand COUNTY Highways as may be best determined, as provided by law.
3. It is mutually agreed by and between the parties hereto that each party warrants and represents to the other party and agrees that: (1) THIS AGREEMENT is executed by duly authorized agents or officers of such party and that all such agents and officers have executed the same in accordance with the lawful authority vested in them, pursuant to all applicable and substantive requirements; (2) THIS AGREEMENT is binding and valid and will be specifically enforceable against each party; and (3) THIS AGREEMENT does not violate any presently existing provision of law nor any applicable order, writ, injunction or decree of any court or government department, commission, board, bureau, agency or instrumentality applicable to such party.

4. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be deemed to take effect on February 1, 2010, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to February 1, 2010. In the event the date that the last authorized agent of the parties hereto affix their signature to THIS AGREEMENT is subsequent to February 1, 2010, the effective date of THIS AGREEMENT shall then be the first day of the month which follows the date that the last authorized agent of the parties hereto affixes their signature.
5. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be enforceable in any court of competent jurisdiction 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 and obligations contained herein.
6. 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.
7. 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.
8. 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.
9. THIS AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. No party hereto may 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 COUNTY, except as provided for in THIS AGREEMENT.

10. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.

11. THIS AGREEMENT shall be considered null and void in the event that the construction contracts covering the improvements contemplated herein are not awarded by **January 1, 2015**.

**CENTRAL LAKE COUNTY
JOINT ACTION WATER AGENCY**

ATTEST:

Title: _____

By: _____
Title: _____
Date: _____

RECOMMENDED FOR EXECUTION

By: _____
Lake County
County Engineer/
Director of Transportation

COUNTY OF LAKE

ATTEST:

Clerk
Lake County

By: _____
Chair
Lake County Board
Date: _____

EXHIBIT A
The IMPROVEMENT

County Section No. 09-00244-03-FP

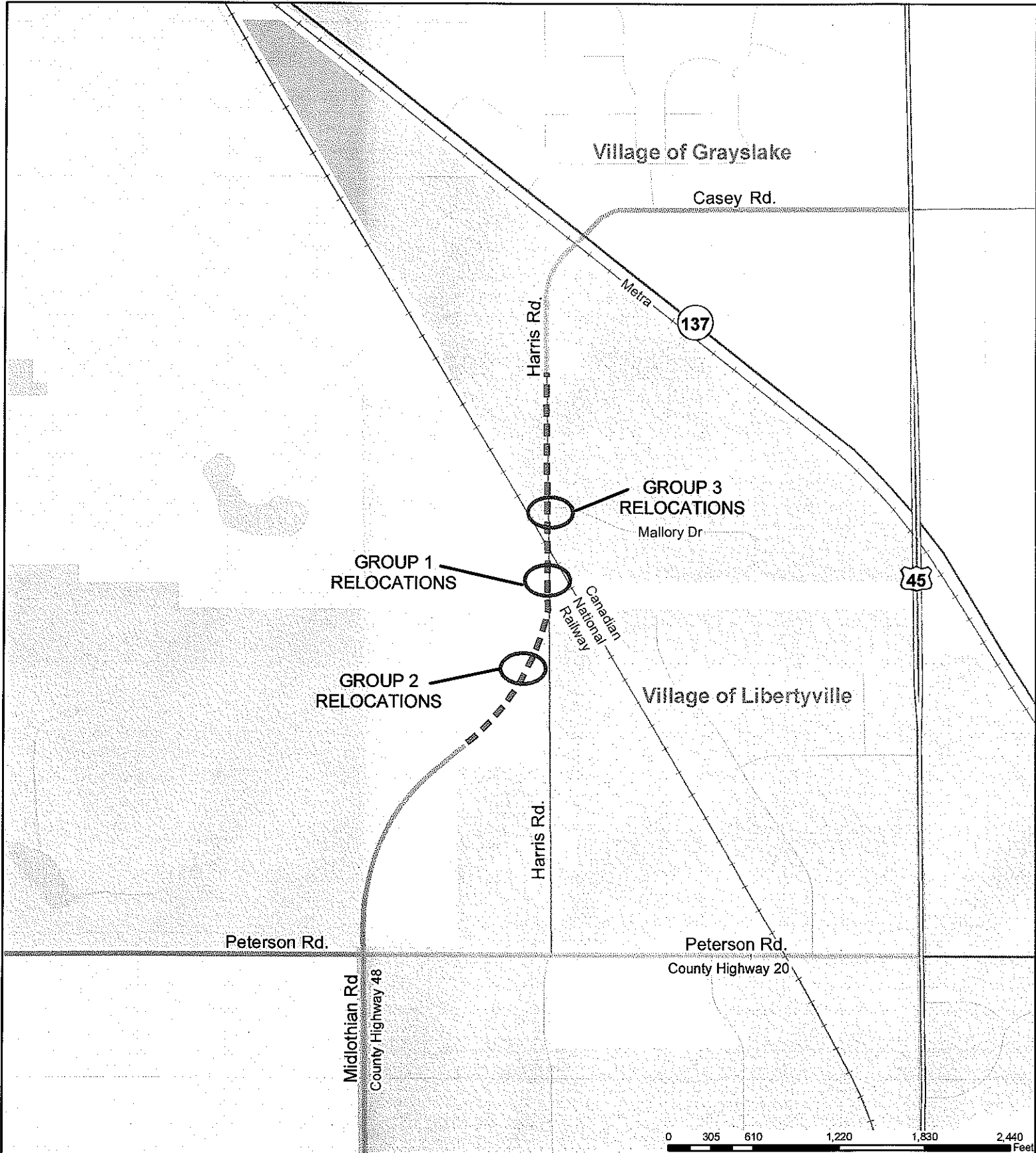


EXHIBIT B
Estimated Division of Costs for the
Relocation and/or Adjustment of the FACILITIES¹
County Section 09-00244-03-FP

Pay Item	Estimated Cost	Portion Attributable to the COUNTY		Portion Attributable to the AGENCY	
		Percentage	Cost	Percentage	Cost
GROUP 1 RELOCATIONS	\$ 38,000.00	0.0%	\$ -	100.0%	\$ 38,000.00
GROUP 2 RELOCATIONS	\$ 25,000.00	0.0%	\$ -	100.0%	\$ 25,000.00
GROUP 3 RELOCATIONS	\$ 42,000.00	0.0%	\$ -	100.0%	\$ 42,000.00
Total Reimbursable Costs: \$ 105,000.00					

¹ Cost estimate data supplied by the Central Lake County Joint Action Water Agency by way of a letter to the Lake County Division of Transportation dated December 15, 2009