

DRAFT

IL 83 at Winchester Road
Lake County
Job Numbers: N-91-001-22 & R-91-014-22
Agreement Number: JN-122-505
County Section: 16-00170-13-CH
PPS Number: 79731-0000

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION,
AND
COUNTY OF LAKE BY AND THROUGH ITS DIVISION OF TRANSPORTATION**

INTERGOVERNMENTAL AGREEMENT (hereafter referred to as the “Agreement”), made and entered into this ____ day of _____, 2022 (hereafter referred to as the “Effective Date”), by and among **COUNTY OF LAKE, BY AND THROUGH ITS DIVISION OF TRANSPORTATION**, an Illinois body politic and corporate (hereafter referred to as the "**COUNTY**") and the **STATE OF ILLINOIS**, acting by and through its **DEPARTMENT OF TRANSPORTATION**, an instrumentality of the State of Illinois (hereafter referred to as “**IDOT**”) (all of whom are sometimes referred to herein collectively as the “Parties”);

W I T N E S S E T H:

WHEREAS, the COUNTY is a unit of local government authorized by the Illinois Constitution (Ill. Const. Art. VII, Section. 10) (hereafter referred to as the “Constitution”), and this Agreement is authorized under and subject to the Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.) (hereafter referred to as the “Cooperation Act”), and the Local Governmental Property Transfer Act (50 ILCS 605/1 et seq.); and

WHEREAS, IDOT is an instrumentality of the State of Illinois engaged in the design, construction, and maintenance of highways and appurtenant areas within the State of Illinois; and

WHEREAS, the COUNTY and IDOT are authorized, pursuant to the Illinois Constitution and the Cooperation Act, to agree with and contract by and among themselves on matters of mutual interest; and

WHEREAS, the COUNTY has formulated plans to improve the intersection of Illinois 83 at Winchester Road (such improvements being sometimes hereafter collectively referred to as the “Project”); and

WHEREAS, IDOT has exclusive jurisdiction over Illinois Route 83; and

WHEREAS, the area of the Project, as heretofore described, may sometimes be referred to herein as Lake County Section: 16-00170-13-CH; and

WHEREAS, this Agreement confirms and summarizes the commitments referred to in letters of intent between the COUNTY and IDOT dated October 31, 2017 and September 17, 2021 and regarding certain land acquisition activities to be performed by the COUNTY and IDOT for the proposed construction of the Project; and

WHEREAS, the COUNTY will perform certain land acquisition activities hereunder (i.e., providing or ordering appraisals, preparing engineering reports, performing negotiations and/or acquiring properties), associated with the Project, as more specifically described in this Agreement; and

WHEREAS, the COUNTY agrees to follow IDOT’s Land Acquisition process as established in IDOT’s “Land Acquisition Policies and Procedures Manual” implementing the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (The Uniform Act); 49 CFR 24; State statutes; and Federal and Illinois case law.

NOW, THEREFORE, for and in consideration of the mutual undertakings, covenants, and agreements herein contained, and for other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged by the parties hereto, the COUNTY and IDOT hereby agree as follows:

1. **RECITALS**: The forgoing recitals are hereby incorporated herein by this reference and made a part of this Agreement.

2. **DESCRIPTION OF PROJECT**: The Project encompasses Illinois 83 at Winchester Road in the County of Lake. The Project will improve the intersection of Illinois 83 at Winchester Road. The COUNTY has funding for right-of-way acquisition programmed in FY2022, and the Project is currently programmed by the COUNTY to begin construction in FY2023.

3. **RESPONSIBILITIES OF THE PARTIES**:

The COUNTY will:

- Pay for all engineering costs, land acquisition, construction costs and construction engineering costs, subject to payment by the IDOT as hereinafter stipulated;
- Obtain from IDOT, an approved permit for the Project and to abide by all conditions set forth therein.
- Prepare and provide Plats of Highways, Appraisals, Specialty Reports and Review Appraisals using IDOT approved Consultants.
- Obtain IDOT's approval for Plats, Appraisals, Specialty Reports and Review Appraisals prior to the start of negotiations for the acquisition of any right-of-way parcels for the Project.
- Negotiate property acquisitions required by the Project in the name of Lake County, using negotiators from IDOT's approved list of negotiators.

- Incur and pay all costs of Land Acquisition including, but not limited to, title work, plat preparation, appraisals, specialty reports, review appraisals, negotiations, land acquisition consultants' fees, attorneys' fees, court costs, all litigation costs, settlement costs, land value costs and all relocation costs,
- Follow IDOT's land acquisition process as established in IDOT's "Land Acquisition Policies and Procedures Manual" implementing the Uniform Act, (49 CFR 24), State statutes, and Federal and Illinois case law in carrying out its responsibilities as described above.
- Upon completion of the project transfer title to all acquired parcels adjacent to Illinois 83 to the State of Illinois via warranty deed.

IDOT will:

- Pay the COUNTY for 50% of all actual construction costs associated with the Project, up to a maximum of \$1,550,000.

4. **MISCELLANEOUS:**

- a) Time of Essence: Time is of the essence of this Agreement.
- b) Written Demands: All notices, demands, and requests required or permitted under this Agreement shall be in writing.
- c) Notices: All notices, demands, and requests required or permitted hereunder shall be deemed to have been properly made on the day of service, if served personally, and on the second day following mailing, if sent by United States certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the COUNTY: **COUNTY OF LAKE, DIVISION OF TRANSPORTATION**
600 West Winchester Road
Libertyville, Illinois 60048
Attn: County Engineer
Fax: 847-984-5888
Email: DOT@lakecountyil.gov

With a copy to: Lake County State's Attorney
Attn: Civil Division
18 N. County Street
Waukegan, IL 60085
Fax: 847-360-0661

If to IDOT: **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION**
201 West Center Court
Schaumburg, Illinois 60196-1096
Attn: Region One Engineer
Fax No.: (847) 705-4468
Email: jose.rios@Illinois.gov

With a copy to: Illinois Department of Transportation
69 W. Washington Street-Suite 2100
Chicago, Illinois 60602
Attn: Richard A. Kabaker, Esq.
Deputy Chief Counsel
Fax: 312-793-3933
Email: Rick.Kabaker@Illinois.gov

- d) Captions: The captions used herein have been utilized for convenience only and are not intended to modify or limit in any way the provisions hereof.
- e) Prior Agreements: This Agreement shall supersede any and all prior agreements or letters of intent, whether written or oral, among the Parties hereto with regard to the subject matter of this agreement (including without limitation the letters of intent dated October 31, 2017 and September 17, 2021) and may only be amended hereafter by a written instrument executed by each of the Parties or their authorized agents.
- f) Counterparts: This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and constitute one and the same agreement; executed

copies of this Agreement received by any party hereto by facsimile transmission shall bind the party so submitting the same until the original executed copy is received by the recipients, whereupon the same shall be replaced by the original executed copy unless the same differs from that received by facsimile transmission.

- g) Ministerial Changes: Ministerial (non-substantive) changes to this Agreement, which do not amend or modify the substance of the transactions contemplated herein, may be approved by authorized representatives of the Parties hereto. Said changes shall be fully binding upon and enforceable against the principals for whom said representatives so acted.
- h) Partial Invalidity: If any provision of this Agreement is deemed to be invalid, it shall not affect the remaining provisions of this Agreement, unless removal of such provision would materially disrupt the purpose or execution of this Agreement.
- i) Successors and Assigns: The terms and conditions herein contained shall inure to the benefit of and shall be binding upon the Parties and their respective successors and/or assigns, as the case may be. Notwithstanding anything to the contrary herein contained, it is understood and agreed by and among the Parties hereto that this Agreement shall not be assignable by any signatory hereto without the prior written consent of the other and any such assignment, without such prior written consent, shall be null and void and of no force and effect.
- j) Maintenance of Project: Future maintenance responsibilities of the Project will be outlined in the permit that the COUNTY, pursuant to this Agreement, is required to obtain from IDOT prior to commencing any construction work.
- k) Audit Documentation: The COUNTY shall maintain, for a minimum of three (3) years from the date final payment has been received by the COUNTY, adequate books, records, and

supporting documents to verify the amounts, recipients and uses of all disbursements of funds passing in conjunction with this Agreement. All books, records, and supporting documents related to this Agreement shall be available for review and audit by the Auditor General and other STATE auditors. The COUNTY agrees to cooperate fully with any audit conducted by the Auditor General and other STATE auditors and to provide full access to all relevant materials. Failure to maintain the books, records and supporting documents required by this section shall establish a presumption in favor of IDOT for the recovery of any funds paid by IDOT under this Agreement of which adequate books, records, and supporting documentation are not available to support their purported disbursement. After the federal or STATE representatives have audited the expenses as incurred by the COUNTY, including such amounts as may have been suspended from any previous payment, IDOT shall promptly pay the COUNTY for the suspended amounts, less the deduction of any item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement. If the total of the item(s) of expense as may be found by the federal or STATE representatives as not being eligible for reimbursement exceeds the suspended amounts, then the COUNTY shall promptly reimburse IDOT for the overpayment.

- 1) Prevailing Wages: Pursuant to 820 ILCS 130/ et seq., as currently enacted, in the event any work is performed by other than COUNTY forces, the provisions of an act regulating wages of laborers, mechanics and other workers employed in public works by the state, county, COUNTY or any public body or any political subdivision or by anyone under contract for public works shall apply. Pursuant to 820 ILCS 130/4, COUNTY is hereby notified “the

prevailing rate of wages are revised by the Department of Labor and are available on the Department's official website.”

- m) Equal Employment Opportunity: The COUNTY agrees to comply with all applicable Executive Orders and Federal Highway Acts pursuant to the Equal Employment Opportunity and non-discrimination regulations required by the Illinois Department of Transportation.
- n) State Financing: It is the intent of the State that all or a portion of the costs of this Project will be paid or reimbursed from the proceeds of tax-exempt bonds subsequently issued by the State. This provision in no way constitutes an obligation of IDOT to use any particular funding or to confer a contractual or other right to demand that any particular funding be used.
- o) Availability of Funds: At the time this Agreement was executed, there were funds available for the Project; however, funding obligations of IDOT and COUNTY under this Agreement are contingent upon and subject to the availability of sufficient funds. IDOT may terminate or suspend its reimbursement obligations under this Agreement, in whole or in part, without penalty or further payment being required, if (i) sufficient State funds have not been appropriated to IDOT, (ii) the Governor or the IDOT reserves appropriated funds, or (iii) the Governor or IDOT determines that appropriated funds are not available for payment. However, all reimbursement obligations of IDOT under this Agreement which accrue prior to IDOT providing written notice of termination or suspension to the County shall remain in full force and effect, and IDOT shall remain obligated to make reimbursement payments to the County for all pre-termination and pre-suspension accrued reimbursement obligations under this Agreement. IDOT shall provide notice, in writing, to the COUNTY of any such funding failure and IDOT's election to terminate or suspend its responsibilities and

obligations under this Agreement as soon as practicable. As soon as the IDOT becomes aware that it may be unable to satisfy its reimbursement obligations, and before the IDOT exercises its right to terminate or suspend such reimbursement obligations and provides notice thereof, IDOT must meet and confer with COUNTY as early as practically possible. The provisions in this section are not intended to curtail IDOT's notice obligations contained herein.

5. **PAYMENTS**: Upon execution of this Agreement, award of the Project contract and within 60 days of receipt of an invoice from the COUNTY, IDOT will pay to the COUNTY, 80% its financial commitment for construction costs as defined in this Agreement. Upon completion of the Project and final acceptance by IDOT and within 60 days of receipt of a final invoice from the COUNTY complete with all supporting documentation, IDOT will pay the COUNTY, the remainder of its obligation in a lump sum up to a maximum of \$1,550,000.

6. **REPRESENTATIONS**: The parties represent and warrant to each other that, to the best knowledge and information of each of them, (a) the matters represented in this Agreement are true and correct and (b) the person(s) executing this Agreement on behalf of each party is duly authorized to do so. Execution by COUNTY has been authorized pursuant to a duly adopted Board Resolution dated _____, a copy of which is attached hereto as Exhibit A.

This AGREEMENT and the covenants contained herein shall be null and void in the event a contract covering any of the engineering and/or construction work contemplated herein is not awarded on or before three (3) years from the date of the execution of this AGREEMENT.

This Agreement shall be binding upon and to the benefit of the PARTIES hereto, their successors and assigns.

IN WITNESS WHEREOF, the PARTIES hereto have caused this AGREEMENT to be executed in duplicate counterparts, each of which shall be considered as an original, by their duly officials as of the dates below indicated.

RECOMMENDED FOR EXECUTION

Shane E. Schneider, P.E.
County Engineer/Director of Transportation

COUNTY OF LAKE

By: _____
Sandra Hart
Chair, Lake County Board

ATTEST:

Clerk
Lake County

Date: _____

STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION

By: _____
Omer Osman
Secretary

By: _____
Vicki Wilson
Chief Fiscal Officer

Date: _____

Date: _____

By: _____
Stephen M. Travia, P.E.
Director of Highway Project
Implementation

By: _____
Yangsung Kim
Chief Counsel

Date: _____

Date: _____