

**INTERGOVERNMENTAL AGREEMENT
AMONG KANE COUNTY, LAKE COUNTY AND WILL COUNTY
FOR THE USE OF ADVANCE FEDERAL SURFACE TRANSPORTATION PROGRAM
FUNDS ALLOCATED BY THE ILLINOIS DEPARTMENT OF TRANSPORTATION TO
THE COLLAR COUNTIES TO BE USED BY KANE COUNTY FOR ITS STEARNS
ROAD PROJECT**

THIS AGREEMENT entered into this ____ day of _____, A.D. 20 ____, by and among the COUNTY OF KANE, Illinois, an Illinois body politic and corporate, acting by and through its Chairman and County Board, hereinafter referred to as KANE, the COUNTY OF LAKE, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter referred to as LAKE, and the COUNTY OF WILL, an Illinois body politic and corporate, acting by and through its County Executive and County Board, hereinafter referred to as WILL.

WITNESSETH

WHEREAS, the Chairman of the Kane County Board, the Chair of the Lake County Board and the Will County Executive are duly elected Local Officials as defined in the Federal Highway Acts of 1970, 1973, 1976; the Surface Transportation Assistance Acts of 1978 and 1982; the Surface Transportation and Uniform Relocation Assistance Act of 1987; the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991; the Transportation Equity Act for the 21st Century (TEA-21) of 1998; and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005; and,

WHEREAS, KANE, LAKE, WILL and McHenry County (hereinafter McHENRY) each receive an annual sub-allocation of federal Surface Transportation Program - County Funds (STP-C FUNDS) from the Illinois Department of Transportation (IDOT), administered by IDOT in the form of contract authority, to construct needed transportation improvements within their respective jurisdictions on a project by project basis through a joint agreement process with IDOT. Fifty percent of said STP-C FUNDS are currently allocated equally among the four counties and fifty percent are based on population as determined by the year 2000 census; and,

WHEREAS, the existing formula for allocating future STP-C FUNDS, or an equivalent federal fund source sub-allocated to KANE, LAKE, McHENRY and WILL by IDOT through the reauthorization of SAFETEA-LU, some other successor federal transportation act, or failing a timely reauthorization of SAFETEA-LU, any continuing resolutions passed by Congress, will continue to be used until such time as the 2010 census figures are available to calculate those portions of the sub-allocations based on population; and,

WHEREAS, the unobligated balance of STP-C FUNDS administered by IDOT is estimated to be of such an amount as to be, as of September 30, 2009, the end of Federal Fiscal Year 2009, a target for rescission; and,

WHEREAS, KANE, LAKE, McHENRY and WILL are desirous to have obligated by IDOT, through authorization by the Federal Highway Administration (FHWA), to the greatest extent possible, all of their respective STP-C FUNDS prior to the end of Federal Fiscal Year 2009 to avoid any rescission of said STP-C FUNDS; and,

WHEREAS, the County Engineers of KANE, LAKE, McHENRY and WILL met on Friday, December 5, 2008 to review the status of all proposed projects contained in the STP-C FUNDS Program; and,

WHEREAS, said project status review has resulted in the determination that KANE's Stearns Road project will be ready for a contract letting prior to the end of Federal Fiscal Year 2009. Said Stearns Road project shall be known as KANE Section 06-00214-20-BR (hereinafter the KANE PROJECT); and,

WHEREAS, LAKE and WILL have unobligated balances of STP-C FUNDS totaling \$6,291,940.00; and,

WHEREAS, it is the finding of the County Engineers that said KANE PROJECT is eligible for the use of the unobligated balance of STP-C FUNDS, subject to all necessary approvals, accumulated by LAKE and WILL in the form of Advance STP-C FUNDS; and,

WHEREAS, IDOT has assured the said County Engineers that sufficient State Fiscal Year 2009 appropriation is available to accommodate the IDOT letting of the KANE PROJECT and said obligation of the said Advance STP-C FUNDS; and

WHEREAS, KANE, LAKE and WILL are desirous to facilitate the expeditious construction of said KANE PROJECT; and,

WHEREAS, LAKE and WILL hereby support and approve the use of Advance STP-C FUNDS, in the amount heretofore stipulated, for said KANE PROJECT; and,

WHEREAS, KANE is desirous to enter into an agreement with LAKE and WILL regarding the repayment of said Advance STP-C FUNDS to LAKE and WILL as hereinafter stipulated; and,

WHEREAS, KANE receives funds (the COLLAR COUNTY TRANSPORTATION EMPOWERMENT FUNDS) authorized under Public Act 95-708 that can be used for highway improvements;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, made and pursuant to all applicable statutes, local ordinances, and authority, KANE, LAKE and WILL do hereby enter into the following:

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. LAKE and WILL agree to advance their respective unobligated balances of STP-C FUNDS to KANE for the KANE PROJECT, subject to receiving the necessary approvals.
3. WILL represents that its unobligated balance of Advance STP-C FUNDS amounts to 3,054,178.00.
LAKE represents that its unobligated balance of Advance STP-C FUNDS amounts to \$3,237,762.00
4. KANE agrees to repay to LAKE and WILL the total amounts of Advance STP-C FUNDS advanced by LAKE and WILL, respectively. Said repayment shall be accomplished through annual payments over a period of five years with the first payments to LAKE and WILL due by June 30, 2010 and successive payments due on June 30 in 2011, 2012, 2013 and 2014 or as hereinafter stipulated in THIS AGREEMENT.
5. It is mutually agreed by and among the parties hereto that for the purposes of THIS AGREEMENT, "repayment" to LAKE and WILL shall be effected through one of the following scenarios:

a. **Repayment Scenario 1: With the continuation of federal allocations.**

This repayment scenario involves a combination of funds from two sources: (1) The replenishment of the Advance STP-C FUNDS to LAKE and WILL through the diversion of future annual allocations of STP-C FUNDS or an equivalent federal fund source sub-allocated to KANE by IDOT through the reauthorization of SAFETEA-LU, some other successor federal transportation act, or failing a timely reauthorization of SAFETEA-LU any continuing resolutions passed by Congress; and (2) Annual lump sum payments from KANE to LAKE and WILL from COLLAR COUNTY TRANSPORTATION EMPOWERMENT

FUNDS or other Local Funds received by KANE. The repayment schedule under this scenario shall be in accordance with EXHIBIT A of THIS AGREEMENT.

b. **Repayment Scenario 2: With no continuation of federal allocations.**

This repayment scenario involves funds from local sources only through annual lump sum payments from KANE to LAKE and WILL from COLLAR COUNTY TRANSPORTATION EMPOWERMENT FUNDS or other Local Funds received by KANE. The repayment schedule under this scenario shall be in accordance with EXHIBIT B of THIS AGREEMENT.

6. It is mutually agreed by and among the parties hereto that the repayment scenario to be employed will be determined as early as is practicable, as soon as a reasonable determination can be made on any continuation, or lack thereof, of STP-C FUNDS or an equivalent federal fund source that may be included in a post-SAFETEA-LU authorization, or failing a timely reauthorization of SAFETEA-LU any continuing resolutions passed by Congress. The determination will be made jointly by KANE's County Engineer, LAKE's County Engineer and WILL's County Engineer in consultation with the IDOT Division of Highways Deputy Director/Region 1 Engineer (REGION 1 ENGINEER).

It is further mutually agreed that in the event that there is insufficient data available by June 1, 2010, to make a determination on the continuation of federal funds or the amount of federal funds that may be sub-allocated to KANE, repayment scenario 2 will be employed for year one of the repayment schedule and for each succeeding year(s) of the repayment schedule in which a determination on the continuation of federal funds to KANE cannot be made by June 1 of the respective payment year.

It is further mutually agreed that failing the continuation of any federal allocations of STP-C FUNDS or an equivalent federal fund source made available to KANE, repayment scenario 2 will be employed.

7. It is mutually agreed by and among the parties hereto that the federal allocations to KANE indicated in Exhibit A of THIS AGREEMENT are estimates based on the assumption that STP-C FUNDS, or an equivalent federal fund source, will continue through the year 2014. Said estimated future allocations may be subject to change on an annual basis and as such there needs to be a means

to reflect in EXHIBIT A of THIS AGREEMENT any changes to the level of Federal funding.

It is further mutually agreed that if it is determined, pursuant to the provisions contained in Paragraph 6 of THIS AGREEMENT that STP-C FUNDS, or an equivalent federal fund source, will continue to be allocated to KANE, EXHIBIT A of THIS AGREEMENT maybe amended annually to reflect any changes in federal funds and consequently, the corresponding equivalent changes to the COLLAR COUNTY TRANSPORTATION EMPOWERMENT FUNDS or other Local Funds. The annual amended EXHIBIT A must be agreed to in writing by the County Engineers of KANE, LAKE and WILL and said written approvals and said annual amended EXHIBIT A shall be made a part hereof. Said approvals of said annual amended EXHIBIT A shall not be unreasonably withheld.

8. The County Engineers of KANE, LAKE and WILL shall inform the Chicago Metropolitan Agency for Planning (CMAP) and the REGION 1 ENGINEER in writing of the determination of the said County Engineers to allow KANE the use of \$6,291,940 in unobligated STP-C FUNDS for the KANE PROJECT and to ask that IDOT request the Federal authorization of said STP-C FUNDS upon IDOT's approval of the plans, specifications and estimates; the certification of any necessary right-of-way; the submittal of the joint agreement for construction and any railroad agreement(s) that may be necessary
9. It is mutually agreed by and among the parties hereto that LAKE and WILL shall invoice KANE annually for that portion of the Advance STP-C FUNDS to be reimbursed from COLLAR COUNTY TRANSPORTATION EMPOWERMENT FUNDS or other Local Funds received by KANE in accordance with the then current and applicable EXHIBIT A or EXHIBIT B. Said invoices shall be issued on or around June 1 of 2010, 2011, 2012, 2013 and 2014, by LAKE and WILL for their respective amounts pursuant to EXHIBIT A of THIS AGREEMENT. Said invoices shall be payable by KANE within thirty (30) days of receipt.
10. It is mutually agreed by and among the parties hereto that any changes to the Federal funds reflected in EXHIBIT A of THIS AGREEMENT shall be based on information from CMAP.
11. The County Engineers of KANE, LAKE and WILL shall provide CMAP and the REGION 1 ENGINEER with copies of THIS AGREEMENT.

12. It is mutually agreed by and among 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. KANE, LAKE and WILL are to be and shall remain independent of each other with respect to all services performed under THIS AGREEMENT.
13. It is mutually agreed by and among 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 provisions 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.
14. It is mutually agreed by and among the parties hereto that THIS AGREEMENT shall be deemed to take effect as of the date on which the duly authorized agents of the last of the parties hereto to execute THIS AGREEMENT affix their signatures.
15. It is mutually agreed by and among the parties hereto that LAKE shall assume the lead as litigant on behalf of WILL in the event that litigation is required to enforce the repayment provisions of THIS AGREEMENT. In such case LAKE shall seek appropriate action at law or in equity, including any action to secure the performance of the representations, promises, covenants, agreements and obligations contained herein in the Circuit Court of the Nineteenth Judicial District.

It is further mutually agreed that if LAKE does not use the services of its State's Attorney's Office and retains outside counsel to represent it in the collection of said funds and in connection therewith pays to said outside counsel attorneys' fees, that WILL shall reimburse LAKE for fifty percent (50%) of all reasonable legal fees actually incurred by LAKE to secure the performance of KANE under the terms of THIS AGREEMENT. LAKE shall cooperate with WILL and its State's Attorney's Office in any such proceeding and in no event shall LAKE have settlement authority for WILL.

16. It is mutually agreed by and among 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.
17. It is mutually agreed by and among 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. Any prior agreements between the parties hereto shall remain in full force and effect except as modified by THIS AGREEMENT.
18. It is mutually agreed by and among 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.
19. It is mutually agreed by and among the parties hereto that THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
20. THIS AGREEMENT shall remain in full force and effect for such a period of time as any amount of the Advance STP-C FUNDS owed to LAKE and/or WILL remain unpaid.
21. THIS AGREEMENT shall be considered null and void in the event that the construction contract for the KANE PROJECT is not awarded by September 30, 2009, unless funds pursuant to this AGREEMENT are advanced and/or paid to KANE. This AGREEMENT shall not be declared null and void once any funds from LAKE and/or WILL are advanced or paid to KANE.

COUNTY OF KANE

Karen McConnaughay
Chairman, Kane County Board

Attest:

Date: _____

John A. Cunningham
Kane County Clerk

COUNTY OF LAKE

RECOMMENDED FOR EXECUTION

Lake County
Director of Transportation/
County Engineer

Suzi Schmidt
Chair
Lake County Board

Attest:

Date: _____

Willard R. Helander
Clerk
Lake County

COUNTY OF WILL

Adopted by the Will County Board this ____ day of _____, 2009

Vote: Yes ____ No ____ Pass ____ (SEAL) _____

Nancy Schultz Voots
Will County Clerk

Approved this ____ day of _____, 2009 _____

Lawrence M. Walsh
Will County Executive

EXHIBIT A

**Reimbursement of Advance STP-C Funds Assuming the Continuation of
Federal Allocations at Current Levels**

EXHIBIT A

Execution Date
 Date Amended
 Date Amended
 Date Amended
 Date Amended
 Date Amended

Reimbursement of Advance STP-C Funds Assuming the Continuation of Federal Allocations at Current Levels

Total Advance Fund Amount to be Reimbursed = \$6,291,940
 Annual Reimbursement over Five Years = \$1,258,388
 Estimated Annual Kane County STP-C Allocation* = \$892,450
 Estimated Annual Kane County Reimbursement Using Collar County Transportation Empowerment or other Local Funds = \$365,938

County Being Reimbursed	2010 Kane County STP-C Allocation	2010 Kane County Local Funds	2011 Kane County STP-C Allocation	2011 Kane County Local Funds	2012 Kane County STP-C Allocation	2012 Kane County Local Funds	2013 Kane County STP-C Allocation	2013 Kane County Local Funds	2014 Kane County STP-C Allocation	2014 Kane County Local Funds	Totals
Lake	\$ 459,237	\$ 188,315	\$ 459,237	\$ 188,315	\$ 459,237	\$ 188,315	\$ 459,237	\$ 188,315	\$ 459,237	\$ 188,317	\$ 3,237,762
Will	\$ 433,213	\$ 177,623	\$ 433,213	\$ 177,623	\$ 433,213	\$ 177,623	\$ 433,213	\$ 177,623	\$ 433,213	\$ 177,621	\$ 3,054,178
Totals	\$ 892,450	\$ 365,938	\$ 892,450	\$ 365,938	\$ 892,450	\$ 365,938	\$ 892,450	\$ 365,938	\$ 892,450	\$ 365,938	\$ 6,291,940

Lake County's Share of Advance Funds Total = \$3,237,762 or 51.458882%
 Will County's Share of Advance Funds Total = \$3,054,178 or 48.541117%

* Assumes the continuation of an annual allocation to the collar counties in the reauthorization of SAFETEA-LU

EXHIBIT B

**Reimbursement of Advance STR Funds Assuming No Federal Allocations
Post-SAFETEA-LU**

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EXHIBIT B

Reimbursement of Advance STR Funds Assuming No Federal Allocations Post-SAFETEA-LU

Total Advance Fund Amount to be Reimbursed =	\$6,291,940
Annual Reimbursement by Kane County =	\$1,258,388

County Being Reimbursed	2010 Kane County Local Funds	2011 Kane County Local Funds	2012 Kane County Local Funds	2013 Kane County Local Funds	2014 Kane County Local Funds	Totals
Lake	\$ 647,552.40	\$ 647,552.40	\$ 647,552.40	\$ 647,552.40	\$ 647,552.40	\$3,237,762.00
Will	\$ 610,835.60	\$ 610,835.60	\$ 610,835.60	\$ 610,835.60	\$ 610,835.60	\$3,054,178.00
Totals	\$1,258,388.00	\$1,258,388.00	\$1,258,388.00	\$1,258,388.00	\$1,258,388.00	\$6,291,940.00

Lake County's Share of Advance Funds Total = \$3,237,762 or 51.458882%

Will County's Share of Advance Funds Total = \$3,054,178 or 48.541117%