

DRAFT

**AGREEMENT  
BETWEEN THE COUNTY OF LAKE  
AND THE LAKE COUNTY FOREST PRESERVE DISTRICT  
FOR THE DEDICATION OF RIGHT-OF-WAY  
AND THE GRANTING OF TEMPORARY AND PERMANENT EASEMENTS  
ALONG DELANY ROAD (COUNTY HIGHWAY 22)  
FOR A HIGHWAY IMPROVEMENT PROJECT,  
INCLUDING THE CONSTRUCTION OF A DETENTION BASIN**

**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 LAKE COUNTY FOREST PRESERVE DISTRICT, an Illinois body politic and corporate, acting by and through its President and Board of Commissioners, hereinafter referred to as the DISTRICT. The COUNTY and the DISTRICT 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 of making certain permanent roadway improvements along Delany Road (County Highway 22), from Sunset Avenue (County Highway 46), northward to Wadsworth Road (County Highway 17) (hereinafter the IMPROVEMENT). Said IMPROVEMENT shall be constructed in two (2) distinct phases and shall include, but not be limited to, the widening and reconstruction of Delany Road, from Sunset Avenue to Wadsworth Road; and,

**WHEREAS**, the first of the two phases of the IMPROVEMENT includes the widening and reconstruction of Delany Road, from Sunset Avenue northward to York House Road (County Highway 65) (hereinafter the SOUTH IMPROVEMENT, also known as County Section No. 00-00093-17-WR). As of this writing, the scheduled letting date for the SOUTH IMPROVEMENT is June 28, 2011; and,

**WHEREAS**, the second of the two phases of the IMPROVEMENT includes the widening and reconstruction of Delany Road, from York House Road to Wadsworth Road (hereinafter the NORTH

IMPROVEMENT, also known as County Section No. 00-00093-18-WR). As of this writing, the scheduled letting date for the NORTH IMPROVEMENT is January 31, 2012; and,

**WHEREAS**, said IMPROVEMENT shall be constructed in substantial conformance with the design engineering plans and specifications prepared by Christopher B. Burke Engineering, Ltd., (hereinafter PLANS), which, by reference herein, hereby become a part hereof. As of this writing, the current PLANS are those dated January 3, 2011 (Pre-Final version); and,

**WHEREAS**, it has been determined by engineering studies that, in order to construct the IMPROVEMENT, the COUNTY requires two (2) areas of real property abutting Delany Road, which is presently owned by the DISTRICT [to become Lake County Highway right-of-way (hereinafter RIGHT-OF-WAY)], nine (9) temporary easements within property(ies) owned by the DISTRICT (hereinafter TEMPORARY EASEMENTS) and five (5) certain permanent easements for the COUNTY within property(ies) owned by the DISTRICT (hereinafter PERMANENT EASEMENTS); and,

**WHEREAS**, the Plat of Highways showing the RIGHT-OF-WAY, TEMPORARY EASEMENTS and PERMANENT EASEMENTS (hereinafter PLAT) is attached as EXHIBIT A to THIS AGREEMENT, which, by reference herein, is hereby made a part hereof.

**WHEREAS**, the legal descriptions for the RIGHT-OF-WAY, TEMPORARY EASEMENTS and PERMANENT EASEMENTS are attached as EXHIBIT B to THIS AGREEMENT, which, by reference herein, is hereby made a part hereof.

**WHEREAS**, necessary for the construction of the NORTH IMPROVEMENT is the construction of a 16.00 acre-feet “dry-bottom” detention basin (hereinafter DETENTION BASIN) within the NORTH IMPROVEMENT, within real property presently owned by the DISTRICT, located immediately east of Delany Road (hereinafter DETENTION BASIN); and,

**WHEREAS**, the Drainage Plan, Grading Plan, Erosion Control and Landscaping Plan for the DETENTION BASIN and the immediate surrounding areas are attached as EXHIBIT C to THIS AGREEMENT (entitled “Detention Area 3 Excerpt”), which, by reference herein, is hereby made a part hereof; and,

**WHEREAS**, once the RIGHT-OF-WAY is granted to the COUNTY, said RIGHT-OF-WAY shall be added to the Lake County Highway System, and the COUNTY shall have the unrestricted right to use said RIGHT-OF-WAY for roadway purposes, including, but not limited to, the construction and maintenance of the IMPROVEMENT and any future COUNTY roadway improvement projects deemed necessary and appropriate in the sole and exclusive judgment of the COUNTY's County Engineer (hereinafter COUNTY ENGINEER). The COUNTY shall thereafter administer the use of the RIGHT-OF-WAY pursuant to its published ordinances; and,

**WHEREAS**, to allow the COUNTY to perform grading necessary for the IMPROVEMENT, nine (9) TEMPORARY EASEMENTS are required, with one (1) (namely Parcel 0031TE-B) being required for the construction of the DETENTION BASIN from within the natural vegetated area on DISTRICT-owned property (hereinafter NATURAL AREA); and,

**WHEREAS**, to allow the COUNTY to perpetually maintain certain storm sewers and appurtenances serving the DETENTION BASIN, it is appropriate for the DISTRICT to grant five (5) PERMANENT EASEMENTS to the COUNTY; and,

**WHEREAS**, the DISTRICT has indicated its willingness to enter into an agreement with the COUNTY regarding the acquisition of the RIGHT-OF-WAY, PERMANENT EASEMENTS and the TEMPORARY EASEMENTS by the COUNTY and to sign the necessary land acquisition/conveyance documents for the RIGHT-OF-WAY, PERMANENT EASEMENTS and the TEMPORARY EASEMENTS at a specified time in the future; and,

**WHEREAS**, the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq., (hereinafter the Act) authorizes units of local government to agree to transfer land between said units of local government; and,

**WHEREAS**, the COUNTY's construction activity within the NATURAL AREA necessitates a maintenance and monitoring plan to ensure the establishment of the native vegetation planted by the COUNTY within the NATURAL AREA; and,

**WHEREAS**, the COUNTY's construction activity within the NATURAL AREA shall be governed by comprehensive special provisions detailing the manner in which work is to be performed; and,

**WHEREAS**, the document containing such provisions, SPECIAL PROVISIONS FOR NATURAL AREAS INSTALLATION (hereinafter INSTALLATION PLAN) is attached as EXHIBIT D to THIS AGREEMENT, which, by reference herein, hereby becomes a part hereof; and,

**WHEREAS**, the document containing the maintenance and monitoring plan, NATURAL AREA INSTALLATION: THREE (3) YEAR MAINTENANCE AND MONITORING PLAN (hereinafter MAINTENANCE PLAN) is attached as EXHIBIT E to THIS AGREEMENT, which, by reference herein, hereby becomes a part hereof; and,

**WHEREAS**, the construction of the IMPROVEMENT necessitates the removal of a number of trees within DISTRICT-owned property. The COUNTY shall replace said trees with approximately 200 trees of agreed-upon size and species (hereinafter PLANTINGS), working in collaboration with the DISTRICT. A comprehensive listing of said PLANTINGS is included in the MAINTENANCE PLAN; and,

**WHEREAS**, the COUNTY shall perform its construction activity and maintenance within the NATURAL AREA in accordance with the INSTALLATION PLAN and the MAINTENANCE PLAN; and,

**WHEREAS**, the RIGHT-OF-WAY, TEMPORARY EASEMENTS and PERMANENT EASEMENTS are necessary for the construction of the IMPROVEMENT, and the IMPROVEMENT will be of benefit to the motoring public of Lake County;

**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 DISTRICT do hereby enter into the following AGREEMENT:

**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.**

### **Dedication of RIGHT-OF-WAY;**

#### **Grant of TEMPORARY EASEMENTS and PERMANENT EASEMENTS**

1. It is mutually agreed by and between the parties hereto that the Local Government Property Transfer Act, 50 ILCS 605/0.01 et seq., authorizes the DISTRICT’s fee simple dedication of the RIGHT-OF-WAY to the COUNTY.
2. The COUNTY agrees to prepare at its sole expense all necessary land acquisition and conveyance documents for the conveyance of the RIGHT-OF-WAY and for the granting of the TEMPORARY EASEMENTS and the PERMANENT EASEMENTS.
3. The DISTRICT agrees to dedicate to the COUNTY, for public roadway purposes, the RIGHT-OF-WAY (Parcels 0029-A and 0029-B), pursuant to the PLAT and the necessary land acquisition documents.
4. The DISTRICT agrees to grant nine (9) TEMPORARY EASEMENTS (Parcels 0029TE-A, 0029TE-B, 0029TE-C, 0029TE-D, 0029TE-E, 0029TE-F, 0029TE-H, 0031TE-A and 0031TE-B) to the COUNTY for the purpose of constructing the IMPROVEMENT, pursuant to the PLAT and the necessary conveyance documents. [Of these nine (9) TEMPORARY EASEMENTS, only Parcel 0031TE-B is necessary for the construction of the DETENTION BASIN.]
5. The DISTRICT agrees to grant the five (5) PERMANENT EASEMENTS (Parcels 0029PE-A, 0029PE-B, 0029PE-C, 0031PE-A and 0031PE-B) to the COUNTY for the purpose of maintaining storm sewers and appurtenances to the DETENTION BASIN, pursuant to the PLAT and the necessary conveyance documents.
6. Provided it is consistent with the provisions, paragraphs and words of THIS AGREEMENT,

the DISTRICT agrees to execute and return to the COUNTY ENGINEER the necessary land acquisition and/or conveyance documents for the RIGHT-OF-WAY, the TEMPORARY EASEMENTS and the PERMANENT EASEMENTS within ten (10) working days of the receipt of said PLAT.

### **SECTION III.**

#### **NATURAL AREA; TEMPORARY EASEMENT 0031TE-B and PERMANENT EASEMENTS 0029PE-A, 0029PE-B, 0031PE-A and 0031PE-B**

1. It is mutually agreed by and between the parties hereto that the INSTALLATION PLAN and MAINTENANCE PLAN contain specifications governing the COUNTY's construction and maintenance activity within the NATURAL AREA by contractor. Said specifications to be included in the COUNTY's PLANS include, but are not limited to: (1) planting schedules, (2) requirements for the quantities and species of live planted materials, (3) explanations of the terms "Establishment" and "Period of Establishment," (4) contractor qualifications, (5) terms of performance guarantee, (6) seeding criteria, (7) erosion control criteria, (8) watering schedule and (9) acceptance criteria.

It is further mutually agreed by and between the parties hereto that the INSTALLATION PLAN and MAINTENANCE PLAN contain requirements for the Three (3)-Year Maintenance and Monitoring Period (hereinafter MMP) for the NATURAL AREA.

It is further mutually agreed by and between the parties hereto that the COUNTY shall perform its construction and maintenance activity within the NATURAL AREA in accordance with the INSTALLATION PLAN and MAINTENANCE PLAN.

2. It is mutually agreed by and between the parties hereto that the COUNTY shall supply and install all PLANTINGS, with no reimbursement by the DISTRICT; however, the DISTRICT shall "field-locate" and stake their desired locations for the PLANTINGS. Because said locations lie outside the RIGHT-OF-WAY, the TEMPORARY EASEMENTS and the PERMANENT EASEMENT, the DISTRICT shall grant the COUNTY all necessary rights-of-entry onto DISTRICT-owned property for the purpose of allowing the COUNTY to install all PLANTINGS.

3. As a condition of the rights granted to the COUNTY by THIS AGREEMENT, the COUNTY shall, for itself and for those authorized by or through the COUNTY, including without limitation an authorized COUNTY contractor, and to the fullest extent permitted by law, hold harmless, indemnify and defend the DISTRICT, its commissioners, officers, agents, attorneys, employees, contractors and successors and assigns from and against any and all losses, liabilities, expenses, claims, costs, causes, actions, litigation costs, attorneys' fees, suits and damages relating to personal or bodily injuries, death or damages or injuries to property arising from, occurring, growing out of, incident to, relating to or otherwise resulting from the grant of the TEMPORARY EASEMENTS or the use hereunder of the NATURAL AREA/TEMPORARY EASEMENTS by the COUNTY, its employees and authorized agents, or any authorized COUNTY contractor, or any of their respective officers, agents, contractors, employee or representatives (collectively, CLAIMS), except to the extent any such CLAIMS arise solely from the negligent, willful or wanton misconduct of the DISTRICT.
  
4. It is mutually agreed by and between the parties hereto that the COUNTY shall have maintained the NATURAL AREA during the construction of the IMPROVEMENT and the DETENTION BASIN, until such time as certain requirements regarding the PLANTINGS are satisfied (said requirements are contained within the INSTALLATION PLAN and MAINTENANCE PLAN and include, for instance, coverage requirements and requirements for the composition of plant materials) (hereinafter PERIOD OF ESTABLISHMENT).

It is further mutually agreed by and between the parties hereto that, once the requirements regarding the PLANTINGS (including Establishment) are met, TEMPORARY EASEMENT 0031TE-B shall terminate and the DISTRICT shall assume maintenance responsibility for the NATURAL AREA, inclusive of pipe drains, but exclusive of storm sewers and appurtenances extending into the DETENTION BASIN.

Pursuant to the PERMANENT EASEMENTS, the DISTRICT shall maintain in perpetuity said NATURAL AREA, however, the DISTRICT shall not modify or otherwise alter the design features of said DETENTION BASIN.

Pursuant to the PERMANENT EASEMENTS, the DISTRICT further agrees to allow the COUNTY to intermittently detain (i.e., store) a volume of up to 16.00 acre-feet of

stormwater detention in perpetuity within the DETENTION BASIN, in the NATURAL AREA, in order to accommodate the needs of the IMPROVEMENT, as established by the Lake County Watershed Development Ordinance permits issued for the IMPROVEMENT.

The COUNTY agrees that all work performed within the NATURAL AREA shall be staked in the field and approved by the DISTRICT prior to the commencement of IMPROVEMENT activities. The DISTRICT agrees to inspect and approve the areas of work to be performed within the NATURAL AREA prior to the commencement of IMPROVEMENT activities. The DISTRICT further agrees the said inspections shall be complete within ten (10) working days after receipt of notification from the COUNTY ENGINEER, and said approval shall not be withheld if the work is to be performed in accordance with the approved PLANS and any and all applicable laws and regulations.

#### **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, in any manner or form, to create or establish a partnership or principal-agent relationship between the parties hereto, or to make the DISTRICT (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 DISTRICT is to be and shall remain independent of the COUNTY, and vice-versa, 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 ENGINEER to maintain, operate, improve, construct, reconstruct, repair, manage, widen or expand COUNTY Highways as may be best determined, as provided by law.
3. The individuals executing THIS AGREEMENT each warrant and represent to the other party and agree that: (1) THIS AGREEMENT is executed by him or her as a duly authorized agent or officer of a party and that he or she has executed the same in accordance with the lawful authority vested in him or her, 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 May 1, 2011, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to May 1, 2011. In the event the date that the last authorized agent of the parties hereto affix their signature to THIS AGREEMENT is subsequent to May 1, 2011, 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 counterparty.

10. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
11. Except where otherwise provided in THIS AGREEMENT, term of THIS AGREEMENT shall be perpetual in nature and terminable only by the mutual written agreement of both of the parties hereto.

12. THIS AGREEMENT shall be considered null and void in the event that the construction contracts covering the IMPROVEMENT are not awarded by January 1, 2017.

**LAKE COUNTY  
FOREST PRESERVE DISTRICT**

**ATTEST:**

\_\_\_\_\_  
Secretary  
Lake County Forest Preserve District

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

**RECOMMENDED FOR EXECUTION**

\_\_\_\_\_  
Martin G. Buehler, P.E.  
Director of Transportation / County Engineer  
Lake County

**ATTEST:**

\_\_\_\_\_  
County Clerk

**COUNTY OF LAKE**

By: \_\_\_\_\_  
Chair  
Lake County Board

Date: \_\_\_\_\_

**EXHIBIT A**

**PLAT OF HIGHWAYS** (*17 pages*), including  
County Section No. 00-00093-17-WR and 00-00093-18-WR

**EXHIBIT B**

**Legal Descriptions for the RIGHT-OF-WAY, TEMPORARY EASEMENTS  
and PERMANENT EASEMENTS *(16 pages)***

County Section No. 00-00093-17-WR and 00-00093-18-WR

**EXHIBIT C**

**Detention Area 3 Excerpt** *(5 pages)*

County Section No. 00-00093-17-WR and 00-00093-18-WR

**EXHIBIT D**

**INSTALLATION PLAN** *(38 pages)*

County Section No. 00-00093-17-WR and 00-00093-18-WR

**EXHIBIT E**

**MAINTENANCE PLAN** *(5 pages)*

County Section No. 00-00093-17-WR and 00-00093-18-WR