

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF NORTH CHICAGO AND COUNTY OF LAKE**

This Agreement is made this _____ day of _____, 2009, by and between the City of North Chicago (hereinafter "CITY") and the County of Lake, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board (hereinafter "COUNTY");

WITNESSETH:

WHEREAS, the CITY owns a portion of land along the area known as Commonwealth Avenue between Martin Luther King, Jr. Drive and Broadway Avenue in the CITY; and

WHEREAS, the COUNTY owns the former Chicago, Milwaukee and North Shore Right-of-Way (County Highway 75) hereinafter the North Shore ROW, which exists on a parallel and abutting alignment with Commonwealth Avenue between Martin Luther King, Jr. Drive and Broadway Avenue in the CITY; and

WHEREAS, the COUNTY maintains a portion of the Robert McClory Bike Path (hereinafter BIKE PATH) running along the area of Commonwealth Avenue and the North Shore ROW as aforesaid and that the BIKE PATH connects with other portions to the north and south of the area in question; and

WHEREAS, the COUNTY desires to have the BIKE PATH relocated to a safer and more desirable location along a similar route that it currently takes through North Chicago, as shown in Exhibit A; and

WHEREAS, the CITY desires to vacate a portion of Commonwealth Avenue to provide increased security for EMCO Chemical Distributors, Inc. (hereinafter EMCO), a company whose product line requires a high degree of security pursuant to the rules and regulations of the United States Department of Homeland Security; and

WHEREAS, the CITY and EMCO have entered into a separate agreement, Exhibit B, to provide for the relocation of the bike path in the area between Broadway Avenue and Martin Luther King, Jr. Drive to a safer and more desirable location at the expense of EMCO and to provide for a perpetual easement for access and maintenance; and

WHEREAS, the CITY and the COUNTY entered into an agreement dated November 16, 1992, hereinafter the 1992 AGREEMENT, which permitted the CITY to relocate the travel lanes of Commonwealth Avenue onto the North Shore right of way between Broadway Avenue and Martin Luther King, Jr. Drive in return for the use of a portion of Commonwealth Avenue for the construction of the BIKE PATH; and

WHEREAS, the CITY and the COUNTY agree that it would be in the public's interest to relocate a portion of the bike path in order to improve safety for those using the BIKE PATH and to improve the security at EMCO; and

WHEREAS, the CITY and the COUNTY's Division of Transportation have previously entered into a letter of intent dated March 24, 2009 in which both the CITY and the COUNTY stated their mutual desire to enter into an intergovernmental agreement to effectuate the transfer of a portion of the North Shore ROW owned by the COUNTY to the CITY, and that the CITY would enter into an agreement with EMCO requiring EMCO to relocate and improve a portion of the BIKE PATH, as shown within Exhibit C, and to transfer to the CITY a parcel of land consisting of approximately 4.2 acres and that the COUNTY would not be responsible for any costs associated with the relocation and improvement of the BIKE PATH and that further improvements would be made to the BIKE PATH in stages to areas south of Martin Luther King Dr. running along Sheridan Road as more fully set forth in Exhibits A, A2 and A3.

BE IT HEREBY RESOLVED AND AGREED BY AND BETWEEN LAKE COUNTY AND THE CITY OF NORTH CHICAGO AS FOLLOWS:

A. The COUNTY shall transfer ownership of the land, by quit claim deed, subject to the Commonwealth Edison Utility Easement, legally described in attached Exhibit D to the CITY.

B. The CITY shall enter into the agreement with EMCO attached as Exhibit B which shall provide that the COUNTY will have rights to enforce the terms of the agreement between the CITY and EMCO.

C. The CITY shall relocate the bike path running along the area of Commonwealth Avenue between Broadway Avenue and Martin Luther King, Jr. Drive as set forth within Exhibit A (Phase I). All construction shall be done in compliance with the rules and regulations established by the Lake County Division of Transportation. The CITY acknowledges that it has a copy of the rules and regulations and will require EMCO to comply as a term and condition of the CITY's agreement with EMCO. Phase I of the relocation of the BIKE PATH along Commonwealth Avenue and Pettibone Creek would be performed by EMCO no later than October 31, 2010. Phase II of the project along Martin Luther King Drive shall be constructed in conjunction with the MLK Rehabilitation project. Currently, the CITY is entering agreements with the development of Sheridan Crossing and the streetscape project shall be done in conjunction of the redevelopment of Sheridan Crossing. In no event shall Phase II be completed any later than October 31, 2010. The CITY will use its best efforts to complete Phase II earlier than October 31, 2010, and shall include the Phase II BIKE PATH extension as part of any streetscape improvement along Martin Luther King Drive. Phase III shall be completed within three years after the City of Waukegan and North Chicago obtains land use for the Lake Shore Bike Path extension. The CITY shall coordinate its efforts to see that Phase III extension is constructed when the CITY

is able to extend the Lake Shore Bike Path south of Martin Luther King Drive. Phase III will be completed by October 31, 2015.

Until the completion of Phase II and Phase III of the relocation of the BIKE PATH, the CITY shall cause the Phase I relocated BIKE PATH to connect with the COUNTY's existing BIKE PATH which exists along the east side of Commonwealth Avenue south of Martin Luther King, Jr. Drive.

D. The COUNTY shall receive a perpetual easement as set forth in Exhibit E for access, installation and maintenance of the BIKE PATH, underground utilities, and/or subsurface communications and the CITY and the COUNTY agree that the BIKE PATH shall be maintained by the COUNTY and that the COUNTY shall have the right to maintain and improve the BIKE PATH. The grantor of the easement shall remain responsible for any contaminated soils that are encountered during the construction and future maintenance of the BIKE PATH and/or improvements that the COUNTY makes upon the BIKE PATH. The grantor of the easement shall, at its expense, remove and dispose of any contaminated soils in accordance with the regulations of the Illinois Environmental Protection Agency.

E. The CITY agrees to provide the COUNTY a perpetual easement for the BIKE PATH adjacent to the north side of Martin Luther King Jr. Drive running east from the point where the BIKE PATH connects with Martin Luther King Drive to Sheridan Road as shown on Exhibit A2, to be known as Phase II of the BIKE PATH improvement.

F. The CITY shall cause to have the BIKE PATH extended along the east side of Sheridan Road from Gate 4 of the Great Lakes Naval Training Center as shown on Exhibit A3. This improvement shall be known as Phase III of the relocated BIKE PATH. The CITY will use its best efforts to secure either the relocation of the fence at the Great Lakes Naval Training Center or additional right of way for the construction of the Phase III BIKE PATH. The CITY shall report to the COUNTY as to the status of the negotiation of the additional right-of-way needed for the BIKE PATH once the location of the BIKE PATH is established by the CITY. Securing the additional right-of-way or relocation of the fence shall be the responsibility of the CITY.

G. The CITY shall cause the relocated BIKE PATH running between the EJ&E Railroad right of way and Martin Luther King Jr. Drive to be completed in conjunction with the construction of the new EMCO parking lot (Phase I); the existing BIKE BATH along Commonwealth Avenue shall remain open for use by the public during the construction of the relocated BIKE PATH. There shall not be any time that the public does not have access to a bike path running along Commonwealth Avenue near the EMCO facility. The portion of the BIKE PATH running between the intersection with Martin Luther King Jr. Drive and Sheridan Road shall be completed in conjunction with either the Martin Luther King Jr. Drive reconstruction project or the Martin Luther King Jr. Drive/Sheridan Road streetscape project (Phase II). The CITY

intends to complete Phase II as part of the Martin Luther King Jr Drive reconstruction project. The extension of the BIKE PATH south from Gate 4 at the Great Lakes Naval Training Center shall be completed in conjunction with the project known as the Lake Front Bike Path (Phase III). In the event that the lakefront bike path (Phase III) is not completed by October 30, 2015, the CITY shall, at that time, construct Phase III of the BIKE PATH contingent upon receiving adequate funding, either through the lakefront bike path project or other means. The COUNTY shall remove the appertenances and signage for the existing BIKE PATH between Martin Luther King, Jr. Drive and 24th Street on Commonwealth Avenue at such time as Phase II and Phase III of the BIKE PATH are completed.

H. The CITY and the Lake County Division of Transportation shall meet at least annually to review the construction and the completion of the BIKE PATH as set forth in this agreement and shall, to the fullest extent possible, cooperate in constructing the BIKE PATH at the earliest possible time.

I. The BIKE PATH shall be constructed in conformity with the specifications set forth in the Lake County Division of Transportation standards and policies, which are incorporated by reference and made a part of this agreement.

J. It is mutually agreed by the parties hereto that THIS AGREEMENT shall supersede the 1992 AGREEMENT as said 1992 AGREEMENT relates to the COUNTY's North Shore ROW, the existing BIKE PATH and the Phase I relocation of said BIKE PATH between the EJ&E Railroad and Martin Luther King, Jr. Drive.

K. **Amendment.** This Agreement may only be amended by a written amendment signed by the parties hereto.

L. **Enforcement; Notice of Default.** This Agreement shall be enforceable by an appropriate action at law or in equity in the Circuit Court for the Nineteenth Judicial Circuit, Lake County, Illinois. The party bringing such enforcement action shall have the right to elect legal or equitable relief, or both, and the parties agree that no party shall be barred from the remedy of specific performance by reason of any alleged remedy at law, the parties acknowledging that any such remedy at law is inadequate. Except in a situation requiring emergency injunctive relief, no action shall be brought to enforce this Agreement unless a notice setting forth the nature and extent of the alleged default has been sent and a period of thirty days has elapsed for the breaching party to cure such default. The prevailing party shall be entitled to collect its reasonable attorney's fees, engineering fees and consulting fees from nonprevailing parties in any such litigation if the court in such litigation makes a specific finding that the nonprevailing party has not acted in good faith in its efforts to comply with this Agreement.

M. Notices.

1. Except as otherwise specifically provided herein, all notices required or permitted hereunder shall be in writing and shall be served:

- a. by personal delivery; or
- b. by mailing by certified mail, return receipt requested (in which event the notices shall be deemed served as of the second business day following such mailing); or
- c. by sending a fax transmission to the fax number listed below (in which event the notice shall be deemed served as of the first business day following the date of the confirmation of receipt of such transmission on the sending fax machine); or
- d. by sending by nationally recognized overnight express delivery services (such as Federal Express, U.S. Postal Service, etc.) (in which event the notice shall be deemed served as of the first business day following the latest of the delivery day ranges held out by such express delivery service for the manner sent).

2. For the purposes of this Agreement, a "business day" is deemed to mean Monday through Friday, 8:00 a.m. to 5:00 p.m., local time, excluding federal holidays.

3. All notices required or permitted hereunder shall be served on the persons set forth below:

If to City of North Chicago:

City of North Chicago
Attention: Mayor's Office
1850 Lewis Avenue
North Chicago IL 60064

With a copy to:

Charles W. Smith
Smith & LaLuzerne, Ltd.
209 W. Madison Street, 2nd Floor
Waukegan IL 60085

If to County of Lake:

County of Lake
Division of Transportation
Attention: County Engineer
600 W. Winchester Road
Libertyville IL 60048

With a copy to:

Lake County State's Attorney's Office
Attention: Civil Division
18 North County Street
Waukegan IL 60085

or to such other addresses with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided in this paragraph.

N. **Severability.** If any provision, section or clause of this Agreement shall be held invalid by any court of competent jurisdiction, such declaration or finding of invalidity shall not invalidate any remaining portion of this Agreement which can be given effect without such invalid provisions, and to that end the provisions of this Agreement shall be severable.

O. **Term.** This Agreement shall remain in effect until its terms are fulfilled or are terminated under its terms.

P. **Illinois law.** This Agreement shall be deemed to be an intergovernmental agreement made under and shall be construed in accordance with and governed by the laws of the State of Illinois.

Q. **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

R. **Entire Agreement of the Parties.** This Agreement represents the entire agreement of the parties with respect to the matters herein set forth. No amendment hereto shall be effective unless approved by appropriate action of the corporate authorities of both parties and signed by duly authorized representatives thereof.

S. **No Third Party Beneficiaries.** The parties agree that under no circumstances shall any third person or entity which is not a party to this Agreement be construed to be a Third Party Beneficiary of any of the parties hereto or entitled to the benefits of any of the parties hereto, except as to rights granted to EMCO under this Agreement, EMCO shall have the right to enforce those rights and privileges granted to EMCO.

IN WITNESS WHEREOF, the parties hereto have signified their approval through the signatures of their duly authorized officials.

CITY OF NORTH CHICAGO
an Illinois municipal corporation

COUNTY OF LAKE

By: _____
LEON ROCKINGHAM, JR., Mayor

By: _____
SUZI SCHMIDT, County Board
President

ATTEST:

ATTEST:

LORI L. COLLINS, City Clerk

WILLARD R. HELANDER, County Clerk

Dated this ____ day of _____, 2009

Dated this ____ day of _____, 2009

RECOMMENDED FOR EXECUTION

LakeCounty
County Engineer/Director of Transportation