

FAP Route 330
Illinois Route 21
State Section: 128R-3
Lake County
Job No. C-91-199-00
Agreement No.: JN-111-014
Contract No.: 60953

AGREEMENT

This Agreement entered into this ____ day of ____, 20____ A.D, by and between the STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION hereinafter called the STATE, and the County of Lake of the State of Illinois, hereinafter called the COUNTY.

WITNESSETH:

WHEREAS, the STATE in order to facilitate the free flow of traffic and insure safety to the motoring public, is desirous of improving approximately 11,616 lineal feet of Illinois Route 21 (Milwaukee Avenue), (FAP Route 330, Illinois Route 21, STATE Section 128R-3) by reconstructing Illinois Route 21, from south of Illinois Route 120 to south of Illinois Route 137 by providing two 12 foot through traffic lanes in each direction, separated by an 18 foot and variable width median. Southbound Illinois Route 21 will be provided with a 12 foot left turn lane at approximately Station 232+00 for the Independence grove Dog park entrance, at approximately Station 265+00 for the Independence Grove Forest Preserve Entrance, two 12 foot left turn lanes and a 12 foot right turn lane at Illinois Route 137 (Buckley Road). Northbound Illinois Route 21 will be provided 12 foot left turn lane at Finstad Drive, Adler Drive, Cater Lane, Janus Court, Brookhill Road, Liberty Prairie Conservancy Entrance, Casey Road, Egidi Lane, Rollings Woods and two 12 foot left turn lanes and a 12 foot right turn lane at Illinois Route 137 (Buckley Road). Approximately 2,020 lineal feet of Illinois Route 137 (Buckley Road) will be reconstructed at Illinois Route 120 to provide two 12 through lanes, two

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left turn lanes and a 12 foot right turn lane in each direction separated by an 8 foot and variable width median. Existing traffic signals at Illinois Route 21 at Illinois Route 137 shall be modernized complete with emergency vehicle preemption equipment. Traffic signals shall be installed at Illinois Route 21 at Casey Road complete with emergency vehicle preemption equipment. All traffic signals shall be interconnected with the County's Passage System. Other work shall include a pedestrian/bicycle trail tunnel and a portion of the trail approaches under Illinois Route 21 north of Brookhill Road, pavement marking, highway drainage, sidewalks and by performing all other work necessary to complete the improvement in accordance with the approved plans and specifications; and

WHEREAS, the COUNTY is desirous of said improvement in that same will be of immediate benefit to the COUNTY residents and permanent in nature;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. The STATE agrees to make the surveys, obtain all necessary rights of way, prepare plans and specifications, receive bids and award the contract, furnish engineering inspection during construction and cause the improvement to be built in accordance with the approved plans, specifications and contract.
2. The STATE agrees to pay for all right of way, construction and engineering costs, subject to reimbursement by the COUNTY as hereinafter stipulated.
3. It is mutually agreed by and between the parties hereto that the estimated cost and cost proration for this improvement is as shown on Exhibit A.

4. The COUNTY agrees that upon receipt of the first and subsequent progress payments made to the CONTRACTOR, the COUNTY will pay to the DEPARTMENT OF TRANSPORTATION of the STATE OF ILLINOIS, from any funds allotted to the COUNTY, an amount equal to the COUNTY's share, \$27,720,000, divided by the estimated construction costs, \$ 32,011400, multiplied by the actual progress payment (appropriately adjusted for non-participating costs on FA projects) made to the CONTRACTOR until the entire obligation incurred under this AGREEMENT has been paid.

It is the COUNTY's intention to pay for the COUNTY's share of the improvement utilizing proceeds received from the sale of tax-exempt obligations or build America bonds (including recovery zone economic development bonds) (the "BONDS") to finance the improvement. Provisions for the use of the BOND proceeds are attached hereto as Exhibit B and made a part hereof

5. The COUNTY agrees to provide written approval of that portion of the plans and specifications relative to the COUNTY's financial and maintenance obligations described herein, prior to the STATE's advertising for the aforescribed proposed improvement.
6. The COUNTY agrees not to permit driveway entrance openings to be made in the curb, as constructed, or the construction of additional entrances, private or commercial, along Illinois Route 21 and Illinois Route 137 without the consent of the STATE.

7. The COUNTY agrees to cause its utilities installed on right of way after said right of way was acquired by the STATE or installed within the limits of a roadway after the said roadway's jurisdiction was assumed by the STATE, to be relocated and/or adjusted, if required, at no expense to the STATE.

8. All COUNTY owned utilities, on STATE right of way within the limits of this improvement, which are to be relocated/adjusted under the terms of this Agreement, will be relocated/adjusted in accordance with the applicable portions of the "Accommodation of Utilities of Right of Way of the Illinois State Highway System." (92 Ill. Adm. Code 530).

9. Upon final field inspection of the improvement the STATE agrees to maintain or cause to be maintain all routes under its jurisdiction.

10. Upon final field inspection of the improvement, the COUNTY agrees to maintain or cause to be maintained the COUNTY owned utilities including appurtenances thereto.

11. Upon acceptance by the STATE of the traffic signal work included herein, the financial responsibility for the maintenance and electrical energy charges for the operation of the traffic signals shall be proportioned as follows:

<u>Intersection</u>	<u>Maintenance</u>	<u>Elect. Energy</u>
Illinois Route 21 @ Illinois Route 137		
STATE Share	(100)%	(0)%
COUNTY Share	(0)%	(0)%
Others	(0)%	(100)%

<u>Intersection</u>	<u>Maintenance</u>	<u>Elect. Energy</u>
Illinois Route 21 @ Casey Road		
STATE Share	(67)%	(0)%
COUNTY Share	(0)%	(0)%
Others	(33)%	(100)%

It is mutually agreed that the actual traffic signal maintenance will be performed by the STATE either with its own forces or through an ongoing contractual agreement.

The STATE retains the right to control the sequence and timing of the traffic signals.

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Obligations of the STATE and COUNTY will cease immediately without penalty or further payment being required if, in any fiscal year, the Illinois General Assembly or Federal funding source fails to appropriate or otherwise make available funds for this contract.

This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within the three years subsequent to execution of the agreement.

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

County of Lake

By: _____
(Signature)

By: _____
(Print or Type)

Title: _____

Date: _____

Attest:

Clerk

(SEAL)

STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION

By: _____
Christine M. Reed, P.E.
Director – Division of Highways
Chief Engineer

Exhibit A
ESTIMATE OF COST & PARTICIPATION

Type of Work	STATE		COUNTY		OTHER		TOTAL
	COST	%	COST	%	COST	%	
All roadway work excluding the following:	\$ 1,600,000	Fixed	\$ 24,740,000	Balance	\$	N/A%	\$ 26,340,000
Preliminary Engineering (5%)	\$ 1,317,000	100%	\$	N/A%	\$	N/A%	\$ 1,317,000
Construction Engineering (10%)	\$ 1,034,000	Balance	\$ 1,600,000	Fixed	\$	N/A%	\$ 2,634,000
TRAFFIC SIGNALS							
Modernization of ILL 21 @ILL 137	\$	N/A%	\$ 280,000	100%	\$	N/A%	\$ 280,000
Preliminary Engineering (5%)	\$ 14,000	100%	\$	N/A%	\$	N/A%	\$ 14,000
Construction Engineering (10%)	\$ 28,000	100%	\$	N/A%	\$	N/A%	\$ 28,000
Emergency Vehicle Pre-emption	\$	N/A%	\$	N/A%	\$ 8,000	100%	\$ 8,000
Preliminary Engineering (5%)	\$	N/A%	\$	N/A%	\$ 400	100%	\$ 400
Construction Engineering	\$	N/A%	\$	N/A%	\$ 800	100%	\$ 800
Installation at ILL 21 @ Casey Rd.	\$	N/A%	\$ 280,000	93.3%	\$ 20,000	6.7%	\$ 300,000
Preliminary Engineering (5%)	\$ 13,995	93.3%	\$	N/A%	\$ 1,005	6.7%	\$ 15,000
Construction Engineering (10%)	\$ 27,990	93.3%	\$	N/A%	\$ 2,010	6.7%	\$ 30,000
Emergency Vehicle Pre-emption	\$	N/A%	\$	N/A%	\$ 8,000	100%	\$ 8,000
Preliminary Engineering (5%)	\$	N/A%	\$	N/A%	\$ 400	100%	\$ 400
Construction Engineering (10%)	\$	N/A%	\$	N/A%	\$ 800	100%	\$ 800
OTHER WORK							
Pedestrian Tunnel	\$	N/A%	\$ 500,000	100%	\$	N/A%	\$ 500,000
Preliminary Engineering (5%)	\$ 25,000	100%	\$	N/A%	\$	N/A%	\$ 25,000
Construction Engineering (10%)	\$ 50,000	100%	\$	N/A%	\$	N/A%	\$ 50,000
Sidewalk	\$	N/A%	\$ 320,000	80%	\$ 80,000	20%	\$ 400,000

Cont. Exhibit A
ESTIMATE OF COST & PARTICIPATION

Preliminary Engineering (5%)	\$ 16,000	80%	\$	N/A%	\$ 4,000	20%	\$ 20,000
Construction Engineering (10%)	\$ 32,000	80%	\$	N/A%	\$ 8,000	20%	\$ 40,000
TOTAL	\$ 4,157,985		\$ 27,720,000		\$ 133,415		\$ 32,011,400

*Note: The COUNTY's participation shall be predicated on the percentages shown above for the specified work, except the County shall pay \$1,600,000 for the roadway construction engineering. The State shall be responsible for the remainder, and the State shall pay for \$1,600,000 of roadway construction. The County shall be responsible for the remainder.

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EXHIBIT B

The COUNTY may issue tax-exempt obligations or build America bonds (including recovery zone economic development bonds) (the "BONDS") to finance the improvement of Illinois Route 21 from Illinois Route 137 to Illinois Route 120 (the "PROJECT"), which improvements, when completed, will be owned by The State of Illinois (the "STATE"). To provide for the efficient completion of the Project, it is the intent of the parties that the STATE manage the PROJECT and enter into contracts with third parties for the completion of the Project. The County will provide Bond proceeds to the State to finance the Project.

This Exhibit sets forth the representations and certifications of State with respect to the use of Bond proceeds and the completion and use of the Project by the State. The County will rely on such certifications and representations in making certain certifications, covenants and representations that will be required of it upon the delivery of the Bonds, which will be contained in the Tax Exemption Certificate and Agreement for the Bonds (if the Bonds are issued as tax-exempt obligations) or in the Tax Compliance Certificate and Agreement for the Bonds (if the Bonds are issued as build America bonds).

COVENANTS

1. The State has incurred or will, within six months of the closing of the Bond issue, currently expected by the County to occur [December ____, 2010], incur a substantial binding obligation (not subject to contingencies within the control of the State or any member of the same Controlled Group as the State) to a third party to expend at least five percent of the Bond proceeds on the Project. The substantial binding obligation will be incurred for Phase 3 engineering for the Project in the amount of

approximately \$3,000,000. It is expected that the work of acquiring and constructing the Project and the expenditure of Bond proceeds transferred from the County to the State will continue to proceed with due diligence through no later than three years after the closing of the Bond issue, at which time it is anticipated that all sale proceeds of the Bonds transferred to the State will have been spent.

2. No sale proceeds of the Bonds transferred to the State will be used to pay for or otherwise acquire goods or services from an Affiliated Person. No sale proceeds of the Bonds transferred to the State will be used to pre-pay for goods or services more than ninety days prior to the date such goods or services are received.

3. To ensure that no investment earnings on Bond proceeds are earned after the County transfers Bond proceeds to the State, the County will transfer Bond proceeds as reimbursement of progress payments to the State only after the State has paid costs of the Project to a third party contractor. Such transfer shall occur within ____ days of the State's submission of request for reimbursement to the County that includes: (i) the amount and proof of payment to a third party contractor for Project costs; (ii) a copy of the State engineer's pay estimate for said payment; and (iii) a representation that all such Project costs for which reimbursement is requested are costs of Capital Expenditures. The State will only submit Project costs that consist of Capital Expenditures for reimbursement from the County. After transfer of Bond proceeds from the County to the State for reimbursement Project costs, the State will account for the Bond proceed reimbursements as being spent on the costs of the project and will deposit the proceeds into the Road Fund pursuant to law.

4. No user of the Project other than a state or local governmental unit will use more than five percent of the Project, in the aggregate, on any basis other than the same basis as the general public.

5. The State acknowledges that Subchapter IV of Chapter 31 of Title 40 of the United States Code applies to the Project if financed with the proceeds of recovery zone economic development bonds. The State represents and warrants that it will comply with the requirements imposed under Subchapter IV of Chapter 31 of Title 40 of the United States Code with respect to the Project if the Project is financed with recovery zone economic development bonds. The State expressly acknowledges that such generally provide that the State must comply with federal prevailing wage laws for certain classes of laborers and must comply with certain notification and specification requirements in construction contracts.

6. Pursuant to the Illinois Highway Code and other applicable laws, the State cannot vacate or otherwise dispose of the property except under action by the General Assembly. The State shall promptly contact the County if a sale or other disposition of Bond-financed property is considered by the State.

7. The reasonably expected economic life of the Project is at least 20 years.

8. The State shall provide an estimated expenditure schedule to the County prior to the Bond closing.

9. At the request of the County, the State shall make available records of the deposit of Bond proceed reimbursements by the State into the Road Fund. The State shall also verify, at the request of the County, that the covenants and representations contained in this Addendum remain true as of the date of request by the County. The State acknowledges that such verification will enable the County to attest to the build America bond or recovery zone economic development bond status of the Bonds (if such Bonds issued as build America bonds or recovery zone economic development

bonds) or to the tax-exempt status of the Bonds (if such Bonds are issued as tax-exempt obligations) on Internal Revenue Service form filings or other inquiries from the Internal Revenue Service.

10. The State is under no obligation to repay principal of or interest on the Bonds on account of the reimbursements provided for herein.

DEFINITIONS

"Affiliated Person" means any Person that (a) at any time during the six months prior to the execution and delivery of the Bonds, (i) has more than five percent of the voting power of the governing body of the State in the aggregate vested in its directors, officers, owners, and employees or, (ii) has more than five percent of the voting power of its governing body in the aggregate vested in directors, officers, board members or employees of the State or (b) during the one-year period beginning six months prior to the execution and delivery of the Bonds, (i) the composition of the governing body of which is modified or established to reflect (directly or indirectly) representation of the interests of the State (or there is an agreement, understanding, or arrangement relating to such a modification or establishment during that one-year period) or (ii) the composition of the governing body of the State is modified or established to reflect (directly or indirectly) representation of the interests of such Person (or there is an agreement, understanding, or arrangement relating to such a modification or establishment during that one-year period).

"Capital Expenditures" means costs of a type that would be properly chargeable to a capital account under the Internal Revenue Code (or would be so chargeable with a proper election) under federal income tax principles if the County were treated as a corporation subject to federal income taxation, taking into account the definition of Placed-in-Service set forth herein.

"Control" means the possession, directly or indirectly through others, of either of the following discretionary and non-ministerial rights or powers over another entity:

(a) to approve and to remove without cause a controlling portion of the governing body of a Controlled Entity; or

(b) to require the use of funds or assets of a Controlled Entity for any purpose.

"Controlled Entity" means any entity or one of a group of entities that is subject to Control by a Controlling Entity or group of Controlling Entities.

"Controlled Group" means a group of entities directly or indirectly subject to Control by the same entity or group of entities, including the entity that has Control of the other entities.

"Controlling Entity" means any entity or one of a group of entities directly or indirectly having Control of any entities or group of entities.

"Person" means any entity with standing to be sued or to sue, including any natural person, corporation, body politic, governmental unit, agency, authority, partnership, trust, estate, association, company, or group of any of the above.

"Placed-in-Service" means the date on which, based on all facts and circumstances (a) a facility has reached a degree of completion that would permit its operation at substantially its design level and (b) the facility is, in fact, in operation at such level.

"Private Business Use" means any use of the Project by any Person other than a state or local government unit, including as a result of (i) ownership, (ii) actual or beneficial use pursuant to a lease or a management, service, incentive payment, research or output contract or (iii) any other similar arrangement, agreement or understanding, whether written or oral, except for use of the Project on the same basis as the general public. Private Business Use includes any formal or informal arrangement with any person other than a state or local governmental unit that conveys special legal entitlements to any portion of the Project that is available for use by the general public or that conveys to any person other than a state or local governmental unit any special economic benefit with respect to any portion of the Project that is not available for use by the general public.