

**AGREEMENT  
BETWEEN THE COUNTY OF LAKE  
AND THE VILLAGE OF OLD MILL CREEK  
FOR THE CONSTRUCTION AND MAINTENANCE  
OF A MULTI-USE TRAIL UNDERPASS  
ALONG HUNT CLUB ROAD (COUNTY HIGHWAY 29),  
APPROXIMATELY 200 FEET SOUTH OF MILL CREEK  
IN OLD MILL CREEK, ILLINOIS**

**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 Chairman and County Board, hereinafter referred to as the COUNTY, and the VILLAGE of OLD MILL CREEK, an Illinois Municipal Corporation, acting by and through its Village President and Board of Trustees, hereinafter referred to as the VILLAGE. The COUNTY and the VILLAGE are hereinafter referred to collectively as the "parties" to THIS AGREEMENT, and either one is referred to individually as a "party" to THIS AGREEMENT.

**WITNESSETH**

**WHEREAS**, the COUNTY has jurisdictional authority over Hunt Club Road (County Highway 29), Millburn Road (County Highway 14) and Wadsworth Road (County Highway 17); and,

**WHEREAS**, the construction of the COUNTY's roadway improvement project along Hunt Club Road, between Millburn Road and Wadsworth Road, known as County Section No. 02-00076-13-CH is presently underway; and,

**WHEREAS**, said roadway improvement project consists of the construction of a roundabout at the intersection of Hunt Club Road and Millburn Road and the construction of a second roundabout at the intersection of Hunt Club Road and Wadsworth Road. Also included in said roadway improvement project is the resurfacing of Hunt Club Road between the aforementioned roundabouts; and,

**WHEREAS**, the VILLAGE is desirous to own and maintain a multi-use trail underpass approximately 200 feet south of Mill Creek, which shall be constructed under a permit issued by the Lake County Division of Transportation (LCDOT), in accordance with the COUNTY's published document, HIGHWAY TEMPORARY CLOSURE AND UTILITY AND FACILITY PLACEMENT ORDINANCE, as amended; and,

**WHEREAS**, said MULTI-USE TRAIL UNDERPASS shall be constructed in substantial conformance with the approved design engineering plans prepared by McClure Engineering Associates, Incorporated, titled, HUNT CLUB ROAD EQUESTRIAN UNDERPASS AT MILL CREEK and shall include (1) the removal of asphalt pavement, guardrail, fencing and trees; (2) saw-cutting and excavation across Hunt Club Road to accommodate the installation of a ten (10)-foot wide by eleven (11)-foot tall cast-in-place concrete tunnel, 80 feet long, the floor of which shall rest approximately twelve (12) feet below final grade; (3) the replacement/relocation of asphalt pavement and guardrail and (4) landscape restoration (hereinafter referred to as the MULTI-USE TRAIL UNDERPASS); and,

**WHEREAS**, said approved design engineering plans, by reference herein, hereby become a part hereof; and,

**WHEREAS**, time is of the essence as it relates to the construction of the MULTI-USE TRAIL UNDERPASS, as an 80-day prescribed road closure of Hunt Club Road is now in effect (July 9, 2011 through September 26, 2011), and the COUNTY requires that the construction of the MULTI-USE TRAIL UNDERPASS be substantially complete within the 80-day prescribed road closure of Hunt Club Road (i.e., on or before September 26, 2011); and,

**WHEREAS**, the VILLAGE shall prepare, or cause to be prepared, the necessary surveys, design engineering plans and specifications and contract letting documents for the MULTI-USE TRAIL UNDERPASS in accordance with Lake County Division of Transportation (LCDOT) policies and standards (hereinafter PLANS); and,

**WHEREAS**, the COUNTY has indicated its commitment to accommodating an equestrian crossing of Hunt Club Road as a result of the above-mentioned roadway improvement project, County Section No. 02-00076-13-CH; therefore, the COUNTY shall participate financially in the construction costs of the MULTI-USE TRAIL UNDERPASS as hereafter stipulated; and,

**WHEREAS**, the construction of the MULTI-USE TRAIL UNDERPASS will eliminate equestrian traffic from Hunt Club Road within the VILLAGE and will also provide future multi-use path connections under Hunt Club Road; and,

**WHEREAS**, the construction of the MULTI-USE TRAIL UNDERPASS shall promote the safe and efficient flow of vehicular, pedestrian and equestrian traffic on and about Hunt Club Road;

**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 VILLAGE do hereby enter into the following:

#### **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.**

##### **Construction and Maintenance of the MULTI-USE TRAIL UNDERPASS**

###### **A. The VILLAGE's Responsibilities**

1. The VILLAGE agrees to prepare, or cause to be prepared, the PLANS with no reimbursement by the COUNTY.
2. The VILLAGE agrees to obtain all necessary approvals from the appropriate jurisdictions for the construction and maintenance of the MULTI-USE TRAIL UNDERPASS.

3. The VILLAGE agrees to provide a complete set of the PLANS to the COUNTY for the COUNTY's review and approval (and said approval shall not be unnecessarily withheld by the COUNTY).
4. The VILLAGE agrees to prepare, or cause to be prepared, all necessary documents for any rights-of-way or easements, either permanent or temporary, that may be necessary to construct and/or maintain the MULTI-USE TRAIL UNDERPASS, inclusive of any appraisals, plats, deeds and legal descriptions that may be necessary to acquire those rights-of-way or easements, either permanent or temporary, with no reimbursement by the COUNTY.

The VILLAGE further agrees to record all rights-of-way and easements, either temporary or permanent, that may be acquired in conjunction with the construction and maintenance of the MULTI-USE TRAIL UNDERPASS, with no reimbursement by the COUNTY.

5. The VILLAGE agrees to construct, or cause the MULTI-USE TRAIL UNDERPASS to be constructed, and to perform, or cause to be performed, the construction engineering supervision for the MULTI-USE TRAIL UNDERPASS, in accordance with its procedures and requirements, with financial participation by the COUNTY as hereafter stipulated.
6. Time is of the essence as it relates to the construction of the MULTI-USE TRAIL UNDERPASS. The COUNTY requires that the MULTI-USE TRAIL UNDERPASS be substantially complete (i.e., the underpass shall be completely constructed and Hunt Club Road shall be resurfaced and shall be reopened to carry two-way traffic) on or before September 26, 2011 (hereinafter SUBSTANTIALLY COMPLETE). The VILLAGE shall be subject to certain penalties pursuant to Section III. of THIS AGREEMENT should the construction of the MULTI-USE TRAIL UNDERPASS not be SUBSTANTIALLY COMPLETE on or before September 26, 2011.
7. It is mutually agreed by and between the parties hereto that an 80-day prescribed road closure of Hunt Club Road from a point 700 feet south of Millburn Road to a point 1,650 feet north of Millburn Road is now in effect (from July 9, 2011 through September 26, 2011) (hereinafter ROAD CLOSURE). There are multiple accesses (driveways) to Hunt Club Road within the limits of said ROAD CLOSURE corresponding to parcels of private property

which currently are provided access from the south via Hunt Club Road. It is the responsibility of the VILLAGE to coordinate with the owners of said parcels of private property to coordinate alternate access for said owners of said parcels of private property during the construction of the MULTI-USE TRAIL UNDERPASS.

8. It is mutually agreed by and between the parties hereto that the VILLAGE shall maintain the MULTI-USE TRAIL UNDERPASS, with no reimbursements from the COUNTY.

It is further mutually agreed by and between the parties hereto that, absent an emergency situation, the VILLAGE shall perform its maintenance on the MULTI-USE TRAIL UNDERPASS during non-peak traffic times, namely on weekdays, between 9:00 a.m. and 3:00 p.m.

It is further mutually agreed by and between the parties hereto that the VILLAGE must submit to the COUNTY, for the COUNTY's approval, an executed form, MUNICIPAL UTILITY/FACILITY ACCEPTANCE ON A COUNTY HIGHWAY (hereinafter MUNICIPAL ACCEPTANCE FORM) by August 1, 2011 for the MULTI-USE TRAIL UNDERPASS, the approval of which shall not be unnecessarily withheld by the COUNTY.

**B. The COUNTY's Responsibilities**

1. The COUNTY'S financial participation shall be limited to \$40,000.00 or the actual cost of the replacement of roadway pavement and guardrail, per the approved design engineering plans, whichever is less.

The COUNTY further agrees that, upon both the completion of the construction contract for the MULTI-USE TRAIL UNDERPASS and the COUNTY's inspection and approval of the installation, and within thirty (30) days of the receipt of an invoice from the VILLAGE, the COUNTY shall pay to the VILLAGE in a lump sum, an amount equal to one-hundred percent (100%) of its obligation under THIS AGREEMENT. Payment at the time of the completion and receipt of an invoice shall not exceed \$40,000.00.

### SECTION III.

#### Penalties

1. The VILLAGE agrees that the construction of the MULTI-USE TRAIL UNDERPASS shall be consistent with the written provisions, paragraphs and words of THIS AGREEMENT, allowing for the performance of the VILLAGE's work within the COUNTY's Hunt Club Road right-of-way after the issuance of the COUNTY permit for the work contemplated herein and before September 26, 2011.
2. The COUNTY requires that the construction of the MULTI-USE TRAIL UNDERPASS be SUBSTANTIALLY COMPLETE within the period of the ROAD CLOSURE (i.e., on or before September 26, 2011).
3. The VILLAGE agrees that all of its work shall be commenced, diligently prosecuted and concluded by the September 26, 2011, so that any remaining ancillary work (i.e., "checklist items") shall not interfere in any significant way with the use or operation of Hunt Club Road.
4. The VILLAGE shall pay to the COUNTY assessed, liquidated and ascertained damages of \$14,300 per calendar day for each day after the ROAD CLOSURE the construction of the MULTI-USE TRAIL UNDERPASS is not SUBSTANTIALLY COMPLETE (which damages the parties agree shall be assessed not as a penalty but as the agreed actual damages to be sustained by the COUNTY). In such instances, the COUNTY shall first reduce its financial obligation to the VILLAGE pursuant to Section II.B.1 of THIS AGREEMENT by the dollar amount of the damages as described in this paragraph above. Should said dollar amount of damages exceed the COUNTY's said financial obligation to the VILLAGE pursuant to Section II.B.1 of THIS AGREEMENT, the COUNTY shall then draw upon the letter of credit (which is required under the COUNTY permit for the MULTI-USE TRAIL UNDERPASS) in a dollar amount equal to the balance of the damages described in this paragraph above. Under this scenario, should the COUNTY exhaust the dollar amount of said letter of credit, the COUNTY shall invoice the VILLAGE for the remaining balance of the damages described in this paragraph above, and the VILLAGE shall pay the COUNTY in a lump-sum amount within 30 days of the receipt of an invoice from the COUNTY.

**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 as, in any manner or form, creating or establishing a relationship of co-partners between the parties hereto, or as constituting the VILLAGE (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 VILLAGE is to be and shall remain independent of the COUNTY 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's 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. It is mutually agreed by and between 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 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 August 10, 2011, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to August 10, 2011. In the event the date that the last authorized agent of the parties hereto affixes his/her signature to THIS AGREEMENT is subsequent to August 10, 2011, the effective date of THIS AGREEMENT shall then be the date that the last authorized agent of the parties hereto affixes his/her 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 COUNTY, except as provided for in THIS AGREEMENT.
10. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.

11. THIS AGREEMENT shall be considered null and void in the event that the construction contracts covering the improvements contemplated herein are not awarded by September 1, 2011.

**VILLAGE OF OLD MILL CREEK**

ATTEST:

\_\_\_\_\_  
Village Clerk

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

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

**RECOMMENDED FOR EXECUTION**

\_\_\_\_\_  
Lake County  
County Engineer/  
Director of Transportation

**COUNTY OF LAKE**

ATTEST:

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

By: \_\_\_\_\_  
Chairman  
Lake County of Board

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