

**AGREEMENT  
BETWEEN THE COUNTY OF LAKE  
AND THE CITY OF WAUKEGAN  
FOR ROADWAY IMPROVEMENTS, INCLUDING  
THE CONSTRUCTION OF WEST AVENUE  
FROM HILL AVENUE TO KENNEDY DRIVE  
AND THE DISCONNECTION OF KENNEDY DRIVE  
AT O'PLAINE ROAD (COUNTY HIGHWAY 38)**

**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 CITY OF WAUKEGAN, an Illinois municipal corporation, acting by and through its Mayor and City Council, hereinafter referred to as the CITY. The COUNTY and the CITY 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 to (1) remove Kennedy Drive (i.e., Frontage Road of IL Route 120) at its intersection with O’Plaine Road (County Highway 38), which presently provides access to the Phoenix Subdivision as well as to the residences at #4573 Kennedy Drive, #4479 Kennedy Drive, #4373 Kennedy Drive and #4367 Kennedy Drive, (2) construct a cul-de-sac at the west end of Kennedy Drive, (3) construct (extend) West Avenue northward, from Hill Avenue to Kennedy Drive, thereby providing an alternative access route to the above-listed locations, and (4) construct sidewalk on the west side of West Avenue, from Hill Avenue northward to Forest Avenue and continuing northward along the east side of West Avenue from Forest Avenue to Kennedy Drive (hereinafter SIDEWALK); and,

**WHEREAS**, the above-listed construction work items labeled (1) through (4), plus any other necessary associated work items, shall hereinafter be referred to as the IMPROVEMENT and shall also be known as County Section Number 09-00109-06-CH; and,

**WHEREAS**, said IMPROVEMENT shall be constructed in substantial conformance with the design engineering plans and specifications prepared by McClure Engineering Associates, Inc. (hereinafter PLANS), which by reference herein, hereby become a part hereof; the current PLANS are those dated October 17, 2014 (Pre-Final version); and,

**WHEREAS**, a general depiction and the approximate limits of the proposed IMPROVEMENT are as indicated on the concept plan which is attached as EXHIBIT A to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof; and,

**WHEREAS**, the land acquisition requirements for the IMPROVEMENT are as indicated in the Plat of Highways (hereinafter PLAT) prepared by McClure Engineering Associates, Inc., which is attached as EXHIBIT B to THIS AGREEMENT, which is attached hereto and hereby made a part hereof; and,

**WHEREAS**, it has been determined by engineering studies that, in order to construct and for maintenance of the IMPROVEMENT, the COUNTY must acquire public right-of-way (hereinafter RIGHT-OF-WAY PARCEL); and,

**WHEREAS**, the COUNTY has acquired the RIGHT-OF-WAY PARCEL necessary for the project without reimbursement from the CITY; and,

**WHEREAS**, the COUNTY will transfer the RIGHT-OF-WAY PARCEL to the CITY via Quit Claim Deed; and,

**WHEREAS**, upon completion of the extension of West Avenue, the CITY will have jurisdiction and maintain the entirety of West Avenue and the SIDEWALK; and,

**WHEREAS**, the construction of the IMPROVEMENT will be of immediate benefit to the motoring public of Lake County and the CITY;

**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 CITY do hereby agree as follows:

## **SECTION I.**

### **Recitals/Headings**

1. It is mutually agreed by and between the parties hereto that the foregoing preambles are hereby incorporated herein as though fully set forth.

2. It is mutually agreed by and between 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 of the IMPROVEMENT**

1. The COUNTY agrees to prepare, or cause to be prepared, the necessary surveys, design engineering plans and specifications and contract letting documents for the IMPROVEMENT in accordance with Lake County Division of Transportation (hereinafter LCDOT) policies and standards, as approved by the Illinois Department of Transportation (hereinafter IDOT), at the COUNTY’s sole cost.

As of this writing, the current PLANS are the pre-final set of plans prepared by McClure Engineering Associates, Inc., dated October 17, 2014. Said PLANS, by reference herein, hereby become a part hereof.

The CITY shall have the opportunity to review and approve said PLANS with regard to the portions of the IMPROVEMENT that will be under the CITY’s jurisdiction, said approval of the PLANS by the CITY shall not be unnecessarily withheld.

2. It is mutually agreed by and between the parties hereto that the COUNTY shall process the construction of the IMPROVEMENT to be let and awarded by LCDOT. As of this writing, the anticipated letting date for the IMPROVEMENT is February 17, 2015. (The letting date is subject to change, dependent upon project readiness and availability of project funding.)
3. The COUNTY agrees to cause the IMPROVEMENT to be constructed and to perform, or cause to be performed, the construction engineering supervision for the IMPROVEMENT in accordance with LCDOT procedures and requirements as approved by IDOT, without reimbursement from the CITY.
4. The COUNTY agrees to prepare, or cause to be prepared, all necessary documents for any rights-of-way, either permanent or temporary, that may be necessary to construct the IMPROVEMENT, inclusive of any appraisals, plats, deeds and legal descriptions that may be necessary to acquire those rights-of-way, either permanent or temporary, without reimbursement from the CITY.

5. The CITY agrees that, by executing THIS AGREEMENT, the CITY concurs in the award of the construction contract for the IMPROVEMENT by the COUNTY in accordance with the standard policies and procedures as adopted and in use by the COUNTY.
6. The COUNTY shall require the successful bidder to name the CITY as an additional insured on any liability coverage required pursuant to such contracts with respect to any contract work performed as part of the IMPROVEMENT on CITY right-of-way, and require the successful bidder to indemnify and hold harmless the CITY.
7. It is mutually agreed by and between the parties hereto that, upon completion of the IMPROVEMENT, the CITY shall own and maintain the portions of the IMPROVEMENT within the right-of-way of Forest Avenue, Hill Avenue, and West Avenue without reimbursement from the COUNTY in perpetuity.

It is further mutually agreed by and between the parties hereto that, upon completion of the IMPROVEMENT, the CITY shall maintain the portion of the IMPROVEMENT along Kennedy Drive within the right-of-way of IL Route 120 in accordance with their existing agreement with IDOT without reimbursement from the COUNTY in perpetuity.

It is further mutually agreed by and between the parties hereto that, upon completion of the IMPROVEMENT, the COUNTY shall own and maintain the portion of the IMPROVEMENT within the right-of-way of O'Plaine Road without reimbursement from the CITY in perpetuity.

### **SECTION III. RIGHT-OF-WAY PARCEL**

1. It has been determined by engineering studies that, in order to construct and maintain the IMPROVEMENT, the COUNTY must acquire public right-of-way in the form of real property having an acreage of 0.125 acres from a larger parcel of real property designated in the PLAT as Parcel 001.
2. It is mutually agreed by and between the parties hereto that the COUNTY has completed its acquisition of the RIGHT-OF-WAY PARCEL necessary for the project without reimbursement from the CITY.

3. It is mutually agreed by and between the parties hereto that the COUNTY will transfer the RIGHT-OF-WAY PARCEL to the CITY via Quit Claim Deed.

#### **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 CITY (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 CITY 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 February 1, 2015, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to February 1, 2015. In the event the date that the last authorized agent of the parties hereto affixes their signature to THIS AGREEMENT is subsequent to February 1, 2015, 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 COUNTY, except as may otherwise be provided for in THIS AGREEMENT.
10. The CITY agrees, upon completion of the IMPROVEMENT, to indemnify, defend and hold harmless the COUNTY, its elected officials, its duly appointed officials, agents, employees, and representatives, and the COUNTY's Division of Transportation, its duly appointed officials, agents, employees, and representatives from and against, any and all claims, suits, settlements, actions, losses, expenses, damages, injuries, judgments and demands (collectively referred to hereinafter as "claims") arising from and relating to the maintenance of (or lack thereof) the IMPROVEMENT.
11. The COUNTY agrees to indemnify, defend and hold harmless the CITY, their elected officials, their duly appointed officials, agents, employees and representatives from and against any and all claims, suits, settlements, actions, losses, expenses, damages, injuries

judgments and demands (collectively referred to hereinafter as “claims”) arising from and relating to the design or construction of the IMPROVEMENT.

12. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
13. THIS AGREEMENT shall be considered null and void in the event that the construction contracts covering the IMPROVEMENT are not awarded by September 1, 2018.

**CITY OF WAUKEGAN**

ATTEST:

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Mayor

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

**RECOMMENDED FOR EXECUTION**

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

**COUNTY OF LAKE**

ATTEST:

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

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

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

**EXHIBIT A**  
General Depiction of the IMPROVEMENT  
*(County Section No. 09-00109-06-CH)*





LEGEND

PR. SIDEWALK

WETLANDS

PARCELS

PROPOSED ROAD

PROPOSED RIGHT-OF-WAY

PAVEMENT REMOVAL

REVISIONS / REMARKS					
NO.	DESCRIPTION	DATE	BY	SURVEYOR:	SWH/RRC
		/ /		DSGMR/LIAISON:	
		/ /		PLOTTED BY:	hdi8574 10/15/2014



ROUTE		SECTION	SECTION NUMBER	SHEET	SHEETS
CH38		109	09-00109-06-CH	1	1

FILE NAME: U:\Design\Helgren\0\Plaine Kennedy\PLAN SHEET.dgn



**EXHIBIT B**  
**PLAT**  
*(County Section No. 09-00109-06-CH)*

