

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF LAKE AND THE VILLAGE OF ROUND LAKE  
FOR ROADWAY IMPROVEMENTS ON A SECTION OF NIPPERSINK ROAD**

**THIS AGREEMENT** is entered into as of the latest date following the signatures hereon, by and between the County of Lake, Illinois, an Illinois body politic and corporate, acting by and through its Chair and County Board, hereinafter “the County”; and the Village of Round Lake, Illinois, an Illinois non-home rule unit of local government, hereinafter “the Village.” The County and the Village may hereinafter be referred to collectively as “Parties” and individually as a “Party” to this Agreement.

**WITNESSETH:**

**WHEREAS**, Article VII, Section 10 of the 1970 Constitution of the State of Illinois authorizes units of local government to contract and associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or ordinance; and

**WHEREAS**, the Intergovernmental Cooperation Act, as amended, (Ill. Rev. Stat. Ch 127, Par. 741 *et seq.*, as amended), (the “Act”), also authorizes units of local government to exercise and enjoy jointly their powers, privileges or authority and to enter into Intergovernmental Agreements for that purpose; and

**WHEREAS**, the Parties are “public agencies” within the meaning of the Intergovernmental Cooperation Act, 5 ILCS 220/2(1); and

**WHEREAS**, the Village proposes to make improvements to a certain section of public roadway known as Nippersink Road, which roadway is in a state of disrepair and in need of repair (“the Project”), and

**WHEREAS**, the Project will consist of roadway resurfacing, pavement patching, curb and gutter improvements, sidewalk, storm drainage improvements, utility structure adjustments, parkway restoration, and other related work required to complete the improvements, and;

**WHEREAS**, given that sections of Nippersink Road under the legal control of both the County and the Village are mutually in need of repair, it is most efficient and economical for the Parties to collaborate under the terms of this Agreement; and

**WHEREAS**, the County has jurisdiction of a portion of Nippersink Road which is included in the Project and is described as follows:

All roadway from the south leg of Cedar Lake Road to the west curb-line of the north leg of Cedar Lake Road, including roadway pavements, curbs and stormwater drainage (from approximately station 122+00 to 129+02 as shown on Proposed Highway Plans MFT Section 16-00042-00-RS, as prepared by Baxter & Woodman, Inc. and dated 07/25/2016 and as outlined on the map attached here as Exhibit A).

The above-described portion of Nippersink Road is referred to as the “County Portion of Nippersink Road”; and

**WHEREAS**, said roadway improvements will be of immediate benefit to the County and the Village, their residents and the public; and

**WHEREAS**, the County and the Village, by this Agreement, desire to establish the rights and responsibilities for the execution of the Project.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and pursuant to all applicable statutes, local ordinances, and authority, the County and the Village do hereby enter into the following:

## **ARTICLE I**

### **Lead Agency**

1.01 Subject to the terms and conditions hereinafter set forth, the Village shall be the lead agency for the design, construction, and management of the Project. The Village agrees to be responsible for all project communications to the public.

1.02 The scope of the Project may be modified by the Village so long as any modification of the County Portion of Nippersink Road, if any, is submitted to the County for its review and is approved in advance and in writing.

1.03 Should the Village, in its sole and exclusive discretion, prior to the beginning of any construction, determine that the Project is not economically feasible, and/or that the bids received for the project are unacceptable, the Village may cancel this Agreement upon written notice to the County. Any funds paid by the County related to actual construction, and any funds paid by the County related to the soft costs, design, engineering, permitting or other pre-construction activities, shall be returned by the Village.

1.04 The Village President of the Village of Round Lake, or his designee, shall administer this Agreement on behalf of the Village. The County’s County Engineer (the “County Engineer”) for the County, or her designee, shall administer this Agreement on behalf of the County.

## **ARTICLE II**

### **Scope of Project; Authority**

2.01 The Village agrees to prepare, or cause to be prepared, any surveys, design engineering plans and specifications, cost estimates, and contract letting documents for the Project. The construction specifications for the Project have been completed as part of the engineering

plans and specifications prepared by the Village Engineer, Baxter & Woodman Inc., and dated July 25, 2016. The engineering plans, specifications, and cost estimates are hereinafter referred to as the "Plans". The County Engineer has been given a copy of the Plans and has approved the same. The Village further agrees to prepare, or cause to be prepared, all necessary documents for any rights-of-way or easements, either permanent or temporary, which may be necessary to construct the Project, 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. The Village further agrees to secure any and all permits necessary to complete the Project.

2.02 The Project shall consist of improvements to a certain portion of the public roadway known as "Nippersink Road" in accordance with the Plans. Except as provided in Paragraphs 3.01, 3.02 and 3.04 below, the Village shall be responsible for the costs of the Project. The letting date for the Project was September 6<sup>th</sup>, 2016. As of this writing, the anticipated Project schedule is to have substantial completion of construction of the improvements by November 30, 2016, which will include pavement surface and markings.

2.03 By executing this Agreement, the County is providing the authority to the Village, its designated engineers, contractors and their respective employees to commence and complete the work on the County Portion of Nippersink Road within the Project area and as shown on the plans and specifications.

2.04 The Village shall commence, prosecute and complete the work pursuant to sound engineering practices and in accordance with all provisions of this Agreement.

2.05 The Village shall not alter the approved engineering plans for the County Portion of Nippersink Road without the prior written consent of the County.

2.06 The Village is hereby granted the authority to control traffic, by signage and barricades, on the County Portion of Nippersink Road until the Project is completed. Further, the Village is hereby granted the authority to temporarily restrict ingress, egress, and limit the number of lanes in use on the County Portion of Nippersink Road and to take all other action necessary regarding usage of the County Portion of Nippersink Road to complete the Project. Village and County shall work together in setting speed zone limits during construction.

2.07 The Village shall allow the County to observe construction of the Project with respect to the County Portion of Nippersink Road, the Village shall address any reasonable concerns expressed by the County regarding said construction of the County Portion, and coordinate the scheduling of the Final Inspection of the Project with the County.

### **ARTICLE III**

#### **Costs of the County Portion of Nippersink Road**

3.01 The Village, as the Lead Agency, shall enter into a Work Order with Village Engineer, Baxter & Woodman Inc. to provide design engineering for the roadway rehabilitation on Nippersink Road. The Parties acknowledge and agree that the County's share of the cost of design engineering shall be seven percent (7.00%) of the actual Project construction costs for the

County Portion of Nippersink Road. As of the time of this writing, the design engineering costs are estimated to be \$17,109.50.

3.02 The Village, as the Lead Agency, shall publically bid, consider and award construction contract(s) for the Project, and shall take all lawful action necessary to include the County Portion of Nippersink Road within the scope of the Village's Project. The bidding and letting of contract(s) for the work to be performed hereunder, as well as Village engineering services, shall be done in accordance with Village ordinances, practices, and procedures, the most recent Illinois Department of Transportation ("IDOT") Standard Specifications for Road and Bridges, and Supplemental Specifications and Recurring Special Provisions and IDOT Procedures. In the event of a conflict, the aforementioned Specifications for Roads and Bridges shall control.

3.03 Bid specifications issued by the Village pursuant to this Agreement shall:

1. Require that the contractor provide the County with a certificate of insurance and endorsement naming the County as an additional insured and an agreement to indemnify and hold harmless the County from all claims arising out of the contractor's performance, on the same terms and conditions as those provided to the Village; and
2. Provided that the County is intended to be a third-party beneficiary of the contract for work related to the County Portion of Nippersink Road, and that any terms establishing rights and authority in Round Lake shall also be deemed to extend to the County for work related to the County Portion of Nippersink Road.

3.04. The Parties acknowledge and agree that the County's share of the construction cost of the Project shall be based on actual construction costs of the County Portion of Nippersink Road. At the time of this writing the construction costs are estimated to be \$244,421.50 and the management costs are estimated to be \$24,442.15. Management costs charged to the County shall be based on 10% of the actual construction costs for the County Portion. The final cost for the County Portion of Nippersink Road shall be as determined by the actual unit costs of all items for the County Portion of Nippersink Road as a proportion of the entire Project.

3.05 The County shall pay to the Village ninety-five percent (95%) of the estimated costs detailed in Paragraphs 3.01 and 3.04 upon award of the construction contract(s) for the Project and upon receipt of an invoice from the Village. The County shall pay remaining amounts due the Village under Paragraph 3.01 and 3.04 above, based on the final costs and final contract quantities at contract unit prices for actual work performed on the County Portion of Nippersink Road, within thirty (30) days of the invoicing by the Village for such sum, or portions thereof advanced funds, if any, shall be held in trust by the Village and the sums so paid shall be utilized by the Village from time to time to pay costs directly associated with the County Portion of Nippersink Road. Upon completion of the Project, agreement of final quantities and closeout of the contract, the Village shall refund any funds overpaid by the County to the County.

3.06 After completion of the roadway improvements and acceptance by the County Engineer, or her designee, on the County Portion of Nippersink Road, said Portion shall revert to the exclusive control, operation and maintenance of the County. The Village shall cooperate with

the County regarding resolution of any contractor warranty issues arising during the term of any applicable warranty period.

3.07 The Village shall maintain, for a minimum of three (3) years after the completion of the Project, and for a minimum of three (3) years after invoicing for maintenance or operation costs, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with the use of the sum paid to the Village by the County, and shall make such records available to the County for review and duplication.

3.08 The Parties agree to budget and appropriate sufficient funds to meet their respective obligations under this Agreement.

3.09 The Parties agree that if any unforeseen condition arises during construction that results in expenditures not anticipated, that the Village or County, whichever entity controls the section of roadway related to which the condition arises, will be required to approve the additional expenditure and agrees to pay the cost associated with it, without the other entity being burdened.

3.10 The Parties agree to cooperate fully, to execute any and all supplementary documents, and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to preserve and assert any claims that the Parties, individually or jointly, may have against a contractor performing work that is subject to the terms of this Agreement.

## **ARTICLE IV**

### **Mutual Indemnity**

4.01 The County shall defend, protect, indemnify, save, and forever hold harmless the Village and/or each of its officers, officials, employees, agents, and/or representatives from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including but not limited to court costs, litigation expenses, insurance deductibles, and attorneys' fees and expenses, which the Village and/or its officers, officials, employees, agents, and/or representatives may incur, suffer, or sustain, or for which the Village and/or its officers, officials, employees, agents, and/or representatives may become obligated by reasons of any accident, injury to, or death of any persons, or loss of, or damage to, any property, or civil and/or constitutional infringement of civil rights or liberties (specifically including violations of any and all federal civil rights statutes, regulations, and constitutional provisions) arising as a result of negligent or willful and wanton acts or omissions of the County, its officials, employees or agents under this Agreement without regard to where such acts or omissions occur.

4.02 The Village shall defend, protect, indemnify, save, and forever hold harmless the County and/or each of its officers, officials, employees, agents, and/or representatives from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses, including but not limited to court costs, litigation expenses, insurance deductibles, and attorneys' fees and expenses, which the County and/or its officers, officials, employees, agents, and/or representatives may incur, suffer, or sustain, or for which the County and/or its officers,

officials, employees, agents, and/or representatives may become obligated by reasons of any accident, injury to, or death of any persons, or loss of, or damage to, any property, or civil and/or constitutional infringement of civil rights or liberties (specifically including violations of any and all federal civil rights statutes, regulations, and constitutional provisions) arising as a result of negligent or willful and wanton acts or omissions of the Village, its officials, employees or agents under this Agreement without regard to where such acts or omissions occur.

## **ARTICLE V**

### **Term of Agreement**

5.01 The term of this Agreement (the “Term”) shall commence on its date and shall expire upon the Director of the Lake County Division of Transportation’s acceptance of the County Portion of Nippersink Road upon completion of the Project, and any applicable contractor warranty period.

## **ARTICLE VI**

### **Amendments**

6.01 No officer, official or agent of the County or the Village has the power to amend, modify or alter this Agreement or waive any of its conditions or to bind any Party by making any promise or representation not contained herein, without the mutual written consent of the Parties hereto, and in the manner set forth in 6.02 below.

6.02 Any amendment of this Agreement may be accomplished from time to time by the mutual consent of the Parties hereto; provided, however, that no such amendment shall be effective unless reduced to a writing, duly authorized by the Corporate authorities of the respective Parties, and signed by the authorized representatives of the Parties.

## **ARTICLE VII**

### **General Provisions**

7.01 It is mutually agreed by and between the Parties that the recitals listed at the beginning of this Agreement are hereby incorporated into this Agreement as though fully set forth.

7.02 Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in the construction of this Agreement.

7.03 No failure of any Party to exercise any power given to either Party hereunder or to insist upon strict compliance by either Party with its obligations hereunder, and no custom or

practice of the parties in variance with the terms hereof, shall constitute a waiver of any other Party's right to demand strict compliance with the terms hereof.

7.04 This Agreement may be executed in several duplicate original copies hereof and each duplicate may be used for any purpose for which the original may be used.

7.05 Notices, requests, demands, and other communications (collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by Notice in the above manner:

To the Village:  
Steve Shields  
Village of Round Lake Village Administrator  
442 N. Cedar Lake Road  
Round Lake, IL 60073  
Phone (847) 546-5400  
Fax (847) 546-5405

To the County:

Paula J. Trigg, P.E.  
County Engineer/Director of Transportation  
Lake County Division of Transportation  
600 W. Winchester Road  
Libertyville, IL 60048  
Phone (847) 377-7400  
Fax (847) 984-5888

Notices may also be given by facsimile, provided the Notice is concurrently sent by one of the above methods. Notices are effective upon receipt or upon attempted delivery if delivery is refused or impossible because of failure to provide a reasonable means for accomplishing delivery.

7.06 If any provision of this Agreement shall be declared invalid for any reason, such invalidation shall not affect any other provisions of this Agreement which can be given effect without the invalid provision and to that extent, the provisions of this Agreement are severable.

7.07 The Parties agree to reasonably cooperate in a good faith effort to implement this Agreement.

7.08 Nothing in this Agreement shall create, or be construed or interpreted to create, any partnership or joint venture in the Project and its work.

7.09 This Agreement shall be binding to the Parties and their respective successors, including successors in office.

7.10 This Agreement is governed by and shall be construed in accordance with the laws of the State of Illinois.

7.11 This Agreement expresses the complete and final understanding of the Parties with respect to the subject matter as of the date of its execution. The Parties acknowledge that no representations have been made which have not been set forth herein.

7.12 This Agreement is for the benefit of the Parties and no other person is intended to or shall have any rights, interest or claims under this Agreement or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

7.13 The undersigned represent that they have the authority of their respective governing authorities to execute this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective corporate officials, official authority therefore having first been duly provided.



ATTEST:

Village of Round Lake

\_\_\_\_\_  
Village Clerk  
Village of Round Lake

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

DATE: \_\_\_\_\_

Recommended for Execution

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

ATTEST:

County of Lake

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

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

DATE: \_\_\_\_\_

**EXHIBIT A**  
**Plans by Baxter & Woodman, Inc. dated 7-25-2016**

