

DRAFT

**AGREEMENT
BETWEEN THE VILLAGE OF LAKE BLUFF
AND THE COUNTY OF LAKE
FOR THE REPLACEMENT OF THE
ROBERT MCCLORY BIKE PATH BRIDGE
OVER WEST SCRANTON AVENUE**

THIS AGREEMENT is entered into this _____ day of _____, A.D. 2019, by and between the VILLAGE OF LAKE BLUFF, an Illinois Municipal Corporation, acting by and through its Village President and Board of Trustees, hereinafter referred to as the VILLAGE, and 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. The VILLAGE and the COUNTY are hereinafter referred to collectively as “parties” to THIS AGREEMENT, and either one be referred to individually as a “party” to THIS AGREEMENT.

WITNESSETH

WHEREAS, the Robert McClory Bike Path is a regional bike path within Lake County that generally runs north and south from the Wisconsin State Line to the Lake-Cook county border (hereinafter BIKE PATH); and,

WHEREAS, said BIKE PATH is also known as U.S. Bike Route 37 due to its regional significance; and,

WHEREAS, said BIKE PATH connects to the eastern terminus of the regional COUNTY-owned North Shore Bike Path; and,

WHEREAS, the COUNTY has jurisdiction and maintenance responsibility for the BIKE PATH from the Wisconsin State Line south to the City of North Chicago – Village of Lake Bluff municipal boundary; and,

WHEREAS, the VILLAGE has jurisdiction and maintenance responsibility for the BIKE PATH within the municipal corporate limits of the VILLAGE (hereinafter VILLAGE PATH SEGMENT); and,

WHEREAS, within the VILLAGE PATH SEGMENT there exists a 6-foot wide bridge that carries the BIKE PATH over West Scranton Avenue, which the VILLAGE is planning to replace, or cause to be replaced (hereinafter IMPROVEMENT); and,

WHEREAS, the VILLAGE and the COUNTY are supportive of non-motorized travel options for their residents; and,

WHEREAS, the VILLAGE and the COUNTY are public agencies and governmental units within the meaning of the Illinois Intergovernmental Cooperation Act, as specified at 5 ILCS 220/1, et seq., and are authorized by Article 7, Section 10 of the Constitution of the State of Illinois to cooperate, contract, and otherwise associate for public purposes; and,

WHEREAS, the purpose of the Intergovernmental Cooperation Act and Article 7 of the Constitution of the State of Illinois includes fostering cooperation among governmental bodies; and,

WHEREAS, both the VILLAGE and the COUNTY are desirous to enter into an agreement regarding cost sharing of the IMPROVEMENT. The general location of the IMPROVEMENT is depicted on EXHIBIT A to THIS AGREEMENT, which is attached hereto and is hereby made a part hereof; and,

WHEREAS, the IMPROVEMENT is located within the VILLAGE PATH SEGMENT and the VILLAGE shall be the lead agency for the IMPROVEMENT; and,

WHEREAS, the VILLAGE shall prepare, or cause to be prepared, all surveys, design engineering plans and specifications, bid documents, secure any necessary right-of-way and/or easements, furnish construction engineering supervision, and cause the IMPROVEMENT to be built in accordance with the final approved plans, specifications, and construction contract; and,

WHEREAS, the COUNTY shall reimburse the VILLAGE for the COUNTY's share of the IMPROVEMENT as hereinafter stipulated; and,

WHEREAS, said BIKE PATH as heretofore described has been and will continue to be of benefit to the residents of the VILLAGE and the COUNTY and is permanent in nature.

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

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.
Design, Construction and Maintenance of the IMPROVEMENT

1. It is mutually agreed by and between the parties hereto that the VILLAGE shall be the lead agency for the IMPROVEMENT.
2. It is mutually agreed by and between the parties hereto that the VILLAGE shall undertake the IMPROVEMENT to replace the BIKE PATH bridge over West Scranton Avenue and the new BIKE PATH bridge shall be designed and constructed to accommodate two-way bicycle traffic in accordance with the current American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities and current Illinois Department of Transportation bike path and bridge design requirements and standards (hereinafter DESIGN GUIDES).
3. The VILLAGE agrees to prepare, or cause to be prepared, any necessary surveys, design engineering plans and specifications and contract letting documents for the IMPROVEMENT, with reimbursement from the COUNTY as hereinafter stipulated.
4. The VILLAGE further agrees that the COUNTY’s County Engineer (hereinafter COUNTY ENGINEER) shall have the opportunity, if desired by the COUNTY ENGINEER, to review the plans and associated IMPROVEMENT documents for general conformance with the DESIGN GUIDES referenced above. However, the COUNTY ENGINEER shall have no duty, obligation or responsibility to determine whether the IMPROVEMENT as designed meets the DESIGN GUIDES standards.

It is further mutually agreed by and between the parties hereto that responsibility for conformance of the IMPROVEMENT with current DESIGN GUIDES rests solely with the VILLAGE and the VILLAGE’s Engineering Consultants.

5. The VILLAGE agrees to identify and secure any permits required for the IMPROVEMENT.

6. The VILLAGE agrees to perform any necessary utility coordination required for the IMPROVEMENT.
7. The VILLAGE 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 IMPROVEMENT, 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 that any costs associated with any land acquisition required for the IMPROVEMENT shall be the VILLAGE's responsibility and without reimbursement from the COUNTY.
8. It is mutually agreed by and between the parties hereto that VILLAGE shall let and award the construction contract for construction of the IMPROVEMENT. As of this writing, the letting date for the IMPROVEMENT is anticipated to be in 2019.
9. The VILLAGE agrees to cause the IMPROVEMENT to be constructed and to perform, or cause to be performed, the construction engineering supervision for the IMPROVEMENT, with reimbursement from the COUNTY as hereinafter stipulated.
10. The VILLAGE agrees to be responsible for all project communications to the public regarding the IMPROVEMENT.
11. It is mutually agreed by and between the parties hereto that the VILLAGE has estimated the IMPROVEMENT to cost approximately \$290,000, inclusive of engineering and construction project costs.
12. It is mutually agreed by and between the parties hereto that the VILLAGE has secured an \$87,600 Grant from the Illinois Department of Natural Resources (IDNR) for construction of the IMPROVEMENT (hereinafter GRANT).

It is further mutually agreed by and between the parties hereto that the VILLAGE shall provide any necessary information and documentation as required by the IDNR for said GRANT and the COUNTY shall have no responsibility to perform any obligations related to said GRANT nor to satisfy any IDNR requirements related to the GRANT.

13. It is mutually agreed by and between the parties hereto that the design and construction costs of the IMPROVEMENT, less the GRANT, shall be paid for by the VILLAGE with reimbursement by the COUNTY of up to 50% as stipulated below.

It is further mutually agreed by and between the parties hereto that the sharing of costs for

the IMPROVEMENT and payment from the COUNTY to the VILLAGE shall be in accordance with the following:

- a. the VILLAGE shall pay for the design and permitting costs of the IMPROVEMENT (hereinafter DESIGN COSTS), with reimbursement by the COUNTY in an amount equal to up to one-half of said DESIGN COSTS less the GRANT. The VILLAGE shall submit an invoice for DESIGN COSTS to the COUNTY after the IMPROVEMENT has been advertised for bid. The COUNTY shall submit reimbursement within sixty (60) days of receipt of an invoice from the VILLAGE with supporting documentation for said DESIGN COSTS. At this time, the COUNTY's share of the DESIGN COSTS is estimated to be \$20,000.
- b. the VILLAGE shall pay for the construction and construction engineering costs of the IMPROVEMENT (hereinafter CONSTRUCTION COSTS), with reimbursement by the COUNTY in an amount equal to up to one-half of said CONSTRUCTION COSTS less the amount of the GRANT. CONSTRUCTION COSTS shall be based on the cost of the VILLAGE's consultant engineering contract for construction engineering services and contract unit prices for actual construction work performed. The VILLAGE shall submit an invoice to the COUNTY for 50% of the COUNTY's share of CONSTRUCTION COSTS after the contract for the IMPROVEMENT has been awarded. The COUNTY shall submit reimbursement within sixty (60) days of receipt of an invoice from the VILLAGE with supporting documentation for said 50% of the COUNTY's share of CONSTRUCTION COSTS, based on the awarded construction engineering services contract and awarded bid contract unit prices. At this time, the COUNTY's initial share of CONSTRUCTION COSTS is estimated to be \$40,000. The VILLAGE shall submit an invoice to the COUNTY for the remaining 50% of the COUNTY's share of CONSTRUCTION COSTS after the contract for the IMPROVEMENT has been completed and closed out and the construction engineering contract has been closed out. The COUNTY shall submit reimbursement within sixty (60) days of receipt of an invoice from the VILLAGE with supporting documentation for said remaining 50% of the COUNTY's share of CONSTRUCTION COSTS, based on actual construction engineering services performed and contract unit prices for actual work performed. At this time, the COUNTY's final share of CONSTRUCTION COSTS is estimated to be \$40,000.

It is further mutually agreed by and between the parties hereto that the COUNTY's maximum contribution toward the IMPROVEMENT shall not exceed \$100,000 total for DESIGN COSTS and CONSTRUCTION COSTS.

It is further mutually agreed by and between the parties hereto that the VILLAGE shall review any construction change orders for the IMPROVEMENT with the COUNTY for concurrence prior to authorization of said change orders.

14. It is mutually agreed by and between the parties hereto that the VILLAGE shall allow the COUNTY to observe construction of the IMPROVEMENT, address any concerns expressed by the COUNTY regarding said construction of the IMPROVEMENT, and coordinate the scheduling of the Final Walk-Thru of the IMPROVEMENT with the COUNTY.
15. The VILLAGE shall require the VILLAGE's contractor to indemnify the COUNTY, its elected officials, duly appointed officials, agents, employees and representatives, and LCDOT, 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 IMPROVEMENT.
16. Following the completion of construction, the VILLAGE agrees to be responsible for all ownership and maintenance costs associated with the IMPROVEMENT, without reimbursement from the COUNTY.

SECTION III. 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, officers, 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 ENGINEER to maintain, operate, manage, improve, construct, reconstruct, repair, widen or expand COUNTY Highways or bike paths as best determined and 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. The VILLAGE agrees to indemnify, defend and hold harmless the COUNTY, its elected officials, duly appointed officials, agents, employees and representatives and the Lake County 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”) resulting from the VILLAGE’S acts or omissions in its performance of any VILLAGE obligations under THIS AGREEMENT.
5. The COUNTY agrees to indemnify, defend and hold harmless the VILLAGE, its elected officials and 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”) resulting from the COUNTY’S acts or omissions in its performance of any COUNTY obligations under THIS AGREEMENT.
6. It is mutually agreed by and between the parties hereto that THIS AGREEMENT shall be deemed to take effect on March 1, 2019, provided the duly authorized agents of the parties hereto duly execute THIS AGREEMENT by affixing their signatures prior to March 1, 2019. In the event the date that the last authorized agent of the parties hereto affixes their signature to THIS AGREEMENT is subsequent to March 1, 2019, 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.
7. If either party is delayed or hindered in or prevented from the performance of any act required hereunder because of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive laws, riots, insurrection, war, fire, inclement weather or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party (each, a “Force Majeure Event”), performance of such act will be excused for the period of delay caused by the Force Majeure Event.

8. 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.
9. It is mutually agreed by and between the parties hereto that the provisions of THIS AGREEMENT are severable. If any provision 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, the illegality of such provision shall not affect the remaining portions of THIS AGREEMENT.
10. 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.
11. 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.
12. THIS AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. No party hereto shall 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 other party, except as provided for in THIS AGREEMENT.
13. THIS AGREEMENT may be executed in multiple identical counterparts, and all of said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
14. Except where otherwise provided in THIS AGREEMENT, the term of THIS AGREEMENT shall be perpetual in nature and terminable only by the mutual written agreement of both of the parties hereto.

15. THIS AGREEMENT shall be considered null and void in the event that the construction contract covering the IMPROVEMENTS contemplated herein, is not awarded by June 1, 2022.

ATTEST:

Village Clerk
(seal)

VILLAGE OF LAKE BLUFF:

By: _____
Village President

Date: _____

RECOMMENDED FOR EXECUTION:

Shane E. Schneider, P.E.
Director of Transportation / County Engineer
Lake County

COUNTY OF LAKE:

ATTEST:

County Clerk
Lake County
(Seal)

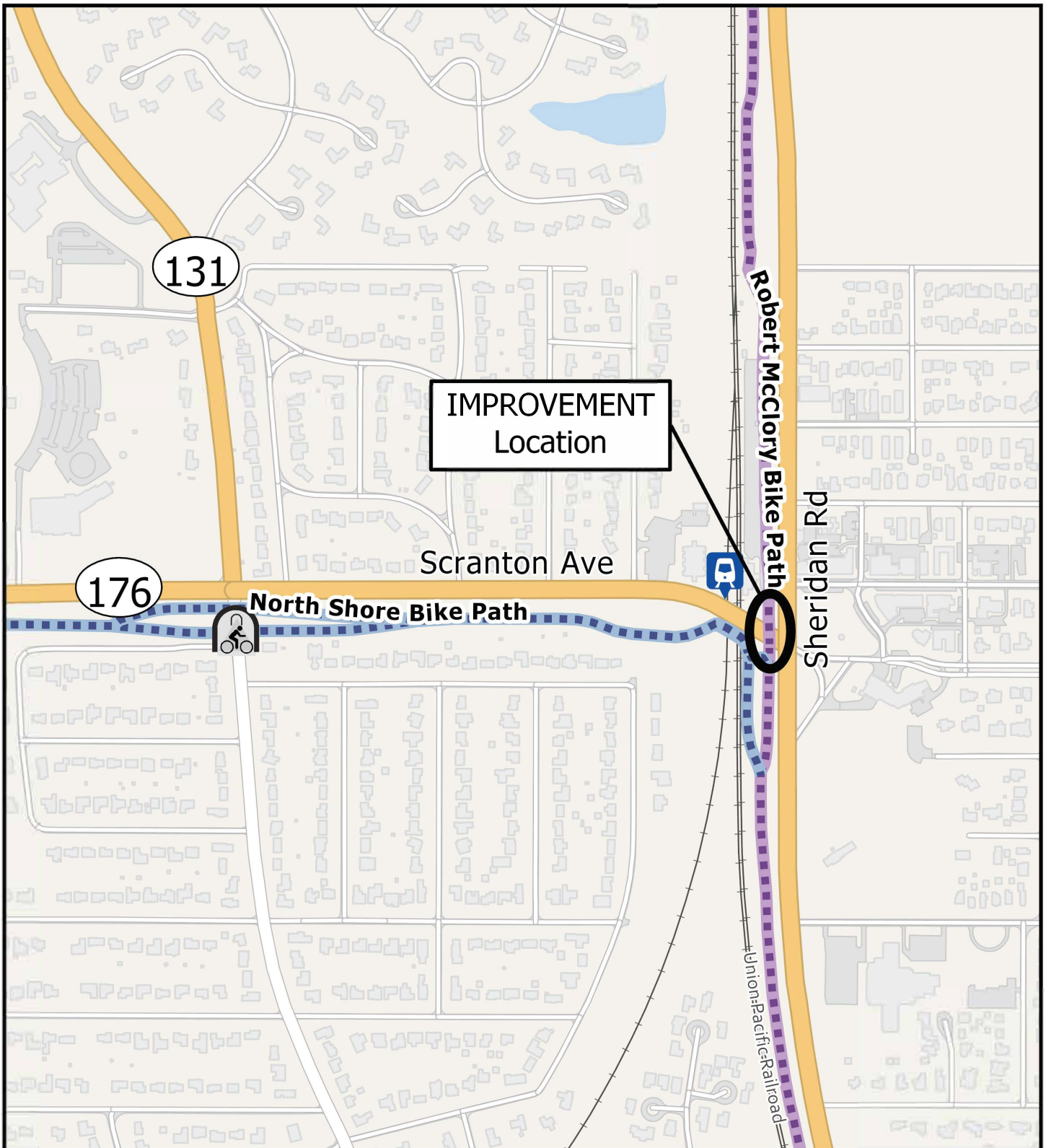
By: _____
Sandra Hart
Chair
Lake County Board

Date: _____

EXHIBIT A
GENERAL LOCATION OF THE IMPROVEMENT

Exhibit A

Robert McClory Bike Path Bridge over West Scranton Ave General Location of the IMPROVEMENT



Metra Station



Bike Tunnel



North Shore Bike Path

Owner: LCDOT



Robert McClory Bike Path

Owner: Village of Lake Bluff



1/2/2019