

**AGREEMENT
BETWEEN THE COUNTY OF LAKE
AND THE VILLAGE OF LAKE ZURICH
FOR NOISE WALL GUIDELINES AND RESTRICTIONS ALONG
QUENTIN ROAD (COUNTY HIGHWAY 5)
BETWEEN ILLINOIS ROUTE 22 AND WHITE PINE ROAD,**

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 Village of Lake Zurich, an Illinois Municipal Corporation, acting by and through its Mayor and Board of Trustees, hereinafter referred to as the VILLAGE. The COUNTY and the VILLAGE 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 and the VILLAGE have previously entered into the AGREEMENT BETWEEN THE COUNTY OF LAKE AND THE VILLAGE OF LAKE ZURICH FOR ROADWAY IMPROVEMENTS ALONG QUENTIN ROAD (COUNTY HIGHWAY 5) BETWEEN ILLINOIS ROUTE 22 AND WHITE PINE ROAD, INCLUDING WATERMAIN, SIDEWALK, HARDSCAPE AND LANDSCAPING IMPROVEMENTS AND TREE MAINTENANCE dated the fifth day of March, A.D. 2018, (hereinafter referred to as the IMPROVEMENT AGREEMENT); and,

WHEREAS, the IMPROVEMENT AGREEMENT defines the IMPROVEMENT as certain permanent roadway and non-motorized facility improvements along Quentin Road (COUNTY Highway 5) from Illinois Route 22 to White Pine Road, including road reconstruction and widening, drainage improvements, construction of multi-use path, sidewalk, landscaping, and the replacement of permanent traffic control signals; and,

WHEREAS, the construction contract for the IMPROVEMENT has been awarded and construction work of the IMPROVEMENT is nearing completion; and

WHEREAS, the IMPROVEMENT included construction of noise walls within the public right-of-way for which the COUNTY has maintenance and jurisdictional authority and which is designated for use of roadway purposes; and,

WHEREAS, the COUNTY and the VILLAGE are desirous to establish guidelines and restrictions for fence extensions and use of the area between the right-of-way (property line) and

Noise Wall (approximately 5-feet) that will remain public right-of-way for use of roadway purposes under the jurisdiction of the COUNTY and,

WHEREAS, the COUNTY is desirous to retain permitting authority for the COUNTY right-of-way except as described in THIS AGREEMENT; inclusive of any utility line installation, operation or maintenance within the COUNTY right-of-way; and,

WHEREAS, the COUNTY is desirous that the VILLAGE issue permits to property owners that wish to extend their side yard fence up to the Noise Wall in accordance with the guidelines and restrictions set forth in THIS AGREEMENT; and,

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 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.

Quentin Road Noise Wall Jurisdiction

1. It is mutually agreed by and between the parties hereto that the Noise Wall constructed as a part of the IMPROVEMENT is owned and maintained by the COUNTY.
2. It is mutually agreed by and between the parties hereto that the Noise Wall is located on public right-of-way which is designated for use of roadway purposes.

It is further mutually agreed by and between the parties hereto that the COUNTY has jurisdiction of the public right-of-way and Quentin Road (County Highway 5).

3. It is mutually agreed by and between the parties hereto that the COUNTY retains permitting authority for the COUNTY right-of-way except as described in THIS AGREEMENT.

4. The COUNTY agrees to allow property owners to extend their side yard fence up to, but not connect to, the Noise Wall provided a permit is obtained from the VILLAGE.
5. The VILLAGE agrees that permits issued to property owners shall include the guidelines and restrictions set forth in Section III of THIS AGREEMENT.

SECTION III.

Guidelines and Restrictions for Fence Extensions and Use of Property Adjacent to the Noise Wall

1. The VILLAGE agrees that permits issued shall stipulate that the area between the right-of-way line (property line) and Noise Wall (approximately 5-feet) will remain public right-of-way for use of roadway purposes under the jurisdiction of the COUNTY.

The VILLAGE further agrees to provide written notice to the property owners/tenants informing them of the guidelines and restrictions as described in THIS AGREEMENT.

2. The COUNTY agrees to record THIS AGREEMENT with each individual property adjacent to the Noise Wall constructed as part of the IMPROVEMENT.
3. It is mutually agreed by and between the parties hereto that if a permit is not secured, the Village may invoke any penalties that are set forth in their ordinances.

It is further mutually agreed by and between the parties hereto that in the absence of a permit, any fencing encountered shall be treated as an encroachment on the COUNTY right-of-way enforceable by the COUNTY.

4. It is mutually agreed by and between the parties hereto that the COUNTY from time to time, may need to work on said Noise Wall, which may include removal of the Noise Wall panels.

It is further mutually agreed by and between the parties hereto that the COUNTY will make a good faith effort to notify any property owner/tenant prior to said work.

5. Use of COUNTY right-of-way adjacent to the Noise Wall shall include the following restrictions for the adjacent residential property owners or tenants of the adjacent residential property (hereinafter referred to as "Residents"):
 - a. Residents may construct a fence within the COUNTY right-of-way up to, but not connected to or attached in any manner or form to the Noise Wall. A permit for such fence shall first be secured by the Lake Zurich Building Department prior to construction of such fence.

- b. No improvement other than a fence as approved under Section 5.a of this agreement shall be authorized for construction within the COUNTY right-of-way. Improvements including but not limited to sheds, playhouses, swing sets, trampolines, raised planter beds, trees, bushes/shrubs, or storage of firewood that exceeds one (1) full cord (4 feet wide, 4 feet high, and 8 feet long) shall NOT be authorized or permitted for construction or installation within the COUNTY right-of-way.
 - c. Residents shall be required to maintain the area between the right-of-way line (property line) and the Noise Wall without reimbursement by the COUNTY for their cost of maintaining such area. Maintenance shall involve weed cutting and otherwise maintaining the lawn (turf grass) in conformance with Section 4-4-2 of the Lake Zurich Municipal Code.
 - d. It may be necessary for the COUNTY and other agencies that may be using the COUNTY right-of-way via permit, such as the VILLAGE and Utility Companies, to access the right-of-way from time to time. The property owner/tenant is required to allow access to the COUNTY right-of-way via the property owner/tenant's property.
 - e. All cost associated with the removal and installation of a fence shall be the responsibility of the property owner, inclusive of any fence removal and installation costs incurred by the COUNTY necessary to access and maintain the Noise Wall and any utility company line operation, maintenance or installation within the COUNTY right-of-way.
 - f. It shall be the property owner's/tenant's responsibility to make provisions for access by the COUNTY, VILLAGE and Utility Companies in case a panel needs to be removed or work carried out within the COUNTY right-of-way. In such instances, security for pets, children, property, etc. will be the obligation of the property owner/tenant to arrange at no cost to the COUNTY.
6. The VILLAGE agrees to keep records of issued permits and, at the time of a permit issuance, to send a copy to the Lake County Division of Transportation's Permit Department for their files.

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 the date that the last authorized agent of the parties hereto affixes his/her signature to THIS AGREEMENT.
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 said counterparts shall, individually and taken together, constitute THIS AGREEMENT.
11. It is mutually agreed by and between the parties hereto that any notice required by the provisions of THIS AGREEMENT shall be mailed to:

If to the COUNTY:
Director of Transportation/County Engineer
Lake County Division of Transportation
600 West Winchester Road
Libertyville, IL, 60048-1381

If to the VILLAGE:
Village Manager
Village of Lake Zurich
70 East Main Street
Lake Zurich, IL 60047

12. THIS AGREEMENT shall be terminable only by the mutual written agreement of the parties.

VILLAGE OF LAKE ZURICH

ATTEST:

Village Clerk

By: _____
Mayor Thomas Poynton

Date: _____

RECOMMENDED FOR EXECUTION

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

COUNTY OF LAKE

ATTEST:

County Clerk

By: _____
Chair
Lake County Board

Date: