

INTERGOVERNMENTAL AGREEMENT

COUNTY OF COOK

HAPP ROAD

VILLAGE OF NORTHFIELD

Winnetka Road to Willow Road
Section: 20-W4044-00-PV

This **INTERGOVERNMENTAL AGREEMENT** (the "AGREEMENT") is entered into this ____ day of _____, 2021, by and between the COUNTY OF COOK, a body politic and corporate of the State of Illinois (the "COUNTY"), acting by and through its DEPARTMENT OF TRANSPORTATION AND HIGHWAYS (the "DEPARTMENT"), and the VILLAGE OF NORTHFIELD, a municipal corporation of the State of Illinois (the "VILLAGE"). The COUNTY and VILLAGE are sometimes referred to herein individually as a "PARTY" and collectively as the "PARTIES."

RECITALS

WHEREAS, the PARTIES, in order to facilitate the free flow of traffic and ensure safety to the motoring public, desire to enter into an intergovernmental partnership to realize improvements to Happ Road from Winnetka Road to Willow Road (the "PROJECT");

WHEREAS, the scope of work for the PROJECT includes, but is not limited to, reconstructing Happ Road from Winnetka Road to Willow Road, and converting the intersection of Happ Road and Orchard Lane into a five-leg roundabout;

WHEREAS, at the request of the VILLAGE, the PROJECT will also include improvements to lighting, landscaping, VILLAGE-owned utilities, and streetscape enhancements (the "VILLAGE WORK");

WHEREAS, Happ Road is under the jurisdiction of the COUNTY and the COUNTY has previously committed to sharing the costs of Phase II engineering, land acquisition, construction and construction engineering for the PROJECT;

WHEREAS, the VILLAGE has been awarded federal Surface Transportation Program-Local (STP-L) funding for the PROJECT;

WHEREAS, the PARTIES by this instrument shall determine and establish their respective responsibilities for Phase II engineering and land acquisition for the PROJECT;

WHEREAS, upon completion of Phase II engineering for the PROJECT, the PARTIES intend to enter into at least one (1) additional intergovernmental agreement setting forth costs and responsibilities for construction, construction engineering and maintenance of the PROJECT;

WHEREAS, the COUNTY, by virtue of its powers as set forth in the Counties Code, 55 ILCS 5/1-1 et seq., and the Illinois Highway Code, 605 ILCS 5/1-101 et seq., is authorized to enter into this AGREEMENT;

WHEREAS, the VILLAGE, by virtue of its powers as set forth in the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq., is authorized to enter into this AGREEMENT; and

WHEREAS, this AGREEMENT is further authorized under Article VII, Section 10 of the Illinois Constitution and by the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the PARTIES agree as follows:

I. PHASE II ENGINEERING

- A. **Engineering Agreement.** The VILLAGE shall enter into an agreement with a professional engineering firm ("the CONSULTANT") to perform Phase II engineering services for the PROJECT, including, but not limited to, preparing preliminary, pre-final and final construction plans, specifications, special provisions, cost estimates and contract bid documents (collectively, "the plans and specifications"), and securing title commitments, plats, legal descriptions, appraisals, review appraisals and negotiation services for any right-of-way and/or easements required for the PROJECT. The VILLAGE shall utilize a Qualifications-Based Selection (QBS) process in selecting the CONSULTANT. The QBS process must comply with all applicable state and federal laws and regulations, including, but not limited to, the provisions set forth in 40 U.S.C. § 1101 et seq. and 23 CFR Part 172. The VILLAGE shall forward a copy of the Phase II engineering agreement to the COUNTY upon execution.
- B. **Deliverables.** The VILLAGE or CONSULTANT shall submit the construction plans, specifications, special provisions and cost estimates to the COUNTY for review and approval at the following stages of plan preparation:
- 60% - Preliminary
 - 90% - Pre-Final
 - 100% - Final
- C. **County Review.** The COUNTY shall review the construction plans, specifications, special provisions and cost estimates within thirty (30) calendar days of receipt thereof. If the VILLAGE does not receive comments from the COUNTY within this time period, or receive a request for an extension of time, which request shall be reasonably considered, the lack of response shall be deemed an approval of the plans and specifications. In the event of disapproval, the COUNTY shall detail in writing its objections to the proposed plans and specifications for review and consideration by the VILLAGE.
- D. **Disputes.** The PARTIES shall work cooperatively to address and resolve any review comments and/or objections raised by the COUNTY. In the event that the PARTIES cannot mutually agree on the resolution a dispute concerning the plans and specifications for COUNTY's roadway or facilities, the decision of the DEPARTMENT's Superintendent shall be final. In the event that the PARTIES cannot mutually agree on the resolution a dispute concerning the plans and specifications for the VILLAGE WORK,

the decision of the VILLAGE's designated representative shall be final as long as that decision does not unreasonably delay delivery of the PROJECT or be detrimental to the maintenance and/or operation of the COUNTY's roadway or facilities.

- E. **Lead Agency.** The VILLAGE agrees to assume overall responsibility for the PROJECT, including ensuring that all required permits and agreements are secured.
- F. **County Permits.** The VILLAGE shall apply for and the COUNTY will not unreasonably withhold any and all permits for right of access (ingress or egress) and/or temporary use of its property within the PROJECT limits to the VILLAGE and/or its agents, without charge of permit fees to the VILLAGE.
- G. **Submittals.** All submittals and notices required of the VILLAGE under this section of the AGREEMENT shall be directed to:

Bureau Chief of Design
Attn: Noel Basquin, P.E.
Cook County Department of Transportation and Highways
69 W. Washington Street, 23rd Floor
Chicago, IL 60602
E-mail: noel.basquin@cookcountyil.gov

II. SCHEDULE AND TERMINATION

- A. **Notice to Proceed.** Execution of this AGREEMENT by the PARTIES shall be deemed a "Notice to Proceed" for the VILLAGE to commence work on the PROJECT.
- B. **Inactivity.** The COUNTY may terminate this AGREEMENT if the Phase II engineering agreement for the PROJECT is not executed by the VILLAGE within eighteen (18) months after the Effective Date of this AGREEMENT, as defined in Section IV (I) below.
- C. **Loss of Funding.** The COUNTY may terminate this AGREEMENT if federal funding becomes unavailable for the PROJECT. Upon such termination, the COUNTY shall be responsible for all costs and expenses duly incurred pursuant to this AGREEMENT prior to the termination.
- D. **Suspension or Early Termination.** Subject to Section IV (K) below, the VILLAGE agrees that, if the COUNTY determines that the VILLAGE has not complied with or is not complying with, has failed to perform or is failing to perform, has not met or is not meeting significant PROJECT milestones or objectives, or is in default under any of the provisions of this AGREEMENT, whether due to failure or inability to perform or any other cause whatsoever, the COUNTY, after written notification to the VILLAGE of said non-compliance or default and failure by the VILLAGE to correct said violations within sixty (60) calendar days, may:
 - i. suspend or terminate this AGREEMENT in whole or in part by written notice, and/or:

- ii. demand refund of any funds disbursed to the VILLAGE;
 - iii. deduct any refunds or repayments from any funds obligated to, but not expended by the VILLAGE, whether from this or any other project;
 - iv. temporarily withhold cash payments pending correction of deficiencies by the VILLAGE or more severe enforcement action by the COUNTY;
 - v. disallow all or part of the cost of the activity or action not in compliance;
 - vi. take other remedies legally available; or
 - vii. take appropriate legal action.
- E. **Termination.** This AGREEMENT terminates upon completion of Phase II engineering and land acquisition for the PROJECT and payment by the COUNTY of the final invoice submitted by the VILLAGE, or December 31, 2026, whichever date is earlier.
- F. **Extensions.** The Superintendent of the DEPARTMENT or their designee may extend in writing any deadline(s) imposed by this section, including, but not limited to, the termination date of the AGREEMENT.

III. FINANCIAL

- A. **Federal Funds.** The Chicago Metropolitan Agency for Planning has awarded the VILLAGE federal funds through the local Surface Transportation Program (STP-L) for Phase II engineering of the PROJECT.
- B. **Village Cost Participation.** The VILLAGE agrees to pay all actual Phase II engineering costs for the PROJECT, subject to reimbursement by the COUNTY as hereinafter stipulated.
- C. **County Cost Participation.** The COUNTY agrees to reimburse the VILLAGE for all Phase II engineering costs for the PROJECT, less (i) the amount of federal STP-L funds received by the VILLAGE for the same and (ii) the cost of Phase II engineering services for the VILLAGE WORK. The COUNTY shall acquire in its name any right-of-way and/or easements required for the PROJECT and shall pay the property owner(s) for said right-of-way and/or easements directly ("Land Acquisition Settlement Costs").
- D. **Reimbursement Procedures.** The COUNTY will pay the VILLAGE for its share of Phase II engineering costs for the PROJECT as follows:
- i. Upon the Phase II kickoff and receipt of an invoice from the VILLAGE, the COUNTY shall make an advance payment to the VILLAGE in the amount of \$219,500.

- ii. Upon receipt of the preliminary plans and specifications for the PROJECT and an invoice from the VILLAGE, the COUNTY shall make a second payment to the VILLAGE in the amount of \$109,750.
 - iii. Upon receipt of an invoice from the VILLAGE following completion of Phase II engineering services for the PROJECT, the COUNTY shall make a final payment to the VILLAGE for the balance of the COUNTY's share of Phase II engineering costs for the PROJECT. The amount of the final payment shall be based upon the actual cost of Phase II engineering services for the PROJECT, less (i) the amount of federal STP-L funds received by the VILLAGE for the same and (ii) the cost of Phase II engineering services for the VILLAGE WORK, and shall reflect the COUNTY's prior payments to the VILLAGE.
- E. **Required Documentation.** In order to receive reimbursement from the COUNTY, the VILLAGE must provide the COUNTY with the following documentation with each reimbursement request, if applicable:
- i. a cover letter addressed to the Bureau Chief of Design;
 - ii. an invoice requesting payment, which includes the name of the PROJECT and its associated section number;
 - iii. a copy of the cancelled check(s) paid to the CONSULTANT (or a copy of the associated bank ledger(s) reflecting the payment(s)), or a letter from the CONSULTANT confirming payment was received for the service(s) rendered; and/or
 - iv. a copy of the associated invoice(s) submitted to the VILLAGE by the CONSULTANT for the service(s) rendered.
- F. **Insufficient Documentation.** If the documentation submitted by the VILLAGE for reimbursement is reasonably deemed by the COUNTY as not sufficiently documenting the work completed, the COUNTY may require further records and supporting documentation to verify the amounts, recipients and uses of all funds invoiced pursuant to this AGREEMENT.
- G. **Ineligible Expenditures.** It is understood and agreed to by the PARTIES that the COUNTY will not reimburse the VILLAGE for any expenditures that are:
- i. contrary to the provisions of this AGREEMENT;
 - ii. not directly related to carrying out Phase II engineering services for the PROJECT;
 - iii. of a regular and continuing nature, including, but not limited to, administrative costs, staff and overhead costs, rent, utilities and maintenance costs,

- iv. incurred without the consent of the COUNTY after written notice of suspension or termination of any or all of the COUNTY's obligations under Sections II (C) and II (D) of this AGREEMENT;
 - v. not otherwise eligible under the STP-L grant; and/or
 - vi. not a permissible use of Illinois Motor Fuel Tax funds.
- H. **Supplemental or Substitute Work.** Either PARTY may request, after the Phase II engineering agreement is awarded by the VILLAGE, that supplemental or costlier substitute work be added to the agreement's scope of work. The VILLAGE will cause said supplemental or substitute work to be added to the agreement, provided that said work will not unreasonably delay the PROJECT schedule. Whichever PARTY requested or caused said supplemental or costlier substitute work shall pay for the cost increases of said work in full.
- I. **Funding Breakdown.** A funding breakdown, including cost estimates, is incorporated into and made a part of this AGREEMENT and attached as EXHIBIT A
- J. **Submittals.** All submittals required of the VILLAGE under this section of the AGREEMENT shall be directed to:

Bureau Chief of Design
Attn: Noel Basquin, P.E.
Cook County Department of Transportation and Highways
69 W. Washington Street, 23rd Floor
Chicago, IL 60602
E-mail: noel.basquin@cookcountyil.gov

IV. GENERAL CONDITIONS

- A. **Authority to Execute.** The PARTIES have read and reviewed the terms of this AGREEMENT and by their signatures as affixed below represent that the signing party has the authority to execute this AGREEMENT and that the PARTIES intend to be bound by the terms and conditions contained herein.
- B. **Binding Successors.** This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective successors and approved assigns. Neither PARTY may assign its rights or obligations hereunder without the written consent of the other PARTY.
- C. **Compliance with Laws, Rules and Regulations.** The PARTIES shall at all times observe and comply with all federal, state and local laws and regulations, as amended from time to time, in carrying out the terms and conditions of this AGREEMENT.
- D. **Conflicts of Interest.** The VILLAGE understands and agrees that no director, officer, agent or employee of the VILLAGE may have an interest, whether directly or indirectly,

in any contract or agreement or the performance of any work pertaining to this AGREEMENT; represent, either as an agent or otherwise, any person, trust or corporation, with respect to any application or bid for any contract or agreement or work pertaining to this AGREEMENT; or take, accept or solicit, either directly or indirectly, any money or thing of value as a gift or bribe or means of influencing his or her vote or actions. Any contract or agreement made and procured in violation of this provision is void and no funds under this AGREEMENT may be used to pay any cost under such a contract or agreement.

- E. **Conflict with Exhibits.** In the event of a conflict between any exhibit attached hereto and the text of this AGREEMENT, the text of this AGREEMENT shall control.
- F. **Counterparts.** This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one (1) and the same instrument.
- G. **County Section Number.** The PROJECT is hereby designated as COUNTY section number 20-W4044-00-PV. The PARTIES shall include COUNTY section number 20-W4044-00-PV on all PROJECT-related submittals, including, but not limited to, correspondence and invoices.
- H. **Disputes.** Subject to Section I (D), the PARTIES shall meet to settle any dispute, claim, question, or disagreement arising out of the performance of this AGREEMENT. To this effect, the PARTIES shall consult and negotiate with each other in good faith and shall recognize each other's interests as well as their mutual interests and attempt to reach a just and equitable solution that gives reasonable consideration to each PARTY's interests and operations. Reasonable efforts are to be measured against what a similarly situated party would reasonably do..
- I. **Effective Date.** The Effective Date of this AGREEMENT shall be the date that the last authorized signatory signs and dates this AGREEMENT, which date shall be inserted on the first page of this AGREEMENT. This AGREEMENT shall become effective only in the event that the corporate authorities of each PARTY approve this AGREEMENT.
- J. **Entire Agreement.** This AGREEMENT constitutes the entire agreement of the PARTIES concerning all matters specifically covered by this AGREEMENT and supersedes all prior written or oral agreements, commitments and understandings among the PARTIES. There are no representations, covenants, promises or obligations not contained in this AGREEMENT that form any part of this AGREEMENT or upon which any of the PARTIES is relying upon in entering into this AGREEMENT.
- K. **Force Majeure.** Neither PARTY shall be liable for any delay or non-performance of its obligations caused by any contingency beyond its control, including, but not limited to, acts of God, war, civil unrest, pandemics, labor strikes or walkouts, fires and/or natural disasters.

- L. **Governing Law and Venue.** All questions of interpretation, construction and enforcement, and all controversies with respect to this AGREEMENT, will be governed by the applicable constitutional, statutory and common law of the State of Illinois. The PARTIES agree that, for the purposes of any litigation relative to this AGREEMENT and its enforcement, venue will be in the Circuit Court of Cook County, Illinois or the Northern District, Eastern Division of the United States District Court, Chicago, Illinois, and the PARTIES consent to the *in personam* jurisdiction of said Courts for any such action.
- M. **Indemnification.** The VILLAGE shall indemnify, defend and hold harmless the COUNTY and its commissioners, officers, directors, employees and agents, from and against any and all claims, liabilities, damages, losses, and expenses, including, but not limited to, legal defense costs, attorneys' fees, settlements or judgments, caused by the negligent acts, omissions or willful misconduct of the VILLAGE, its officers, directors, employees, agents, consultants, contractors, subcontractors or suppliers in connection with or arising out of the performance of this AGREEMENT.
- The COUNTY shall indemnify, defend and hold harmless the VILLAGE and its commissioners, officers, directors, employees and agents, from and against any and all claims, liabilities, damages, losses, and expenses, including, but not limited to, legal defense costs, attorneys' fees, settlements or judgments, caused by the negligent acts, omissions or willful misconduct of the COUNTY, its officers, directors, employees, agents, consultants, contractors, subcontractors or suppliers in connection with or arising out of the performance of this AGREEMENT.
- N. **Modification.** Unless otherwise specified, this AGREEMENT may only be modified by a written instrument executed by duly authorized representatives of both PARTIES.
- O. **No Individual or Personal Liability.** No official, employee, or agent of either PARTY to this AGREEMENT shall be charged personally by the other PARTY with any liability or expenses of defense incurred as a result of the exercise of any rights, privileges, or authority granted herein, nor shall they be held personally liable under any term or provision of this AGREEMENT, or because of a PARTY's execution or attempted execution of this AGREEMENT, or because of any breach of this AGREEMENT. This provision shall survive termination or expiration of this AGREEMENT.
- P. **No Third-Party Beneficiaries.** This AGREEMENT is not intended to confer any rights or remedies upon any person, entity, or municipality other than the PARTIES.
- Q. **Notices.** Unless otherwise specified, all written reports, notices and other communications related to this AGREEMENT shall be in writing and shall be personally delivered or mailed via first class, certified or registered U.S. Mail or electronic mail delivery to the following persons at the following addresses:

To the COUNTY:

Jennifer "Sis" Killen, P.E., PTOE
Superintendent

Cook County Department of Transportation and Highways
69 W. Washington Street, 24th Floor
Chicago, IL 60602
E-mail: jennifer.killen@cookcountyil.gov

To the VILLAGE:

Honorable Greg Lungmus
Village President
Village of Northfield
361 Happ Road
Northfield, IL 60093
E-mail: glungmus@northfieldil.org

- R. **Recitals.** The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into and made a part of this AGREEMENT.
- S. **Records Maintenance.** The VILLAGE shall maintain during the term of this AGREEMENT and for a period of three (3) years thereafter complete and adequate financial records, accounts and other records to support all PROJECT expenditures. These records and accounts shall include, but not be limited to, records providing a full description of each activity being assisted with COUNTY funds; a general ledger that supports the costs being charged to the COUNTY; records documenting procurement of goods and services; contracts for goods and services; invoices; billing statements; cancelled checks; bank statements; schedules containing comparisons of budgeted amounts and actual expenditures; and construction progress schedules.
- T. **Reviews and Audits.** The VILLAGE will give the COUNTY access to all books, accounts, records, reports, files, and other papers pertaining to the administration, receipt and use of COUNTY funds under this AGREEMENT to necessitate any reviews or audits.
- U. **Section Headings.** The descriptive section and subsection headings used in this AGREEMENT are for convenience only and shall not control or affect the meaning or construction of any of the provisions thereof.
- V. **Severability.** If any term of this AGREEMENT is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity, or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted and possible, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
- W. **Waiver of Default.** The failure by the COUNTY or the VILLAGE to seek redress for violation of or to insist upon strict performance of any condition or covenant of this AGREEMENT shall not constitute a waiver of any such breach or subsequent breach of


such covenants, terms, conditions, rights and remedies. No provision of this AGREEMENT shall be deemed waived by the COUNTY or the VILLAGE unless such provision is waived in writing.

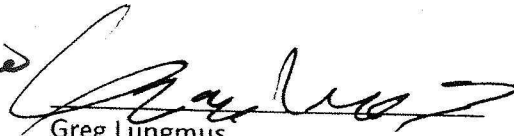
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IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT on the dates indicated.

EXECUTED BY COUNTY OF COOK:

EXECUTED BY VILLAGE OF NORTHFIELD:



Toni Preckwinkle
President
Cook County Board of Commissioners


Greg Lungmus
Village President

This ____ day of _____, 2021

This 19 day of October 2021

ATTEST:


County Clerk

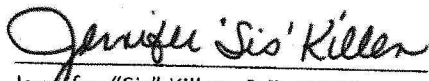
ATTEST:


Village Clerk

RECOMMENDED BY:

APPROVED AS TO FORM:

Kimberly M. Foxx, State's Attorney


Jennifer "Sis" Killen, P.E., PTOE

Superintendent

County of Cook

Department of Transportation and Highways

By:



Assistant State's Attorney

EXHIBIT A
Funding Breakdown

ITEM	FHWA	VILLAGE	COUNTY	TOTAL
Phase II Engineering	\$455,000	Estimated \$14,000	Balance, estimated at \$495,000	\$964,000
Land Acquisition Settlement Costs	\$0	\$0	100% of costs, estimated at \$86,000	\$86,000
Total	\$455,000	\$14,000*	\$581,000	\$1,050,000

I, KAREN A. YARBROUGH, County Clerk of Cook County, in the State of Illinois aforesaid and keeper of the records and files of said Cook County, do hereby certify that The Board of Commissioners of The County of Cook, at their regular meeting held on December 16, 2021, passed the following Resolution:

22-R-

RESOLUTION

Sponsored by

THE HONORABLE TONI PRECKWINKLE

PRESIDENT OF THE COOK COUNTY BOARD OF COMMISSIONERS

RESOLVED, by the members of The Board of Commissioners of Cook County, Illinois, on behalf of the County of Cook, to authorize and direct its President to execute, by original signature or authorized signature stamp, two (2) copies of an Intergovernmental Agreement with the Village of Northfield, said Agreement attached, wherein the Village will be the lead agency for Phase II engineering and the County shall perform land acquisition settlement for the improvements along Happ Road from Winnetka Road to Willow Road; that the County of Cook will reimburse the Village for the County's share of the Phase II engineering costs (estimated at \$495,000) and pay property owners for land acquisition settlement costs directly (estimated at \$86,000) for a total estimated cost contribution of \$581,000 under County Section: 20-W4044-00-PV; and, the Department of Transportation and Highways is authorized and directed to return one (1) executed copy of the Agreement with a certified copy of this Resolution to the Village of Northfield and implement the terms of the Agreement.

All of which appears from the records and files of my office.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the SEAL of said County at my office in the City of Chicago, in said County, this 16th day of December A.D. 2021.

(SEAL)


County Clerk

APPROVED BY THE BOARD OF
COOK COUNTY COMMISSIONERS

DEC 16 2021

COM _____