

INTERGOVERNMENTAL AGREEMENT

County of Cook

Euclid Avenue Resurfacing Project

Village of Arlington Heights

Section: 23-A5912-00-PV

This Intergovernmental Agreement ("Agreement") is made and entered into this ____ day of _____, 2023, by and between the County of Cook, a body politic and corporate of the State of Illinois ("County"), acting by and through its Department of Transportation and Highways ("Department"), and the Village of Arlington Heights, a municipal corporation of the State of Illinois ("Village"). The County and Village are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, in order to facilitate the free flow of traffic and ensure the safety of pedestrians, bicyclists, and the motoring public, the Parties desire to enter into an intergovernmental partnership to realize resurfacing improvements to Euclid Avenue from Rohlwing Road to Rand Road ("Project");

WHEREAS, the anticipated scope of work for the Project includes, but is not limited to, mill-and-overlay of the existing Hot Mix Asphalt (HMA) pavement, intermittent curb and gutter, sidewalk and driveway removal and replacement, ADA sidewalk improvements, structure adjustments, loop detector replacement, pavement striping, landscape restoration, and full replacement of the existing traffic signal located at the intersection of Euclid Avenue and Wilke Road;

WHEREAS, within the limits of the improvement, Euclid Avenue is under the jurisdiction of the Village from Waterman Avenue to Walnut Avenue and the County's jurisdiction from Waterman Avenue to Rand Road and Walnut Avenue to Rohlwing Road;

WHEREAS, the Parties have a fully executed Letter of Intent dated March 7, 2023 that serves as the basis for interagency cooperation in funding, engineering, and construction of the Project;

WHEREAS, this Agreement sets forth the Parties' respective responsibilities and obligations for completion and funding of preliminary engineering services for the Project;

WHEREAS, the County, by virtue of its powers as set forth in the Counties Code and Illinois Highway Code, is authorized to enter into this Agreement;

WHEREAS, the Village, by virtue of its powers as set forth in the Illinois Municipal Code, 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.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

- **SECTION 1. PRELIMINARY ENGINEERING**

- A. **Engineering Agreement.** The Village shall enter into an agreement with a professional engineering firm/consultant to perform preliminary engineering services for the Project. In awarding and administering the preliminary engineering agreement, the Village shall comply with all applicable state and federal laws and regulations. The Village shall forward a copy of the agreement to the County within fourteen (14) calendar days of execution.
- B. **Lead Agency.** The Village shall assume overall responsibility for the Project, including ensuring that all required permits and joint participation and/or force account agreements are secured.
- C. **County Review and Approval.** The County shall have the opportunity to review and approve all relevant documentation associated with preliminary engineering services for the improvements prior to providing the Village with reimbursement.
- D. **Meetings.** The Village and/or its consultant shall coordinate and conduct any public meetings or hearings required by the Illinois Department of Transportation (IDOT) or any other state or federal agency for the Project. The Village shall provide not less than fourteen (14) calendar days' advance written notice to the County of the Project kick-off meeting and any such public meetings or hearings.
- E. **Draft Project Development Reports.** The Village shall provide the County with electronic copies of any draft Project Development Reports prepared as part of the Project.
- F. **Final Project Development Report.** The Village and/or its consultant shall provide IDOT with any and all documents necessary to secure IDOT approval of the Project Development Report (PDR) for the Project. The Village shall provide the County with one (1) paper copy and an electronic copy of the final approved PDR.
- G. **County Permits.** The Village shall apply for and the County shall not unreasonably withhold any and all permits for right of access (ingress or egress) and/or temporary use of the County's property within the Project limits to the Village and/or its agents, without charge of permit fees to the Village.

- **SECTION 2. FINANCIAL**

- A. **Cost Estimate.** Estimated preliminary engineering costs for the Project are Two Hundred Ninety-Seven Thousand Four Hundred Ninety-Nine Dollars and 00/100 Cents

(\$297,499.00). This amount does not include any costs relating to the resurfacing of the bicycle path between Salt Creek and New Wilke Road.

B. **Village Cost Participation.** The Village shall pay all actual preliminary engineering costs for the Project, subject to reimbursement by the County as described below. The estimated cost to the Village under this Agreement is One Hundred Two Thousand Six Hundred Seven Dollars and 60/100 Cents (\$102,607.60).

C. **County Cost Participation.** The County agrees to reimburse the Village for the following costs:

- i. One hundred percent (100%) of actual preliminary engineering costs associated with the traffic signal replacement at Euclid Avenue and Wilke Road, estimated at Forty Thousand Nine Hundred Eighty Dollars and 00/100 cents (\$40,980.00); and
- ii. Sixty percent (60%) of the remaining actual preliminary engineering costs for the Project, estimated at One Hundred Fifty-Three Thousand Nine Hundred Eleven Dollars and 40/100 Cents (\$153,911.40).

The estimated cost to the County under this Agreement is One Hundred Ninety-Four Thousand Eight Hundred Ninety-One Dollars and 40/100 Cents (\$194,891.40).

D. **Progressive Reimbursement.** The County shall reimburse the Village for the County's share of preliminary engineering costs as funds are expended by the Village. The Village may seek reimbursement from the County not more frequently than on a monthly basis. The County shall pay invoices from the Village within forty-five (45) calendar days of receipt thereof.

E. **Required Documentation.** In order to receive reimbursement from the County, the Village shall submit the following documentation along with any invoice:

- i. A cover letter addressed to the Department's Project Studies Manager, including the name of the Project and its associated section number;
- ii. Copies of all canceled checks paid to the consultant(s) (or copies of the associated bank ledgers reflecting the payments); and
- iii. Copies of all associated invoices submitted to the Village by the consultant(s) for the services rendered.

F. **Ineligible Costs.** The County shall not reimburse the Village for any costs or expenditures that are:

- i. Contrary to the provisions of this Agreement;
- ii. Not directly related to carrying out preliminary engineering services for the Project;

- iii. Related to the resurfacing of the bicycle path between Salt Creek and New Wilke Road;
 - iv. Associated with lighting, landscaping, or aesthetic improvements;
 - v. Not paid by the Village or its consultant;
 - vi. Of a regular and continuing nature, including, but not limited to, administrative costs, staff and overhead costs, rent, utilities and maintenance costs; and/or
 - vii. Incurred without the consent of the County after the County has given the Village written notice of suspension or termination of any or all of the County's obligations under this Agreement.
- G. **Additional Work.** Either Party may request in writing that additional work be added to the Project. Provided that the additional work does not unreasonably delay the Project schedule, the Village shall cause said additional work to be included in the Project. Additional work shall be paid for by force account or agreed unit price. Each Party shall pay the costs of additional work for their associated work items.
- H. **Substitutions/Substitute Work.** Either Party may request in writing that bid work or materials be substituted with different work or materials. Provided that the substitute work and/or materials do not unreasonably delay the Project schedule, the Village shall cause said substitute work and/or materials to be included in the Project. Each Party shall pay the costs of substitutions for their associated work items.
- I. **Funding Breakdown.** A funding breakdown is incorporated into and made a part of this Agreement and attached as Exhibit A.

• **SECTION 3. GENERAL CONDITIONS**

- A. **Binding Agreement.** This Agreement shall be binding on and inure to the benefit of the Parties and their permitted successors and assigns, except that a Party shall not assign its obligations under this Agreement without the other Party's express written consent, such consent not to be unreasonably withheld or delayed.
- B. **Compliance with Laws, Rules, and Regulations.** The Parties shall at all times observe and comply with all applicable federal, state, and local laws and regulations, as amended from time to time, in carrying out the terms and conditions of this Agreement.
- C. **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 their 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.

- D. **Conflict with Exhibits.** In the event of a conflict between a term or provision in this Agreement and a corresponding term or provision in any attached exhibit(s), the term or provision in this Agreement shall control.
- E. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.
- F. **County Section Number.** The Project is hereby designated as County section number 23-A5912-00-PV. The Parties shall include County section number 23-A5912-00-PV on all Project-related submittals, including, but not limited to, written correspondence and invoices.
- G. **Effective Date.** The Effective Date of this Agreement shall be the date that the last authorized signatory signs and dates the Agreement, which date shall be inserted on the first page of this Agreement.
- H. **Electronic Signatures.** A signed copy of this Agreement transmitted by facsimile, electronic mail or other means of electronic submission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement.
- I. **Entire Agreement.** This Agreement sets forth the entire understanding between the Parties with respect to the subject matter thereof, and supersedes all prior agreements or understandings with respect to its subject matter.
- J. **Force Majeure.** Neither Party shall be liable for failing to fulfill any obligation under this Agreement if such failure is caused by an event beyond such Party's reasonable control and which is not caused by such Party's fault or negligence. Such events shall include but not be limited to acts of God, acts of war, fires, lightning, earthquakes, floods, labor strikes or walkouts, epidemics, pandemics, or riots.
- K. **Governing Law and Venue.** This Agreement shall be exclusively governed by and construed in accordance with the laws of the State of Illinois, without reference to or use of any conflicts-of-laws provisions. The Parties irrevocably submit to the exclusive jurisdiction and venue of the Circuit Court of Cook County or the United States District Court for the Northern District of Illinois for the purposes of any and all proceedings arising out of this Agreement, to the exclusion of all other courts and venues, and both Parties waive any objection to such jurisdiction and venue.

- L. **Inactivity.** The County may terminate this Agreement if the preliminary engineering agreement for the Project is not executed by the Village within eighteen (18) months of the Effective Date of this Agreement.
- M. **Indemnification.** The Village agrees to defend, indemnify and hold the County and its commissioners, officers, directors, employees, contractors, agents and representatives harmless from and against any and all losses, claims, demands and damages, including reasonable attorneys' fees and litigation expenses, arising out of, in whole or in part, or in connection with or in consequence of any act or omission on the part of the Village, or its appointed officials, contractors, consultants, employees, agents and representatives, that are related to their obligations under this Agreement.
- N. **Modifications.** No modification of this Agreement shall be valid unless made in writing and duly signed by the Department's Superintendent and an authorized representative of the Village.
- O. **No Third-Party Beneficiaries.** This Agreement is not intended to benefit any person, entity or municipality not a party to this Agreement, and no other person, entity or municipality shall be entitled to be treated as beneficiary of this Agreement. This Agreement is not intended to and does not create any third-party beneficiary or other rights in any third person or party, including, but not limited to, any agent, contractor, subcontractor, consultant, volunteer or other representative of any Party. No agent, employee, contractor, subcontractor, consultant, volunteer or other representative of any Party shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer or other representative of the other.
- P. **Notices.** All 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: Katie Bell, P.E.
Project Studies Manager
Cook County Department of Transportation and Highways
69 W. Washington Street, 23rd Floor
Chicago, IL 60602
E-mail: Katie.Bell@cookcountyil.gov

To the Village: Aldair Vargas, P.E.
Civil Engineer II
Village of Arlington Heights
33 S. Arlington Heights Road
Arlington Heights, IL 60005
E-mail: avargas@vah.com

- Q. **Recitals.** The introductory recitals included at the beginning of this Agreement are agreed to and incorporated into and made a part of this Agreement.
- R. **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; canceled checks; bank statements; schedules containing comparisons of budgeted amounts and actual expenditures; and construction progress schedules, if applicable.
- S. **Reviews and Audits.** The Village shall give the County access to all books, accounts, records, reports and files pertaining to the administration, receipt and use of County funds under this Agreement to necessitate any reviews or audits.
- T. **Section Headings.** The descriptive section and subsection headings used in this Agreement are for convenience only and do not control or affect the meaning or construction of any of the provisions thereof.
- U. **Severability.** In the event any portion of this Agreement is held to be invalid or unenforceable, such portion shall be construed as nearly as possible to reflect the original intent of the Parties, or if such construction cannot be made, such provision or portion thereof shall be severable from this Agreement, provided that the same shall not affect in any respect whatsoever the remainder of this Agreement.
- V. **Suspension; Early Termination.** Subject to Section 3.J. above, 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 notice 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. Temporarily withhold payments pending correction of deficiencies by the Village;
 - iv. Disallow all or part of the cost of the activity not in compliance; or
 - v. Pursue other remedies legally available.
- W. **Term of Agreement.** Unless otherwise agreed to by the Parties in a writing signed by the Department's Superintendent and an authorized representative of the Village, this

Agreement terminates upon approval of the final PDR by IDOT and payment by the County of the final invoice submitted by the Village, or November 30, 2027, whichever date is earlier.

- X. **Waivers of Default.** No waiver of any provision or breach of this Agreement (i) shall be effective unless made in writing, or (ii) shall operate as or be construed to be a continuing waiver of such provision or breach.

(signature page to follow)

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated.

EXECUTED BY COUNTY OF COOK:

EXECUTED BY VILLAGE OF ARLINGTON HEIGHTS:

Toni Preckwinkle
President
Cook County Board of Commissioners

Thomas Hayes
Village President
Village of Arlington Heights

This ____ day of _____, 2023

This ____ day of _____, 2023

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

Type of Work	Village Share	County Share	Total
Preliminary Engineering	0% of costs associated with the traffic signal replacement at Euclid Avenue and Wilke Road 40% of balance estimated at \$102,607.60	100% of costs associated with the traffic signal replacement at Euclid Avenue and Wilke Road estimated at \$40,980 60% of balance estimated at \$153,911.40	\$297,499 ¹

¹ This amount does not include any preliminary engineering costs relating to the resurfacing of the bicycle path between Salt Creek and New Wilke Road.