

DRAFT INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE AND
THE VILLAGE OF WESTMONT
FOR
CH 15/CASS AVENUE IMPROVEMENTS
(FROM THE NORTH INTERSECTION OF 35TH STREET
TO INDIAN TRAIL ROAD)
MEDIAN AND RIGHT-OF-WAY MAINTENANCE

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this ____ day of _____, 2018, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the Village of Westmont (hereinafter referred to as the "VILLAGE"), a municipal corporation with offices at 31 W. Quincy Street, Westmont, Illinois. The COUNTY and the VILLAGE are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the VILLAGE has prepared corridor beautification plans for its 35th Street and Cass Avenue Gateway project from the north Intersection of 35th Street to Indian Trail Road including installation of a raised median, street lighting, trees, plantings, monument signage, and drip irrigation (hereinafter referred to as the "PROJECT"); and

WHEREAS, CH 15/Cass Avenue within the PROJECT limits is under the COUNTY's jurisdiction; and

WHEREAS, the COUNTY and the VILLAGE desire to establish the parties' mutual future maintenance responsibilities with respect to the PROJECT; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/1-101 et seq.) and the VILLAGE by virtue of its power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 et seq.) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 et seq.).

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each party to the other, the parties do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION.

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 SCOPE OF PROJECT

- 2.1. The COUNTY and VILLAGE agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 2.2. The PROJECT includes median and right-of-way (both sides) improvements on CH 15/Cass Avenue from the north intersection of 35th Street to Indian Trail Road including installation of a raised median, street lighting, trees, plantings, monument signage, and drip irrigation. .

3.0 RESPONSIBILITIES OF THE VILLAGE

- 3.1. The VILLAGE shall act as the lead agency and be responsible for completing all preliminary and design engineering, awarding of contract(s), utility coordination, construction engineering and construction for the PROJECT. The VILLAGE shall be responsible for securing/paying for all PROJECT costs.

3.2. Both the COUNTY and VILLAGE agree that the VILLAGE shall manage the contract for the construction of the PROJECT. The VILLAGE agrees to manage the PROJECT in the best interest of both parties and to consult with, and keep advised, officials of the COUNTY regarding the progress of the PROJECT and any problems encountered or changes recommended.

4.0 RESPONSIBILITIES OF THE COUNTY

4.1. The parties agree that this AGREEMENT shall serve in lieu of a separate DuPage County Division of Transportation permit for the median and right-of-way (both sides) improvements on CH 15/Cass Avenue as referenced on Exhibit A attached hereto and made a part hereof as a part of the PROJECT.

5.0 MAINTENANCE

5.1. Upon completion of the PROJECT, the VILLAGE shall be responsible for future maintenance of the PROJECT. Maintenance responsibilities for the median and right-of-way (both sides) improvements referenced on Exhibit A, shall include, but are not limited to, maintenance of the drip based irrigation system to avoid overspray onto the roadway surface as approved by the County Engineer or his designee, non-traffic control signs, street lighting, routine day-to-day maintenance to include trimming/pruning of trees, flowers and shrubs, mowing, debris (garbage) removal, graffiti removal and weed and invasive species control. Any changes to future maintenance of the median and right-of-way (both sides) improvements as referenced on Exhibit A must be amended pursuant to Section 11.0 hereinafter. The parties agree that no claim based upon any purported oral change shall be made.

5.3. In addition to the maintenance responsibilities referenced hereinabove and/or referenced on Exhibit A, the VILLAGE shall at all times maintain the median and right-of-way (both sides) improvements in good, clean, safe and healthy conditions with the advice and consent of the COUNTY.

6.0 INSURANCE REQUIREMENTS

6.1 At all times during the period of this AGREEMENT, the VILLAGE and, if applicable, their contractor shall maintain the following insurance coverage(s), or be self-insured to cover the following:

- (a) **Worker's Compensation Insurance** in the statutory amounts.
- (b) **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and one million dollars (\$1,000,000.00) each employee/disease.
- (c) **Commercial (Comprehensive) General Liability Insurance** with a limit of not less than three million dollars (\$3,000,000) total; including limits of not less than two million (\$2,000,000) dollars per occurrence and one million (\$1,000,000) dollars excess liability in the annual aggregate injury/property damage.
- (d) **Commercial (Comprehensive) Automobile Liability Insurance** with minimum limits of at least one million (\$1,000,000) dollars Combined Single Limit (Each Accident).
- (e) The coverage limits required under subparagraphs (c) and (d) above may be satisfied through a combination of primary and excess coverage. The VILLAGE shall not allow any contractor to commence work until all the insurance coverage(s) required under this insurance section have been obtained. Satisfactory evidence of contractor's insurance including endorsements shall be provided by the VILLAGE to the COUNTY immediately upon request. Additionally, the VILLAGE shall include in all of its contracts a statement expressly declaring the COUNTY to be a third-party beneficiary of the insurance requirements provided for in this insurance section.
- (f) The VILLAGE shall require all approved contractors, anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable under this AGREEMENT, to

acquire and maintain the insurance as set forth in Paragraph 7. (a) to (d) of the AGREEMENT. The COUNTY retains the right to obtain evidence of contractor's insurance coverage at any time. The VILLAGE will ensure that its contractors and subcontractors name the COUNTY as an additional insured as set out in the paragraphs below. The VILLAGE understands that it is to the VILLAGE's benefit to diligently enforce this insurance requirement as the VILLAGE shall indemnify the COUNTY, its officials, officers, agents, and employees from all liability, in its performance under this AGREEMENT pursuant to the terms in Paragraph 6 herein."

- (g) The insurance required to be purchased and maintained by the VILLAGE and if applicable, their contractor, shall be provided by an insurance company acceptable to the COUNTY, and licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the VILLAGE is satisfying insurance required through a combination of primary and excess coverage, the VILLAGE shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that affect. The VILLAGE shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.
- (h) It is the duty of the VILLAGE to immediately notify the COUNTY if any insurance required under this AGREEMENT has been cancelled, materially changed, or renewal has been refused, and the

VILLAGE shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the required insurance coverage, the COUNTY shall notify the VILLAGE that the VILLAGE can proceed with the work that is a part of this AGREEMENT. Failure to provide and maintain the required insurance coverage could result in the immediate cancellation of this AGREEMENT, and the VILLAGE shall accept and bear all costs that may result from the cancellation of this AGREEMENT due to the VILLAGE's or if applicable, their contractor's failure to provide and maintain the required insurance.

- (i) The VILLAGE's and if applicable, their contractor's insurance as required by paragraphs (c) and (d) above shall name the COUNTY, its officers, and employees as additional insured parties. The Certificate of Insurance/endorsements shall state: "The County of DuPage, its officers, and employees are named as additional insured(s) as defined in the Commercial (Comprehensive) General Liability Insurance and Commercial (Comprehensive) Automobile Liability Insurance policies with respect to claims arising from the VILLAGE's performance under this AGREEMENT. The Endorsements must also be provided naming the County of DuPage c/o DuPage County Division of Transportation, 421 N. County Farm Road, Wheaton, IL 60187, as an additional insured. This additional insured is to be on a primary and non-contributory basis."
- (j) If the VILLAGE will be using their own forces for the work covered in this AGREEMENT, the VILLAGE shall inform the COUNTY in writing following execution of this AGREEMENT. If, however, the VILLAGE will be hiring a contractor for the work covered in this AGREEMENT, the VILLAGE shall inform the COUNTY in writing following execution of this AGREEMENT and shall provide a copy of said contract to the COUNTY upon request.

7.0 INDEMNIFICATION

7.1. The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the VILLAGE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.1.1. The COUNTY and the VILLAGE acknowledge that the COUNTY has made no representations, assurances or guaranties regarding the COUNTY'S or any successor's or assign's authority and legal capacity to indemnify VILLAGE as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the VILLAGE, or any person or entity claiming a right through VILLAGE, or in the event of change in the laws of the State of Illinois governing COUNTY'S or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties rights and obligations provided for therein.

7.2. The VILLAGE shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, the VILLAGE'S negligent or willful acts, errors or omissions in its performance under

this AGREEMENT to the extent permitted by law. The VILLAGE does not hereby waive any defenses or immunity available to it with respect to third parties.

- 7.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing the COUNTY, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. The COUNTY'S participation in its defense shall not remove VILLAGE'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
- 7.4. Neither party waives, by these indemnity requirements, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or otherwise available to it, or to the other party, under the law."
- 7.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The VILLAGE'S indemnification shall survive the completion of the PROJECT and the VILLAGE'S maintenance responsibilities as set forth in Section 5.0 hereof.

8.0 GENERAL

- 8.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address median improvements on CH 15/Cass Avenue and no changes to existing roadway and appurtenance maintenance and/or jurisdiction are proposed.
- 8.2 Whenever in this AGREEMENT, approval or review of either the COUNTY or VILLAGE is provided for, said approval or review shall not be unreasonably delayed or withheld.

- 8.3 In the event of a dispute between the COUNTY and VILLAGE representatives in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Engineer and the Village Manager shall meet and resolve the issue.
- 8.4 No later than fourteen (14) days after the execution of this AGREEMENT, each party shall designate a representative to the other party who shall serve as the full time representative of said party during the carrying out of the construction of the PROJECT. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the work covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 8.5 This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

9.0 ENTIRE AGREEMENT

- 9.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT, and supersedes all previous communications or understandings whether oral or written.

10.0 NOTICES

- 10.1. Any notice required shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, or sent by confirmed facsimile or email, to the party's address. The address of each party is as specified below. Either party may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

Village of Westmont
31 W. Quincy Street
Westmont, IL 60559
ATTN: Steve May, Village Manager

Phone: 630.981.6200
Facsimile: 630.560.4885
Email: smay@westmont.il.gov

County of DuPage
Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Christopher C. Snyder, P.E.
Director of Transportation/County Engineer
Phone: 630.407.6900
Facsimile: 630.407.6901
Email: Christopher.snyder@dupageco.org

11.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

11.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

12.0 NON-ASSIGNMENT

12.1. This AGREEMENT shall not be assigned by either party without the written consent of the other party, whose consent shall not be unreasonably withheld.

13.0 AUTHORITY TO EXECUTE/RELATIONSHIP

13.1. The parties hereto have read and reviewed the terms of this AGREEMENT and by their signature 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.

13.2. This AGREEMENT shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.

14.0 GOVERNING LAW

14.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

14.2. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

15.0 SEVERABILITY

15.1. In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

16.0 FORCE MAJEURE

16.1. Neither party shall be liable for any delay or non performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

COUNTY OF DU PAGE

VILLAGE OF WESTMONT

Daniel J. Cronin, Chairman
DuPage County Board

Ron Gunter, Mayor

ATTEST:

ATTEST:

Paul Hinds
County Clerk

Virginia Szymiski
Village Clerk

Attach Exhibit A