

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF
COUNTY AND THE BLACKBERRY TOWNSHIP HIGHWAY
COMMISSIONER FOR THE IMPROVEMENT OF PART OF SEAVEY ROAD**

This AGREEMENT is entered into this _____ day of July AD, 2012, by and between the County of Kane, a body corporate and politic of the State of Illinois, (hereinafter referred to as the "COUNTY") and the Blackberry Township Highway Commissioner, a publically elected officer of Blackberry Township, Kane County, Illinois, (hereinafter referred to as the "TOWNSHIP"). The COUNTY and the TOWNSHIP are sometimes hereinafter individually referred to as a "PARTY" and collectively referred to as the "PARTIES".

WITNESSETH:

WHEREAS, the Illinois Constitution of 1970, Article VII, Section 10 and 5 ILCS 220/1, *et seq.* authorizes COUNTY and TOWNSHIP to cooperate in the performance of their respective duties and responsibilities by contract and other agreements; and

WHEREAS, the COUNTY and TOWNSHIP desire to cooperate among themselves to accomplish the improvement of Seavey Road a highway under the jurisdiction of the TOWNSHIP (hereinafter referred to as the "PROJECT"), by making the following improvements thereto:

Repaving of slightly more than one mile of the existing paved bituminous surface of Seavey Road from its intersection with Finley Road to its intersection with the entrance of the COUNTY's gravel pit/maintenance facility along with various bridge repairs therein and all other work necessary to complete the PROJECT in accordance with the approved plans and specifications;

and

WHEREAS, the PROJECT is deemed by COUNTY and TOWNSHIP to be of immediate benefit to the residents of the County of Kane and Blackberry Township and the State of Illinois in that it shall facilitate the safe and efficient movement of traffic and shall provide for the safety of the motoring public; and

WHEREAS, the COUNTY and TOWNSHIP have determined a mutually satisfactory allocation of responsibilities and costs for said PROJECT as set forth in this AGREEMENT: and

WHEREAS, the COUNTY and TOWNSHIP, by this AGREEMENT, desire to determine and establish their respective responsibilities toward engineering, right of way acquisition, utility relocation, construction, funding and maintenance of the PROJECT as proposed; and

WHEREAS, the COUNTY and TOWNSHIP, by virtue of their powers as set forth in the Illinois Highway Code (605 ILCS 5/5-504) and (605 ILCS 5/6-201.10-1) are authorized by statute to enter into this AGREEMENT.

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

I. ENGINEERING

- A.** COUNTY agrees to perform or cause to be performed preliminary and final design engineering, obtain necessary surveys, and prepare the final plans and specifications for the PROJECT.
- B.** The TOWNSHIP shall review the plans and specifications which impact TOWNSHIP's highway jurisdiction within thirty (30) calendar days of receipt thereof. After review, TOWNSHIP shall send a letter to COUNTY indicating its approval, or its disapproval thereof. Approval by TOWNSHIP shall mean TOWNSHIP agrees with all specifications in the plans, including alignment and location of the PROJECT improvements which impact TOWNSHIP's highway jurisdiction. In the event of disapproval, TOWNSHIP will detail in writing its objections to the proposed plans and specifications for review and consideration by COUNTY. In the event that TOWNSHIP does not comment on the plans and specifications with thirty (30) calendar days, the plans and specifications shall be deemed approved by TOWNSHIP.
- C.** Any dispute concerning the plans and specifications shall be resolved by the Director of Transportation of the COUNTY and the Highway Commissioner of the TOWNSHIP.
- D.** The final approved plans and specifications for the PROJECT shall be promptly delivered to the TOWNSHIP by the COUNTY.
- E.** The COUNTY agrees to assume overall PROJECT responsibility, including assuring that all permits (U.S. Army Corps of Engineers, Office of Natural Resources, Environmental Protection Agency, etc.) and joint participation and/or force account agreements (County, Township, Municipal, Railroad, Utility, etc.), as may be required by the PROJECT, are secured by the Parties hereto in support of general PROJECT schedules and deadlines. All Parties hereto agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of said permits and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT.

II. RIGHT OF WAY

- A.** The COUNTY and the TOWNSHIP acknowledge and agree that no additional right of way is required for the successful completion of the PROJECT.
- B.** It is understood that neither the COUNTY nor TOWNSHIP has consented in this AGREEMENT to the transfer of any interest in COUNTY's or TOWNSHIP's property or rights of way.

III. UTILITY RELOCATION

- A.** The COUNTY and the TOWNSHIP acknowledge and agree that no adjustment or relocation of public or private utilities are required as part of the PROJECT.

IV. CONSTRUCTION

- A.** The COUNTY shall advertise and receive bids, obtain TOWNSHIP concurrence as to the amount of bids for work to be funded wholly or partially by the TOWNSHIP before award, award the contract(s), provide construction engineering inspections and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications, subject to reimbursement by the TOWNSHIP as hereinafter stipulated.
- B.** After award of the construction contract(s), any proposed changes from the plans and specifications that affect the TOWNSHIP shall be submitted to the TOWNSHIP for approval prior to commencing such work. The TOWNSHIP shall review the proposed changes and indicate its approval or disapproval thereof in writing. If the proposed change to the plans and specifications are not acceptable, the TOWNSHIP shall detail in writing its specific objections. If the COUNTY receives no written response from the TOWNSHIP within fifteen (15) calendar days after delivery to the TOWNSHIP of the proposed change, the proposed change shall be deemed approved by the TOWNSHIP.
- C.** After award of the construction contract(s) for the PROJECT, assuming there are no proposed changes from the plans and specifications that affect the TOWNSHIP, the COUNTY shall provide no less than five (5) calendar day's written notice to the TOWNSHIP prior to commencement of work on the PROJECT.
- D.** The COUNTY shall require its contractor(s) working within the TOWNSHIP's rights of way to comply with the indemnification provision contained in the Illinois Department of Transportation's Standard Specifications for Road and Bridge Construction subsequently in effect.

- E.** The COUNTY shall require that the TOWNSHIP, and its agents, officers, directors and employees are included as additional insured in the General Liability Insurance the COUNTY requires of its contractor(s) and that the TOWNSHIP will be added as an additional insured party on all performance bonds required of the contractor(s). These requirements shall be included in the Special Provisions of the construction contract(s). The COUNTY will also require that the COUNTY's contractor(s) maintain the TOWNSHIP insurance documentation of said insurance throughout the construction of the PROJECT. Said insurance documentation will include copies of policies or insurance certificates including copies of the applicable Additional Insured endorsements as required by this AGREEMENT.
- F.** The TOWNSHIP and its authorized agents shall have all reasonable rights of inspection (including pre-final and final inspection) during the progress of work included in the PROJECT that affects the TOWNSHIP's highway system. The TOWNSHIP may assign personnel to perform inspections on behalf of the TOWNSHIP of all work included in the PROJECT that affects the TOWNSHIP's highway system, and will deliver written notices to the County Engineer of the COUNTY advising the COUNTY as to who has been assigned to perform said inspections. The TOWNSHIP, on its own behalf and on the behalf of any entity working on behalf of the TOWNSHIP pursuant to this AGREEMENT, to the extent allowable by law, agrees to indemnify and hold harmless the COUNTY, its officers, directors, employees and agents from and against, and shall pay all damages, costs and expenses, including attorneys' fees (including the internal costs related to the State's Attorney of Kane County, Illinois) incurred by the indemnified PARTIES with respect to any claim arising out of or relating to bodily injury, including death, or property damage caused by the TOWNSHIP's or its employees', agents' or representatives' acts or omissions in the performance of the TOWNSHIP 's obligations pursuant to this AGREEMENT.
- G.** Notices required to be delivered by either PARTY pursuant to this AGREEMENT shall be delivered as indicated in Section IV of this AGREEMENT.
- H.** No inspections or approvals of the specifications or the work by the TOWNSHIP or its employees, officers or agents shall relieve the COUNTY's contractor(s) of responsibility and liability for the proper performance of the work as determined by the COUNTY. The COUNTY inspections and approvals shall not be considered a waiver of any right the TOWNSHIP may have pursuant to this AGREEMENT. All TOWNSHIP communications and correspondence with the COUNTY's contractor(s) or relating to a contract shall be through the COUNTY, unless otherwise specifically approved by the County Engineer of Kane County and the Highway Commissioner of the TOWNSHIP. In the event a TOWNSHIP representative discovers TOWNSHIP related work that is not being performed or has not been

performed in accordance with the approved plans and specifications, the representative shall promptly notify in writing the County Engineer of Kane County or his duly designated representative.

V. FINANCIAL PARTICIPATION

- A. Except as otherwise identified herein, COUNTY agrees to pay all PROJECT related engineering, construction engineering and construction costs subject to reimbursement by the TOWNSHIP as hereinafter stipulated.
- B. It is mutually agreed by the PARTIES hereto that the estimated cost of the PROJECT to the TOWNSHIP is \$150,900.00. Notwithstanding anything herein to the contrary, the PARTIES acknowledge and agree that the estimated cost to TOWNSHIP as set forth herein is subject to modification depending on TOWNSHIP's share of the final actual cost of the PROJECT. The PARTIES' respective estimated shares of the cost of construction of the PROJECT shall be determined as follows:

	COUNTY	TOWNSHIP	Total
Resurfacing	\$372,600.00	\$41,400.00	\$414,000.00
Bridge Repair	\$109,500.00	\$109,500.00	\$219,000.00
<u>Engineering</u>	<u>\$25,000.00</u>	<u>\$0.00</u>	<u>\$25,000.00</u>
TOTAL	\$507,100.00	\$150,900.00	\$658,000.00

- C. The TOWNSHIP agrees that upon award of the contract for the PROJECT and receipt of an invoice, for all work completed, from the COUNTY, the TOWNSHIP will pay to the COUNTY, an amount equal to 100% of its obligation incurred under this AGREEMENT, based upon actual bid prices. The TOWNSHIP will pay to the COUNTY the remainder of its obligation, if any, in a lump sum, upon completion of the PROJECT, based on final costs, within 45 days of receipt of an invoice therefor from the COUNTY.
- D. TOWNSHIP and COUNTY shall maintain, for a minimum of three (3) years after the completion of the PROJECT, adequate books, records, and supporting documents to verify the amounts, recipients, and uses of all disbursements of funds passing in conjunction with this AGREEMENT. All books, records, and supporting documents related to the PROJECT shall be available for review and audit by the Auditor of COUNTY and the Auditor of TOWNSHIP. TOWNSHIP and the COUNTY agree to cooperate fully with

any audit conducted by the Auditor of the other PARTY and to provide full access to all relevant materials.

- E.** Either the COUNTY or the TOWNSHIP may request, after the construction contract(s) are let by the COUNTY, that supplemental work that increases the total cost of the PROJECT or more costly substitute work be added to the construction contract(s). The COUNTY will cause said supplemental work or such substitute work to be added to the construction contract(s), provided that said work will not delay construction of the PROJECT. The PARTY requesting or causing said supplemental work or more costly substitute work shall pay the entire actual cost of said supplemental work or more costly substitute work in full.

VI. GENERAL PROVISIONS

- A.** It is understood and agreed by the PARTIES hereto, that the TOWNSHIP shall have and shall continue to have jurisdiction of that part of Seavey Road that is part of the PROJECT. The COUNTY shall have no jurisdiction over any part of Seavey Road. For the purpose of this AGREEMENT, jurisdiction shall mean the authority and obligation to administer, control, construct, maintain, and operate.
- B.** Wherever in this AGREEMENT approval or review by either the COUNTY or the TOWNSHIP is provided for, said approval or review shall not be unreasonably delayed or withheld.
- C.** Not later than fourteen (14) calendar days after execution of this AGREEMENT each PARTY shall designate in writing a representative who shall serve as the full time representative of the said PARTY during the carrying out of the construction of the PROJECT. Each representative shall have authority, on behalf of such PARTY, to make decisions relating to the work covered by this AGREEMENT. Representatives may be changed, from time to time, by subsequent written notice. Each representative shall be readily available to the other PARTY.
- D.** In the event of a dispute between the COUNTY and the TOWNSHIP in the carrying out of the terms of this AGREEMENT, the County Engineer of Kane County and the TOWNSHIP's Highway Commissioner shall meet and resolve the issue.
- E.** 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 and the same instrument.
- F.** Under penalties of perjury, COUNTY certifies that its correct Federal Tax Identification number is _____ and it is doing business

as a governmental entity, whose mailing address is the Kane County Division of Transportation, 41 W 011 Burlington Road, St. Charles, Illinois 60175.

G. Under penalties of perjury, TOWNSHIP certifies that its correct Federal Tax Identification number is 36-6006203 and it is doing business as a governmental entity, whose mailing address 43W390 Main St. Elburn, Illinois 60119.

H. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES hereto.

I. This AGREEMENT and the covenants contained herein shall become null and void in the event the contract covering the construction work contemplated herein is not awarded within five (5) years subsequent to the date of execution of this AGREEMENT.

J. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto and their respective successors and approved assigns.

K. It is agreed that the laws of the State of Illinois shall apply to this AGREEMENT.

L. All notices shall be in writing and shall be personally delivered or mailed to the following persons at the following addresses:

To TOWNSHIP: The Blackberry Township Highway Commission
 43W390 Main Street
 Elburn, Illinois 60119
 Attn: Highway Commissioner

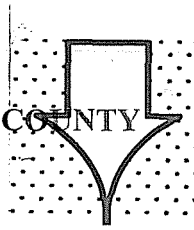
To COUNTY: The Kane County Division of Transportation
 41 W 011 Burlington Road
 St. Charles, Illinois 60175.
 Attn: Director of Transportation/COUNTY
 County Engineer

N. The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.

IN WITNESS THEREOF, the parties have executed this AGREEMENT on the dates indicated.

**SIGN
HERE**

THE COUNTY OF COUNTY



By: *Korey McManis*
County Board Chairman

Attest: _____

Date: JULY 12, 2012

Blackberry Township Road District

By: *Roy Fee*
Township Highway Commissioner

Attest: *Lisa L. Hodge*

Date: 6-20-2012