

INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF ENGINEERING SERVICES FOR THE TOWN OF CORTLAND, ILLINOIS IN DEKALB COUNTY, ILLINOIS

THIS INTERGOVERNMENTAL AGREEMENT (*"the Agreement"*) is entered into by and between the County of DeKalb, a unit of local government of the State of Illinois (*"DeKalb County"*) and the Town of Cortland, a unit of local government of the State of Illinois (*"Town of Cortland"*).

WITNESSETH:

WHEREAS, the Constitution of the State of Illinois of 1970, Article VII, Section 10 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and

WHEREAS, Town of Cortland and DeKalb County are units of local government within the meaning of Article VII, Section 1 of the Illinois Constitution of 1970 who are authorized to enter into intergovernmental agreements pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, the Town of Cortland is desirous of DeKalb County to provide engineering services for general maintenance and construction projects for the maintenance and repairs of certain streets within the jurisdiction of the Town of Cortland; and

WHEREAS, DeKalb County and Town of Cortland have determined that in regard to the general maintenance and construction projects, which DeKalb County shall handle all facets of the bidding and contracting process; and

WHEREAS, the estimated yearly project costs will be provided with the submission of BLR 14222, Estimate of Maintenance Costs or other appropriate forms, and will consist of general maintenance, construction, maintenance engineering, preliminary engineering, and construction engineering estimates as appropriate for the project. For any joint hot mix asphalt resurfacing project between the Town of Cortland and DeKalb County, a total fee for Preliminary Engineering and Construction Engineering shall be five percent of the Town of Cortland's responsibility of the final project cost. For any general maintenance project with the Town of Cortland, a total fee for Preliminary Engineering and Construction Engineering shall be five percent of the Town of Cortland's responsibility of the final project cost. For any joint construction project between the Town of Cortland and DeKalb County, a Preliminary Engineering fee of ten percent and Construction Engineering fee of five percent shall be based on the Town of Cortland's responsibility of the final project cost. Any additional material testing by a third party shall be paid for by the Town of Cortland.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereafter set forth, the parties agree as follows:

Section 1. The foregoing preambles are hereby incorporated into this Agreement as if fully restated in this Section 1.

Section 2. DeKalb County's responsibilities are as follows:

- a. DeKalb County will prepare or cause to be prepared project plans, specifications and bid documents.
- b. DeKalb County will advertise and award a contract to the low responsible bidder for the general maintenance and construction projects requested by the Town of Cortland in coordination with the County's general maintenance and construction projects. DeKalb County will be responsible for supervising the completion of these general maintenance and construction projects by the contractor retained by them.
- c. DeKalb County will ensure that the Project(s) comply with the rules and regulations directed by the Illinois Department of Transportation ("*IDOT*"), Local Road and Streets Manual and all other applicable local ordinances, state and federal laws.
- d. DeKalb County will comply with all competitive bidding and selection requirements necessary for completion of the Project(s) pursuant to applicable state and federal laws.
- e. Upon Project(s) completion, DeKalb County shall provide the Town of Cortland with a pay estimate for the total amount of final Project(s) costs to be paid by the Town of Cortland.
- f. DeKalb County shall release the completed project(s) to the Town of Cortland's jurisdiction for continued maintenance.

Section 3. Town of Cortland agrees to the following:

- a. Town of Cortland shall appropriate funds to pay for the Town of Cortland Project(s) Costs.
- b. Town of Cortland will concur in the award of the Project(s) to the qualified low bidder.
- c. Town of Cortland agrees to the implementation of the Project(s) by DeKalb County.

- d. Town of Cortland agrees to reimburse DeKalb County the entire Town of Cortland Project(s) Costs after receipt of an invoice (pay estimate) for same and approval for payment through routine processing by the Town Board at their next scheduled meeting following receipt.

Section 4. General Terms & Conditions:

- a. The failure of the Town of Cortland to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations with respect to this Agreement, shall constitute a Default by Town of Cortland hereunder. Further, in the event Town of Cortland shall fail to timely make a scheduled payment, which Town of Cortland is required to perform under this Agreement, DeKalb County shall notify Town of Cortland in writing and allow Town of Cortland thirty (30) days from the date of receipt of the notice to cure the default. If the default is not cured within 30 days of receipt of such notice, DeKalb County will consider Town of Cortland to be in Default under this Agreement. Upon the occurrence of a Default, DeKalb County may, by an action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to the specific performance of the agreement contained herein. Town of Cortland further agrees to reimburse DeKalb County for all attorneys' fees and costs incurred by DeKalb County related to DeKalb County's enforcement of this Agreement.
- b. The failure of DeKalb County to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations with respect to this Agreement, shall constitute a Default by DeKalb County hereunder. Upon the occurrence of a Default, the Town of Cortland may, by an action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to the specific performance of the agreement contained herein. DeKalb County further agrees to reimburse Town of Cortland for all attorneys' fees and costs incurred by Town of Cortland related to Town of Cortland's enforcement of this Agreement.
- c. This Agreement and the rights of the parties hereunder may not be assigned (except by operation of law), and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements.
- d. All notices required or permitted hereunder shall be in writing and may be given by either (a) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and certified with the return receipt requested, (b) delivering the same in person, or (c) telecopying the same with electronic confirmation of receipt.

If to DeKalb County: DeKalb County Engineer
1826 Barber Greene Road
DeKalb, Illinois 60115

If to Town of Cortland: Town Engineer
PO Box 519, 59 S Somonauk Road
Cortland, Illinois 60112

Or such address or counsel as any party hereto shall specify in writing pursuant to this Section from time to time.

- e. This Agreement shall be interpreted and enforced under the laws of the State of Illinois. Any legal proceeding related to enforcement of this Agreement shall be brought in the Circuit Court of Illinois, Twenty-Third Judicial Circuit, State of Illinois. In case any provision of this Agreement shall be declared and/or found invalid, illegal or unenforceable by a court of competent jurisdiction, such provision shall, to the extent possible, be modified by the court in such manner as to be valid, legal and enforceable so as to most nearly retain the intent of the parties, and if such modification is not possible, such provision shall be severed from this Agreement, and in either case the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be impaired thereby.
- f. Town of Cortland and DeKalb County agree that the waiver of, or failure to enforce, any breach of this Agreement by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this Agreement. Further, the failure to enforce any particular breach shall not bar or prevent the remaining party from enforcing this Agreement with respect to a different breach. No endorsement or statement on any check or correspondence accompanying a check for payment shall be deemed as an accord and satisfaction and DeKalb County may accept such payment without prejudice to its rights to recover the balance of Town of Cortland Project(s) Costs still owed.
- g. This Agreement may be executed in counterparts (including facsimile signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement.
- h. This Agreement represents the entire Agreement between the parties and there are no other promises or conditions in any other Agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties and may not be modified except in writing acknowledged by both parties.
- i. Nothing contained in this Agreement, nor any act of DeKalb County or Town of Cortland pursuant to this Agreement, shall be deemed or

construed by any of the parties hereto or by third persons, to create any relationship of third-party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving DeKalb County and Town of Cortland.

- j. Neither party will be responsible to the other for damage, loss, injury, or interruption of work if the damage, loss, injury, or interruption of work is caused solely by conditions that are beyond the reasonable control of the parties, and without the intentional misconduct or negligence, of that party (hereinafter referred to as a “force majeure event”). To the extent not within the control of either party, such force majeure events include acts of God, acts of any governmental authorities, fire, explosions or other casualties, vandalism, and riots or war. A party claiming a force majeure event (“the claiming party”) shall promptly notify the other party in writing, describing the nature and estimated duration of the claiming party’s inability to perform due to the force majeure event. The cause of such inability to perform will be remedied by the claiming party with all reasonable dispatch.
- k. Nothing in the agreement shall be construed as to change the jurisdiction of either DeKalb County or Town of Cortland in respect to their roadway and/or bridge improvements, and their ongoing jurisdictional duties in respect to the roadways and bridges themselves.
- l. The Term of Agreement shall commence as of January 1, 2023 and remain in effect until cancelled by either party per section 4.a above. Further, Agreement will not be cancelled until final repayment of the Town of Cortland Project(s) Costs except as otherwise specified herein.
- m. DeKalb County and Town of Cortland each hereby warrant and represent that their respective signatures set forth below have been, and are on the date of this Agreement, duly authorized by all necessary and appropriate corporate and/or governmental action to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date(s) below.

County of DeKalb, a unit of local Government, of the State of Illinois

Town of Cortland, a unit of local Government, of the State of Illinois

By: _____
Chair, DeKalb County Board

By: _____
Mayor, Town of Cortland

Date: _____

Date: _____

ATTEST:

ATTEST:

By: _____
DeKalb County Clerk

By: _____
Town of Cortland Clerk