

**RESOLUTION
#R2022-06**

WHEREAS, the Highway Committee of the DeKalb County Board deems it appropriate to enter into an agreement with the Village of Kirkland for certain engineering services for the replacement of the Pearl Street Bridge; and

WHEREAS, DeKalb County will provide its allotment of the federal Surface Transportation Block Grant Program funds to reimburse 80% of the eligible preliminary engineering services costs for the replacement of said bridge; and

WHEREAS, the Village of Kirkland shall be responsible for the payments to the selected engineering firm. DeKalb County shall be responsible for submitting invoices to the Illinois Department of Transportation for reimbursement using said federal funds.

NOW, THEREFORE, BE IT RESOLVED, by the DeKalb County Board that it does authorize the Chairman to execute the appropriate Intergovernmental Agreement with the Village of Kirkland, Illinois.

PASSED AT SYCAMORE, ILLINOIS THIS 16th DAY OF FEBRUARY, 2022 A.D.



Chairman, DeKalb County Board

ATTEST:



County Clerk

Funding Sources	Budgeted	Estimated
STP Bridge	\$240,000.00	
Village of Kirkland	\$ 60,000.00	

**INTERGOVERNMENTAL AGREEMENT FOR
THE PROVISION OF ENGINEERING SERVICES FOR THE
VILLAGE OF KIRKLAND, 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 Village of Kirkland, a unit of local government of the State of Illinois (*"Village of Kirkland"*).

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, Village of Kirkland 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 Village of Kirkland has been awarded an Illinois Special Bridge Program grant for the construction and construction engineering associated with the replacement of the Pearl Street Bridge in State Fiscal Year 2024 within the jurisdiction of the Village of Kirkland; and

WHEREAS, the Village of Kirkland is desirous of DeKalb County to provide its allotment of the federal Surface Transportation Block Grant Program funds to reimburse 80% of the eligible preliminary engineering services costs for the replacement of said bridge; and

WHEREAS, DeKalb County and the Village of Kirkland have determined that in regards to the preliminary engineering services agreement, DeKalb County shall perform the qualifications based selection process, enter into a contract with the selected engineering firm, and oversee the associated preliminary engineering work per state and federal requirements and with the Village of Kirkland's input; and

WHEREAS, the Village of Kirkland shall be responsible for the payments to the selected engineering firm. DeKalb County shall be responsible for submitting invoices to the Illinois Department of Transportation for reimbursement using said federal funds.

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 perform the qualifications based selection process with input by the Village of Kirkland in accordance with state and federal requirements.
- b. DeKalb County will negotiate and enter into a preliminary engineering agreement with the selected engineering firm with input by the Village of Kirkland.
- c. DeKalb County will pursue At-Risk Project Pre-Agreement Authority For Preliminary Engineering through Section 1440 of the Fixing America's Surface Transaction Act as specified in the Illinois Department of Transportation's Circular Letter 2021-10 dated March 11, 2021.
- d. Upon authorization through Section 1440 of the Fixing America's Surface Transaction Act and upon receipt of payments to the engineering firm by the Village of Kirkland, DeKalb County shall submit invoices to the Illinois Department of Transportation for reimbursement using federal Surface Transportation Block Grant Program funds.
- e. Upon receipt of the reimbursement funds from the Illinois Department of Transportation, DeKalb County shall reimburse the Village of Kirkland at their next scheduled meeting following receipt.

Section 3. Village of Kirkland agrees to the following:

- a. Village of Kirkland will concur in the selection and execution of a preliminary engineering agreement with the selected engineering firm through the qualifications based selection process.
- b. Village of Kirkland shall appropriate funds to pay for the preliminary engineering.
- c. Village of Kirkland agrees to pay invoices to the selected engineering firm and submit copies of the payments and invoices to DeKalb County.
- d. Village of Kirkland agrees to pay for any land acquisition costs other than those included in the engineering agreement using non-federal funds.

Section 4. General Terms & Conditions:

- a. The failure of the Village of Kirkland to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations with respect to this Agreement, shall constitute a Default by Village of Kirkland hereunder. If the default is not cured within 30 days of receipt of such notice, DeKalb County will consider Village of Kirkland 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. Village of Kirkland 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 Village of Kirkland 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 Village of Kirkland for all attorneys' fees and costs incurred by Village of Kirkland related to Village of Kirkland'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 Village of Kirkland: Village of Kirkland
511 W. Main Street
P.O. Box 550
Kirkland, Illinois 60146

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. Village of Kirkland 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.
- 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 Village of Kirkland 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 Village of Kirkland.
- 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 Village of Kirkland 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 execution of this Agreement and remain in effect until cancelled by either party per section 4.a above or completion of the approved preliminary engineering services. Further, Agreement will not be cancelled until final reimbursement is provided to the Village of Kirkland except as otherwise specified herein.
- m. DeKalb County and Village of Kirkland 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

Village of Kirkland, a unit of local Government, of the State of Illinois

By: John Friedler
Chair, DeKalb County Board

By: [Signature]
President, Village of Kirkland

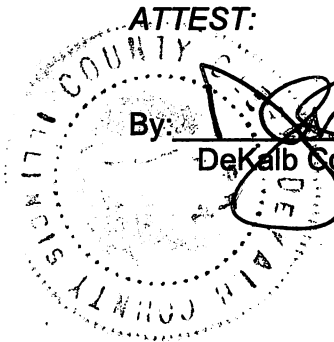
Date: 2/16/2022

Date: 07 FEBRUARY 2022

ATTEST:

ATTEST:

By: [Signature]
DeKalb County Clerk



By: Carl Spigman
Village of Kirkland Clerk

