

**INTERGOVERNMENTAL AGREEMENT BETWEEN COUNTY OF DUPAGE,
ILLINOIS AND MILTON TOWNSHIP HIGHWAY DEPARTMENT FOR THE LLOYD
AVENUE CULVERT REHABILITATION DRAINAGE IMPROVEMENT PROJECT**

This INTERGOVERNMENTAL AGREEMENT (hereinafter “AGREEMENT”) is made this 10th day of December 2024, by and between the County of DuPage, a body politic and corporate, with offices at 421 North County Farm Road, Wheaton, Illinois (hereinafter the “COUNTY”) and Milton Township Highway Department, a body politic and corporate, with offices at 23W040 Poss Street, Glen Ellyn, IL 60137 (hereinafter the “TOWNSHIP”), individually referred to at times as “Party” or collectively referred to as the “Parties”.

RECITALS

WHEREAS, the TOWNSHIP and the COUNTY are public agencies within the meaning of the Illinois “Intergovernmental Cooperation Act” and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

WHEREAS, the purposes of the “Intergovernmental Cooperation Act” and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

WHEREAS, the Illinois General Assembly has granted the COUNTY authority to take action to control flooding, manage stormwater runoff and improve drainage throughout the COUNTY’S territory and to enter into agreements for the aforesaid purposes (Illinois Compiled Statutes, Chapter 55 paragraphs 5/5-1062.3 and 5/5-15001 et. seq.); and

WHEREAS, pursuant to said authority, the COUNTY and TOWNSHIP have sought to undertake a project to improve drainage by performing culvert maintenance along Lloyd Avenue, generally located between Glen Park Road and Hemstead Road within unincorporated Milton Township; and

WHEREAS, the COUNTY and TOWNSHIP have developed a plan to rehabilitate existing drainage improvements associated with the Lloyd Avenue Culvert, (herein referred to as the “PROJECT”); and

WHEREAS, the COUNTY and the TOWNSHIP have determined and intend that the PROJECT will benefit local citizens by improving drainage and reducing the occurrence of localized flooding within Milton Township; and

WHEREAS, the COUNTY and TOWNSHIP have determined to each contribute funding for the PROJECT’S construction costs, with the COUNTY’S contribution via its Drainage Assistance Program constituting either fifty percent (50%) of the PROJECT’S allowable construction costs or an amount not to exceed sixty thousand dollars and zero cents (\$60,000.00), whichever is lesser, and the TOWNSHIP’S contribution being sixty thousand

dollars and zero cents (\$60,000.00) or the remainder of the PROJECT's cost, whichever is greater; and

WHEREAS, the COUNTY and TOWNSHIP shall jointly undertake the PROJECT, with the COUNTY responsible for the award of the construction contract and payment of all PROJECT allowable construction costs up front, through an existing Cooperative Purchasing Agreement vetted through OMNIA Partners (hereinafter referred to as "OMNIA"), and subject to reimbursement by the TOWNSHIP following substantial completion of the PROJECT, per the this AGREEMENT.

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 AND CONSTRUCTION.

- 1.1 All recitals set forth above are incorporated herein and made a 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 PROJECT DESCRIPTION.

- 2.1 The PROJECT involves rehabilitation of existing improvements associated with the Lloyd Avenue culvert and any related site restoration
- 2.2 The PROJECT shall be completed in substantial conformity to the recommendations in the OMNIA Cooperative Purchasing Agreement quote provided by Hoerr Construction, Inc., attached hereto and incorporated herein as "Exhibit A."

3.0 FUNDING.

- 3.1 The Parties acknowledge and agree that the total PROJECT costs for construction are estimated to be one hundred twenty thousand dollars and no cents (\$120,000.00). The COUNTY's total contribution amount shall not exceed the amount of sixty thousand dollars and no cents (\$60,000.00), or fifty percent (50%) of the total PROJECT costs, whichever is lesser. The TOWNSHIP's total contribution shall be either sixty thousand dollars and no cents (\$60,000.00) or the remainder of the total project costs in excess of the COUNTY's contribution, whichever is greater.
- 3.2 The COUNTY'S contribution amount shall only be used towards payment of allowable PROJECT construction expenses. Allowable PROJECT

construction expenses shall include services directly related to the construction of the PROJECT, including labor and materials, but shall not include construction management, bid advertising, professional services, administrative costs, overhead, payroll, land acquisition, and/or legal or accounting services, etc.

- 3.3 The TOWNSHIP shall be responsible for securing, at its own expense, any third-party professional services (architectural, construction management, etc.) related to the PROJECT's completion. The TOWNSHIP shall also be responsible for bearing all administrative costs, overhead, payroll, land acquisition, and/or legal or accounting services related to the PROJECT.
- 3.4 The TOWNSHIP shall be responsible for bearing any cost overruns or expenses in excess of the total PROJECT costs estimate listed in Paragraph 3.1, regardless of the cause, unless the TOWNSHIP and COUNTY agree to apportion such extra costs in writing before they are incurred.
- 3.5 This AGREEMENT shall in no way obligate the COUNTY or TOWNSHIP to undertake or complete the PROJECT if the COUNTY or TOWNSHIP in their sole discretion determines that it is no longer in their best interest to proceed with this PROJECT. In the event the PROJECT is cancelled prior to completion, the TOWNSHIP shall reimburse the COUNTY fifty percent (50%) of the actual total project costs incurred at the time of the PROJECT'S cancellation.
- 3.6 The TOWNSHIP hereby acknowledges and agrees to the COUNTY'S use of the OMNIA Cooperative Purchasing Agreement to retain an approved contractor to complete the PROJECT properly vetted through the COUNTY's procurement process.

4.0 TOWNSHIP'S RESPONSIBILITIES.

- 4.1 The TOWNSHIP, together with the COUNTY, shall be responsible for the preparation of any plans and specifications for the PROJECT. The TOWNSHIP shall, at its own expense, select, and contract with, all vendors providing professional services for the PROJECT, if determined to be necessary by the TOWNHIP.
- 4.2 The TOWNSHIP and COUNTY shall cooperate to secure all local, county, state, and federal permits necessary for completion of the PROJECT.
- 4.3 The TOWNSHIP shall be responsible for obtaining all required land rights necessary for the completion of the PROJECT.

- 4.4 The TOWNSHIP shall not be responsible for reimbursing the COUNTY for work undertaken prior to the signing of this AGREEMENT.
- 4.5 Subject to the COUNTY's prior approval, the TOWNSHIP may enter into additional agreements to secure the services of other project partners to perform or undertake the TOWNSHIP'S functions under this Agreement, but in all instances the TOWNSHIP shall remain responsible for ensuring the satisfactory performance and/or substantial completion of the PROJECT by any such additional project partners.
- 4.6 The TOWNSHIP shall allow the COUNTY, including the COUNTY'S employees, contractors and consultants, etc., unlimited access to the PROJECT area to perform, supervise, review, and inspect all PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.).
- 4.7 The TOWNSHIP shall make a single payment to the COUNTY in the amount of either sixty thousand dollars and no cents (\$60,000.00) or the remainder of the total project costs in excess of the COUNTY's agreed contribution, whichever is greater, upon receipt of the COUNTY's final invoice following substantial completion of the PROJECT. There shall be no progress payments.

5.0 COUNTY'S RESPONSIBILITIES.

- 5.1 The COUNTY shall be responsible for the award of the PROJECT construction contract through an existing Cooperative Purchasing Agreement vetted through OMNIA.
- 5.2 The COUNTY, together with the TOWNSHIP, shall be responsible for oversight and successful completion of all phases of the PROJECT, from design and construction through maintenance.
- 5.3 The COUNTY and TOWNSHIP shall cooperate to secure all local, county, state, and federal permits necessary for completion of the PROJECT.
- 5.4 The COUNTY may enter into additional agreements to secure the services of other project partners to perform or undertake the COUNTY'S functions under this Agreement, but in all instances the COUNTY shall remain responsible for ensuring the satisfactory performance and/or substantial completion of the PROJECT.
- 5.5 The COUNTY shall reserve the right to review and modify the PROJECT'S plans and specifications, prior to the commencement of the PROJECT, together with any subsequent change orders, addendums, or revisions thereto, for the purpose of verifying that PROJECT components qualify for payment through the COUNTY'S Drainage Assistance

Program. The COUNTY shall further have the right to review all plans and specifications related to the TOWNSHIP's retention of third-party professional services for the PROJECT and any additional agreements by the TOWNSHIP to secure the services of other project partners.

5.6 The COUNTY shall cost share in the PROJECT as follows:

5.6.1 The COUNTY shall pay for all construction costs associated with the project, but in no event shall the COUNTY's total contribution towards the PROJECT after final reimbursement by the TOWNSHIP amount to more than sixty thousand dollars and no cents (\$60,000.00) or 50% of the total PROJECT cost, whichever is lesser.

5.6.2 In the event actual costs for the PROJECT at the time of completion total less than one hundred and twenty thousand dollars and no cents (\$120,000.00), the COUNTY'S total reimbursement amount shall not be more than fifty percent (50%) of the final PROJECT construction costs. In the event it is determined that the COUNTY has overpaid more than its agreed share of the PROJECT'S costs, for any reason, the TOWNSHIP shall promptly refund the COUNTY the amount of such overpayment.

5.7 The COUNTY shall submit a final invoice to the TOWNSHIP within a reasonable time following substantial completion of the PROJECT'S construction. The invoice shall be supported by documentation of all allowable PROJECT expenses for which the COUNTY seeks reimbursement.

5.8 The COUNTY shall make direct payments to all parties providing allowable construction services related to this PROJECT. This requirement will not affect the TOWNSHIP'S obligation to reimburse the COUNTY in the amounts herein agreed upon, nor shall this provision affect the TOWNSHIP'S obligation to reimburse the COUNTY in the event the PROJECT is not undertaken or completed, as established in paragraph 3.3.

5.9 The COUNTY shall allow the TOWNSHIP unlimited, but reasonable, access to the PROJECT area to observe and review PROJECT work and work documents (i.e., plans, change orders, field orders, manager diaries, etc.) for eligibility for TOWNSHIP reimbursement.

6.0 GOVERNMENT REGULATIONS.

6.1 The COUNTY and TOWNSHIP shall comply with all local, county, state and federal requirements now in force, or which may hereafter be in force, pertaining to the PROJECT.

7.0 INDEMNIFICATION.

- 7.1 The TOWNSHIP shall indemnify, hold harmless and defend the COUNTY and its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, 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 TOWNSHIP'S performance under this AGREEMENT to the fullest extent the TOWNSHIP is so authorized under the law; provided, however, that the TOWNSHIP shall not be obligated to indemnify, hold harmless and defend the COUNTY for any negligent or intentional wrongful misconduct or omissions by COUNTY officials, employees, agents, contractors or personnel.
- 7.2 The COUNTY shall indemnify, hold harmless and defend the TOWNSHIP and its officials, officers, employees, and agents from and against all liability, claims, suits, demands, liens, proceedings and actions, 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 performance under this AGREEMENT to the fullest extent the COUNTY is so authorized under the law; provided, however, that the COUNTY shall not be obligated to indemnify, hold harmless and defend the TOWNSHIP for any negligent or intentional wrongful misconduct or omissions by TOWNSHIP officials, employees, agents, contractors, consultants, or personnel.
- 7.3 The TOWNSHIP and COUNTY shall require each consultant and contractor responsible for the design, construction, maintenance, or monitoring of the PROJECT to name both the TOWNSHIP and COUNTY as additional insured parties on said consultant or contractor's liability insurance policy. Further, the TOWNSHIP and COUNTY shall each require that their consultants and contractors indemnify, defend, and hold harmless both the TOWNSHIP and COUNTY, their officers, employees, and elected officials from and against any claims, liability or judgments resulting from, or caused by, the negligence or willful conduct of such consultant and, or contractor.
- 7.4 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, liens, proceedings, and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, under this AGREEMENT, shall be the State's Attorney, or appointed thereby, in accord with the applicable law. The COUNTY'S participation in its defense shall not remove TOWNSHIP'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above. Moreover, indemnity as provided in this AGREEMENT shall not be limited by reason of any

insurance coverage maintained by the TOWNSHIP or its consultants, contractors, or agents. The TOWNSHIP'S indemnification of the COUNTY shall survive the termination, or expiration, of this AGREEMENT.

8.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT.

- 8.1 The parties may modify or amend terms of this AGREEMENT only by a written document duly approved and executed by both parties, excluding term extensions as provided for in the following provision.
- 8.2 Notwithstanding Paragraph 8.1, above, the term for performing this AGREEMENT may be extended by any suitable County-designated form, signed by both parties without formal amendment pursuant to Paragraph 8.1, above.

9.0 TERM OF THIS AGREEMENT.

- 9.1 The term of this AGREEMENT shall begin on the date the AGREEMENT is fully executed, and shall continue in full force and effect until the earlier of the following occurs:
- 9.1.1 November 30, 2025 or to a new date agreed upon by the parties.
- 9.1.2 The completion by the TOWNSHIP and COUNTY of their respective obligations under this AGREEMENT in the event such completion occurs before November 30, 2025.

10.0 ENTIRE AGREEMENT.

- 10.1 This AGREEMENT, including matters incorporated herein, contains the entire AGREEMENT between parties.
- 10.2 There are no other covenants, warranties, representations, promises, conditions, or understandings; either oral or written, other than those contained herein.
- 10.3 This AGREEMENT may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.
- 10.4 In event of a conflict between the terms or conditions or this AGREEMENT and any term or condition found in any exhibit or attachment, the terms and conditions of this AGREEMENT shall prevail.

11.0 SEVERABILITY.

11.1 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.

12.0 GOVERNING LAW.

12.1 The laws of the State of Illinois shall govern this AGREEMENT as to both interpretation and performance.

12.2 The venue 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.

13.0 NOTICES.

13.1 Any required notice shall be sent to the following addresses and parties:

Gary Muehlfelt
Highway Commissioner
Milton Township Highway Department
23W040 Poss St,
Glen Ellyn, IL 60137
(630) 682-4270

Sarah Hunn, Director
DuPage County Stormwater Management Department
421 North County Farm Road
Wheaton, Illinois 60187
(630) 407-6700

DuPage County State's Attorney's Office
Attn: Civil Bureau
503 North County Farm Road
Wheaton, Illinois 60187

14.0 WAIVER OF/FAILURE TO ENFORCE BREACH.

14.1 The parties 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.

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

COUNTY OF DUPAGE

MILTON TOWNSHIP HIGHWAY
DEPARTMENT

Deborah A. Conroy
Chair, DuPage County Board

Gary Muehlfelt, Highway Commissioner
Milton Township Highway Department

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Kasi Steinhilber
Administrative Assistant

EXHIBIT A



Hoerr Construction, Inc.
1416 County Road 200 N
P.O. Box 65
Goodfield, IL 61742

Office: (309) 691-6653
Fax: (309) 508-7990

PROJECT PROPOSAL & CONTRACT

Project: Milton Township Culvert Rehabilitation – OMNIA Pricing

Quote #: 241028-3

6/11/2024

DuPage County

421 N County Farm Road
Wheaton, IL 60187
Attn: Sarah Hunn
Email: sarah.hunn@dupageco.gov
Phone: 630.407.6705

HOERR CONSTRUCTION, INC. to Provide:

- Spray-In-Place Lining (SIPL) Rehabilitation for 482 LF of 96" Wide x 72" High culvert located in Milton Township, IL.
 - +\ -50 Linear Feet (LF) of rehab.
 - Cofferdam installation and removal.
 - Bypass of creek under Lloyd Avenue.
 - Dewatering of structure.
 - Pre/Post 360-Degree Inspection of Culvert.
 - Pipe cleaning and removal of debris/stone from structure.
 - Repair of damaged sections of pipe prior to application of Geopolymer.
 - Preparation of the surface of structure prior to SIPL.
 - 1.5" of geopolymer coating spray applied to interior of structure.
 - 7-day / 28-day cylinder testing of material for each application date.
 - Protection of Easement areas utilizing load bearing truck boards.
 - Basic signs and cones for traffic control, including flagging operations for the movement of materials within work zone.
- Work to be completed during normal work week, M-F daytime operations.
- Certificate of insurance with Hoerr Construction's standard coverages.
- Certified payrolls, if required or requested.
- Prices quoted are good for 60 days.
- Project subject to 23-065-PW Trenchless Rehabilitation and Maintenance of Pipeline Infrastructure – County of DuPage OMNIA Specifications

DuPage County to Provide:

- Water for cleaning operations.
- Dump site for debris removed from manholes (should be minimal).



Hoerr Construction, Inc.
 1416 County Road 200 N
 P.O. Box 65
 Goodfield, IL 61742

Office: (309) 691-6653
 Fax: (309) 508-7990

- Usage of easement areas along Lloyd Avenue for access to structure and staging of materials/equipment.
- Access to manholes to include but not limited to the following:
 - All traffic control beyond flashing yellow lights and cones that are normally carried on Hoerr trucks.
 - Access for truck-sized equipment to all manhole lids associated with rehab.
- Any necessary bonds, permits, fees, association dues, special insurance coverage, surface restoration, erosion control, deflection testing, air testing, or staking.
 - Standard performance and payment bond can be provided at 2% of total quote.

Total Project Price: \$120,000.00

OMNIA Pricing Items:

• Contingency		\$ 10,000.00
• Item 507 – Travel and Mobilization	1 EA @ \$15,000.00	\$ 15,000.00
• Item 518 – 84" Storm Pipe Minimum 1.5"	50 LF @ \$1,200.00	\$ 60,000.00
• Item 535 – Invert Repair	50 LF @ \$700.00	<u>\$ 35,000.00</u>
Total Project:		\$120,000.00

Thank you for the opportunity to quote this SIPL Culvert Lining project. If this proposal is accepted, regular payments to be made to Hoerr Construction, Inc. monthly as the work progresses, as billed, for the units that were installed. If a separate contract format is used, this document shall be included as an exhibit. This proposal may be retracted if not accepted within 30 days. If you have any questions, please call me at (312)350.0301.



John P. Manijak
 Hoerr Construction, Inc.

Acceptance of Proposal

The pricing, specifications, and conditions noted above and on the following pages of this proposal are agreeable and are accepted in full. By signing below, you have our authorization to complete the work as specified.

 Customer Authorized Signature

 Customer Printed Name

 Acceptance Date