

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DuPAGE
AND THE CITY OF WEST CHICAGO
FOR INTERSECTION IMPROVEMENTS
AT CH 21/FABYAN PARKWAY AND POORMAN PARKWAY
SECTION # 08-00210-03-FP**

This Agreement (hereinafter referred to as "AGREEMENT") is executed this _____ day of _____, 2026, between the County of DuPage (hereinafter referred to as "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the City of West Chicago, Illinois (hereinafter referred to as "MUNICIPALITY"), a municipal corporation and home rule unit of local government under the laws and constitution of the State of Illinois, with offices at 475 Main Street, West Chicago, Illinois 60185. The COUNTY and the MUNICIPALITY are hereinafter sometimes individually referred to as a "PARTY" or together as the "PARTIES."

RECITALS

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and to ensure the safety of the public, desires to improve traffic flow on CH21/Fabyan Parkway from IL38/Roosevelt Road to the DuPage/Kane County Line (hereinafter referred to as "PROJECT").

WHEREAS, the COUNTY and the MUNICIPALITY desire to cooperate in the construction of the PROJECT because of the benefit of the PROJECT to the residents of DuPage County, the MUNICIPALITY and the public; and

WHEREAS, the MUNICIPALITY has requested to include a northbound right turn lane and southbound left turn lane at the intersection of Fabyan Parkway in the County PROJECT (hereinafter referred to as the "WORK") and the new proposed Poorman Parkway (to be installed by the MUNICIPALITY), as depicted in "EXHIBIT A", attached hereto, as part of the PROJECT; and

WHEREAS, the COUNTY is willing to incorporate the WORK into the plans for the PROJECT; and

WHEREAS, the COUNTY and the MUNICIPALITY desire to establish each party's cost and future maintenance responsibilities with respect to the WORK; 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.); and

WHEREAS, the COUNTY, by virtue of its powers set forth in the "Counties Code" (55 ILCS 5/5-1001 *et seq.*) and the "Illinois Highway Code" (605 ILCS 5/5-101 *et seq.*), and the MUNICIPALITY by virtue of its home rule powers and powers set forth in the "Illinois Municipal Code" (65 ILCS 5/5-1-1 *et seq.*), and both the County's and City's powers under the intergovernmental agreement provisions in Art. VII, Sec. 10 of the Illinois Constitution (1970) and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, are authorized to enter into this AGREEMENT; and

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each PARTY, 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 included for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.
- 1.3 The exhibits referenced in this AGREEMENT shall be deemed incorporated herein and made a part hereof.

2.0 SCOPE OF SERVICES

- 2.1 The COUNTY and the MUNICIPALITY agree to cooperate in and make every effort to cause the construction of the PROJECT and the WORK.
- 2.2 The COUNTY and the MUNICIPALITY agree that the scope of the PROJECT is for improvements to CH21/Fabyan Parkway from IL38/Roosevelt Road to the DuPage/Kane County Line. The proposed limits of construction will begin approximately 800 feet southwest of IL38/Roosevelt Road and extend west to the DuPage/Kane County Line.
- 2.3 The WORK will include a northbound right turn lane and southbound left turn lane at the intersection of Fabyan Parkway and new proposed Poorman Parkway, and this will also include all appurtenant and necessary work at the intersection, which may include but not be limited to, curb and gutter, and/or sidewalk removal, replacement or installation, all pavement markings, storm sewers and drainage

improvements and roadway signage as part of the WORK at the new intersection up to the edge of the COUNTY right-of-way. The MUNICIPALITY shall cause the installation of the portion of Poorman Parkway located east of the COUNTY right-of-way. (see EXHIBIT A).

- 2.4 The COUNTY concurs with adding the WORK to the PROJECT subject to the terms and conditions noted herein.

3.0 RESPONSIBILITIES OF THE MUNICIPALITY

- 3.1 The MUNICIPALITY, at its sole cost and expense, will be responsible for:

- A. Design engineering costs for the WORK, calculated at twelve percent (12%) of the estimated cost to construct the WORK based on the contract award amount, (using plan quantities and as-bid unit prices); and
- B. Construction engineering for the costs for the WORK, calculated at twelve percent (12%) of the actual cost to construct the WORK; and
- C. One hundred percent (100%) of the actual cost to construct the WORK, as set forth in Section 2.3 herein.

The MUNICIPALITY's estimated total cost of engineering and construction of the WORK, including signage furnished and installed by the COUNTY, is approximately \$543,128.00. A table of estimated MUNICIPALITY costs as set forth in "EXHIBIT B".

- 3.2 The MUNICIPALITY shall reimburse to the COUNTY for the following costs associated with the WORK, as set forth in Exhibit B:

- A. One hundred percent (100%) of design engineering costs.
- B. Construction costs and construction engineering costs, payable in the following proportions and milestones:
 - 1) 50% upon contract award for the PROJECT;
 - 2) 30% upon substantial completion of the PROJECT as confirmed by the COUNTY; and
 - 3) 20% upon final completion of the PROJECT.
- C. Final actual costs will be determined upon completion of the PROJECT and acceptance of the WORK.
- D. Costs for signage furnished and installed by the COUNTY, upon completion of the PROJECT and acceptance of the WORK.

- 3.3 All payments required under this Section shall be made within sixty (60) days of receipt of a properly documented invoice from the COUNTY. Each invoice shall correspond to the applicable milestone or cost category identified in Section 3.2 and shall include the documentation required under Section 3.4.
- 3.4 For purposes of this Agreement, a "properly documented invoice" shall include, at a minimum, as applicable to the stage of the WORK:
- A. a copy of the executed construction contract or bid tabulation upon award;
 - B. Pay applications or progress payment requests;
 - C. A schedule of values;
 - D. Documentation supporting the percentage of completion.
- 3.5 The MUNICIPALITY further agrees to reimburse the COUNTY the balance of the calculated construction engineering cost and one hundred percent (100%) of the difference between the estimated cost and the actual costs for constructing the WORK, as well as one hundred percent (100%) of the costs for furnishing and installing the signage by the COUNTY for the WORK, as referenced herein above, upon completion and acceptance of the WORK, not to be unreasonably withheld, and based upon the documentation of final costs and quantities submitted by the COUNTY, per Section 3.4 herein above, with a final invoice, within sixty (60) days of receipt of a properly documented invoice from the COUNTY. No payment from third parties will be accepted by the COUNTY.
- 3.6 The PARTIES acknowledge that the MUNICIPALITY will assess a Stormwater Management Permit Fee in the amount of Two Thousand One Hundred Dollars (\$2,100.00) associated with the PROJECT pursuant to the City Code. Except for the specifically identified fee noted herein, the MUNICIPALITY agrees that no additional MUNICIPALITY permit fees, stormwater certification fees, review fees, inspection fees, or other project-related fees associated with the PROJECT shall be assessed to the COUNTY under this AGREEMENT. Any permit fees, review fees, or other costs imposed by outside agencies or third parties that are directly attributable to the WORK shall be considered a MUNICIPALITY project cost and may be incorporated into Exhibit B.
- 3.7 The PARTIES agree that any costs for relocating, adjusting, and/or removing MUNICIPALITY utilities, including resolving any known conflicts related to the WORK, will be at the MUNICIPALITY's expense. Should the location of the

MUNICIPALITY's utilities vary from the information provided, resulting in unexpected utility conflict(s), all costs associated with resolving said utility conflict(s) shall be at the sole cost of the MUNICIPALITY.

- 3.8 The PARTIES agree that the MUNICIPALITY is not responsible for the COUNTY's failure to pay contractors or subcontractors, or for the performance of the WORK. Provided that the MUNICIPALITY timely makes all payments required under this Agreement, the MUNICIPALITY shall not be responsible for any fees, penalties, or interest arising from the COUNTY's failure to pay contractors or subcontractors in accordance with the applicable contracts relating to the PROJECT or the WORK.
- 3.9 The PARTIES agree that traffic signal(s) are not warranted at the intersection of Fabyan Parkway and proposed Poorman Parkway at the time this AGREEMENT is executed. If, in the future, the COUNTY determines that intersection signalization is appropriate, the MUNICIPALITY would be responsible to pursue installation of a signal through the COUNTY's Highway Permit process. Costs associated with any necessary studies, design engineering, construction, construction engineering, maintenance, and electrical service, will be subject to the permit terms and fee schedule in place at that time.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1 The COUNTY and the MUNICIPALITY agree that the COUNTY shall act as the lead agency and administer the contract for the construction of the PROJECT including the WORK. The COUNTY agrees to manage the PROJECT in the best interest of both PARTIES and keep advised officials of the MUNICIPALITY regarding the progress of the PROJECT and the WORK.
- 4.2 Subject to the provisions in Section 3.2 herein, the COUNTY shall submit invoices to the MUNICIPALITY for costs associated with the WORK in a timely manner following the occurrence of each applicable milestone or cost incurrence. Each invoice shall be a properly documented invoice as defined in Section 3.4 herein.
- 4.3 The COUNTY shall ensure that all invoices correspond to the applicable milestone or stage of completion as established in Section 3.2 herein based on the actual costs of the WORK and not solely on estimated costs depicted in Exhibit B.

4.4 The scope of the WORK shall not be materially modified without the consent of the MUNICIPALITY. To the extent that minor modifications are required and the COUNTY is unable to get consent from the MUNICIPALITY without unduly delaying construction activities, the COUNTY will endeavor to make decisions that are in the mutual interest of both PARTIES.

5.0 FUTURE MAINTENANCE RESPONSIBILITIES

5.1 It is understood and agreed by the PARTIES hereto that this AGREEMENT is intended to address funding for design engineering, construction, and construction engineering for the WORK, with no change to existing maintenance responsibilities of the PARTIES.

5.2 It is further understood and agreed by the PARTIES that the COUNTY shall have no ongoing, future maintenance responsibility for the proposed Poorman Parkway east of the edge of pavement of Fabyan Parkway extended through the intersection.

5.3 The COUNTY and the MUNICIPALITY may, by separate Intergovernmental Agreement, alter future maintenance responsibilities of the PROJECT and the WORK, including any future traffic signals at the intersection of Fabyan Parkway and Poorman Parkway.

6.0 GENERAL

6.1 Whenever in this AGREEMENT, approval or review of either the COUNTY or MUNICIPALITY is provided for, said approval or review shall not be unreasonably delayed or withheld.

6.2 In the event of a dispute between the COUNTY and MUNICIPALITY representatives in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the COUNTY Director of Transportation and Facilities Management and the MUNICIPALITY Administrator, or their appointees, shall meet and resolve the issue to the mutual satisfaction of the PARTIES.

6.3 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 WORK. Each representative shall have the 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. Any change of a PARTY's representative shall be promptly communicated in writing to the other PARTY with that representative's name, title, and contact information.

7.0 INDEMNIFICATION

7.1 The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the MUNICIPALITY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, 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 negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.1.1 The MUNICIPALITY acknowledges that the COUNTY has made no representations, assurances or guarantees regarding the COUNTY'S or any successor's or assign's authority and legal capacity to indemnify MUNICIPALITY 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 MUNICIPALITY, or any person or entity claiming a right through MUNICIPALITY, 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 MUNICIPALITY shall, to the extent permitted by law, 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 MUNICIPALITY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT. The MUNICIPALITY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.2.1 The COUNTY acknowledges that the MUNICIPALITY has made no representations, assurances or guarantees regarding the MUNICIPALITY's or any successor's or assign's authority and legal capacity to indemnify COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the MUNICIPALITY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through COUNTY, or in the event of change in the laws of the State of Illinois governing MUNICIPALITY'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.

7.3 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 MUNICIPALITY's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.

7.4 Nothing contained herein shall be construed as prohibiting the MUNICIPALITY, 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. The MUNICIPALITY'S participation in its defense shall not remove COUNTY's duty to indemnify, defend, and hold the MUNICIPALITY harmless, as set forth above.

- 7.5 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.).
- 7.6 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. Except with respect to occurrences arising before the completion of the PROJECT, the MUNICIPALITY's and COUNTY's indemnification under Section 6.0 hereof shall terminate when the PROJECT, including the WORK is completed and the MUNICIPALITY and COUNTY each assume its respective maintenance responsibilities as set forth in Section 5.0 hereof.

8.0 INSURANCE

- 8.1 The COUNTY shall require the contractor selected for the PROJECT and the WORK to name the City of West Chicago, its officers, employees, agents, and consultants as an additional-insured for the Commercial General Liability and Automobile Liability in the Special Provisions section of the contract for the PROJECT and the WORK.

9.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

- 9.1 No modification or amendment to this AGREEMENT shall be effective until approved by the PARTIES in writing.
- 9.2 Prior to commencement of the WORK, either PARTY may terminate this AGREEMENT by giving written notice of said termination to the other PARTY; a termination shall be effective immediately unless specific termination date has been agreed upon. If termination is requested after the WORK as begun, the MUNICIPALITY shall remain responsible for all costs associated with construction activities completed to-date as part of the WORK. In such case, the COUNTY will take all reasonable steps to suspend construction related to the WORK as quickly as is reasonably practicable.
- 9.3 This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within two (2) years subsequent to the execution of this AGREEMENT.

10.0 ENTIRE AGREEMENT

10.1 This AGREEMENT represents the entire AGREEMENT between the PARTIES with respect to the PROJECT, including the WORK, and supersedes all previous communications or understandings whether oral or written.

11.0 NON-ASSIGNMENT

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

12.0 NOTICES

12.1. Any notice required shall be deemed properly given to the PARTY to be notified at the time it is personally delivered, or three days after it is mailed by certified mail, return receipt requested, or at the time it is sent by confirmed 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.

City of West Chicago

Public Works Department
475 Main Street
West Chicago, IL 60185
Attn: Mehul Patel, P.E., CFM
Director of Public Works
Phone: 630.293.2255
Email: mpatel@westchicago.org

County of DuPage

421 N. County Farm Road
Wheaton, IL 60187
ATTN: Stephen M. Travia, P.E.
Director of Transportation and Facilities Management
Phone: 630-407-6900
Email: stephen.travia@dupagecounty.gov

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 of 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, and natural disasters.

17.0 COUNTERPARTS

17.1 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 in the same instrument.

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

COUNTY OF DU PAGE

CITY OF WEST CHICAGO

Deborah A. Conroy, Chair,
DuPage County Board

Daniel Bovey
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek
County Clerk

Signature

Valeria Perez

Print Name

Executive Office Manager

Title

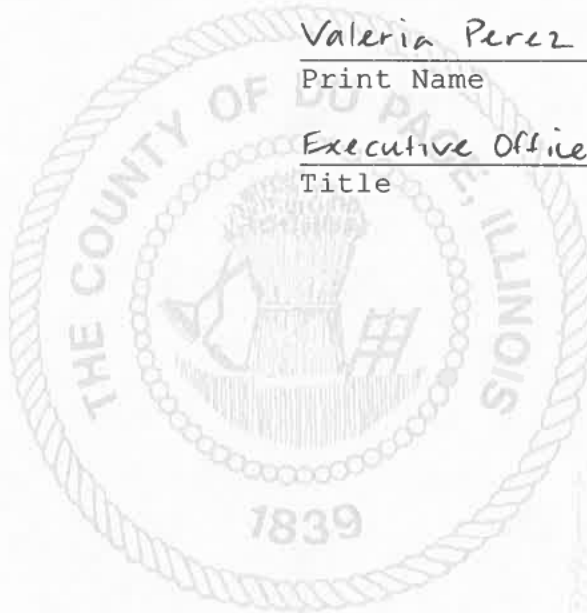
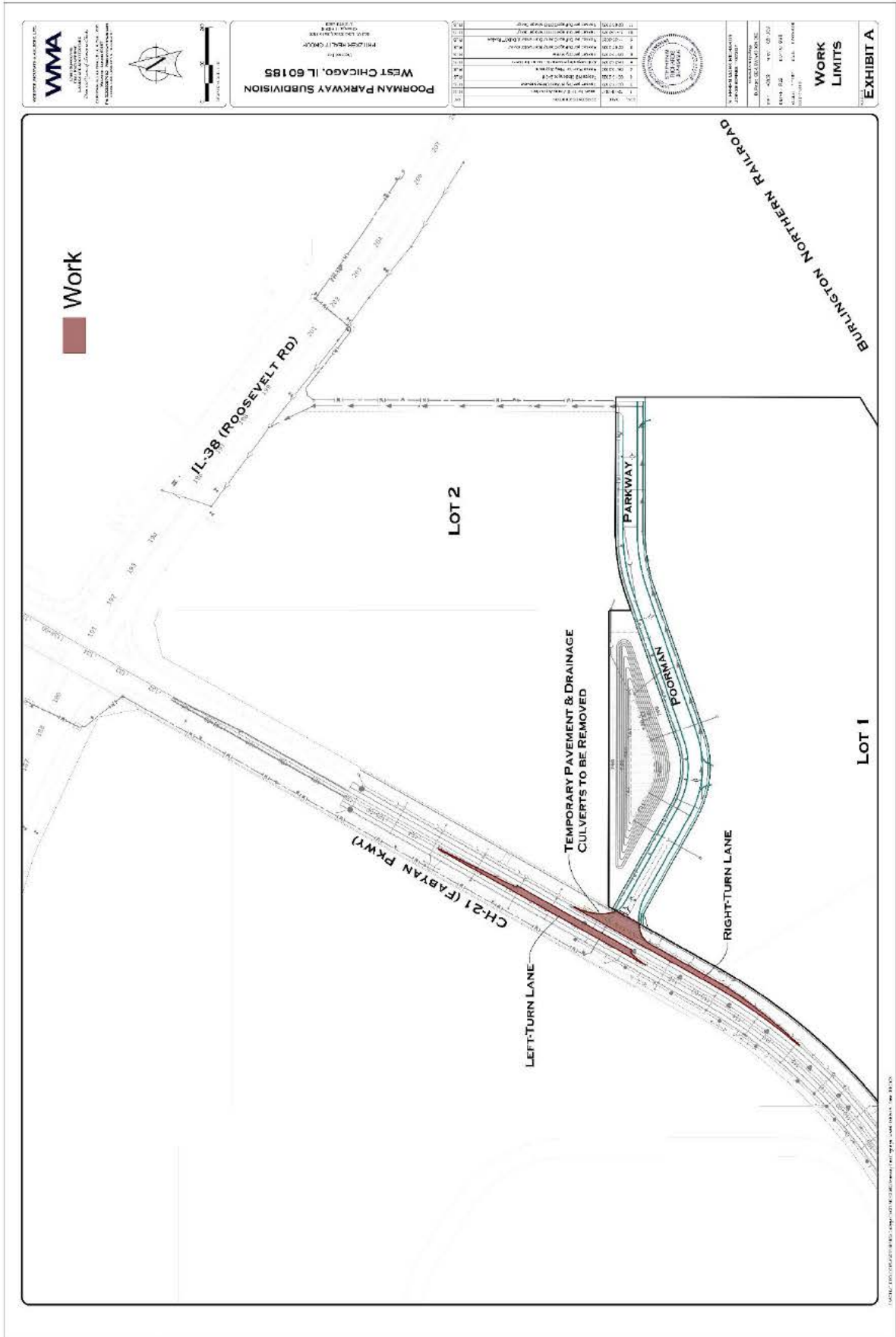


EXHIBIT A



**EXHIBIT B
ESTIMATED MUNICIPALITY COSTS**

DESCRIPTION	ESTIMATED MUNICIPALITY COST
Design Engineering (Estimated) (Calculated as 12% of the bid price for the WORK)	\$ 52,271.00
Construction (Estimated)	\$ 435,586.00
Construction Engineering (Estimated) (Calculated as 12% of the bid price for the WORK)	\$ 52,271.00
Signage furnished and installed by County (Estimated)	\$ 3,000.00
TOTAL	\$ 543,128.00

