



RESOLUTION NO. 2020-009

A Resolution Authorizing the Execution of an Intergovernmental Agreement for Kendall County Transportation Alternatives Program Funding Grant to the Village of Montgomery for Constructing a Multi-Use Path Connecting Sidewalks Along U.S. Route 30 and the Virgil Gilman Trail (2020)

WHEREAS, Article 7, Section 10 of the Illinois Constitution authorizes units of local government to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or ordinance; and,

WHEREAS, the Intergovernmental Cooperation Act, 5 ILCS 220/3, provides that any power or powers, privileges, functions, or authority exercised or which may be exercised by a public agency, may be exercised, combined, transferred, and enjoyed jointly with any other public agency of the State, except where it is specifically prohibited by law; and,

WHEREAS, the Village of Montgomery is an Illinois municipal corporation operating pursuant to the provisions of the Illinois Municipal Code, 65 ILCS 5/1-1-1 et seq.; and,

WHEREAS, Kendall County is an Illinois county operating pursuant to the provisions of the Illinois Counties Code, 55 ILCS 5/et seq.; and,

WHEREAS, the Village and the County desire to enter into an intergovernmental agreement with regard to funding the construction of a multi-use path connecting U.S. Route 30 and the Virgil Gilman Trail.

NOW, THEREFORE, BE IT RESOLVED by the President and Board of Trustees of the Village of Montgomery, Kane County, Illinois, as follows:

1. The Intergovernmental Agreement attached hereto as **Exhibit A** is hereby approved.
2. That the Village President and Village Clerk are hereby authorized to execute said agreement on behalf of the Village of Montgomery.

PASSED AND APPROVED by the President and Board of Trustees of the Village of Montgomery, Kane and Kendall Counties, this 27th day of April, 2020.

W.D. Boy

President of the Board of Trustees of the Village of
Montgomery, Kane and Kendall Counties, Illinois

AYES: 6

NAYS: 0

ABSENT: 0



ATTEST: [Signature]
Clerk, Village of Montgomery

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT FOR KENDALL COUNTY
TRANSPORTATION ALTERNATIVES PROGRAM (“KC-TAP”) FUNDING GRANT
TO THE VILLAGE OF MONTGOMERY FOR CONSTRUCTING A MULTI-USE PATH
CONNECTING SIDEWALKS ALONG U.S. ROUTE 30 AND THE VIRGIL GILMAN
TRAIL (2020)**

THIS INTERGOVERNMENTAL AGREEMENT (*“the Agreement”*) is by and between the County of Kendall, a unit of local government of the State of Illinois (*“Kendall County”*) and the Village of Montgomery (the *“Grantee”*), a municipal corporation of the State of Illinois.

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, the Grantee and Kendall County (the *“parties”*) 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 Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, provides that any county may participate in an intergovernmental agreement under this Act notwithstanding the absence of specific authority under the State law to perform the service involved, provided that the unit of local government contracting with the County has authority to perform the service; and

WHEREAS, pursuant to the Illinois Highway Code under 605 ILCS 5/9-101 and 605 ILCS 5/4-409, the State, its municipalities and the counties may form cooperative agreements with each other for the construction, maintenance and improvement of streets, highways and any portions thereof; and

WHEREAS, the Illinois Highway Code (605 ILCS 5/1 *et seq.*) and the Illinois Bikeway Act (605 ILCS 30/1 *et seq.*) each encourage the funding and the creation of bicycle paths, multi-use trails and sidewalks along roadways within the State of Illinois; and

WHEREAS, on July 17, 2012, the Kendall County Board passed Resolution Number 12-33 entitled “Resolution for the Creation of the Kendall County Transportation Alternatives Program (“KC-TAP”)”, which authorizes Kendall County to provide financial assistance to qualified applicants for the grantee’s construction of multi-use trails and sidewalks in Kendall County, Illinois; and

WHEREAS, on or about December 20, 2019, Grantee submitted an application pursuant to the KC-TAP. Grantee’s application sought financial assistance to construct a multi-use path linking sidewalks along U.S. Route 30 with the Virgil Gilman Trail, including a spur that connects to a branch of the Oswego Public Library. Grantee’s construction project is identified in the attached Exhibit A and shall be referred to herein as “the Project”; and

WHEREAS, the Kendall County Highway Committee approved Grantee’s KC-TAP application for financial assistance on February 11, 2020 and the Kendall County Board approved the grant of this award on February 18, 2020; and

WHEREAS, the parties wish to enter into this agreement for the benefit of local pedestrians and bicyclists and to provide a safe and efficient pathway for the residents of the Village of Montgomery and Kendall County; and

WHEREAS, pursuant to the terms of this agreement, Kendall County will grant money to Grantee to partially fund the building of the multi-use path as shown in the Location Map attached as Exhibit B and described in the Grantee's application for funds, which is attached as Exhibit A, both of which are hereby incorporated by reference; and

WHEREAS, it is understood that in no case shall Kendall County provide more than 50% of the funding for any approved project; and

WHEREAS, while the Kendall County Board acknowledges KC-TAP grants are typically limited to \$50,000 per project per year, it has determined that the Project to build the multi-use path connecting U.S. Route 30 to the Virgil Gilman Trail, including the connection to the library branch, will promote public safety for the residents of Kendall County on a major road in a heavily traveled area with new residential development. Further, because of the importance of these special circumstances, the Kendall County Board has determined that it will suspend KC-TAP's \$50,000 per year limitation on awards and permit an award of up to \$75,000 for the Project; and

WHEREAS, it is the understanding of the parties that at all times, including after completion of the Project, Grantee alone will own, construct, maintain, repair and/or replace the subject improvements, and that Kendall County will have no duties to construct, maintain, repair and/or replace the subject improvements at any time in the future.

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

1. The foregoing preambles are hereby incorporated into this Agreement as if fully restated in this paragraph 1;
2. Kendall County's Obligations:

- a. Kendall County agrees to grant an amount not to exceed seventy-five thousand dollars (\$75,000.00) in Fiscal Year 2020 (December 1, 2019 to November 30, 2020) to Grantee for the purpose of partially funding the construction costs of the Project;
 - b. The final amount of this Grant, which shall not exceed seventy-five thousand dollars (\$75,000.00), will be determined at the time the Grantee submits its final request for reimbursement for the Project;
 - c. The final Grant amount shall not exceed 50% of the funding for said Project. Should the submitted reimbursement request constitute an amount above 50% of the Project's costs, then Kendall County shall, in its sole discretion, choose to reimburse an amount below seventy-five thousand dollars (\$75,000.00) and equal to 50% of the Project's costs;
 - d. Kendall County shall disburse the Grant funds under this agreement within sixty (60) days of the submission of Grantee's final request for reimbursement and the necessary supporting documentation supporting the request;
 - e. Kendall County shall have no ownership interest in the Project and/or the subject improvements under this agreement, nor shall it have any obligations beyond the granting and disbursement of KC-TAP grant funds as described herein.
3. Grantee's Obligations:
- a. Grantee understands and agrees that only qualified units of local government within Kendall County who have statutory authority to provide lands or facilities for multi-use trails or sidewalk purposes are eligible for assistance under the KC-TAP program and eligible projects must be located within the geographical boundaries

of Kendall County, as well as located along a State or County Highway and Grantee herein assures Kendall County that it and its Project qualifies for funding pursuant to this understanding and pursuant to all other terms of the KC-TAP as set forth in Kendall County Resolution Number 12-33 and Grantee's application;

- b. Grantee shall use the funds set forth in this Agreement to construct the Project at the locations, and pursuant to the specifications, as set forth in the attached Exhibit A and in conformance with all plans and designs previously supplied by Grantee as part of the KC-TAP application process, as such locations and specification may be mutually modified by the parties during the course of the Project to address any exigencies which may arise. Grantee understands and agrees that the funds provided by Kendall County pursuant to this Agreement shall not be used for any other purpose ("Improper Purpose") including, but not limited to, future maintenance of the multi-use trails or sidewalks (e.g., sealing, patching or crack filling). In the event that Grantee uses the funds for an improper purpose, Grantee shall immediately reimburse Kendall County the full amount of funds provided to Grantee under this Agreement;
- c. At all times, the Project, and all of its resulting improvements, shall be the exclusive property of Grantee, who shall exercise complete control, responsibility and ownership of said property. At no time shall Kendall County be deemed to have adopted said Project or its resulting improvements or the responsibility for the ownership, construction, maintenance, care, and demolition of the improvements that are subject to the Project and this Agreement;

d. Grantee and its consultants, employees, contractors, subcontractors and agents agree to comply with the following state and federal laws and Grantee shall ensure that all of their contracts include provisions incorporating the following:

- i. The Illinois Prevailing Wage Act, 820 ILCS 130/1 *et seq.* Grantee agrees to (a) fully comply with all applicable requirements of the Prevailing Wage Act, (b) notify all contractors and subcontractors that the work performed pursuant to this Agreement shall be subject to the Illinois Prevailing Wage Act, and (c) include all notices required by statute and the Illinois Department of Labor in any contracts. In the event that Grantee fails to comply with the notice requirements set forth in the Illinois Prevailing Wage Act, Grantee shall be solely responsible for any and all penalties, fines and liabilities incurred for Grantee's, contractors' and/or subcontractors' violations of the Prevailing Wage Act.
- ii. The Employment of Illinois Workers on Public Works Act, 30 ILCS 570/0.01 *et seq.*
- iii. The Substance Abuse Prevention on Public Works Act, 820 ILCS 265/1 *et seq.* and the Illinois Drug Free Workplace Act, 30 ILCS 580/1 *et seq.*
- iv. The Illinois Public Construction Bond Act, 30 ILCS 550/1 *et seq.*
- v. The Illinois Human Rights Act, Title VI of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations.

- e. Grantee shall ensure that Grantee and each contractor and/or subcontractor performing work on the Project shall obtain and continue in force during the term of the Project, all insurance necessary and appropriate and that each contractor and/or subcontractor contracted with to perform work on the Project shall name Kendall County as an Additional Insured on a Primary and Non-Contributory basis with respect to all liability coverage, as well as a waiver of subrogation with respect to the general liability and workers' compensation in favor of Kendall County. Further, Grantee shall require each contractor and/or subcontractor to provide indemnification and hold harmless guarantees to Kendall County during the construction of this Project;
- f. Grantee shall comply with all competitive bidding and selection requirements necessary for construction and completion of the Project pursuant to applicable state and federal laws. Grantee shall obtain certifications from all contractors and subcontractors who perform work on the Project, which certify the contractors and subcontractors are not barred from performing the work as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or as a result of a violation of 820 ILCS 130/1 *et seq.* (the Illinois Prevailing Wage Act);
- g. It is agreed by the Grantee that the maintenance, both physical and financial of the Project and its resulting improvements will be the responsibility of Grantee, and Grantee alone. Further, so long as Grantee maintains ownership, Grantee shall be responsible for any future repair or replacement deemed necessary for the Project and its resulting improvements (notwithstanding any agreements with third parties in this regard). Nothing in this Agreement shall be construed as to create a duty or

responsibility on behalf of Kendall County to finance, maintain, repair, replace, or otherwise control the subject improvements;

- h. During, and following completion of the Project, Grantee shall defend, with counsel of Kendall County's own choosing, indemnify and hold harmless Kendall County, including Kendall County's past, present and future board members, elected officials, insurers, employees, and agents from and against any and all claims, liabilities, obligations, losses, penalties, fines, damages, and expenses and costs relating thereto, including but not limited to attorneys' fees and other legal expenses, which Kendall County, its past, present and future board members, elected officials, insurers, employees, and/or agents may hereafter sustain, incur or be required to pay relating to, or arising in any manner out of the use, ownership, construction, maintenance, repair, replacement and/or condition of the subject facilities built during this Project, or claims, liabilities, obligations, losses, penalties, fines, damages, and expenses and costs relating to and arising in any manner out of Grantee and Grantee's Contractors and Subcontractors construction of this Project or Grantee's alleged failure to perform its obligations pursuant to this Agreement. Any attorney representing Kendall County shall be approved by the Kendall County State's Attorney and shall be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9005. Kendall County's participation in its defense shall not remove Grantee's duty to indemnify, defend and hold Kendall County harmless, as set forth above. Kendall County does not waive its defenses or immunities under the Local Government and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) by reason of this indemnification

provision. Notwithstanding the foregoing, Grantee shall retain control over any such litigation, which shall include, but not be limited to, the right to enter into a settlement agreement. Indemnification shall survive the termination of this Agreement;

- i. Grantee understands and agrees that construction of the Project must begin within 24 months of signature of this Agreement by the Kendall County Board. If the Project does not begin construction within 24 months and the timeframe is not otherwise mutually extended by the parties as set forth in subsection (k), Grantee will be in default of this Agreement and at that time the Agreement, as well as any obligations of Kendall County, shall immediately cease and be considered null and void with no further obligation upon Kendall County to provide the Grant funding as described above;
- j. Grantee understands that Construction of the Project must be completed and a request for reimbursement must be submitted to Kendall County within 60 months after the signature of this Agreement. If Grantee is unable to complete the Project and seek reimbursement within that time and the timeframe is not otherwise mutually extended by the parties as set forth in subsection (k), Grantee will be in default of this Agreement and at that time the Agreement, as well as any obligations by Kendall County, shall immediately cease and be considered null and void with no further obligation upon Kendall County to provide the Grant funding as described above;
- k. If Grantee is unable to begin construction of the Project within 24 months after the parties' execution of this Agreement, or is unable to complete the Project and

request reimbursement within 60 months after the parties' execution of this agreement, Grantee may submit a request in writing to Kendall County requesting an extension of time to commence or complete the construction, as the case may be. Grantee must file its request for an extension of time with Kendall County on or prior to expiration of the 24-month period in the case of it beginning construction or on or prior to expiration of the 60-month period in the case of completing construction and seeking reimbursement. Requests for extensions shall not be valid if made after the expiration of the above deadlines. Kendall County retains sole discretion whether to approve Grantee's request for an extension of time;

- l. Grantee understands and agrees that prior to Kendall County disbursing the above listed KC-TAP funds as described herein, Grantee must submit final project costs, along with a written request for reimbursement to the Kendall County Engineer or his designee, who shall then determine the appropriateness of the costs and expenses claimed and determine if all obligations have been met prior to approving the disbursement of Grant funds. If requested by Kendall County, the Grantee must also submit any and all further documentation to verify completion of the Project, the costs incurred by Grantee and Grantee's compliance with the terms of this Agreement;
- m. Grantee understands and agrees that prior to and as a condition of reimbursement, Grantee shall obtain, and tender to Kendall County, a final waiver of lien for all contractors, subcontractors, and/or suppliers who performed work on or supplied materials to the Project;

- n. Grantee understands and agrees that it shall submit its request for reimbursement to Kendall County within the same fiscal year that the Project is completed. Failure to timely request reimbursement as outlined in this Agreement will result in Grantee being in default of this Agreement and at that time the Agreement, as well as any obligations by Kendall County, shall immediately cease and be considered null and void with no further obligation upon Kendall County to provide the Grant funding as described above;
 - o. Grantee understands and agrees that reimbursement requests cannot exceed the amount originally awarded by the Kendall County Board and described in Section 2(a);
 - p. Grantee understands and agrees that under no circumstances shall cost overruns be considered nor shall KC-TAP Funds under this Agreement be advanced to the Grantee prior to project completion and submission of a request for reimbursement.
4. It is mutually agreed by Kendall County and Grantee that at no time shall Kendall County be inferred to, or obligated to, have a duty to provide insurance for the subject improvements or otherwise indemnify and hold harmless Grantee in connection with the use, enjoyment, ownership, maintenance, construction, repair or replacement of the Project improvements and any property where the Project has been completed;
5. 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 and assigns, any rights, remedies, obligations or liabilities under or by reason of such agreements;

6. Any notice required or permitted to be given pursuant to this Agreement shall be duly given if sent by fax, certified mail, or courier service and received. As such, 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 the County: County Engineer
Kendall County Highway Department
6780 Route 47
Yorkville, Illinois 60560

With copy to:
Kendall County State's Attorney
807 John Street
Yorkville, Illinois 60560

If to the Grantee: Montgomery Village President
Village of Montgomery
200 North River Street
Montgomery, Illinois 60538

With copy to:
Village Attorney
Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.
140 S. Municipal Drive
Sugar Grove, IL 60554

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

7. 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 Kendall County, 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 affected or impaired thereby;

8. 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;
9. 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. Except as stated herein, this Agreement supersedes any other prior written or oral agreements between the parties and may not be further modified except in writing acknowledged by both parties;
10. Nothing contained in this Agreement, nor any act of Kendall County or the Grantee 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 Kendall County and the Grantee. Grantee understands and agrees that Grantee is solely responsible for paying all wages, benefits and any other compensation due and owing to Grantee's officers, employees, and agents for the performance of services on the Project or as otherwise set forth in the Agreement.
11. This Agreement shall be in full force and effect upon signature by both parties and will terminate upon either (a) payout by Kendall County of Grant funds as described herein, or

(b) default by Grantee, whichever occurs first. However, the duty to defend and indemnify shall survive the term of this agreement;

12. In the event Kendall County is in default under the Agreement because funds are not appropriated for a fiscal period subsequent to the one in which the Agreement was entered into which are sufficient to satisfy all or part of Kendall County's obligations under this Agreement during said fiscal period, Kendall County agrees to provide prompt written notice of said occurrence to Grantee. In the event of a default due to non-appropriation of funds, Grantee and Kendall County have the right to terminate the Agreement upon providing thirty (30) days written notice to the other party. No additional payments, penalties and/or early termination charges shall be required upon termination of the Agreement;

13. Kendall County and Grantee 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 Intergovernmental Agreement to be executed by their duly authorized officers on the above date.

County of Kendall, a unit of local government
of the State of Illinois,

Village of Montgomery, Kendall County,
Illinois, a municipal corporation

By: _____
Scott Gryder, Chair, Kendall County
Board

By: _____
Matt Brolley, Village President

Date: _____

Date: _____

Attest:

Attest:

County Clerk

Village Clerk



| | |
|----------------|--------------------------------|
| JOB NO: | MO1927-V |
| DESIGNED: | CJO |
| DATE: | December 19, 2019 |
| PROJECT TITLE: | Oswego Library Shared Use Path |

Preliminary Cost Estimate

| ITEM NO. | ITEM | UNIT | QUANTITY | UNIT PRICE | AMOUNT |
|----------|---------------------------------------|-------|----------|------------|--------------|
| 1 | Tree Removal (6 to 15 Units Diameter) | UNIT | 100.0 | \$ 50.00 | \$ 5,000.00 |
| 2 | Tree Root Pruning | EACH | 20 | \$ 40.00 | \$ 800.00 |
| 3 | Earth Excavation | CU YD | 1,990.0 | \$ 40.00 | \$ 79,600.00 |
| 4 | Geotechnical Fabric | SQ YD | 4,650 | \$ 2.00 | \$ 9,300.00 |
| 5 | Aggregate Subgrade Improvement, 12" | SQ YD | 5,110.0 | \$ 12.00 | \$ 61,320.00 |
| 6 | Restoration | SQ YD | 6,970 | \$ 8.00 | \$ 55,760.00 |
| 7 | Hot-Mix Asphalt Surface Course | TON | 540.00 | \$ 140.00 | \$ 75,600.00 |
| 8 | | | | | \$ - |
| 9 | | | | | \$ - |
| 10 | | | | | \$ - |
| 11 | | | | | \$ - |
| 12 | | | | | \$ - |
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| 27 | | | | | \$ - |
| 28 | | | | | \$ - |
| 29 | | | | | \$ - |
| 30 | | | | | \$ - |

| | | |
|--|----|------------|
| SUBTOTAL | \$ | 287,400.00 |
| CONTINGENCY (10%) | \$ | 28,800.00 |
| TOTAL | \$ | 316,200.00 |
| DESIGN ENGINEERING (11%) | \$ | 34,800.00 |
| CONSTRUCTION ENGINEERING (10%) | \$ | 31,700.00 |
| TOTAL PRELIMINARY COST ESTIMATE | \$ | 382,700.00 |