

#17-80

INTERGOVERNMENTAL AGREEMENT FOR THE FUNDING OF THE REPAIR OF  
STRUCTURE 062-3019 CARRYING RICHLAND TOWNSHIP TR 3 (MARSHALL  
COUNTY) OVER SNAG CREEK

**THIS INTERGOVERNMENTAL AGREEMENT** (*“the Agreement”*) is entered into by and between the County of Woodford, a unit of local government of the State of Illinois (*“Woodford County”*) and the County of Marshall, a unit of local government of the State of Illinois (*“Marshall”*).

**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**, Marshall County and Woodford 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**, there exists a bridge having a waterway opening of more than twenty five (25) square feet situated within 80 Rods of the Marshall-Woodford County Line that crosses Snag Creek, and is known as Structure 062-3019. Woodford County’s section number for the proposed improvements to this Structure is 17-001167-BR and Marshall County’s section number for the proposed improvements to this Structure is **17-08117-00-BR**. Pursuant to 605 ILCS 5/5-502 or 605 ILCS 5/5-503, said bridge is within the jurisdiction of both Woodford County and Marshall County and as such, these government bodies shall jointly fund, repair or replace the bridge as they deem necessary; and

**WHEREAS**, Woodford County and Marshall County are under orders from the Illinois Department of Transportation to repair the subject bridge by June 1, 2018 and have determined that the existing bridge is currently in need of repair, which the Counties desire to coordinate and fund in cooperation with each other and it has been determined that Marshall County shall handle all facets of the bidding and contracting process for the herein described repair project (the "*Project*"), for which Woodford County shall reimburse Marshall County for proportionate share as determined in accordance with 605 ILCS 5/5-503 which states that "...the expense of such construction and repair shall be borne in a proportion to the assessed value of the taxable property in the respective counties according to the last preceding equalized assessment thereof prior to the construction..." The proportionate share based on Tax Year 2016 Rate Setting Equalized Assessed Valuations (EAV) for Woodford County is seventy three and six tenths percent (73.6%) of the final Project costs and for Marshall County is twenty six and four tenths percent (26.4%) of the final Project costs. Said EAV's are \$885,956,772 and \$317,917,477 respectively.

**WHEREAS**, the estimated costs of the Project to be jointly shared are as follows:

|                               |                    |
|-------------------------------|--------------------|
| Construction                  | \$100,000.00       |
| Preliminary Engineering       | \$ 8,000.00        |
| Construction Engineering (7%) | <u>\$ 7,000.00</u> |
| Total                         | \$115,000.00       |

Preliminary Engineering cost will be conducted in-house by Marshall County and per Resolution 44-56 will be reimbursed at \$1,000 + 7% of the construction cost. Construction Engineering will be provided by Marshall County staff and will be reimbursed at 7% of the final contract construction cost; Construction cost will be based on adjusted contract quantities and bid unit prices.

**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 stated in this Section 1.

**Section 2.** Marshall County's responsibilities are as follows:

- a. Marshall County will prepare or cause to be prepared project plans, specifications, and bid documents for the proposed structure and provide copies of same to Woodford County for review and approval.
- b. Marshall County will, at its expense, acquire the necessary right of way and/or easements required to construct the proposed structure.
- c. Marshall County will advertise and award a contract for the proposed structure replacement and Marshall County will be responsible for supervising the completion of the project by the contractor retained by them.
- d. Marshall County shall initially fund the Project costs for all phases of work on the subject structure, with the understanding that Woodford County will reimburse Marshall County based on the proportionate shares as outlined in **Section 1** above.
- e. Marshall County will ensure that the Project complies with the rules and regulations directed by the Illinois Department of Transportation (IDOT) and all other local ordinances, State and Federal laws.
- f. Marshall County will comply with all competitive bidding and selection requirements necessary for completion of the Project pursuant to applicable State and Federal laws and/or regulations.
- g. Marshall County shall provide Woodford County with the Final Pay Estimate, Approved Changes in Plans together with appropriate lien waivers.
- h. Upon Project completion, Marshall County shall provide Woodford County with and invoice for the total amount of the final Project costs paid by Marshall County for all phases of the Project and Woodford County will, within sixty (60) days of receipt of said invoice, reimburse Marshall County based on the proportionate shares as outlined in **Section 1** above.

**Section 3.** Woodford County agrees to the following:

- a. Woodford County shall appropriate funds to pay for the Woodford County Project costs.

- b. Woodford County will concur in the award of the Project to the qualified low bidder.
- c. Woodford County agrees to the implementation of the Project by Marshall County.
- d. Woodford County agrees to reimburse Marshall County the entire Woodford County proportionate share of the Project cost within sixty (60) days after receipt of an invoice for same and approval of payment through routine processing by the Woodford County Highway Committee at their next scheduled meeting following receipt.

**Section 4.** General Terms & Conditions:

- a. The failure of Woodford 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 Woodford County hereunder. Further, in the event Woodford County should fail to timely make payment, which Woodford County is required to perform under this Agreement, Marshall County shall notify Woodford County in writing and allow Woodford County 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, Marshall County will consider Woodford County to be in Default under this Agreement. Upon the occurrence of a Default, Marshall County may, by any 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. Woodford County further agrees to reimburse Marshall County for all attorneys' fees and costs incurred by Marshall County related to Marshall County's enforcement of this Agreement.
- b. 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.
- c. 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 Marshall County:* Marshall County Engineer  
552 State Route 26  
Lacon, Illinois 61540

with copy to: Marshall County State's Attorney  
Marshall County Court House  
PO Box 328  
Lacon, IL 61540

*If to Woodford County:* Woodford County Engineer  
Highway Department, County of Woodford  
301 S. Main St.  
Roanoke, IL 61561

with copy to: Woodford County State's Attorney  
Woodford County Courthouse  
115 N. Main Street  
Eureka, IL 61530

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

- d. 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 Marshall County, Illinois, Tenth 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 affected or impaired thereby.

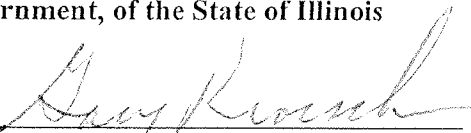
- e. Marshall County and Woodford County agree that the waiver of, or failure to enforce, any breach of this Agreement by the remaining party shall not be construed, or otherwise operate, as a waiver of any future breach of this Agreement. Further, the failure to enforce any particular breach shall not 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 of an installment shall be deemed as an accord and satisfaction and Marshall County may accept such payment without prejudice to its rights to recover the balance of Woodford County Project Costs still owed.
- f. 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.
- g. 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.
- h. Nothing contained in this Agreement, nor any act of Marshall County or Woodford County 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 Marshall County and Woodford County.
- i. 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.

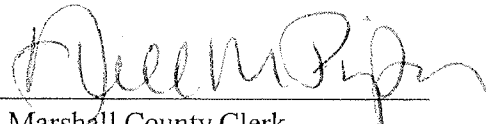
- j. Should Woodford County desire to pay the remaining portion of their Project Costs in a lump sum in advance of the final payment date, then it may do so upon sending written notice to Marshall County along with the remaining funds.
- k. Nothing in this Agreement shall be inferred to, or obligate, either party to have a duty to provide the other with insurance for the subject bridge or otherwise indemnify and hold harmless the other in connection with the use, enjoyment, ownership, maintenance, repair or replacement of the subject structure.
- l. Nothing in this agreement shall be construed as to change the jurisdiction of either Marshall County or Woodford County in respect to their roadway and/or structure improvements, and their ongoing jurisdictional duties in respect to the roadways and bridge themselves.
- m. The Term of the Agreement shall commence as of the Agreement Date and shall expire upon final repayment of the Woodford County Project Costs except as otherwise specified herein.
- n. Marshall County and Woodford County 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 Marshall, a unit of local government, of the State of Illinois**

By:   
Chair, Marshall County Board

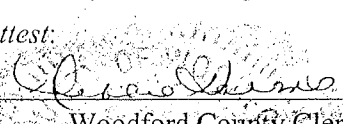
Date: 12-14-17

Attest:   
Marshall County Clerk

**County of Woodford, a unit of local government, of the State of Illinois**

By:   
Chair, Woodford County Board

Date: 11/21/17

Attest:   
Woodford County Clerk

