

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE CITY OF NAPERVILLE
FOR CENTRAL SIGNAL SYSTEM EXPANSION 1 AND 2
INSTALLATION AND FUTURE MAINTENANCE RESPONSIBILITIES
AT VARIOUS LOCATIONS
SECTION NO.: 17-DCCSS-01-TL

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2018, between the County of DuPage (hereinafter referred to as the "COUNTY") a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the City of Naperville, (hereinafter referred to as the "MUNICIPALITY"), a home rule municipal corporation with offices at 400 S. Eagle Street, Naperville, Illinois. The COUNTY and the MUNICIPALITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the COUNTY has recently received Congestion Mitigation Air Quality funding to expand its Central Signal System under COUNTY Section Numbers: 17-DCCSS-01-TL (Expansion 1) and 17-DCCSS-02-TL (Expansion 2); and

WHEREAS, the COUNTY has decided to combine the two above referenced projects into one project for letting purposes to be known as Section No. 17-DCCSS-01-TL (hereinafter referred to as the "PROJECT"); and

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 that the COUNTY install upgraded traffic signal equipment and Ethernet communications at approximately 10 Municipal traffic signals and connect the existing DuPage County and City of Naperville Transportation Management Center networks (hereinafter referred to as the "WORK") as a 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 the parties' mutual project cost, shared use of systems and maintenance responsibilities with respect to the PROJECT; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/1-101 et seq.) and the MUNICIPALITY by virtue of its home rule power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 et seq.) are authorized to enter into this AGREEMENT; 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 and MUNICIPALITY are public agencies as that term is defined in the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq.

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

- 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 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 SCOPE OF PROJECT

- 2.1. The PROJECT includes, but is not limited to, modernization of traffic signal hardware and software to establish connections to Ethernet-based Central Traffic Management Systems, as well as support/prepare for future transit signal priority

and connected vehicle technology, at the arterial and collector road network level. The PROJECT shall also include the WORK.

3.0 RESPONSIBILITIES - JOINT

- 3.1. The parties agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 3.2. The COUNTY and MUNICIPALITY agree that the scope of WORK will be added to the contract documents for Section 17-DCCSS-01-TL and said contract documents are incorporated into this AGREEMENT by reference. Exhibit A is attached hereto and incorporated herein by reference outlining the estimated cost to the MUNICIPALITY for the WORK including design and construction engineering.
- 3.3. The COUNTY and MUNICIPALITY agree that the contract documents for the PROJECT were prepared in an effort to minimize the need to relocate MUNICIPALITY utilities. Should field conditions result in unexpected utility conflict(s), reasonably demonstrated to have been caused based on the information provided to the COUNTY from the MUNICIPALITY, all reasonable costs associated with resolving said utility conflict(s) shall be at the sole cost of the MUNICIPALITY.

4.0 RESPONSIBILITIES OF THE COUNTY

- 4.1. The COUNTY shall be responsible for all PROJECT costs except as noted hereinafter, act as the lead agency and be responsible for completing all preliminary and design engineering, right-of-way and/or easement acquisition, if any, coordinating with the Illinois Department of Transportation for letting/awarding of construction contract, permit processing except as noted in paragraph 5.2 hereinafter, and utility coordination except as noted in paragraph 3.3 hereinabove, and construction engineering for the PROJECT.
- 4.2. Both the COUNTY and MUNICIPALITY agree that the COUNTY shall administer the contract for the construction of the PROJECT. The COUNTY agrees to

administer the PROJECT in the best interest of both parties and to consult with, and keep advised, officials of the MUNICIPALITY regarding the progress of the WORK and any problems encountered or changes recommended. No change order which affects the MUNICIPALITY's facilities, or MUNICIPALITY cost, except normal minor variations in quantities of pay items required to complete the WORK shall be authorized except with prior written approval by the MUNICIPALITY.

- 4.3. The COUNTY agrees, if necessary, to make arrangements for and apply for permits for PROJECT required adjustments, relocations and modifications, etc. to MUNICIPALITY utility facilities, which are in conflict with the PROJECT at no expense to the MUNICIPALITY.
- 4.4. The COUNTY shall submit the Pre-final Plans and Specifications for the PROJECT to the MUNICIPALITY for review. The MUNICIPALITY shall provide review comments within fourteen (14) days of receipt of the Pre-final Plans and Specifications. The COUNTY will correct any errors and address other reasonable comments prior to the submittal of Final Plans and Specifications to the MUNICIPALITY.
- 4.5. For the purposes of this agreement the "SIGNAL SYSTEM" shall include Central Traffic Management System software, as well as communications cables within County right-of-way, Ethernet switches, communications hardware, and PTZ cameras, as well as peripheral equipment.
- 4.6. Upon completion of the PROJECT, the COUNTY shall continue to own, operate and maintain the COUNTY'S SIGNAL SYSTEM and shall provide and pay for all costs associated with the future routine maintenance of the SIGNAL SYSTEM.
- 4.7. Upon completion of the PROJECT, the MUNICIPALITY shall continue to own, operate and maintain the MUNICIPALITY'S SIGNAL SYSTEM and shall provide and pay for all costs associated with the future routine maintenance of the SIGNAL SYSTEM.

5.0 RESPONSIBILITIES OF THE MUNICIPALITY

- 5.1. The MUNICIPALITY hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the MUNICIPALITY property within the boundaries of the PROJECT for the purpose of constructing the PROJECT. The MUNICIPALITY shall retain the right of ingress and egress over said areas so long as it does not interfere with the COUNTY's WORK. Upon completion of the PROJECT, the right-of-entry shall terminate.
- 5.2. The MUNICIPALITY agrees, if necessary, to make arrangements for and issue permits for PROJECT required adjustments, relocations, modifications, etc. to utility facilities located within existing MUNICIPALITY rights of way which are in conflict with the PROJECT at no expense to the COUNTY.
- 5.3. The MUNICIPALITY agrees to reimburse the COUNTY one hundred (100%) percent of the local share of the construction cost of the WORK.
- 5.4. The MUNICIPALITY agrees to reimburse the COUNTY an additional ten (10%) percent of the actual final construction cost of the local share of the WORK for construction engineering.
- 5.5. The MUNICIPALITY agrees to reimburse the COUNTY for the actual design engineering cost for the WORK estimated to be \$35,000.00.
- 5.6. The MUNICIPALITY agrees to pay the COUNTY fifty (50%) percent of the estimate of MUNICIPALITY cost as attached hereto in Exhibit A upon award of the contract for the PROJECT based upon as-bid unit prices for the WORK. Upon completion of the WORK and based upon the documentation of final costs and quantities, submitted by the COUNTY and a final invoice, the MUNICIPALITY agrees to reimburse the COUNTY for the balance of the MUNICIPALITY cost within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

6.0 MAINTENANCE AND SHARED ACCESS

6.1. Upon completion of the PROJECT:

- 6.1.1 Any new fiber optic cable and conduit that is installed in the COUNTY'S right-of-way shall be owned, operated and maintained by the COUNTY.
- 6.1.2. Any new fiber optic cable and conduit that is installed in the MUNICIPALITY'S right-of-way shall be owned, operated and maintained by the MUNICIPALITY.
- 6.1.3. The MUNICIPALITY shall grant the COUNTY access to its traffic signal field equipment or other facilities owned by the MUNICIPALITY for maintenance purposes with one (1) business day notice. The MUNICIPALITY retains the right to require COUNTY personnel to be escorted by a representative of the MUNICIPALITY when accessing MUNICIPALITY facilities.
- 6.1.4. The COUNTY shall grant the MUNICIPALITY access to its traffic signal field equipment or other facilities owned by the COUNTY for maintenance purposes with one (1) business day notice. The COUNTY retains the right to require MUNICIPALITY personnel to be escorted by a representative of the COUNTY when accessing COUNTY facilities.
- 6.1.5. The MUNICIPALITY shall be given remote access to the COUNTY'S SIGNAL SYSTEM for the purpose of sharing data and video services.
- 6.1.6. The COUNTY shall be given remote access to the MUNICIPALITY'S signal system for the purposes of sharing data and video services.
- 6.1.7. The COUNTY shall be responsible for specific equipment located on the MUNICIPALITY'S facilities. The MUNICIPALITY shall be responsible for specific equipment located on the COUNTY'S facilities. The specific equipment subject to this section are listed

in Exhibit B. The parties agree that the equipment listed in Exhibit B may be revised by the designated representatives from time to time as necessary and mutually agreed upon without amendment of the AGREEMENT.

6.1.8. Each party shall continue to designate a representative to the other party who shall serve as the full time representative regarding the SIGNAL SYSTEM.

6.1.9. The COUNTY and the MUNICIPALITY agree that existing energy and maintenance agreements including phasing, timing and operations related to the individual traffic signals involved in the PROJECT will continue as outlined in said existing agreements.

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 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 COUNTY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.1.1. The COUNTY and the MUNICIPALITY acknowledge that the COUNTY has made no representations, assurances or guaranties 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 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 to the extent permitted by law. The MUNICIPALITY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.2.1. The COUNTY and the MUNICIPALITY acknowledge that the MUNICIPALITY has made no representations, assurances or guaranties 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. 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.) or otherwise available to it, or to the other party, under the law.
- 7.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The MUNICIPALITY's and COUNTY's indemnification under Section 7.0 hereof shall terminate when the PROJECT is completed and the MUNICIPALITY assumes its maintenance responsibilities as set forth in paragraph 6.1 hereof.

8.0 GENERAL

- 8.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the PROJECT and improvements requested by the MUNICIPALITY as a part of the PROJECT and no changes to existing highways and appurtenances maintenance and/or jurisdiction are proposed.
- 8.2. 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.

- 8.3. 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 Engineer of the COUNTY and the City Engineer of the MUNICIPALTY shall meet and resolve the issue.
- 8.4. 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 PROJECT. Each representative shall have 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.
- 8.5. 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.

9.0 ENTIRE AGREEMENT

- 9.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT, and supersedes all previous communications or understandings whether oral or written.

10.0 NOTICES

- 10.1. Any notice required hereunder shall be deemed properly given to the party to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, or sent by confirmed facsimile, 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.

For MUNICIPALITY:

Andy Hynes, P.E.,
Deputy City Engineer
City of Naperville
400 South Eagle Street
Naperville, IL 60540
Phone: 630.548.2958
Facsimile: 630.305.5986
Email: hynesa@naperville.il.us

For COUNTY:

Christopher C. Snyder, P.E.
Director of Transportation/County Engineer
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
Phone: 630.407.6900
Facsimile: 630.407.6901
Email: Christopher.snyder@dupageco.org

11.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

11.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing except for the provisions stated in paragraph 6.1.7 herein.

12.0 ASSIGNMENT

12.1. This AGREEMENT shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

13.0 GOVERNING LAW

13.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

13.2. The forum for resolving any disputes concerning the parties' respective performance, or failure to

perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

14.0 SEVERABILITY

14.1. 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.

15.0 FORCE MAJEURE

15.1. 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 or natural disasters.

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

COUNTY OF DU PAGE

CITY OF NAPERVILLE

Daniel J. Cronin, Chairman
DuPage County Board

Douglas A. Krieger
City Manager

ATTEST:

ATTEST:

Paul Hinds
County Clerk

Pam Gallahue, Ph.D.
City Clerk

EXHIBIT "A" ESTIMATE OF MUNICIPALITY COST

Estimate of design engineering for the WORK	<u>\$ 35,000.00</u>
Estimate of WORK construction costs: (MUNICIPALITY'S Local Share)	<u>135,000.00</u>
Estimate of construction engineering (10% of WORK) (MUNICIPALITY'S Local Share)	<u>13,500.00</u>
Total Estimate of MUNICIPALITY COST:	<u>\$183,500.00</u>

**EXHIBIT "B" (Equipment, location & maintenance responsibility
to be added)**

Equipment (Owner)	Location (Facility Owner)	Maintenance Responsibility
Traffic ware detectors, hardware and peripheral communications equipment (Naperville)	Intersection of Warrenville Road and Washington Street (DuPage DOT)	City of Naperville