

**INTERGOVERNMENTAL AGREEMENT
 BETWEEN THE COUNTY OF DU PAGE
 AND THE CITY OF NAPERVILLE
 FOR MOWING ALONG COUNTY ROADS AND RIGHTS-OF-WAY**

This intergovernmental agreement (hereinafter referred to as "Agreement"), entered into as hereinafter set forth, by and between the County of DuPage, a body corporate and politic of the State of Illinois (hereinafter referred to as the "COUNTY") and the City of Naperville (hereinafter referred to as the "MUNICIPALITY"), a municipal corporation. The COUNTY and the MUNICIPALITY are hereinafter individually referred to as a "party" or together as the "parties."

WITNESSETH

WHEREAS, the COUNTY and the MUNICIPALITY are authorized by the 1970 Illinois Constitution, Article VII, Para. 10 and the Intergovernmental Cooperation Act 5 ILCS 220/1 et seq., to contract with each other; and

WHEREAS, the MUNICIPALITY agrees to mow grass along certain roads and rights of way which are within the maintenance jurisdiction of the COUNTY and within the corporate limits of the MUNICIPALITY as follows (hereinafter referred to as "COUNTY MOWING"):

COUNTY MOWING:

Co Hwy #	Street Name	Street Side	Location Description	Mowing Instructions	Total Acres
33	75th St	Both Sides and Medians	Modaff Rd. to Palomino Dr.		35.03
				Grand Total:	35.03

and;

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is in the best interest of the citizens of DuPage County and the residents of the City of Naperville for the MUNICIPALITY to provide mowing along the above listed County Highways subject to the following GENERAL CONDITIONS AND SPECIFICATIONS:

GENERAL CONDITIONS

1. The MUNICIPALITY shall visit the site of the proposed work, and shall investigate, examine and familiarize itself with the premises and conditions relating to the mowing to be done in order that it may understand the difficulties and restrictions required to complete the mowing to be done under this Agreement.
2. The MUNICIPALITY shall furnish all labor, materials, equipment and transportation necessary to complete five (5) mowing cycles and up to eighteen (18) additional mowing(s) as necessary per year for four (4) years under the terms and conditions herein set forth. All materials and equipment shall be in strict compliance with the specifications hereinafter set forth; however, if no specifications are set forth for particular materials or equipment such material or equipment shall be of such specifications as are reasonably necessary and appropriate to carry out the terms and conditions of this Agreement. All labor and transportation shall be performed in accordance with the highest professional and technical standards in the field.
3. At the sole option of the COUNTY, the MUNICIPALITY shall furnish all labor, materials, equipment and transportation necessary to complete additional mowing cycles, on any portion or portions of said COUNTY MOWING, under the terms and conditions herein set forth. The COUNTY shall give written notice to the MUNICIPALITY of the portion or portions of roads and rights of way to be mowed not less than seven (7) days prior to the required starting date.
4. The safety of persons and property of the MUNICIPALITY, the COUNTY, and the general public is of primary concern, and shall take priority over all other terms and conditions of this Agreement.
5. All equipment and materials furnished by the MUNICIPALITY shall meet or exceed all safety standards for mowing prescribed by O.S.H.A. The MUNICIPALITY agrees, covenants, and understands that the MUNICIPALITY bears sole liability for any injury or damage caused by the MUNICIPALITY under this Agreement and that the COUNTY shall not accept any liability whatsoever from the MUNICIPALITY except where any injury or damage is caused by the COUNTY.

6. Indemnification

- (a) The MUNICIPALITY shall indemnify, hold harmless and defend the COUNTY, its officials, officers, agents, and employees 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 MUNICIPALITY's negligent or willful acts, errors or omissions or any of the MUNICIPALITY contractor's or agent's negligent or willful acts in its performance under this Agreement. The indemnification set forth herein shall not extend to any injury or damage caused by the negligent or willful acts, errors or omissions of the COUNTY or its officers, agents and employees.
- (b) (b) Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers and employees, at their sole cost and expense, 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, any attorney representing the COUNTY, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, in accordance with the applicable law. The COUNTY's participation in its defense shall not remove the MUNICIPALITY's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above provided, however, that the MUNICIPALITY shall have the authority to direct the defense and to settle any claim, suit, demand, proceeding or action against the COUNTY for which the MUNICIPALITY would be required to indemnify the COUNTY hereunder subject to the approval of the State's Attorney to settle all claims. The State's Attorney shall not unreasonably withhold such approval.
- (c) 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 indemnification of the COUNTY shall survive the termination, or expiration, of this Agreement.
- (d) The COUNTY does not waive, 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 MUNICIPALITY, under the law."

7. Insurance

At all times during the period of this Agreement, the MUNICIPALITY and, if applicable, their contractor shall maintain the following insurance coverage(s), or be self-insured to cover the following:

- (a) **Worker's Compensation Insurance** in the statutory amounts.
- (b) **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and one million dollars (\$1,000,000.00) each employee/disease.
- (c) **Commercial (Comprehensive) General Liability Insurance** with a limit of not less than three million dollars (\$3,000,000) total; including limits of not less than two million (\$2,000,000) dollars per occurrence and one million (\$1,000,000) dollars excess liability in the annual aggregate injury/property damage.
- (d) **Commercial (Comprehensive) Automobile Liability Insurance** with minimum limits of at least one million (\$1,000,000) dollars Combined Single Limit (Each Accident).
- (e) The coverage limits required under subparagraphs (c) and (d) above may be satisfied through a combination of primary and excess coverage. The MUNICIPALITY shall not allow any contractor to commence work until all the insurance coverage(s) required under this insurance section have been obtained. Satisfactory evidence of contractor's insurance including endorsements shall be provided by the MUNICIPALITY to the COUNTY immediately upon request. Additionally, the MUNICIPALITY shall include in all of its contracts a statement expressly declaring the COUNTY to be a third-party beneficiary of the insurance requirements provided for in this insurance section.
- (f) The MUNICIPALITY shall require all approved contractors, anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable under this Agreement, to acquire and maintain the insurance as set forth in Paragraph 7. (a) to (d) of the Agreement. The COUNTY retains the right to obtain evidence of contractor's insurance coverage at any time. The MUNICIPALITY will ensure that its contractors and subcontractors name the COUNTY as an additional insured as set out in the paragraphs below. The MUNICIPALITY understands that it is to the MUNICIPALITY's benefit to

diligently enforce this insurance requirement as the MUNICIPALITY shall indemnify the COUNTY, its officials, officers, agents, and employees from all liability, in its performance under this Agreement pursuant to the terms in Paragraph 6 herein."

- (g) The insurance required to be purchased and maintained by the MUNICIPALITY and if applicable, their contractor, shall be provided by an insurance company acceptable to the COUNTY, and licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the MUNICIPALITY is satisfying insurance required through a combination of primary and excess coverage, the MUNICIPALITY shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that affect. The MUNICIPALITY shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.
- (h) It is the duty of the MUNICIPALITY to immediately notify the COUNTY if any insurance required under this Agreement has been cancelled, materially changed, or renewal has been refused, and the MUNICIPALITY shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the required insurance coverage, the COUNTY shall notify the MUNICIPALITY that the MUNICIPALITY can proceed with the work that is a part of this Agreement. Failure to provide and maintain the required insurance coverage could result in the immediate cancellation of this Agreement, and the MUNICIPALITY shall accept and bear all costs that may result from the cancellation of this Agreement due to the MUNICIPALITY's or if applicable, their contractor's failure to provide and maintain the required insurance.

- (i) The MUNICIPALITY's and if applicable, their contractor's insurance as required by paragraphs (c) and (d) above shall name the COUNTY, its officers, and employees as additional insured parties. The Certificate of Insurance/endorsements shall state: "The County of DuPage, its officers, and employees are named as additional insured(s) as defined in the Commercial (Comprehensive) General Liability Insurance and Commercial (Comprehensive) Automobile Liability Insurance policies with respect to claims arising from the MUNICIPALITY's performance under this Agreement. The Endorsements must also be provided naming the County of DuPage c/o DuPage County Division of Transportation, 421 N. County Farm Road, Wheaton, IL 60187, as an additional insured. This additional insured is to be on a primary and non-contributory basis."
- (j) If the MUNICIPALITY will be using their own forces for the work covered in this Agreement, the MUNICIPALITY shall inform the COUNTY in writing following execution of this Agreement. If, however, the MUNICIPALITY will be hiring a contractor for the work covered in this Agreement, the MUNICIPALITY shall inform the COUNTY in writing following execution of this Agreement and shall provide a copy of said contract to the COUNTY upon request.
8. The terms and conditions of this Agreement may be amended or supplemented by written statement of the parties to make such amendment or supplement. The parties agree that no oral change orders will be allowed and that no claim based upon any purported oral change order shall be made.
9. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
10. All State and Federal Laws insofar as applicable to COUNTY contracts shall be hereby specifically made a part of this Agreement as set forth herein.
11. This Agreement shall be governed by the laws of the State of Illinois. 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.

12. In the event, any provisions of this Agreement are 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.
13. This Agreement may be terminated at any time by submission to the other party of written thirty (30) days advance notice served by certified or registered mail, return receipt requested, properly addressed with postage prepaid and said notice shall be effective upon receipt as verified by the United States Postal Service, to the following addresses:

FOR THE MUNICIPALITY:

Dick Dublinski
Director of Public Works
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540
dublinskid@naperville.il.us

FOR THE COUNTY:

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

14. This Agreement shall remain in full force and effect after execution by the parties as set forth below until November 30, 2025, unless terminated by thirty (30) days written notice to the other party as referenced above.

SPECIFICATIONS

1. All grassy areas heretofore set out in COUNTY MOWING shall be mowed from the edge of shoulder or back of curb to the right of way line. Median and island areas are also included as part of this Agreement (as referenced in table hereinabove) and shall be mowed back-to-back of curb.
2. Grass shall be mowed to the height of three (3) inches.

3. All mowing shall be performed in a manner to produce a finished appearance which is acceptable to the COUNTY. Such acceptability shall be based upon the reasonable application of professional standards in the mowing industry. The opinion of the DuPage County Division of Transportation Highway Operations Manager shall constitute prima facie evidence of a reasonable application of such professional standards.
4. Hand-cutting or cutting along fences and guardrails is included as part of the Agreement.
5. Hand-cutting around landscaping and other obstructions within the right of way shall be part of this contract. Grass cuttings shall not be allowed on roadways or curbs. Large grass clumps shall not remain on cut areas. Such cuttings or clumps shall be removed or blown clean.
6. Pick up of typical roadway trash (bottles, cans, paper, plastic bags, and miscellaneous small debris) will be the responsibility of the MUNICIPALITY and shall be included in the cost of mowing. Any areas where materials are encountered that would not be classified as "typical roadway trash" should be referred to the DuPage County Highway Operations Manager for removal.
7. Damage caused by the MUNICIPALITY to turf areas shall be repaired to the satisfaction of the DuPage County Highway Operations Manager prior to payment for the cycle in which damage occurred.
8. The MUNICIPALITY shall protect all work sites with proper traffic control as specified in the current "Manual of Uniform Traffic Control Devices" and applicable standards as included in these special provisions, and appropriate at any particular site. The safety of employees and the public shall be of primary concern.
9. Roadways shall be kept open to traffic in both directions at all times. The loading and unloading of materials and/or equipment shall be done in a protected area completely off the traveled roadway. If it is necessary for a slow-moving piece of equipment to travel for a short distance along the roadway, this piece of equipment shall be accompanied by a properly equipped escort vehicle during the entire time that it occupies any portion of the traveled roadway. The escort vehicle shall be equipped with an amber-colored, rotating-type warning light mounted on or above the cab of the escort vehicle. The escort vehicle shall also be equipped with two (2) amber colored flashing lights mounted to the rear of the escort vehicle at a minimum height of six (6) feet.

10. No equipment or material shall be stored on the pavement or shoulders at any time.

11. The starting date for each year's mowing cycle shall be no later than the following:

- First Mowing - May 1
- Second Mowing - June 1
- Third Mowing - July 1
- Fourth Mowing - August 1
- Fifth Mowing - September 15

Eighteen (18) additional mowing cycles may be completed as weather and grass conditions warrant.

12. The COUNTY shall pay the MUNICIPALITY the lessor of \$1,804.05 or contractor pricing plus ten percent (10%) for construction engineering within forty-five (45) days of receipt of invoice after the completion of each mowing cycle of 35.03 acres.

13. The MUNICIPALITY shall endeavor to submit a final invoice for all mowing no later than November 15th of each year for the term of this Agreement.

14. Additions or deductions to the mowing acres may be required during the mowing season and will be done at the sole discretion of the COUNTY. Additions or deductions will be made to the payment due for a mowing cycle at a unit price of the lessor of Fifty-One Dollars and Fifty Cents per acre (\$51.50 per acre) or contractor pricing plus ten percent (10%) for construction engineering. The DuPage County Division of Transportation will notify the MUNICIPALITY in writing, of any additions or deductions made in the mowing cycle acres.

15. The MUNICIPALITY, if contracting with an outside contractor /vendor, shall furnish a copy of the executed contract between the MUNICIPALITY and the contractor to the COUNTY in advance of invoice processing for our records. If during the term of this contract the MUNICIPALITY awards a new/different contractor, the MUNICIPALITY must notify the COUNTY and furnish the new executed contract. This will not affect the mowing acreage, pricing or schedule of this agreement.

WHEREAS, 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.

WHEREAS, this Agreement shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.

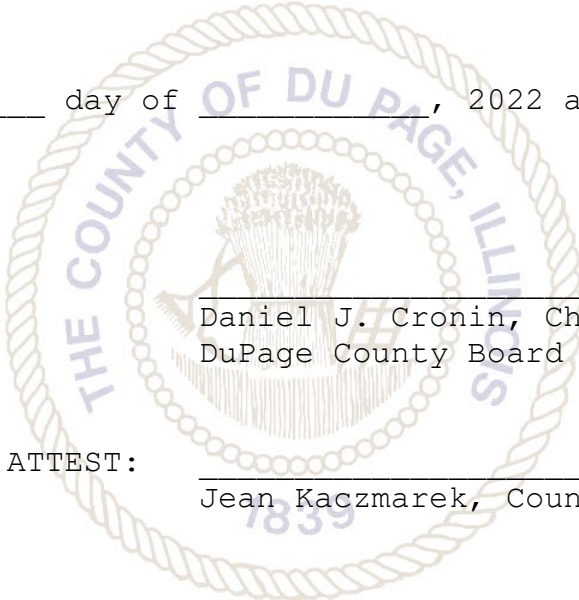
WHEREAS, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

WHEREAS, this Agreement shall become effective on the day on which both parties hereto have executed this document.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and to be attested to and their corporate seals to be hereunder affixed.

COUNTY OF DU PAGE

Signed this _____ day of _____, 2022 at Wheaton, Illinois.



Daniel J. Cronin, Chairman
DuPage County Board

ATTEST:

Jean Kaczmarek, County Clerk

CITY OF NAPERVILLE

Signed this _____ day of _____, 2022, at Naperville, Illinois.

Doug A. Krieger, City Manager
City of Naperville

ATTEST:

By: _____

Print Name: _____

Title: _____