

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE CITY OF NAPERVILLE
FOR FUTURE MAINTENANCE/ENERGY RESPONSIBILITIES
FOR THE TRAFFIC SIGNAL
CH 32/MILL STREET AT COMMONS ROAD/NIKE PARK

This Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2018, 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 Naperville (hereinafter referred to as the "MUNICIPALITY"), a 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 received an application for a permit for the installation of the traffic signal at the intersection of CH 32/Mill Street at Commons Road/Nike Park (hereinafter referred to as the "SIGNAL"); and

WHEREAS, the COUNTY and the MUNICIPALITY, in order to facilitate the free flow of traffic and to ensure the safety of the public desire to define installation and future maintenance and energy responsibilities related to said SIGNAL; and

WHEREAS, the "SIGNAL" lies within the corporate limits of the MUNICIPALITY; 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 power set forth in the "Municipal Code" (65 ILCS 1/1-1-1 et seq.) are authorized to enter into this AGREEMENT; and

WHEREAS, the COUNTY and the MUNICIPALITY have determined that it is in their mutual best interests to enter into this AGREEMENT.

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 included for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 RESPONSIBILITIES OF THE COUNTY

- 2.1. The COUNTY shall review the plans and specifications provided by the MUNICIPALITY for the SIGNAL. Approval of the permit shall not be unreasonably withheld.
- 2.2. Upon completion, inspection and acceptance by written letter or via e-mail communication to the MUNICIPALITY by the COUNTY of the installation of the SIGNAL, the COUNTY shall own, operate and maintain said SIGNAL and shall provide and pay for all costs associated with the future routine maintenance of the SIGNAL including pre-emption equipment with reimbursement from the MUNICIPALITY as referenced hereinafter.
- 2.3. The COUNTY retains the right to control and regulate the sequence and all other aspects of phasing and timing of the SIGNAL.
- 2.4. The COUNTY will be responsible for maintenance of all pavement markings on CH 32/Mills Street.

3.0 RESPONSIBILITIES OF THE MUNICIPALITY

- 3.1. The MUNICIPALITY shall be 100% responsible for engineering, permitting, construction and financing of the SIGNAL. The plans and specifications shall include emergency vehicle pre-emption, fiber interconnect, audible pedestrian push buttons and optimization with the traffic signals at Diehl Road and at Bauer Road.
- 3.2. The MUNICIPALITY shall arrange for the energy supply with the local power company to furnish the electrical energy for the operation of the SIGNAL and shall be invoiced directly by the energy provider for the SIGNAL.
- 3.3. The MUNICIPALITY shall reimburse the COUNTY 50% of future routine maintenance costs including traffic signal equipment and combination mast arm mounted luminaires for the SIGNAL by annual invoice from the COUNTY. Routine maintenance shall be invoiced to the MUNICIPALITY at the same unit price paid by the COUNTY for the COUNTY traffic signal maintenance contract in place at the time of the annual invoice.
- 3.4. The MUNICIPALITY agrees that the COUNTY shall have the right to remove the SIGNAL if the MUNICIPALITY does not remit payment for any invoices from the COUNTY related to the SIGNAL within 120 days of the date of invoice and the COUNTY may invoice the MUNICIPALITY for all removal costs. However, the COUNTY shall not exercise said remedy without written notice to the MUNICIPALITY allowing for a 60-day cure period.
- 3.5. The MUNICIPALITY agrees that the COUNTY shall repair damages to the SIGNAL caused by motor vehicles or construction activities by others, and shall invoice the MUNICIPALITY for all said costs not recovered by the COUNTY. COUNTY agrees to execute any necessary documentation subrogating COUNTY'S rights to the MUNICIPALITY for recovery of said cost.
- 3.6. The MUNICIPALITY shall be responsible for maintenance of all pavement markings on Commons Road and Nike Park access including cross-walk and stop line markings.

4.0 FUTURE MODERNIZATION/RECONSTRUCTION

4.1. If, in the future, it is determined by the COUNTY that the SIGNAL requires modernization or reconstruction due to age, condition, etc. or if the COUNTY improves CH 32/Mill Road which results in the need to modernize or reconstruct the SIGNAL, the parties hereby agree to share the cost of the improvement to the SIGNAL, including engineering, construction, construction engineering and/or land acquisition, in proportion to the number of approaches to the intersection maintained by the respective parties. For the purposes of this AGREEMENT, the east leg, Nike Park access, shall be considered as MUNICIPALITY maintained. The west leg, Commons Road, shall be considered as MUNICIPALITY maintained. The north and south legs, Mill Street, shall be considered as COUNTY maintained.

5.0 INDEMNIFICATION

5.1. 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.

5.1.1. 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 the 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.

- 5.2. 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 COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.
- 5.3. 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.
- 5.4. The COUNTY and MUNICIPALITY do 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 the MUNICIPALITY, under the law.
- 5.5. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided.

6.0 ENTIRE AGREEMENT

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

7.0 NOTICES

7.1. 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, to the party's address or sent by confirmed facsimile or 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.

For MUNICIPALITY:

Bill Novack
Director of Transportation, Engineering and
Development
City of Naperville
400 S. Eagle Street
Naperville, IL 60540
Phone: 630.420.6704
Facsimile: 630.305.5986
Email: novackw@naperville.il.us

For COUNTY:

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

8.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

8.1. No modification or amendment to this AGREEMENT shall be effective until approved by the parties in writing.

9.0 NON-ASSIGNMENT

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

10.0 AUTHORITY TO EXECUTE/RELATIONSHIP

10.1. 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.

10.2. This AGREEMENT shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.

11.0 GOVERNING LAW

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

11.2. 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.

12.0 SEVERABILITY

12.1. 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.

13.0 FORCE MAJEURE

13.1. 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.

14.0 COUNTERPARTS

14.1 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.

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