

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE CITY OF NAPERVILLE
FOR IMPROVEMENT OF CH23/NAPERVILLE ROAD
FROM NAPERVILLE-WHEATON ROAD/RIDGELAND AVENUE TO DIEHL ROAD
SECTION NO. 16-00195-06-CH**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2022, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 N. County Farm Road, Wheaton, Illinois and the City of Naperville (hereinafter referred to as the "CITY"), a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois with offices at 400 S. Eagle Street, Naperville, Illinois. The COUNTY and the CITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and to ensure the safety and accessibility of the public, desires to improve CH 23/Naperville Road from Naperville-Wheaton Road/Ridgeland Avenue to Diehl Road (hereinafter referred to as the "PROJECT"), County Section No. 16-00195-06-CH; and

WHEREAS, the COUNTY and the CITY desire to cooperate in the construction of the PROJECT because of the benefit to the residents of DuPage County, the CITY and the public; and

WHEREAS, the CITY has requested that the COUNTY reconstruct Diehl Road for approximately 482 feet west of the CH 23/ Naperville Road intersection in lieu of resurfacing, (hereinafter referred to as the "WORK") as part of the PROJECT, depicted in Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, the COUNTY is willing to incorporate the WORK into the plans for the PROJECT; and

WHEREAS, the COUNTY and the CITY desire to establish the parties' mutual cost and maintenance responsibilities with respect to the PROJECT and the WORK; 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 5/5-101 *et seq.*) and the CITY by virtue of its 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

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 COUNTY and CITY agree to cooperate in and make every effort to cause the construction of the PROJECT and the WORK.
- 2.2 The COUNTY and CITY agree that the scope of the PROJECT includes the addition of a northbound auxiliary lane from Naperville-Wheaton Road/Ridgeland Avenue to the eastbound I-88 entrance ramp and a southbound auxiliary lane from Diehl Road to Naperville-Wheaton Road/Ridgeland Avenue lengthening the existing eastbound dual left lanes on Diehl Road; construction of an island on the west leg of the Lincoln Road intersection, prohibiting left turns onto Naperville Road; widening Naperville Road to accommodate dual left turn lanes and a shared thru/right lane configuration for Naperville-Wheaton Road/Ridgeland Avenue intersection; reconfiguration of the lanes on Ridgeland Avenue to improve alignment and intersection operations; improvements to existing closed drainage system; traffic signal modernization at the Diehl Road and Naperville-Wheaton Road/Ridgeland Avenue intersections, including the elimination of the existing east-west split phase operation; roadway lighting improvements; and milling, patching and resurfacing of the existing pavement.
- 2.3 The COUNTY and the CITY further agree that the PROJECT includes relocating existing roadway lighting that is part of the CITY's existing lighting system and installation of new roadway lighting to be integrated into the CITY's lighting system. This includes the removal, installation, and relocation of the roadway lighting (hereinafter referred to as "LIGHTING").

- 2.4. The COUNTY and CITY agree that the scope of the WORK includes reconstruction, in lieu of resurfacing, of the section of Diehl Road for approximately 482 feet west of CH 23/ Naperville Road, and includes reconstruction of the pavement, medians, curb and gutter, drainage, and other appurtenant work, and as shown in Exhibit "B" attached.

3.0 RESPONSIBILITIES OF THE COUNTY

- 3.1. The COUNTY shall be responsible for all PROJECT costs except as noted herein, act as the lead agency and be responsible for completing all design engineering, permit processing, right-of-way acquisition, utility coordination, construction engineering and construction for the PROJECT including the WORK.
- 3.2. Both the COUNTY and CITY agree that the COUNTY shall administer the contract for the construction of the PROJECT including the WORK. The COUNTY agrees to manage the PROJECT including the WORK in the best interest of both parties and keep advised officials of the CITY regarding the progress of the WORK and any problems encountered or changes recommended.
- 3.3. The COUNTY agrees, if necessary, to arrange for and apply for permits for the PROJECT required adjustments, relocations and modifications, etc. to CITY utility facilities, which are in conflict with the PROJECT at no expense to the CITY.
- 3.4. The COUNTY shall submit the plans and specifications for the PROJECT which includes the WORK to the CITY for review. The CITY shall provide review comments and the COUNTY will correct any errors and address other reasonable comments prior to the submittal of Final Plans and Specifications to the CITY.

4.0 RESPONSIBILITIES OF THE CITY

- 4.1. The CITY hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the CITY property within the boundaries of the PROJECT for the purpose of constructing the PROJECT. The CITY 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.
- 4.2. The CITY shall, if necessary, plan for and issue permits for the PROJECT, including the WORK, for required adjustments, relocations, modifications, etc. to utility facilities located within existing CITY rights-of-way, which are in conflict with the PROJECT and the WORK at no expense to the COUNTY.

- 4.3. The CITY agrees to waive CITY administration fees for plan/stormwater permit reviews/inspections for the PROJECT and the WORK. This waiver shall not include any pass-through consultation plan review and inspection fees, for which the COUNTY will reimburse the CITY within sixty (60) days of receipt of a properly documented invoice from the CITY.
- 4.4. The CITY will be responsible for all costs related to the LIGHTING. The CITY will also be responsible for all future maintenance, and future energy costs for the roadway lighting.
- 4.5. The CITY agrees that the CITY's estimated share of the cost of the WORK and the LIGHTING is approximately \$692,422.00. A Funding Table is attached hereto as Exhibit "A" and is incorporated herein. The CITY's first payment to the COUNTY will not be made until after 01/15/2023.
- 4.6. The CITY agrees to reimburse the COUNTY \$14,306.00 for the CITY's share of design engineering for the WORK and \$15,800.00 for design engineering for the LIGHTING within sixty (60) days of receipt of a properly documented invoice from the COUNTY.
- 4.7. The CITY agrees to reimburse the COUNTY one hundred percent (100%) of the difference between the estimated cost for resurfacing and the actual costs for reconstruction (WORK) and the CITY also agrees to reimburse the COUNTY one hundred percent (100%) of the LIGHTING. (See Exhibit A)
- 4.8. The CITY agrees to reimburse the COUNTY ten percent (10%) of the actual final construction cost of the WORK and LIGHTING for construction engineering.
- 4.9. The CITY agrees to reimburse the COUNTY for a share of the estimated WORK and LIGHTING costs upon award of the contract for the PROJECT based upon as-bid unit prices for the WORK and LIGHTING. The COUNTY will invoice the CITY for one hundred percent (100%) of the design engineering, eighty percent (80%) of construction, and eighty percent (80%) of construction engineering costs upon award of a contract. Upon completion and acceptance of the WORK and LIGHTING, not to be unreasonably withheld, and based upon the documentation of final costs and quantities submitted by the COUNTY and a final invoice, the CITY agrees to reimburse the COUNTY the balance of the actual WORK and LIGHTING cost as referenced herein above within sixty (60) days of receipt of a properly documented invoice from the COUNTY.
- 4.10 The CITY shall pay one hundred percent (100%) of all future energy costs for the traffic signals at the intersection of Diehl Road and CH 23/Naperville Road and at the intersection of Ridgeland Avenue-Naperville-Wheaton Road and CH 23/Naperville Road. The CITY will be directly billed by the energy company for the electricity costs.

4.11. The CITY agrees that it will be responsible for all maintenance of the WORK, including all pavement markings on Diehl Road west of CH23/Naperville Road following completion and acceptance of same, and the COUNTY shall be responsible for all maintenance of the remainder of the PROJECT owned or under the jurisdiction of the COUNTY.

5.0 FUTURE MAINTENANCE, MODERNIZATION/RECONSTRUCTION OF TRAFFIC SIGNALS

- 5.1. The CITY shall reimburse the COUNTY fifty-percent (50%) for all future routine maintenance and repair costs of all traffic signal equipment, luminaries and pre-emption equipment at the intersection of Diehl Road and CH23/Naperville Road and at the intersection of Ridgeland Avenue/Naperville-Wheaton Road and CH 23/Naperville Road by annual invoice from the COUNTY. Routine maintenance shall be invoiced to the CITY 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.
- 5.2. The CITY agrees that the COUNTY shall repair damages to the traffic signals caused by motor vehicles or construction activities by others and shall invoice the CITY for fifty-percent (50%) of said costs not recovered by the COUNTY. The COUNTY agrees to execute any necessary documentation subrogating the COUNTY's right to the CITY for recovery of said cost.
- 5.3. If in the future, it is determined that the traffic signals at the intersection of Diehl Road and CH23/Naperville Road and/or at the intersection of Ridgeland Avenue/Naperville-Wheaton Road and CH 23/Naperville Road require modernization or reconstruction due to age, condition, etc. or if the COUNTY improves CH23/Naperville Road which results in the need to modernize or reconstruct the signals involved in said intersections, the parties hereby agree to share the cost of the improvement to the signals in proportion to the number of approaches to the intersection maintained by the respective parties.
- 5.4 COUNTY will notify the CITY of any said future modernization /reconstruction and it shall be the subject of a future agreement that will define the parties' project and financial responsibilities.
- 5.5 The parties agree that should either party receive federal, state or other funding granted for the modernization/reconstruction of said signals that the parties will equitably allocate such grant funds so as to mutually benefit each party in proportion to the number of street approaches to the intersection maintained by the respective party. Such agreement on modernization /reconstruction shall not change future responsibilities for payments for the energy for the signals and maintenance/repair unless mutually agreed to by both parties.

6.0 GENERAL

- 6.1 It is understood and agreed by the parties hereto that this AGREEMENT is intended to address funding and plan / construction participation of the WORK and no changes to existing roadway and appurtenance maintenance and/or jurisdiction are proposed.
- 6.2 Whenever in this AGREEMENT, approval or review of either the COUNTY or CITY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 6.3 In the event of a dispute between the COUNTY and CITY representatives in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Engineer and the CITY Administrator shall meet and resolve the issue.
- 6.4 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 WORK. 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.
- 6.5 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 and the same instrument.
- 6.6 This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within four (4) years subsequent to the execution of this AGREEMENT.

7.0 INDEMNIFICATION

7.1. The COUNTY shall, to the extent permitted by law, indemnify, hold harmless and defend the CITY, its officials, officers, employees, and agents 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 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 CITY 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 CITY 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 CITY, or any person or entity claiming a right through CITY, 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 CITY 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 CITY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The CITY does not hereby waive any defenses or immunity available to it with respect to third parties.
- 7.2.1. The COUNTY and the CITY acknowledge that the CITY has made no representations, assurances or guaranties regarding the CITY'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 CITY, 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 CITY'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 55ILCS 5/3-9008. The COUNTY'S participation in its defense shall not remove CITY'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 tort, 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. Except with respect to occurrences arising before the completion of the Project, the CITY'S and COUNTY'S indemnification under Section 6.0 hereof shall terminate when the WORK is completed and the CITY and COUNTY each assume its respective maintenance responsibilities as set forth in Section 5.0 hereof.

8.0 ENTIRE AGREEMENT

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

9.0 NOTICES

- 9.1. Any notice required shall be deemed properly given to the party to be notified at the time it is personally delivered, or three days after it is mailed by certified mail, return receipt requested, or at the time it is 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.

City of Naperville

400 S. Eagle Street

Naperville, IL

ATTN: Bill Novack

Director of Transportation, Engineering and Development

Phone: 630-420-6704

Email: novackw@naperville.il.us

County of DuPage Division of Transportation

421 N. County Farm Road
Wheaton, IL 60187

ATTN: Christopher C. Snyder, P.E.

Director of Transportation/County Engineer

Phone: 630-407-6900

Email: Christopher.snyder@dupageco.org

10.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

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

11.0 NON-ASSIGNMENT

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

12.0 AUTHORITY TO EXECUTE/RELATIONSHIP

12.1. 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.

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

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.

(remainder of page left intentionally blank)

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.

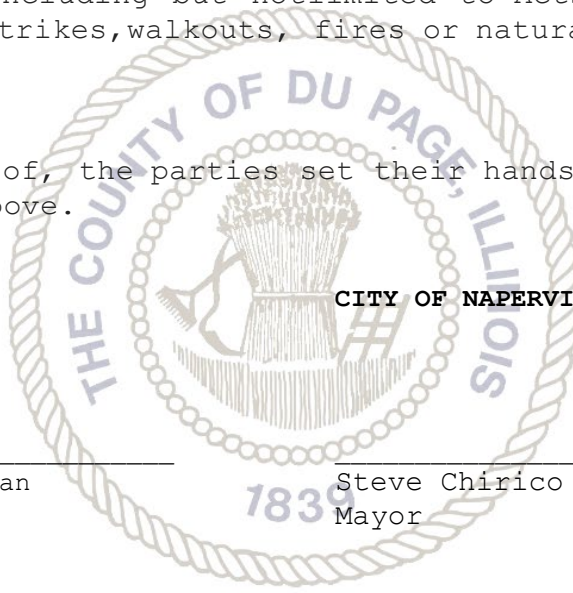
15.0 FORCE MAJEURE

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

Steve Chirico
Mayor

ATTEST:

ATTEST:

Jean Kaczmarek, County Clerk

Signature

Print Name

Title

EXHIBIT A

CITY - Estimate of Costs
16-00195-06-CH

DESCRIPTION	ESTIMATE OF TOTAL COST	ESTIMATE OF CITY COST
Phase II Design Engineering (WORK) (5% Differential Construction Cost)		\$ 14,306
Phase II Design Engineering (LIGHTING) (5% Construction Cost)		\$ 15,800
Construction (Resurfacing of Diehl Rd)	\$ 241,622	
Construction (WORK) (Reconstruction of Diehl Rd)	\$ 527,727	\$ 286,105
Construction Engineering (10% Differential Construction Cost)		\$ 28,611
Construction (LIGHTING)		\$ 316,000
Construction Engineering (10% LIGHTING)		\$ 31,600
TOTAL ESTIMATED CITY COST		\$ 692,422

