

GRANTOR: John W. Feldott
as Successor Trustee under Trust
Agreement Dated November 13, 1996,
as restated June 28, 2016 and known
as the Donald A. Feldott Trust

GRANTEE: City of Naperville,
an Illinois Municipal Corporation
400 South Eagle Street
Naperville, IL 60540

PROPERTY ADDRESS:
8 West Chicago Avenue
Naperville, IL 60540

P.I.N.
07-13-436-012 [part of]

Return to:
City Clerk
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

Above space reserved for Recorder

PERMANENT EASEMENT AGREEMENT
[Part of 8 West Chicago Avenue, Naperville, IL]

THIS PERMANENT EASEMENT (“Agreement”) is entered into by and between John W. Feldott as Trustee under Trust Agreement dated November 13, 1996, as restated June 28, 2016, and known as the Donald A. Feldott Trust, with offices located at 2857 Bond Circle, Naperville, IL 60563 (“**Grantor**”) and the City of Naperville, an Illinois municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois (“**Grantee**” or “**City**”), with an address of 400 South Eagle Street, Naperville, IL 60540. Grantor and Grantee shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

RECITALS

- A. **WHEREAS**, the City is undertaking reconstruction of the Washington Street bridge located in the City’s downtown (the “**Washington Street Bridge Replacement Project**” or “**Project**”); and

B. **WHEREAS**, the Owner is the owner in fee simple of certain real property and all improvements located thereon located at 8 West Chicago Avenue, Naperville, IL, 60540, legally described on **Exhibit A** and depicted on **Exhibit B**, and having parcel identification number 07-13-436-012 (the “**Property**”); and

C. **WHEREAS**, the City has determined that it is necessary and in the public interest to acquire a permanent easement (“**Permanent Easement**”) in 0.006 acres of the Property as depicted on **Exhibit B** and legally described on **Exhibit C** (hereinafter the “**Permanent Easement Premises**”) which will be used by the City for the Project as provided herein, and Grantor has agreed to grant the City said Permanent Easement on the Permanent Easement Premises for the purposes set forth herein.

D. **WHEREAS**, in entering into this Agreement and undertaking the obligations provided herein, the City is acting pursuant to its home rule authority under the laws and Constitution of the State of Illinois.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other valuable consideration received the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.**

1.1 The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph 1.1 in their entirety.

2. **GRANT OF PERMANENT EASEMENT**

2.1 Grant of Permanent Easement. In consideration of the terms, conditions, and covenants set forth herein, the sufficiency of which is acknowledged by the Parties hereto to be sufficient, Grantor hereby grants the City of Naperville a non-exclusive permanent easement (“**Permanent Easement**”) over, upon, under, through, and across the Permanent Easement Premises for the purposes of removal and replacement of existing surface area within the permanent easement, installation of City sanitary sewer and other utilities including but not limited to electric duct bank, construction staging, and other highway purposes (herein “**Improvements**”), and the inspection, repair, maintenance, reconstruction, and operation of said Improvements. Said Permanent Easement includes a grant to the City, and any of the City’s officers, agents, representatives, employees, contractors, licensees, successors, or assigns the right, privilege and authority to enter upon the Permanent Easement Premises, either by vehicle or on foot, together with the necessary workers and equipment to do any of the work described herein. The right is also granted to the City to trim or remove any trees, shrubs or other plants on the Permanent Easement Premises that may interfere with the forgoing Permanent Easement purposes.

3. **CONSIDERATION.**

3.1 Subject to the terms and conditions set forth herein, the total consideration (“**Consideration**”) to be paid by the City to Grantor for the Permanent Easement on the Permanent

Easement Premises as set forth herein herein, including but not limited to all damages to the remainder of the Property related to or resulting therefrom, is twenty-five thousand one hundred and ten dollars (\$25,110.00) the sufficiency of which is hereby acknowledged. Said amount shall be paid to Grantor by the City within thirty (30) days of the Effective Date of this Agreement.

3.2 The Parties hereto acknowledge that the City made an offer to acquire the Permanent Easement and agreed upon payment of the amounts described in Section 3.1 above, and further acknowledge that within the meaning of 735 ILCS 30/10-5-105(a) the City has the authority to exercise the power of eminent domain with respect to the Permanent Easement notwithstanding that no eminent domain action has been filed.

4. **GRANTOR'S REPRESENTATIONS AND COVENANTS.**

4.1 Grantor represents and warrants that:

4.1.1 It has good title to the Permanent Easement Premises.

4.1.2 It has the sole authority to grant the Permanent Easement on the Permanent Easement Premises as described herein. Grantor shall provide the City with fully executed copies of tenant and lessee releases with respect to the Permanent Easement granted herein prior to City payment of the consideration described herein; and

4.1.3 The Permanent Easement Premises are not the subject of any pending real estate tax special assessment or litigation. Grantor further acknowledges and represents that to the best of its knowledge the Permanent Easement Premises are not the subject of any environmental action, inquiry, or investigation.

5. **DEFENSE, INDEMNIFICATION, AND HOLD HARMLESS.**

5.1 Grantor. Grantor shall defend, indemnify and hold the City of Naperville and its officers, agents, representatives, and employees harmless from and against any claims, demands, or actions of any kind arising out of the grant herein of the Permanent Easement on the Permanent Easement Premises brought by any person or entity claiming to have a rental, lease, or other interest of any kind in any portion of the Permanent Easement Premises, provided that in the event that any such claims or causes of actions are asserted against the City, the City shall immediately furnish Grantor with written notification thereof.

5.2 Grantee/City. Except for the negligent and willful misconduct of the Grantor and its officers, employees, agents, affiliates, parent companies, subsidiaries, and their successors ("**Indemnitees**"), the City shall defend, indemnify, and hold harmless the Indemnitees from and against claims or causes of action arising out of the use of the Permanent Easement Premises for the uses described herein, provided that in the event that any such claims or causes of actions are asserted against Grantor, Grantor shall immediately furnish the City with written notification thereof.

6. **GENERAL PROVISIONS.**

6.1 **Entire Agreement.** This Agreement sets forth and constitutes the entire agreement between the Parties with respect to the subject matter described herein and supersedes any and all prior agreements, understandings, promises, warranties, and representations made by each Party to the other concerning the subject matter. This Agreement may be modified only by a written document signed by both Parties.

6.2 **Binding Nature.** All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the tenants, lessees, transferees, assigns, successors in interest, representatives, heirs, executors, and administrators of the Parties hereto.

6.3 **Severability.** If any part or any provision of this Agreement is finally determined to be invalid or unenforceable under applicable law by a court of competent jurisdiction, that part or provision shall be ineffective to the extent of such invalidity or unenforceability only, without in any way affecting the remaining parts or provisions of this Agreement.

6.4 **Fees and Expenses.** The Parties agree to bear their own costs, attorneys' fees and related expenses associated with this Agreement and any dispute between the Parties.

6.5 **Joint Preparation.** The Parties cooperated in the drafting of this Agreement, and if it is finally determined that any provision herein is ambiguous, that provision shall not be presumptively construed against any Party.

6.6 **Notices.** All notices required under this Agreement shall be served upon the Parties via First Class U.S. Mail as follows:

NOTICES TO THE CITY OF NAPERVILLE

Mike DiSanto, City Attorney
City of Naperville Municipal Center
400 South Eagle Street
Naperville, IL 60540

With a copy to:

William Novack
Director of T.E.D.
City of Naperville Municipal Center
400 South Eagle Street
Naperville, IL 60540

NOTICES TO THE GRANTOR

John W. Feldott
2857 Bond Circle
Naperville, IL 60563

With a copy to:

Jon Moss, Esq.
2857 Bond Circle
Naperville, IL 60563

6.7 Choice of Law/Venue. This Agreement shall be governed, in all respects, by the laws of the State of Illinois, irrespective of its choice of law rules. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

6.8 Exhibits Incorporated. All exhibits referenced herein are deemed incorporated herein and made part hereof.

6.9 Authorizations. Each of the signatories to this Agreement represents and warrants that they are authorized to execute this Agreement on behalf their respective Party and by such signature to bind that Party to this Agreement.

6.10 Survival. The following provisions of this Agreement shall survive the expiration or termination of this Agreement: Section 4 including all subparts thereof, Subsections 1.1, 2.1, 5.1, 5.2, 6.1 through 6.5, and 6.7 through 6.10.

6.11 Recordation. This Agreement shall be recorded by the City with the DuPage County Recorder.

6.12 Effective Date. The effective date (“**Effective Date**”) of this Agreement shall be the date upon which it has been fully executed by both Parties hereto.

IN WITNESS WHEREOF, we have executed this Agreement effective as of the Effective Date set forth above.

/SIGNATURES ON FOLLOWING PAGES/

GRANTOR: JOHN W. FELDOTT AS SUCESSOR TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1996, AS RESTATED JUNE 28, 2016, AND KNOWN AS THE DONALD A. FELDOTT TRUST

By _____

Printed Name: John W. Feldott

Title: _____

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that John W. Feldott appeared before me this day in person and acknowledged the signature set forth above.

Given under my hand and official seal this _____ day of _____, 2022.

(seal)

Notary Public

GRANTEE: CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

By: _____
Name: Pam Gallahue, Ph.D.
Its: City Clerk

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager, and Pam Gallahue, City Clerk this ____ day of _____, 2022.

Given under my hand and official seal this ____ day of _____, 2022.

Notary Public

Print Name

My Commission Expires: _____

Seal

This Agreement was prepared by the Naperville Legal Department, 400 South Eagle Street, Naperville, IL 60540

EXHIBIT A

LEGAL DESCRIPTION

LOT 1 OF FRIDLEY'S SUBDIVISION OF PART OF LOT 2 IN BLOCK 5 OF SLEIGHT'S SECOND ADDITION TO NAPERVILLE; ALSO, BEGINNING AT THE NORTHEAST CORNER OF LOT 1 OF FRIDLEY'S SUBDIVISION OF PART OF LOT 2 OF SLEIGHT'S SECOND ADDITION TO NAPERVILLE; THENCE SOUTH PARALLEL WITH THE WEST LINE OF SAID LOT 1, 100 FEET FOR A PLACE OF BEGINNING; THENCE SOUTHERLY PARALLEL TO THE WEST LINE OF SAID LOT 1, 33 FEET; THENCE WEST 6.7 FEET TO THE EAST LINE OF SAID LOT; THENCE NORTHEASTERLY ALONG THE EAST LINE OF THE SAID LOT 33.6 FEET TO THE POINT OF BEGINNING; ALL OF SAID PREMISES BEING A PART OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID FRIDLEY'S SUBDIVISION RECORDED MARCH, 1856, AS DOCUMENT 10255, IN DUPAGE COUNTY, ILLINOIS.

SITUATED IN THE COUNTY OF DUPAGE AND STATE OF ILLINOIS.

PERMANENT TAX NUMBER(S): 07-13-436-012

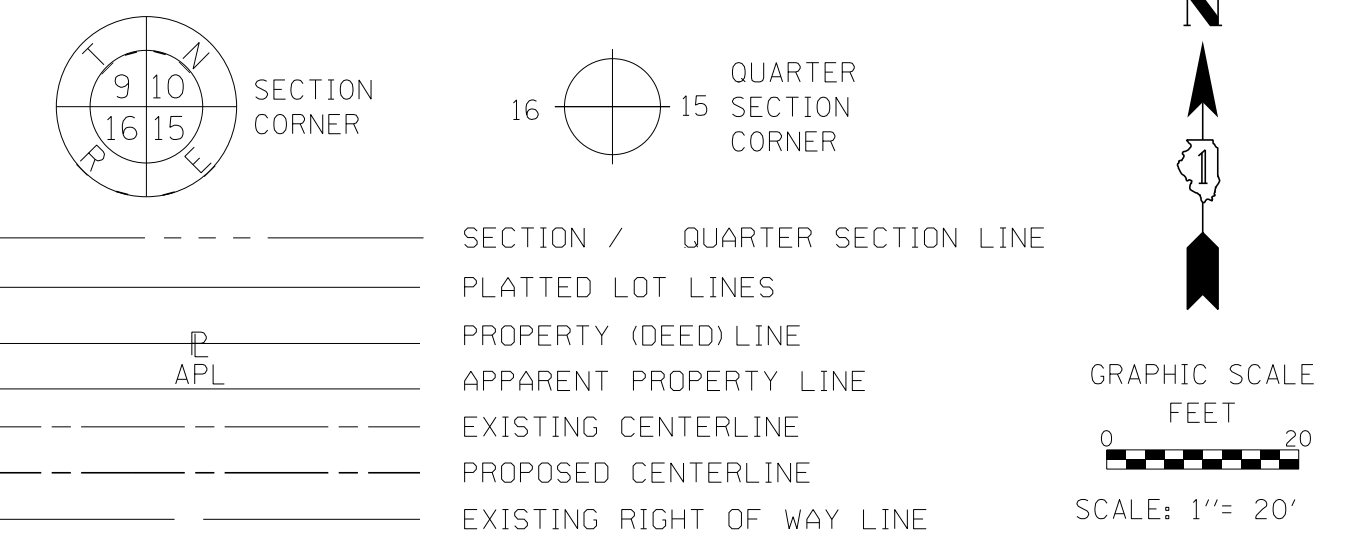
COMMON ADDRESSES:

8 West Chicago Avenue
Naperville, IL 60540

PART OF THE SE1/4 OF SECTION 13, TWP. 38 N., R. 9 E. OF THE 3RD. P.M., IN DUPAGE COUNTY, ILLINOIS.

PARCEL NUMBER	TOTAL HOLDINGS ACRES	PART TAKEN ACRES	AREA IN EXISTING R.O.W. ACRES	REMAINDER AREA ACRES	EASEMENT AREA		PARCEL INDEX NUMBER	OWNER
					ACRES	SQUARE FEET		
0005 0005PE 0005TE	0.106	0.012 507 SQ. FT.		0.094	0.006 0.007	279 294	07-13-436-012	DONALD A. FELDTT AS TRUSTEE UNDER TRUST AGREEMENT DATED NOVEMBER 13, 1996, AS REINSTATED JUNE 28, 2016, AND KNOWN AS THE DONALD A. FELDTT TRUST

LEGEND



BEARINGS AND COORDINATES ARE REFERENCED TO THE ILLINOIS STATE PLANE COORDINATE SYSTEM, NAD83 (2011 ADJUSTMENT), EAST ZONE.

- IRON PIPE OR ROD FOUND
- ⊕ *MAG NAIL SET
- + CUT CROSS FOUND OR SET
- 5 / 8" REBAR SET
- STAKING OF PROPOSED RIGHT OF WAY, SET DIVISION OF HIGHWAYS SURVEY MARKER TO MONUMENT THE POSITION SHOWN, IDENTIFIED BY INSCRIPTION DATA AND SURVEYORS REGISTRATION NUMBER.
- M STAKING OF PROPOSED RIGHT OF WAY IN CULTIVATED AREAS, BURIED 5/8 INCH METAL ROD 20 INCHES BELOW GROUND TO MARK FUTURE SURVEY MARKER POSITION IDENTIFIED BY COLORED PLASTIC CAP BEARING SURVEYORS REGISTRATION NUMBER.
- ⊙ PERMANENT SURVEY MARKER, I.D.O.T. STANDARD 2135 (TO BE SET BY OTHERS)
- RIGHT OF WAY STAKING PROPOSED TO BE SET

STATE OF ILLINOIS)
)SS
COUNTY OF DUPAGE)

THIS IS TO CERTIFY THAT I, ZACHARY N. RAWLINGS, AN ILLINOIS PROFESSIONAL LAND SURVEYOR, HAVE SURVEYED THE PLAT OF HIGHWAYS SHOWN HEREON IN SECTION 13, TOWNSHIP 38 NORTH, RANGE 9 EAST OF THE THIRD PRINCIPAL MERIDIAN, DUPAGE COUNTY, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PLAT CORRECTLY REPRESENTS SAID SURVEY, THAT ALL MONUMENTS FOUND AND ESTABLISHED ARE OF PERMANENT QUALITY AND OCCUPY THE POSITIONS SHOWN THEREON AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, MADE FOR THE DEPARTMENT OF TRANSPORTATION, STATE OF ILLINOIS.

DATED AT NAPERVILLE, ILLINOIS THIS 7 DAY OF JANUARY, 2019 A.D.

ILLINOIS PROFESSIONAL LAND SURVEYOR NO. 3934
LICENSE EXPIRATION DATE: NOVEMBER 30, 2020
FIELD WORK COMPLETED: 1/4/2019
THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

benesch
engineers · scientists · planners
Alfred Benesch & Company
35 West Wacker Drive, Suite 3300
Chicago, Illinois 60601
312-565-0450
Design Firm License # 184.000882

PARCEL PLAT
CITY OF NAPERVILLE
WASHINGTON STREET
BRIDGE RECONSTRUCTION

LIMITS: AURORA AVE TO CHICAGO AVE COUNTY: DUPAGE
SECTION: _____ JOB NO.: 10557
STA. 135+95.67 TO STA. 136+71.05
SCALE: 1"=20' SHEET 1 OF 1 SHEETS

CITY OF NAPERVILLE
400 SOUTH EAGLE STREET
NAPERVILLE, ILLINOIS 60540

PROJECT COORDINATES
ILLINOIS STATE PLANE, EAST ZONE, NAD83 (2011)

EXISTING WASHINGTON STREET

STATION	NORTHING	EASTING	DESCRIPTION
31+08.88	1858632.14	1034694.83	START
32+59.88	1858782.63	1034707.19	PC
33+29.32	1858851.84	1034712.88	PI
33+98.65	1858920.12	1034725.56	PT
36+65.14	1859477.08	1034829.02	END

PROPOSED WASHINGTON STREET

STATION	NORTHING	EASTING	DESCRIPTION
131+08.88	1858632.14	1034694.83	START
131+49.63	1858672.75	1034698.17	PC
132+70.20	1858792.92	1034708.04	PI
133+90.57	1858911.46	1034730.06	PT
136+69.36	1859185.57	1034780.97	POT
138+19.48	1859334.14	1034802.47	END

PARCEL COORDINATES

STATION	OFFSET	NORTHING	EASTING
135+95.67	-32.49	1859119.05	1034735.57
135+96.18	-46.66	1859122.13	1034721.73
135+97.24	-44.31	1859122.75	1034724.24
135+97.74	-43.21	1859123.04	1034725.41
136+43.14	-53.55	1859169.57	1034723.53
136+44.86	-44.31	1859169.57	1034732.93
136+46.51	-35.40	1859169.57	1034742.00
136+54.80	-55.26	1859181.34	1034723.98
136+56.55	-42.16	1859180.67	1034737.18
136+70.37	-43.62	1859192.81	1034737.95
136+71.05	-36.68	1859192.49	1034744.92

SECTION CORNERS

CORNER	NORTHING	EASTING
13-NE	1863947.51	1029662.15
13-NW	1864118.74	1035043.85
13-S-1/4	1858721.50	1032274.82
13-SE	1858809.30	1035005.94
E-25	1850713.26	1034870.54

PRIVATE OWNERSHIP ENDS AT WATER EDGE

STONE RETAINING WALL

DUPAGE RIVER

NOTE:
ALLEY APPEARS ON PLAT OF FRINDLEY'S SUBDIVISION RECORDED AS DOC. 10255, THOUGH OCCUPATION SUGGESTS VACATION, NO VACATION DOCUMENT HAS BEEN FOUND.
TITLE COMMITMENT NO. BEN-2018-DP-4708.0 DATED AUGUST 21, 2018

NOTE:
ALL DIMENSIONS ARE MEASURED UNLESS OTHERWISE SPECIFIED.
BEARINGS AND DISTANCES SHOWN HEREON ARE ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NORTH AMERICAN DATUM OF 1983 (2011 ADJUSTMENT) "GRID".
ALL MEASURED AND CALCULATED DISTANCES ARE "GRID" NOT "GROUND". TO OBTAIN GROUND DISTANCES, DIVIDE GRID DISTANCES BY THE COMBINATION FACTOR OF 0.99995095.
AREAS SHOWN ON THIS PLAT ARE "GROUND".

REVISION DATE: _____ REVISION MADE BY: _____

EXHIBIT C

LEGAL DESCRIPTION OF PERMANENT EASEMENT

THAT PART OF LOT 1 IN FRINDLEY'S SUBDIVISION, RECORDED MARCH 26, 1856 IN DUPAGE COUNTY AS DOCUMENT NUMBER 10255, BOOK 19, PAGE 158, IN THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN DUPAGE COUNTY, ILLINOIS, BEARINGS AND DISTANCES BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD 83 (2011 ADJUSTMENT), WITH A COMBINED FACTOR OF 0.99995095, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 2 DEGREES 10 MINUTES 24 SECONDS WEST A RECORD DISTANCE 100' ALONG THE EAST LINE OF SAID LOT 1; THENCE SOUTH 2 DEGREES 10 MINUTES 24 SECONDS WEST 33.40 FEET ALONG A LINE PARALLEL WITH THE WEST LINE OF SAID LOT 1; THENCE NORTH 87 DEGREES 40 MINUTES 22 SECONDS WEST, 4.63 FEET; THENCE SOUTH 7 DEGREES 15 MINUTES 3 SECONDS WEST, 23.11 FEET ALONG THE WESTERLY LINE OF WASHINGTON STREET; THENCE DUE WEST 9.07 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 10 DEGREES 31 MINUTES 21 SECONDS EAST, 47.62 FEET TO THE NORTH EDGE OF THE DUPAGE RIVER; THENCE SOUTH 76 DEGREES 11 MINUTES 43 SECONDS WEST, 2.58 FEET ALONG SAID NORTH EDGE TO THE WEST LINE OF SAID LOT 1; THENCE NORTH 2 DEGREES 10 MINUTES 24 SECONDS EAST, 47.47 FEET ALONG SAID WEST LINE; THENCE DUE EAST, 9.40 FEET TO THE POINT OF BEGINNING, ALL LYING WITHIN DUPAGE COUNTY, ILLINOIS.

SAID PART CONTAINS 0.006 ACRES (279 SQUARE FEET), MORE OR LESS.

COMMON ADDRESSES:

8 West Chicago Avenue
Naperville, IL 60540

PIN: 07-13-436-012
[part of]