

Oct 6, 2020 Council QA

Wednesday, September 30, 2020 1:08 PM

F. AWARDS AND RECOGNITIONS:

1. **20-1150** Proclaim October 2020 as Arts DuPage Month

I. CONSENT AGENDA:

1. **20-1107** Approve the regular City Council meeting minutes from September 15, 2020
2. **20-1139** Approve the City Council meeting schedule for October, November, and December 2020

Q:	What is the anticipated date Council will be back in Chambers? Please provide a status of all matters postponing in Chambers participation.	Gustin
A:	<p>We continue to experience backorders of critical pieces of video equipment for the Council Chambers audio/visual upgrade project, which is necessary for a return to Council Chambers. These pieces are in extraordinary demand due to the pandemic and the move towards online meetings by numerous organizations. Notable pieces we are waiting for include video cameras, a server, and the device that will allow for the broadcast of hybrid (mixed in-person/Zoom participation) meetings.</p> <p>Our contractor continues to take proactive steps, including regular reach-out to vendors, to do all they can to obtain this equipment. In the meantime, staff is pushing forward necessary networking processes to expedite the integration, programming, TV channel server migration, and testing work that must occur when all equipment is in hand. However, some of these efforts can only occur once all video equipment is on site. Currently, the best estimate for completion is the end of November 2020. In addition, we have begun the planning process for non-technical meeting requirements including plexiglass needs, capacity management, staffing and overflow plans.</p>	LaCloche

3. **20-879** Approve the recommendation by GCG Financial to award basic life, accidental life, supplemental life and family medical leave administration (FMLASource) renewal to Reliastar Life Insurance/VOYA Financial for an amount not to exceed \$325,000 and for a two-year term
4. **20-889** Waive the applicable provisions of the Naperville Procurement Code and award Procurement 20-262, Employee Assistance Program (EAP), to Curalinc Healthcare for an amount not to exceed \$76,500 and for a three-year term (requires six positive votes)

Q:	Can any of these services be covered by the CARES Act reimbursement program?	Gustin
A:	<p>No, we could not use this contract renewal under The Cares Act because this is an existing employee benefit which we are renewing for 2021-2023.</p> <p>The CARES Act requires that the payments from the Coronavirus Relief Fund only be used to cover expenses that—</p> <ol style="list-style-type: none"> 1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19); 2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and 3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020. 	White

5. **20-998** Approve the award of Option Year Three to Contract 17-169, Parkway Tree Trimming, to Steve Piper and Sons for an amount not to exceed \$150,000

Q:	Due to this change, would staff recommend sending these services out to bid again?	Gustin
A:	No. Steve Piper's pricing is far below the next low bidder even with the 3% increase.	Dublinski

6. **20-1019** Waive the applicable provisions of the Naperville Procurement Code and award the Surplus Donation of Unit 332, 2009 International Medtec Ambulance, to Naperville Sister City, Cancun, Mexico (requires six positive votes) (Item 1 of 2)
7. **20-1042** Approve the award of Change Order #1 to Cooperative Procurement 20-045, Unit 332 Ambulance Replacement, to Foster Coach for an amount not to exceed \$7,000 and a total award of \$268,800 (Item 2 of 2)

Q:	How and why was the decision made to deviate from the original trade-in plan City Council agreed to and instead to donate the vehicle? What is the larger benefit to the city of donating to Cancun instead of receiving a \$7,000 trade in value?	Sullivan
A:	The City has in the past donated one ambulance and one fire truck to Cancun, both of which are still in service in Cancun today. Cancun has expressed the need for additional equipment. The benefit in donating this vehicle as well as other donations such as de-commissioned air packs to Cancun is that they are officially our Sister City and the Commission and Fire Department staff see a greater benefit in the life saving impacts of this donation as well as future reciprocation from	Chief Puknaitis

Cancun in the way of increased cooperation and coordination with this Sister City.
--

- 8. **20-1045** Approve the award of Option Year One to Contract 20-001, Pipefitting, Plumbing and Mechanical Services, to Dahme Mechanical Industries, Inc. for an amount to not exceed \$204,000 and for a one-year term
- 9. **20-1065** Approve the award of Bid 20-317, 2020 Traffic Light LED Replacement Program, to Electric Conduit Construction, for an amount not to exceed \$162,657.64, plus a 5% contingency
- 10. **20-1078** Approve the award of Cooperative Procurement 20-349, Panasonic Refresh, to CDS Technologies for an amount not to exceed \$151,356
- 11. **20-1080** Approve the award of JOC Procurement DPW-004-CY20.A, Van Buren Parking Deck Maintenance, to Robe Inc. for an amount not to exceed \$113,530.49 plus a 5% contingency
- 12. **20-1081** Approve the award of Cooperative Procurement 20-351, Restoration of the Southwest Waterworks (SWWW) South and North Ground Level Reservoir exterior roofs and walls, to Garland/DBS for an amount not to exceed \$284,800, plus a 5% contingency
- 13. **20-1082** Approve the award of Cooperative Procurement 20-352, Southeast Waterworks (SEWW), East Reservoir Roof Repair, to Garland DBS Inc. for an amount not to exceed \$240,000, plus a 5% contingency
- 14. **20-1100** Approve the award of RFP 20-290, Naper Settlement Distance Learning, to Night Kitchen Interactive for an amount not to exceed \$160,500 and for a one-year term

Q:	A) Does the city normally cover costs for new Settlement exhibit programming, or services to develop those exhibits?	Sullivan
A:	<p>Yes, the City regularly pays for school programming expenses and all revenue generated from school programming goes back to the 016 Settlement City account. If programs were still being delivered on-site, expenses would range from program development to consumable materials such as wood for fires, iron for the blacksmith, and cream and saltines for butter making activities.</p> <p>Because of COVID-19 and its resultant restrictions, 35,000 school children and teachers who normally come to Naper Settlement for a school field trip can no longer do so.</p> <p>RFP 20-290 allows the museum to pivot its school programming to on-line and continue to provide grades 4-12 with curriculum-based learning experiences that teachers in our two Naperville school</p>	Sack

	districts and across the Chicago metropolitan area look for and rely on.	
Q:	B) Does the Settlement have a plan to charge for these exhibits and if so, are the proceeds designated to go back into the same fund the expense is being taken from, so that the City may recoup these costs?	Sullivan
A.	<p>Yes, Naper Settlement plans to provide these school field trips for a fee and the revenue goes into the 016 Settlement City account. Naper Settlement’s revenue for school programming took a significant blow beginning in March 2020, with no field trips to the museum campus due to COVID-19 restrictions. In a normal year, school revenue is around \$200,000 annually (016 Settlement City account). This year without a means to take school programming virtual, all revenue for this line ended abruptly in March.</p> <p>RFP 20-290 allows the museum to pivot its mission and revenue generating school programs to on-line. In its <i>Starting the 2020-21 School Year</i> the Illinois State Board of Education recommends that schools “pursue virtual activities and events in lieu of field trips.”</p> <p>The development of three on-line field trip experiences are fast-tracked to be complete by the end of December 2020, allowing the museum to launch distance learning in January 2021. We have 2 promotion waves that will be made to the teaching community. Upon approval of RFP 20-290, an email to District 203 and 204 fourth grade teachers will be sent, informing them that Naper Settlement is taking the beloved and time-tested Fourth Grade Living History Program on-line. Teachers will also receive notice of the two other programs in development, so that they plan their curriculum year knowing that their classroom can continue to participate in Naper Settlement programming, both video and live with museum educators. In November, registration will open and a programming teaser will be released.</p> <p>RFP 20-290 allows the museum to regain at least part of its school program revenue, which we have budgeted for \$125,000 for 2021. As well, we do anticipate that many schools will continue with on-line field trips into 2022. We also expect that as schools retain more on-line curriculum, that the virtual field trips produced as part of RFP 20-290 will open Naper Settlement up to a wider market of schools (normally too far away to participate), which will provide additional revenue in years to come.</p>	Sack

- 15. 20-1111** Approve the award of Bid 20-342, Police Department Exterior ADA Upgrades, to Lite Construction, Inc., for an amount not to exceed \$239,400, plus a 5% contingency

Q:	<p>1) Has Lite construction ever done work for the city?</p> <p>2) I don’t think we should use base bids to determine the winning bidder. That said, if bidders know that, they will low ball the base bids and high ball the alternates just like this one did.</p> <p>3) We’re in a pandemic and all dollars matter. There’s nothing wrong with 2 different contractors for this simple of a job.</p> <p>4) Who will hire the contractor for the tubing? Is it part of the bids?</p>	Hinterlong
-----------	--	-------------------

A:	<ol style="list-style-type: none"> 1. Lite Construction has not performed work for the City of Naperville. However, locally, they constructed the varsity baseball fields for Naperville Central High School and completed the renovations at Jefferson School. Additionally, they provided 13 positive references for both municipal and school projects. 2. The difference in the average combined cost for construction between the top four bidders and the requested award amount is \$2000 (less than 1% the total cost of the project). In addition, the decision to include an Alternate was made following a pre-bid meeting and added to the bid document in the form of an addendum. Staff believes that Lite's Alternate bid proposal is fair and was made in good faith. 3. Due to favorable combined pricing and to be able to complete this project this construction season, staff believes it is in the City's best interest to coordinate the work through one contractor. 4. The installation of the tubing is part of the bid. 	Lang & Catalano
----	--	-----------------

- 16. **20-1127** Approve the appointments of student representatives to City boards and commissions
- 17. **20-1135** Accept the public underground and streetlight improvements associated with The Shoppes on Washington and Metro Self Storage and authorize the City Clerk to reduce the corresponding public improvement surety
- 18. **20-316** Receive the staff report for the acquisition of land for right-of-way and a temporary construction easement for the North Aurora Road improvements from the property at 2404 North Aurora Road (Item 1 of 3)
- 19. **20-334** Adopt the resolution affirming the applicability of Section 6-2-19 (Existing Buildings and Structures) to the property located at 2404 North Aurora Road following acquisition of additional right-of-way for North Aurora Road (Item 2 of 3)
- 20. **20-335** Adopt the resolution approving a purchase and sale agreement for part of 2404 North Aurora Road (Item 3 of 3)

Please find attached a corrected version of the Purchase and Sale agreement.	Gallahue
---	-----------------

- 21. **20-317** Receive the staff report for the acquisition of land for right-of-way and a temporary construction easement for the North Aurora Road improvements from the property at 2000 North Aurora Road (Item 1 of 3)
- 22. **20-345** Pass the ordinance affirming the applicability of Section 6-2-19 (Existing

Buildings and Structures) to the property located at 2000 North Aurora Road following acquisition of additional right-of-way for North Aurora Road (Item 2 of 3)

- 23. **20-346** Adopt the resolution approving a purchase and sale agreement for part Of 2000 North Aurora Road (Item 3 of 3)
- 24. **20-1070B** Pass the ordinance granting approval of variances to Section 6-13-10:3.3 (Design) and Section 6-13-10:5.2 (Setbacks) to allow for roof mounted antennas on the building located at 35 S. Washington (PZC 20-1-076)
- 25. **20-1071B** Pass the ordinance granting approval of a variance to Section 6-7D-4 (Required Conditions) to allow a general service use below the second floor for the property located at 110 S. Washington Street (The NOW Massage) - (PZC 20-1-069)

Q:	Why is this on consent? I thought only unanimous recommendations get on consent?	Hinterlong
A:	Staff puts items on consent if the staff recommendation agrees with a board recommendation. In this case, although two Plan Commissioners opposed, the PZC recommendation was for approval, thus the item was put on consent.	Krieger

J. PUBLIC HEARINGS:

- 1. **20-1142** Conduct a public hearing for the allocation of \$296,985 in Community Development Block Grant CARES Act funds (Item 1 of 2)

Q:	Will there be funds for mental health moving forward?	Gustin
A:	<p>In the "Other Public Services" category for this CARES Act allocation, three awards have been recommended by the evaluation committee for mental health assistance initiatives.</p> <ol style="list-style-type: none"> 1. DuPage PADS - Career/Employment Solutions for Homeless (\$25,854) 2. Little Friends - Reimbursement for CILA Staff in Naperville Homes (\$30,000) 3. Samaritan Interfaith Counseling - Mental Health Access Program (\$50,505) <p>In the upcoming Social Services Grant (SSG) process, staff anticipates part of the \$500,000 will be allocated to mental health programs as well.</p>	Gallahue

2. **20-1133** Approve the award of \$296,985 in Community Development Block Grant CARES Act funds (Item 2 of 2)

Q:	What is Little Friends CILA?	Gustin
	CILA is the acronym for Community Integrated Living Arrangement and refers to group homes for adults with developmental disabilities.	Gallahue

L. ORDINANCES AND RESOLUTIONS:

1. **20-1131** Pass an ordinance authorizing the issuance of General Obligation Bonds for an amount not to exceed \$40,500,000 and amending the 2020 Budget (Item 1 of 2)

Q:	Please find attached a corrected copy of the ordinance.	Gallahue
----	---	----------

2. **20-1132** Pass the ordinance approving an amendment to the City of Naperville Annual Budget for Calendar Year 2020 to accommodate the expenditure of general obligation bond proceeds (Item 2 of 2) (Requires six positive votes)

PURCHASE AND SALE AGREEMENT
[Part of 2404 North Aurora Road]

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is entered into as of this _____ day of _____ 2020 (the “**Effective Date**”) by and between the Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121 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. The City of Naperville and Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-112 shall be referenced individually herein as “**Party**” and collectively as “**Parties**”.

RECITALS

- A. WHEREAS, the Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121 (“**Owner**”) is the owner in fee simple of certain real property and all improvements located thereon located at 2404 North Aurora Road, Naperville 60563, legally described on **Exhibit A** and depicted on **Exhibit B** attached hereto and made part hereof (“**Property**”); and
- B. WHEREAS, the City of Naperville (“**City**”) desires to purchase, and the Owner desires to sell approximately 0.335 acres of said Property comprised of a twenty foot (20’) wide strip of land along the entire frontage of the Property which will be used by the City to undertake roadway improvements on North Aurora Road between Weston Ridge Drive and Frontenac Road in conjunction with the Naperville Township Road District (“**Project**”); and
- C. WHEREAS, the portion of the Property sought to be acquired by the City for the Project is depicted and legally described on **Exhibit C** (“**City Parcel**”); and
- D. WHEREAS, the Owner has also agreed, by separate agreement, to grant a temporary construction easement on approximately 0.012 acres of the Property comprised of an approximately five foot (5’) wide by one hundred and five foot (105’) long strip of the Property located to the south of the City Parcel as depicted and legally described on **Exhibit C** (“**TCE**” or “**TCE Parcel**”); and
- E. 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, for consideration of the foregoing Recitals and the mutual covenants contained herein, the Parties hereto agree as follows:

1. **INCORPORATION OF RECITALS**. The foregoing Recitals are hereby incorporated in this Agreement as if set forth herein in this paragraph in their entirety.

2. CONSIDERATION/RESTORATION.

2.1 **Consideration.** Subject to the terms and conditions set forth herein, the consideration to be provided to the Owner by the City for the TCE and for acquisition of the City Parcel, and to compensate Owner for any and all impact to the Property as a result thereof, is one hundred and fourteen thousand, one hundred dollars (\$114,100) to be paid in cash at the Closing, as Closing is defined herein. As additional consideration to be provided to the Owner by the City for the TCE and for acquisition of the City Parcel, the City has agreed to undertake the following with respect to the Property: (i) install a street light illuminating the driveway at a mutually agreeable location; (ii) install a gate south of the right of way securing the driveway; (iii) construct a 36-foot wide entrance, as measured at the right of way line; (iv) grade the berm at the entrance to Property to the reasonable satisfaction of the Owner; (v) install trees as generally indicated on **Exhibit D** attached hereto and made part hereof during the City's fall tree planting program after completion of the Project; and (vi) the City will construct the multi-use trail to be constructed as part of the Project with concrete where it cuts through the Owner's asphalt driveway for the Property.

2.2 **Restoration.** The City, at its sole cost, will restore the Property disturbed by the construction of the Project to a condition equal to or better than its condition prior to construction.

3. DEED AND TITLE.

3.1 At Closing Owner shall convey or cause to be conveyed to the City good title to the City Parcel by a recordable Special Warranty Deed in a form approved by the City Attorney and free and clear of all liens, encumbrances, easements, restrictions, or other matters affecting title to said property subject to the following permitted exceptions (hereinafter "**Permitted Exceptions**") if any:

- 3.1.a. General real estate taxes not due and payable at time of Closing as further provided in Subsection 6.1 hereof.
- 3.1.b. Zoning laws and ordinances;
- 3.1.c. Easements for public utilities;
- 3.1.d. Public roads and highways and easements pertaining thereto;
- 3.1.e. Rights of way for drainage tiles, ditches, feeders, laterals and underground pipes, if any;
- 3.1.f. Rights of adjoining and contiguous land owners to have the uninterrupted flow of waters of any stream which may flow on or through the Property maintained.
- 3.1.g. Additional exceptions approved in writing by the City Attorney. If

the Owner is unable to cure any exception objected to by the City Attorney, in such instance this Agreement shall become null and void and the Parties shall have no liability to each other and no obligation to consummate the transaction anticipated herein.

3.2 The City acknowledges that it is accepting the City Parcel on an “AS-IS” basis, without any implied warranties, and that the City is completely at risk with respect to all attributes and conditions, latent or otherwise, of the City Parcel.

4. OWNER’S REPRESENTATIONS AND COVENANTS.

4.1 The Owner represents and warrants that:

4.1.1 It has good title to the TCE Parcel, and to City Parcel subject to the Permitted Exceptions described in Section 3 above; and

4.1.2 It has the sole authority to convey fee simple title to the City Parcel to the City subject to the Permitted Exceptions described in Section 3 above.

4.1.3 It has the sole authority to grant the City a temporary construction easement on the TCE Parcel to be used in furtherance of the Project.

4.1.4 Owner acknowledges and represents that neither the Property nor the TCE Parcel are the subject of any pending real estate tax special assessment. Owner further acknowledges and represents, with no duty to investigate, that to the best of its knowledge neither the Property nor the TCE Parcel are the subject of any environmental action, inquiry, or investigation.

4.1.5 The Owner shall not encumber the City Parcel or TCE Parcel, or any part of either, with any mortgage, lien, or any obligation of any kind which mortgage, lien, or obligation would affect said City Parcel or the TCE Parcel after Closing. If any such encumbrance is filed on the City Parcel or the TCE Parcel after the Closing relating to obligations or circumstances occurring prior to Closing, the Owner agrees that the Owner shall immediately remove such encumbrances; and

4.1.6 The Owner represents that as of the Closing there will be no management, maintenance, or service agreements in effect which apply to or affect any portion of the City Parcel or the TCE Parcel, and that there will be no outstanding obligations or commitments of any kind relative to any management, maintenance or service agreement(s) affecting the City Parcel or the TCE Parcel as of the Closing; and

4.1.7 Except as to the provisions contained in Section 4.1.4 above, the Owner agrees to defend, indemnify, and hold the City harmless against any claim, demand, cost, and liability arising out of any breach of the Owner representations and covenants set forth in this Section 4. The Owner further agrees to defend, indemnify, and hold the City harmless against any claims, demands, or actions of any kind brought by any tenant or lessee of the Property resulting from Owner's conveyance of the City Parcel or granting of a TCE to the City.

5. TITLE AND CLOSING.

5.1 When used herein, the term "**Closing**" or "**Close**" shall mean the conveyance of the City Parcel to the City in accord with the terms of this Agreement at Wheatland Title Guaranty Company ("**Title Company**"). Such Closing may be conducted by mail by agreement of counsel for the Parties. The Parties shall Close on a date that is mutually agreed upon by the Parties.

5.2 The City agrees to pay all closing costs, escrow costs, and title costs ("**Closing Costs**") related to Closing on the Property except that Owner shall be responsible for its attorneys' fees for all matters associated with the conveyance of the Property to the City, including but not limited to the Closing. The Owner shall be responsible for its own costs for all matters associated with the conveyance of the Property other than Closing Costs.

5.3 The City, at its sole cost, has obtained a title commitment ("**Title Commitment**") for the City Parcel from the Title Company on the current form of the American and Title Association Owner's Policy (or equivalent policy) in the amount of seventy-six thousand dollars (\$76,000) through the date thereof.

5.4 At the Closing, the City shall cause the Title Company to provide the City with a marked-up Title Commitment in the amount of seventy-six thousand dollars (\$76,000) showing the City of Naperville in title to the City Parcel subject only to the Permitted Exceptions set forth in Subsection 3.1 above.

5.5 The Owner shall furnish the City, at Closing, an Affidavit of Title for the City Parcel covering the date of Closing subject only to the Permitted Exceptions or as to those exceptions, if any, as to which the title insurer commits to extend insurance.

5.6 The Parties shall execute a completed Real Estate Transfer Declaration signed by authorized agents in the form required by the Illinois Real Estate Transfer Act. This transaction is exempt from any city, county or State transfer stamps. The City shall be responsible for obtaining an exempt stamp for the City of Naperville Transfer Tax.

5.7 Possession of the City Parcel shall be granted to the City at the time of Closing.

5.8 The City of Naperville acknowledges that the parking lot on the Property, which is located within a required 100' front yard setback, constitutes and will continue to constitute a legal non-conforming structure on the Property. As such, said parking lot, including construction equipment and material storage thereon, shall be permitted to remain on the Property subject to

compliance with the provisions Section 6-2-19 of the Naperville Municipal Code (EXISTING BUILDINGS AND STRUCTURES). To evidence this, the Naperville City Council has adopted the Resolution attached hereto and made part hereof as **Exhibit E**. Further, said Resolution confirms that North Aurora Road is not Illinois Department of Transportation (“IDOT”) roadway; therefore, the existing 8-10’ high berm on the Property, located immediately to the South of the City Parcel is not subject to IDOT setback provisions, and furthermore is compliant with City of Naperville municipal code requirements.

6. REAL PROPERTY TAXES.

6.1 The Owner shall be solely obligated to pay all real estate taxes which are due on the Property prior to Closing or which accrue on the Property up to the date the City Parcel is conveyed to the City. If the City receives a real estate tax bill for the City Parcel for taxes that were due prior to the conveyance of the City Parcel to the City, or which accrued prior to the conveyance of the City Parcel to the City, the Owner shall be obligated to pay said bill within fifteen (15) calendar days of receipt thereof from the City.

7. GENERAL PROVISIONS.

7.1 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 all Parties.

7.2 Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement. Original signatures transmitted by facsimile or email will be effective to create such counterparts and will have the same effect as if signed in person.

7.3 Binding Nature. This Agreement is binding on the Parties and their successors and assigns.

7.4 Invalidity. 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.

7.5 Non-Assignment. The Parties hereby warrant and represent that they have not assigned nor in any way transferred or conveyed, all or any portion of the claims covered by this Agreement. The Parties acknowledge and agree that this warranty and representation is an essential and material term of this Agreement, without which they would not have entered into this Agreement.

7.6 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. In the event of a dispute between the Parties arising out of the terms and conditions of this Agreement, the prevailing party in such dispute shall be entitled to recover reasonable attorneys’ fees and court costs from the non-prevailing party.

7.7 Legal Counsel. The Parties acknowledge that they have consulted with legal counsel of their choosing, or were given the opportunity to consult with legal counsel, before entering into this Agreement, that they have read this Agreement, that they know and understand its contents, and that they execute this Agreement freely and voluntarily. In executing and giving this Agreement, each Party acknowledges that it has not relied on or made to the other Party or anyone purporting to act on its behalf any promise or representation that is not in this Agreement.

7.8 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.

7.9 Notices. All notices required under this Agreement shall be served on 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 OWNER

Robert G. Krug
President, K-Five Construction Corporation
999 Oakmont Plaza Drive, Suite 200 | Westmont, IL
60559

With a copy to:

Vince Rosanova
Rosanova & Whitaker LTD
127 Aurora Avenue
Naperville, Illinois 60540
630-880-8820 (C)
630-355-4600 (O)
630-352-3610 (F)

7.10 Choice of Law. This Agreement shall be governed, in all respects, by the laws of the State of Illinois, irrespective of its choice of law rules. All disputes shall be resolved in the Circuit Court where the Property is located as the sole and exclusive jurisdiction and venue.

7.11 Cooperation. The Parties agree to cooperate in good faith and execute any documents necessary to effectuate and/or consummate the terms of this Agreement.

7.12 Severability. If any phrase, clause or provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause or provision shall be deemed severed from this Agreement but will not affect any other provisions of this Agreement, which shall otherwise remain in full force and effect. If any restriction or limitation in this Agreement is deemed to be unreasonable, onerous and unduly restrictive by a court of competent jurisdiction, it shall not be stricken, in its entirety and held totally void and unenforceable, but shall be deemed rewritten and shall remain effective to the maximum extent permissible under applicable law within reasonable bounds.

7.13 Further Assurance. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments, agreed Orders and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement, which said purpose is acknowledged to be a full and complete resolution of the eminent domain dispute with a comprehensive release of liability.

7.14 No Broker. Each Party warrants and represents to the other that it has not retained a broker in connection with the purchase and sale of the City Parcel. Each Party agrees to defend, indemnify, and hold harmless the other against any claim for brokers' fees and/or similar commissions claimed by any party claiming through them.

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

7.16 Ambiguities. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

7.17 Authorizations. Each of the signatories to this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of his or her respective Party and by such signature to bind that Party to this Agreement.

[Signature pages follow.]

IN WITNESS WHEREOF, we have executed this Agreement effective as of the date above written.

Chicago Title Land Trust Company, successor trustee to Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121

By: _____

Printed Name: _____

Its: _____

State of Illinois)
) ss
County of DuPage)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed and delivered said instrument as his/her free and voluntary act for the uses and purposes herein set forth.

Given under my hand and official seal this ____ day of _____, 2020.

Notary Public
My Commission Expires: _____

Seal

Print Name

City of Naperville

By: _____

Name: Douglas A. Krieger

Its: City Manager

ATTEST

By: _____

Name: Pam Gallahue, Ph.D.

Its: City Clerk

Date: _____

EXHIBIT A

LEGAL DESCRIPTION

OF THE PART OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE NORTH LINE OF LANDS OWNED BY THE BURLINGTON NORTHERN RAILROAD COMPANY (FORMERLY THE CHICAGO, BURLINGTON AND QUINCY RAILROAD) AND LYING SOUTH OF THE CENTER LINE OF NORTH AURORA ROAD AND LYING WEST OF THE WEST LINE OF WESTON RIDGE INDUSTRIAL PARK, UNIT NO. 1 ASSESSMENT PLAT (ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1969 AS DOCUMENT R69-42494) (EXCEPT THEREFROM THE WEST 862.12 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE WEST LINE THEREOF, AND EXCEPT THEREFROM THE EAST 684.41 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE EAST LINE THEREOF), ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-16-101-029, 07-16-101-030, and 07-16-101-031

ADDRESS: 2404 NORTH AURORA ROAD, NAPERVILLE, IL 60563



Transportation, Engineering and
Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 8/27/2020

Exhibit B
DEPICTION OF PROPERTY
2404 N. Aurora Rd (K-Five Construction)

0 60 120 180 240 Feet

This map should be used for reference only.
The data is subject to change without notice.
City of Naperville assumes no liability in the use
or application of the data. Reproduction or
redistribution is forbidden without expressed
written consent from the City of Naperville.



LEGAL DESCRIPTION OF CITY PARCEL:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860 and the point of beginning; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet; thence North 89 degrees 54 minutes 05 seconds West, a distance of 375.74 feet; thence North 89 degrees 52 minutes 02 seconds West, a distance of 344.90 feet to the west line of the grantor, according to said trustee's deed; thence North 0 degrees 08 minutes 00 seconds East along the west line of the grantor, according to said trustee's deed, a distance of 20.19 feet to the point of beginning.

Said parcel containing 0.335 acre, more or less.

Index No. 07-16-101-029 [part of]

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION EASEMENT:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet to the point of beginning; thence North 89 degrees 54 minutes 05 seconds West, a distance of 104.21 feet; thence South 0 degrees 05 minutes 55 seconds West, a distance of 5.00 feet; thence South 89 degrees 54 minutes 05 seconds East, a distance of 103.98 feet to the east line of the grantor, according to said trustee's deed; thence North 2 degrees 42 minutes 47 seconds East along the east line of the grantor, according to said trustee's deed, a distance of 5.01 feet to the point of beginning.

Said temporary easement containing 0.012 acre, more or less.

Said temporary easement to be used for construction purposes.

Index No. 07-16-101-029

COUNTRY GLEND R

DR

NORTH AURORA RD

2404 NORTH AURORA RD

20.19'

R.O.W. Acquired

5' Temporary Construction Easement

20.20'

0 50 100 150 200 Feet



Transportation, Engineering and Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 9/23/2020

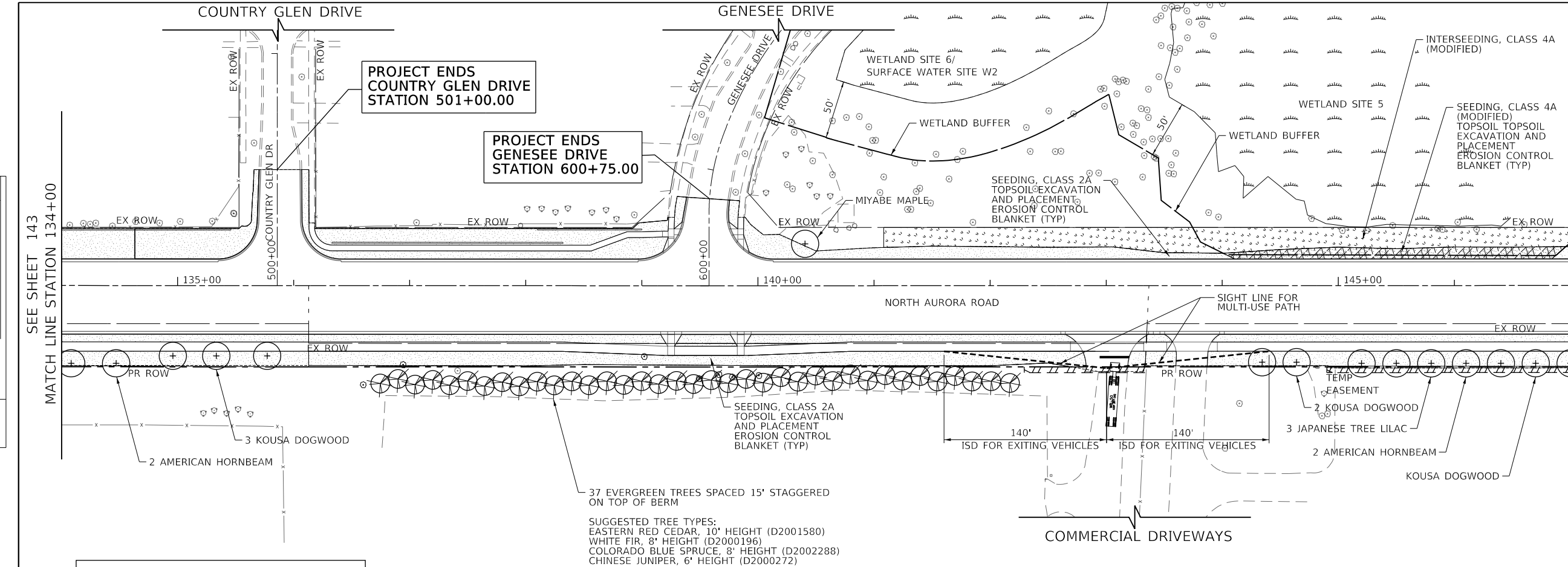
Exhibit C
LEGAL DESCRIPTION AND DEPICTION OF CITY PARCEL & TEMPORARY EASEMENT
2404 N. Aurora Rd (K-Five Construction)

This map should be used for reference only. The data is subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.



PLAN	SURVEYED	DATE
	PLOTTED	
	CHECKED	
	BY	
	NO. _____	

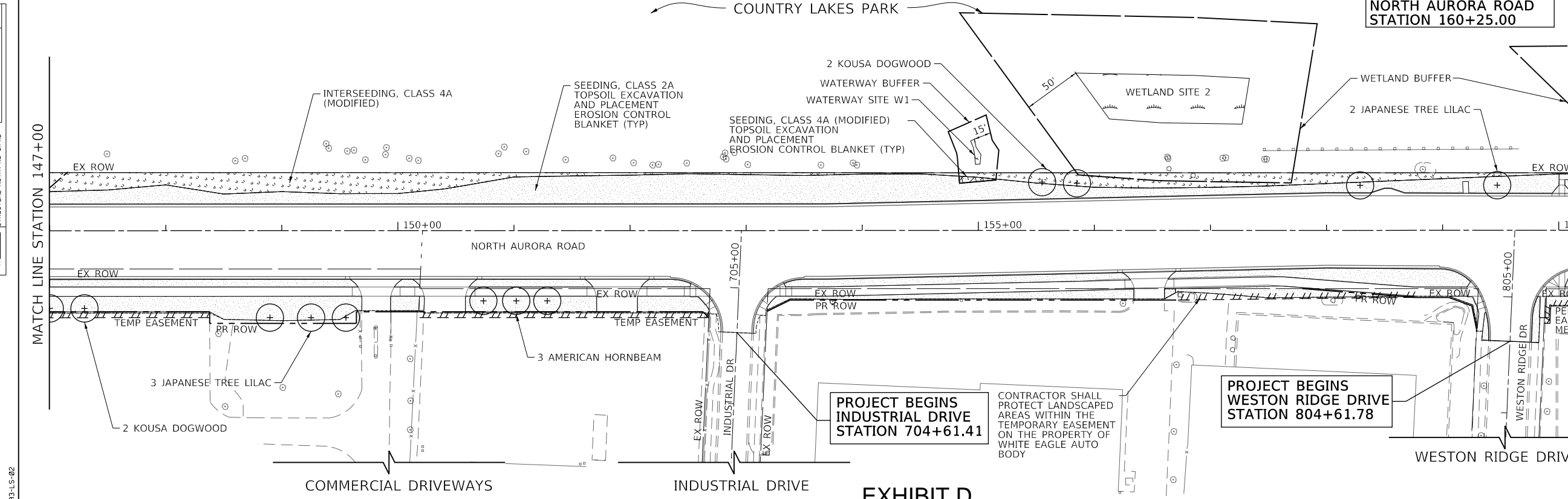
PROFILE	SURVEYED	DATE
	GRADES CHECKED	
	STRUCTURE NOTATIONS CHECKED	
	BY	
	NO. _____	



DRAFT

- LEGEND**
- SEEDING, CLASS 2A
TOPSOIL EXCAVATION AND PLACEMENT
EROSION CONTROL BLANKET
HEAVY DUTY EROSION CONTROL
BLANKET ON SLOPES STEEPER THAN 3:1
 - SEEDING, CLASS 4A (MODIFIED)
TOPSOIL EXCAVATION AND PLACEMENT
EROSION CONTROL BLANKET
HEAVY DUTY EROSION CONTROL
BLANKET ON SLOPES STEEPER THAN 3:1
 - SODDING, SALT TOLERANT
TOPSOIL EXCAVATION AND PLACEMENT
 - INTERSEEDING, CLASS 4A (MODIFIED)
 - PROPOSED SHADE TREE
 - PROPOSED EVERGREEN TREE

NOTE:
THE CONTRACTOR SHALL PROVIDE A MINIMUM 5 FOOT DIAMETER MULCH BED FOR ANY EXISTING TREES TO REMAIN AND ANY NEW TREES.



FILE NAME = 090193-LS-02



USER NAME = brvanderwal	DESIGNED - AMK	REVISED -
	DRAWN - BMS	REVISED -
PLOT SCALE = 50 SCALE	CHECKED - BVW	REVISED -
PLOT DATE = 2/27/2020	DATE - 2/27/2020	REVISED -

**STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION**

**NORTH AURORA ROAD
FRONTENAC ROAD TO FAIRWAY DRIVE
LANDSCAPING**

SCALE: 1"=50' SHEET 2 OF 4 SHEETS STA. 134+00.00 TO STA. 160+25.00

F.A.U. R.T.E.	SECTION	COUNTY	TOTAL SHEETS	SHEET NO.
1509	08-00140-00-PV	DuPAGE	331	144
CONTRACT NO. 61G19			ILLINOIS FED. AID PROJECT	

RESOLUTION NO. 20 - ____

A RESOLUTION AFFIRMING THE APPLICABILITY OF SECTION 6-2-19 (EXISTING BUILDINGS AND STRUCTURES) TO THE PROPERTY LOCATED AT 2404 NORTH AURORA ROAD FOLLOWING ACQUISITION OF ADDITIONAL RIGHT-OF-WAY FOR NORTH AURORA ROAD

RECITALS

1. **WHEREAS**, the property located at 2404 North Aurora Road in the City of Naperville, legally described on **Exhibit A** and depicted on **Exhibit B** (hereinafter “Subject Property”), is owned by Countryside Bank f/k/a State Bank of Countryside as Trustee under Trust Agreement dated February 14, 1992 known as Trust No. 92-1121, 999 Oakmont Plaza Drive, Westmont, IL 60559 (hereinafter “Property Owner”); and
2. **WHEREAS**, the Subject Property was annexed to the City in 1980 and is zoned I (Industrial), and at all times has been utilized for several industrial uses including as a construction equipment and material storage yard which uses the city acknowledges are all in conformance with the City’s zoning code; and
3. **WHEREAS**, the Subject Property abuts North Aurora Road along its northern property line; and
4. **WHEREAS**, North Aurora Road is a minor arterial roadway and designated truck route with an average daily trip of 21,000 vehicles per day, serving both residents of Naperville and Aurora, as well as providing access to the Route 59 Metra Station; and
5. **WHEREAS**, in 2021, the City of Naperville, in conjunction with the Naperville Township Road District, will undertake CIP# SC033 to improve North Aurora Road between Weston Ridge Drive and Frontenac Road (hereinafter “CIP# SC033”); and

EXHIBIT E

6. **WHEREAS**, the city represents to the Property Owner that CIP# SC033 will increase roadway capacity by adding one through lane in each direction, thereby reducing congestion; improve safety through the addition of roadway lighting and left turn channelization; add new pedestrian and bicycle facilities to provide access to the Route 59 Metra Station; and improve corridor drainage; and
7. **WHEREAS**, CIP# SC033 necessitates the acquisition of an additional twenty feet (20') of North Aurora Road right-of-way along the frontage of the Subject Property (hereinafter "Acquisition") as depicted in Exhibit C as well as temporary access easements; and
8. **WHEREAS**, per Section 6-8C-7 (Industrial District: Yard Requirements) of the current Naperville Municipal Code (hereinafter "Code"), there shall be a required yard adjacent to each existing or proposed roadway which bounds an individual tract. Such yard shall not be less than twenty feet (20') in depth; provided, however, that such yard located across a street from a residence district shall in no event be less than one hundred feet (100') in depth; and
9. **WHEREAS**, per Section 6-8C-7, the city has reviewed the Subject Property and confirms it has a required yard of 100' adjacent to North Aurora Road; and
10. **WHEREAS**, Section 6-9-2:4.3 of the Code (Off-Street Parking Facilities: Industrial), requires that parking facilities, including construction equipment and material storage yards, may not be located in the required front yard; and
11. **WHEREAS**, a portion of the existing parking lot on the Subject Property, including construction equipment and material storage, is located within the required 100' front yard and has been deemed by the City to be an existing legal non-conforming improvement; and

12. **WHEREAS**, following Acquisition, the construction equipment and material storage yard located on the Subject Property (hereinafter “Storage Yard”) will be located within the required 100’ yard, in conflict with the Code; and
13. **WHEREAS**, the City also affirms that the parking lot, including construction equipment and material storage, will continue to be a legal non-conforming improvement following Acquisition; and
14. **WHEREAS**, the Subject Property is also improved with a berm which is approximately 8-10’ in height and located along North Aurora Road, immediately south of the Acquisition area (hereinafter “Berm”); and
15. **WHEREAS**, the Illinois Department of Transportation (hereinafter “IDOT”) requires a certain setback between an improvement, such as a berm, and an IDOT roadway (hereinafter “IDOT Setback”); and
16. **WHEREAS**, the City represents to Property Owner that North Aurora Road is not an IDOT roadway; therefore the IDOT Setback is not applicable to the Berm and in no event shall any IDOT requirement or requirement of any other governmental body be applicable or require the berm to be located or modified in any way including should the Property Owner redevelop the Subject Property in the future; and
17. **WHEREAS**, the City hereby confirms to Property Owner that the location of the Berm now and after the taking complies with all Code requirements; and
18. **WHEREAS**, Section 6-2-19 (Existing Buildings and Structures) of the Code provides regulations pertaining to the continuance, repair and alteration, restoration, and relocation of existing buildings and structures which do not comply with Code requirements; and

19. WHEREAS, the City Council, through this Resolution, hereby affirms that that regulations provided in Section 6-2-19 of the Code shall be applicable to the Subject Property following Acquisition, as further described below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule powers, as follows:

SECTION 1: The foregoing Recitals are incorporated as though fully set forth in this Section 1. All exhibits referenced in this Ordinance shall be deemed incorporated and made part hereof.

SECTION 2: Following Acquisition, the Storage Yard located on the Subject Property will not comply with the 100' front yard setback required along North Aurora Road. The City Council affirms that Section 6-2-19 (Existing Buildings and Structures) of the Code shall be applicable to the Subject Property following Acquisition, including:

- A. Any building or structure which existed at the time of the adoption of this Title, or any amendment hereto, and which does not comply with yard requirements of the zoning district in which said building or structure is located upon the adoption of this Title, or any amendments hereto, may be continued during the remainder of the normal life of the building or structure or until the building or structure has deteriorated to the extent that it is no longer safe. The continuance of such building or structure shall be subject to the regulations herein set forth.
- B. Repairs and alterations which increase the bulk of the building or structure and which increase the lot coverage may be made to a building or structure which does not comply with the yard requirements of the zoning district in which said building or structure is located, provided said repairs or alterations comply with the conditions, yard requirements, height limitations, and bulk regulations of the zoning district in which said building or structure is located.
- C. Nothing in this Title shall prevent the reconstruction, repairing or rebuilding of a building, structure or part thereof which does not comply with yard requirements of the zoning district in which said building or structure is

located and which exists at the effective date hereof, rendered necessary by wear and tear, or deterioration of which is required by the provisions of the building regulations of the City relative to the maintenance of said buildings or structures, provided the cost of such work, within a two-year time period, shall not exceed fifty percent (50%) of the replacement cost of such building or structure at the time such work is done.

- D. If a building or structure which does not comply with yard requirements of the zoning district in which said building or structure is located is damaged by fire, collapse, explosion, or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence shall exceed fifty percent (50%) of the replacement cost of the building or structure at the time of destruction or damage, then any new construction or reconstruction must comply with all regulations of the zoning district in which the building or structure is located

SECTION 3: The City Council affirms (i) that the IDOT Setback is not applicable to the Berm located on the Subject Property and that the location of the Berm complies with all other Naperville Municipal Code requirements as well as all other governmental bodies with current or future jurisdiction over the property; (ii) that upon redevelopment of the Subject Property no portion of the berm will have to be relocated; (iii) that the presently existing berm and landscaping thereon conforms to all city screening requirements applicable to the Subject Property; (iv) that at all time that the Property Owner or its successors are using the existing improvements on the Subject Property for its current purposes or for any uses permitted within the City's Industrial Zoning District that no modifications will be required to the Subject Property, including, but not limited to additional screening, landscaping, berming, relocation of access points or relocation of any improvements on the Subject Property; and (v) that should the Property Owner seek to redevelop the Subject Property in the future that it will be entitled to petition the City for reduced setbacks along North Aurora Road consistent with what exists today.

SECTION 4: If any section, paragraph, or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such

section, paragraph, or provision, shall not affect any of the remaining provisions of this Resolution or any other City ordinance, resolution, or provision of the Naperville Municipal Code.

SECTION 5: This Resolution shall be in full force and effect upon its passage and approval.

PASSED this _____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

APPROVED this _____ day of _____, 2020.

Steve Chirico
Mayor

ATTEST:

Pam Gallahue, Ph.D.
City Clerk

EXHIBIT A

LEGAL DESCRIPTION

OF THE PART OF THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 38 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING NORTH OF THE NORTH LINE OF LANDS OWNED BY THE BURLINGTON NORTHERN RAILROAD COMPANY (FORMERLY THE CHICAGO, BURLINGTON AND QUINCY RAILROAD) AND LYING SOUTH OF THE CENTER LINE OF NORTH AURORA ROAD AND LYING WEST OF THE WEST LINE OF WESTON RIDGE INDUSTRIAL PARK, UNIT NO. 1 ASSESSMENT PLAT (ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 23, 1969 AS DOCUMENT R69-42494) (EXCEPT THEREFROM THE WEST 862.12 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE WEST LINE THEREOF, AND EXCEPT THEREFROM THE EAST 684.41 FEET, AS MEASURED ALONG THE NORTH LINE AND PARALLEL WITH THE EAST LINE THEREOF), ALL IN DUPAGE COUNTY, ILLINOIS.

PIN: 07-16-101-029, 07-16-101-030, and 07-16-101-031

ADDRESS: 2404 NORTH AURORA ROAD, NAPERVILLE, IL 60563



Transportation, Engineering and
Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 8/27/2020

Exhibit B
DEPICTION OF PROPERTY
2404 N. Aurora Rd (K-Five Construction)

0 60 120 180 240 Feet

This map should be used for reference only.
The data is subject to change without notice.
City of Naperville assumes no liability in the use
or application of the data. Reproduction or
redistribution is forbidden without expressed
written consent from the City of Naperville.



LEGAL DESCRIPTION OF CITY PARCEL:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860 and the point of beginning; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet; thence North 89 degrees 54 minutes 05 seconds West, a distance of 375.74 feet; thence North 89 degrees 52 minutes 02 seconds West, a distance of 344.90 feet to the west line of the grantor, according to said trustee's deed; thence North 0 degrees 08 minutes 00 seconds East along the west line of the grantor, according to said trustee's deed, a distance of 20.19 feet to the point of beginning.

Said parcel containing 0.335 acre, more or less.

Index No. 07-16-101-029 [part of]

LEGAL DESCRIPTION OF THE TEMPORARY CONSTRUCTION EASEMENT:

That part of the Northwest Quarter of Section 16, Township 38 North, Range 9 East of the Third Principal Meridian, in DuPage County, Illinois, bearings and distances are based on the Illinois Coordinate System, NAD 83(2011) East Zone, with a combination factor of 0.9999464926, described as follows:

Commencing at the northwest corner of the Northwest Quarter of said Section 16; thence on an Illinois Coordinate System NAD 83(2011) East Zone bearing of South 0 degrees 08 minutes 00 seconds West along the west line of the Northwest Quarter of said Section 16, a distance of 721.34 feet to the center line of North Aurora Road; thence South 89 degrees 53 minutes 03 seconds East along the center line of North Aurora Road, a distance of 862.08 feet to the northwest corner of trustee's deed recorded September 11, 1992 as document number R92-172780; thence South 0 degrees 08 minutes 00 seconds West along the west line of said trustee's deed, a distance of 50.00 feet to the south right of way line of North Aurora Road recorded July 23, 1982 as document number R82-31860; thence South 89 degrees 53 minutes 03 seconds East along the said south right of way line of North Aurora Road, a distance of 721.55 feet to the northeast corner of the grantor and the east line of said trustee's deed; thence South 2 degrees 42 minutes 47 seconds West along the east line of the grantor, according to said trustee's deed, a distance of 20.20 feet to the point of beginning; thence North 89 degrees 54 minutes 05 seconds West, a distance of 104.21 feet; thence South 0 degrees 05 minutes 55 seconds West, a distance of 5.00 feet; thence South 89 degrees 54 minutes 05 seconds East, a distance of 103.98 feet to the east line of the grantor, according to said trustee's deed; thence North 2 degrees 42 minutes 47 seconds East along the east line of the grantor, according to said trustee's deed, a distance of 5.01 feet to the point of beginning.

Said temporary easement containing 0.012 acre, more or less.

Said temporary easement to be used for construction purposes.

Index No. 07-16-101-029

COUNTRY GLENDRI

NORTH AURORA RD

2404 NORTH AURORA RD

20.19'

R.O.W. Acquired

5' Temporary Construction Easement

20.20'

0 50 100 150 200 Feet



Transportation, Engineering and Development Business Group
Questions Contact (630) 420-6100
www.naperville.il.us
Date: 9/23/2020

Exhibit C
LEGAL DESCRIPTION AND DEPICTION OF CITY PARCEL & TEMPORARY EASEMENT
2404 N. Aurora Rd (K-Five Construction)

This map should be used for reference only. The data is subject to change without notice. City of Naperville assumes no liability in the use or application of the data. Reproduction or redistribution is forbidden without expressed written consent from the City of Naperville.



ORDINANCE NO. 20-_____

**ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED
\$40,500,000 GENERAL OBLIGATION BONDS OF 2020 OF
THE CITY OF NAPERVILLE, ILLINOIS**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NAPERVILLE,
DUPAGE AND WILL COUNTIES, ILLINOIS, AS FOLLOWS:**

Section 1. Authority and Purposes. This ordinance is adopted pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and Chapter 9, Article C of the City of Naperville Municipal Code for the purposes of (A) refunding certain of the outstanding general obligation bonds of the City of the following series:

- General Obligation Bonds, Taxable Series 2010A (Recovery Zone Economic Development Bonds – Direct Payment)
- General Obligation Bonds, Taxable Series 2010B (Build America Bonds – Direct Payment)
- General Obligation Bonds, Series 2011

and (B) financing the following capital improvements (the “Projects”):

Project	Estimated Cost
E-Government Initiatives Upgrade and replace the current technology infrastructure and expand the City' technology resources.	\$2,630,000
Building Improvements and Renovations Replace, upgrade, and modify buildings and building components throughout the City.	\$1,770,000
Stormwater Management Improvements Manage localized stormwater projects throughout the City and include the installation of new storm sewer sections; dam reconstructions; the replacement of deteriorated storm sewer sections; culvert replacements; and citywide drainage improvement projects.	\$795,000
Traffic Improvement Programs Projects include engineering and construction work for bridge expansion and rehabilitation; street reconstruction and expansion; street lighting upgrades and improvements; pedestrian improvements; intersection alignments; and the installation of new traffic signals.	\$5,525,000
Equipment Replacement Program	\$5,042,000
Traffic Control and Street Lighting	\$238,000

It is found and determined that the borrowing of money as provided in this ordinance is necessary for the welfare of the government and affairs of the City, is for proper public purposes and is in the public interest.

Section 2. Refunding Plan. The City may determine to refund all of a portion of each series of the general obligation bonds listed in Section 1 of this ordinance. The particular general obligation bonds to be refunded (the "Prior Bonds"), the particular Prior Bonds to be redeemed prior to maturity and the date of redemption of any Prior Bonds that are to be redeemed prior to maturity, shall be specified in one or more of the Bond Orders referred to in Section 3 of this ordinance. The Mayor, City Manager,

Finance Director and the other officers and officials of the City are authorized and directed to do, or cause to be done, all things necessary to accomplish the refunding and redemption of the Prior Bonds.

Section 3. Authorization and Terms of Bonds. To meet part of the estimated costs of the Projects and the refunding of the Prior Bonds and to fund the costs of issuance of the bonds herein authorized, there is hereby appropriated the sum of \$40,500,000. Pursuant to the home rule powers of the City to incur debt payable from ad valorem property tax receipts and for the purpose of financing said appropriation, unlimited tax general obligation bonds of the City are authorized to be issued and sold in one or more series and in an aggregate principal amount of not to exceed \$40,500,000.

The bonds of each series shall be designated as “General Obligation Bonds”, and shall include additional designations to distinguish each series of the bonds. The bonds authorized and issued pursuant to this ordinance are herein collectively called the “2020 Bonds”.

Authority is hereby delegated to the City Manager, to determine all of the terms and provisions of the 2020 Bonds and to select the Prior Bonds, all in accordance with the limitations of this ordinance. Such terms and provisions to be set forth in one or more bond orders (each a “Bond Order”) to be executed by the City Manager. The City Manager may delegate to the Finance Director the authority to make any of such determinations and to execute a Bond Order by executing and filing with the City Clerk a written instrument evidencing such delegation.

The 2020 Bonds shall be issuable in the denominations of \$5,000 or any integral multiple thereof and may bear such identifying numbers or letters as shall be useful to facilitate the registration, transfer and exchange of 2020 Bonds. Each 2020 Bond delivered upon the original issuance of the 2020 Bonds shall be dated as of the date specified in the Bond Order. Each 2020 Bond thereafter issued upon any transfer, exchange or replacement of 2020 Bonds shall be dated so that no gain or loss of interest shall result from such transfer, exchange or replacement.

The 2020 Bonds shall mature on December 1 in such years and in such principal amounts as shall be specified in the Bond Order, provided that no 2020 Bond shall mature later than December 1, 2040.

Each 2020 Bond shall bear interest from its date, computed on the basis of a 360 day year consisting of twelve 30 day months and payable in lawful money of the United States of America on an initial interest payment date of June 1, 2021 and semiannually thereafter on each June 1 and December 1, at the rates per annum as shall be specified in the Bond Order, provided that no 2020 Bond shall bear interest at a rate exceeding five and one-half percent (5.50%) per annum.

No 2020 Bonds shall be sold pursuant to this ordinance unless the sum of the taxes levied pursuant to Section 9 of this ordinance and the moneys to be deposited into the 2020 Debt Service Fund (established by this ordinance) concurrently with the issuance of the 2020 Bonds is sufficient to provide for the punctual payment of the principal of and interest on the 2020 Bonds.

The principal of and premium, if any, on the 2020 Bonds shall be payable in lawful money of the United States of America upon presentation and surrender thereof

at the corporate trust office of UMB Bank, N.A., in the City of St. Louis, Missouri, which is hereby appointed as the bond registrar and paying agent for the 2020 Bonds. Interest on the 2020 Bonds shall be payable on each interest payment date to the registered owners of record thereof appearing on the registration books maintained by the City for such purpose at the corporate trust office of the bond registrar, as of the close of business on the 15th day of the calendar month next preceding the applicable interest payment date. Interest on the 2020 Bonds shall be paid by check or draft mailed to such registered owners at their addresses appearing on the registration books or by wire transfer pursuant to an agreement by and between the City and the registered owner.

The 2020 Bonds of any series shall be subject to redemption prior to maturity as determined in the Bond Order, at the option of the City and upon notice as herein provided, in such principal amounts and from such maturities as the City shall determine as determined in the Bond Order. Any optional redemption shall be at redemption prices that may include a redemption premium for each 2020 Bond to be redeemed expressed as a percentage, not exceeding 3% of the principal amount to be redeemed.

2020 Bonds of like series and maturity may be subject to mandatory redemption, by the application of sinking fund installments, all as determined in the Bond Order.

All 2020 Bonds subject to mandatory sinking fund redemption shall be redeemed at a redemption price equal to the principal amount thereof to be redeemed. The bond registrar is hereby authorized and directed to mail notice of the mandatory sinking fund redemption of 2020 Bonds in the manner provided in this section.

Whenever 2020 Bonds subject to mandatory sinking fund redemption are redeemed at the option of the City, the principal amount thereof so redeemed shall be credited against the unsatisfied balance of future sinking fund installments or final maturity amount established with respect to the 2020 Bonds, in such amounts and against such installments or final maturity amount as shall be determined by the City in the proceedings authorizing such optional redemption or, in the absence of such determination, shall be credited against the unsatisfied balance of the applicable sinking fund installments next ensuing, and with respect to which notice of redemption has not yet been given.

On or prior to the 60th day preceding any sinking fund installment date, the City may purchase 2020 Bonds subject to mandatory redemption on such sinking fund installment date, at such prices as the City shall determine. Any 2020 Bond so purchased shall be cancelled and the principal amount thereof so purchased shall be credited against the unsatisfied balance of the next ensuing sinking fund installment.

In the event of the redemption of less than all the 2020 Bonds of like series and maturity, the aggregate principal amount thereof to be redeemed shall be \$5,000 or an integral multiple thereof and the bond registrar shall assign to each 2020 Bond of such maturity a distinctive number for each \$5,000 principal amount of such 2020 Bond and, unless otherwise determined in the Bond Order, shall select by lot from the numbers so assigned as many numbers as, at \$5,000 for each number, shall equal the principal amount of such 2020 Bonds to be redeemed. The 2020 Bonds to be redeemed shall be the 2020 Bonds to which were assigned numbers so selected; provided that only so

much of the principal amount of each 2020 Bond shall be redeemed as shall equal \$5,000 for each number assigned to it and so selected.

Notice of the redemption of 2020 Bonds shall be mailed not less than 30 days nor more than 60 days prior to the date fixed for such redemption to the registered owners of 2020 Bonds to be redeemed at their last addresses appearing on said registration books. The 2020 Bonds or portions thereof specified in said notice shall become due and payable at the applicable redemption price on the redemption date therein designated, and if, on the redemption date, moneys for payment of the redemption price of all the 2020 Bonds or portions thereof to be redeemed, together with interest to the redemption date, shall be available for such payment on said date, and if notice of redemption shall have been mailed as aforesaid (and notwithstanding any defect therein or the lack of actual receipt thereof by any registered owner) then from and after the redemption date interest on such 2020 Bonds or portions thereof shall cease to accrue and become payable. If there shall be drawn for redemption less than all of a 2020 Bond, the City shall execute and the bond registrar shall authenticate and deliver, upon the surrender of such 2020 Bond, without charge to the owner thereof, in exchange for the unredeemed balance of the 2020 Bond so surrendered, 2020 Bonds of like series and maturity and of the denomination of \$5,000 or any integral multiple thereof.

The bond registrar shall not be required to transfer or exchange any 2020 Bond after notice of the redemption of all or a portion thereof has been mailed. The bond registrar shall not be required to transfer or exchange any 2020 Bond during a period of

15 days next preceding the mailing of a notice of redemption which could designate for redemption all or a portion of such 2020 Bond.

Section 4. Sale and Delivery. Subject to the limitations contained in this ordinance, authority is hereby delegated to the City Manager to offer one or more series of the 2020 Bonds for public sale, on one or more sale dates prior to December 31, 2020 and (i) to award and sell each series of the 2020 Bonds to the best bidder in accordance with the notice of sale for the 2020 Bonds, or (ii) to reject all bids. No award of a series of 2020 Bonds shall be made unless the purchase price bid is not less than 97% of the principal amount of 2020 Bonds sold.

The sale and award of the 2020 Bonds and the determination of the details of the 2020 Bonds shall be evidenced by the Bond Order, which shall be signed by the City Manager (or the Finance Director if delegated to do so by the City Manager). An executed counterpart of the Bond Order shall be filed with the City Clerk and entered in the records of the City.

The Official Statement prepared with respect to the 2020 Bonds is approved and “deemed final” as of its date for purposes of Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934.

The Mayor, City Manager, Finance Director, City Clerk and other officials of the City are authorized and directed to do and perform, or cause to be done or performed for or on behalf of the City each and every thing necessary for the issuance of the 2020 Bonds, including the proper execution and delivery of the 2020 Bonds and the Official Statement.

Section 5. Execution and Authentication. Each 2020 Bond shall be executed in the name of the City by the manual or authorized facsimile signature of its Mayor and the corporate seal of the City, or a facsimile thereof, shall be thereunto affixed or otherwise reproduced thereon and attested by the manual or authorized facsimile signature of its City Clerk.

In case any officer whose signature, or a facsimile of whose signature, shall appear on any 2020 Bond shall cease to hold such office before the issuance of the 2020 Bond, such 2020 Bond shall nevertheless be valid and sufficient for all purposes, the same as if the person whose signature, or a facsimile thereof, appears on such 2020 Bond had not ceased to hold such office. Any 2020 Bond may be signed, sealed or attested on behalf of the City by any person who, on the date of such act, shall hold the proper office, notwithstanding that at the date of such 2020 Bond such person may not have held such office. No recourse shall be had for the payment of any 2020 Bonds against any officer who executes the 2020 Bonds.

Each 2020 Bond shall bear thereon a certificate of authentication executed manually by the bond registrar. No 2020 Bond shall be entitled to any right or benefit under this ordinance or shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the bond registrar.

Section 6. Transfer, Exchange and Registry. The 2020 Bonds shall be negotiable, subject to the provisions for registration of transfer contained herein. Each 2020 Bond shall be transferable only upon the registration books maintained by the City for that purpose at the corporate trust office of the bond registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender

thereof together with a written instrument of transfer satisfactory to the bond registrar and duly executed by the registered owner or his duly authorized attorney. Upon the surrender for transfer of any such 2020 Bond, the City shall execute and the bond registrar shall authenticate and deliver a new 2020 Bond or 2020 Bonds registered in the name of the transferee, of the same series, aggregate principal amount, maturity and interest rate as the surrendered 2020 Bond. 2020 Bonds, upon surrender thereof at the corporate trust office of the bond registrar, with a written instrument satisfactory to the bond registrar, duly executed by the registered owner or his attorney duly authorized in writing, may be exchanged for an equal aggregate principal amount of 2020 Bonds of the same series, maturity and interest rate and of the denominations of \$5,000 or any integral multiple thereof.

For every such exchange or registration of transfer of 2020 Bonds, the City or the bond registrar may make a charge sufficient for the reimbursement of any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer, which sum or sums shall be paid by the person requesting such exchange or transfer as a condition precedent to the exercise of the privilege of making such exchange or transfer. No other charge shall be made for the privilege of making such transfer or exchange. The provisions of the Illinois Bond Replacement Act shall govern the replacement of lost, destroyed or defaced 2020 Bonds.

The City and the bond registrar may deem and treat the person in whose name any 2020 Bond shall be registered upon the registration books as the absolute owner of such 2020 Bond, whether such 2020 Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of, premium, if any, or interest

thereon and for all other purposes whatsoever, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such 2020 Bond to the extent of the sum or sums so paid, and neither the City nor the bond registrar shall be affected by any notice to the contrary.

Section 7. General Obligations. The full faith and credit of the City are hereby irrevocably pledged to the punctual payment of the principal of and interest on the 2020 Bonds. The 2020 Bonds shall be direct and general obligations of the City, and the City shall be obligated to levy ad valorem taxes upon all the taxable property in the City for the payment of the 2020 Bonds and the interest thereon, without limitation as to rate or amount.

Section 8. Form of Bonds. The 2020 Bonds shall be issued as fully registered bonds and shall be in substantially the following form, the blanks to be appropriately completed when the 2020 Bonds are printed:

No. _____

United States of America
 State of Illinois
 Counties of DuPage and Will
 CITY OF NAPERVILLE
 GENERAL OBLIGATION BOND,
 SERIES 2020

<u>INTEREST RATE</u>	<u>MATURITY DATE</u>	<u>DATED DATE</u>	<u>CUSIP</u>
. %	December 1, _____	_____, 2020	630412 ____

REGISTERED OWNER: Cede & Co.

PRINCIPAL AMOUNT:

The CITY OF NAPERVILLE, a municipal corporation and a home rule unit of the State of Illinois situate in the Counties of DuPage and Will, acknowledges itself indebted

and for value received hereby promises to pay to the registered owner of this bond, or registered assigns, the principal amount specified above on the maturity date specified above, and to pay interest on such principal amount from the date hereof at the interest rate per annum specified above, computed on the basis of a 360 day year consisting of twelve 30 day months and payable in lawful money of the United States of America on June 1, 2021 and semiannually thereafter on June 1 and December 1 in each year until the principal amount shall have been paid, to the registered owner of record hereof as of the 15th day of the calendar month next preceding such interest payment date, by wire transfer pursuant to an agreement by and between the City and the registered owner, or otherwise by check or draft mailed to the registered owner at the address of such owner appearing on the registration books maintained by the City for such purpose at the corporate trust office of UMB Bank, N.A., in the City of St. Louis, Missouri, as bond registrar or its successor (the "Bond Registrar"). This bond, as to principal [and premium, if any,] when due, will be payable in lawful money of the United States of America upon presentation and surrender of this bond at the office of the Bond Registrar. The full faith and credit of the City are irrevocably pledged for the punctual payment of the principal of and interest on this bond according to its terms.

This bond is one of a series of bonds issued in the aggregate principal amount of \$ _____, which are authorized and issued under and pursuant to Section 6 of Article VII of the Illinois Constitution of 1970 and under and in accordance with the City of Naperville Municipal Code and an ordinance adopted by the City Council of the City on October 6, 2020 and entitled: "Ordinance Authorizing the Issuance of Not to

Exceed \$40,500,000 General Obligation Bonds of 2020 of the City of Naperville, Illinois.”

[The bonds of such series maturing on or after December 1, 20__ are subject to redemption prior to maturity at the option of the City and upon notice as herein provided, in such principal amounts and from such maturities as the City shall determine and by lot within a single maturity, on December 1, 20__ and on any date thereafter, at a redemption price equal to the principal amount thereof to be redeemed plus, if such bond is to be redeemed during any period (both dates inclusive) shown in the following table, the applicable redemption premium, expressed as a percentage of such principal amount, set forth opposite such period:

<u>Redemption Period</u>	<u>Redemption Premium]</u>
--------------------------	----------------------------

[The bonds of such series due December 1, 20__, are subject to mandatory sinking fund redemption to the extent required to satisfy annual sinking fund installments, in part by lot, at a redemption price equal to the principal amount thereof to be redeemed, on December 1, 20__, and on each December 1 thereafter, in the following amounts:

<u>Year</u>	<u>Principal Amount]</u>
-------------	--------------------------

Notice of the redemption of bonds will be mailed not less than 30 days nor more than 60 days prior to the date fixed for such redemption to the registered owners of bonds to be redeemed at their last addresses appearing on such registration books. The bonds or portions thereof specified in said notice shall become due and payable at the applicable redemption price on the redemption date therein designated, and if, on the redemption date, moneys for payment of the redemption price of all the bonds or portions thereof to be redeemed, together with interest to the redemption date, shall be available for such payment on said date, and if notice of redemption shall have been mailed as aforesaid (and notwithstanding any defect therein or the lack of actual receipt thereof by any registered owner) then from and after the redemption date interest on such bonds or portions thereof shall cease to accrue and become payable.

This bond is transferable only upon such registration books by the registered owner hereof in person, or by his attorney duly authorized in writing, upon surrender hereof at the corporate trust office of the Bond Registrar together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or by his duly authorized attorney, and thereupon a new registered bond or bonds, in the authorized denominations of \$5,000 or any integral multiple thereof and of the same aggregate principal amount, maturity and interest rate as this bond shall be issued to the transferee in exchange therefor. In like manner, this bond may be exchanged for an equal aggregate principal amount of bonds of the same maturity and interest rate and of any of such authorized denominations. The City or the Bond Registrar may make a charge sufficient for the reimbursement of any tax, fee or other governmental charge required to be paid with respect to the transfer or exchange of this

bond. No other charge shall be made for the privilege of making such transfer or exchange. The City and the Bond Registrar may treat and consider the person in whose name this bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal[, premium, if any,] and interest due hereon and for all other purposes whatsoever.

This bond shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been duly executed by the Bond Registrar.

It is hereby certified, recited and declared that all acts, conditions and things required to be done, exist and be performed precedent to and in the issuance of this bond in order to make it a legal, valid and binding obligation of the City have been done, exist and have been performed in regular and due time, form and manner as required by law, and that the series of bonds of which this bond is one, together with all other indebtedness of the City, is within every debt or other limit prescribed by law.

IN WITNESS WHEREOF, the City of Naperville has caused this bond to be executed in its name and on its behalf by the manual or facsimile signature of its Mayor, and its corporate seal, or a facsimile thereof, to be hereunto affixed or otherwise reproduced hereon and attested by the manual or facsimile signature of its City Clerk.

Dated _____

CITY OF NAPERVILLE

Mayor

Attest:

CERTIFICATE OF AUTHENTICATION

This bond is one of the General Obligation Bonds, Series 2020, described in the within mentioned Ordinance.

City Clerk

UMB BANK, N.A., as Bond Registrar

By _____
Authorized Signer

ASSIGNMENT

For value received the undersigned sells, assigns and transfers unto _____

the within bond and hereby irrevocably constitutes and appoints _____

attorney to transfer the said bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated _____

Signature Guarantee:

Section 9. Levy and Extension of Taxes. (A) For the purpose of providing the money required to pay the interest on the 2020 Bonds when and as the same falls due and to pay and discharge the principal thereof (including mandatory sinking fund installments) as the same shall mature, there is hereby levied upon all the taxable property in the City, in each year while any of the 2020 Bonds shall be outstanding, a direct annual tax sufficient for that purpose in addition to all other taxes, as follows:

<u>Tax Levy Year</u>	<u>A Tax Sufficient to Produce</u>
2020	\$6,000,000
2021	6,000,000
2022	5,500,000
2023	5,500,000
2024	5,000,000
2025	4,500,000
2026	4,000,000
2027	4,000,000
2028	4,000,000
2029	3,500,000
2030	2,000,000
2031	1,500,000
2032	1,500,000
2033	1,500,000
2034	1,500,000
2035	1,500,000
2036	1,500,000
2037	1,500,000
2038	1,500,000
2039	1,500,000

(B) Interest or principal coming due at any time when there shall be insufficient funds on hand to pay the same shall be paid promptly when due from current funds on hand in advance of the collection of the taxes herein levied; and when said taxes shall have been collected, reimbursement shall be made to the said funds in the amounts thus advanced.

(C) After the sale of the 2020 Bonds and the execution of the Bond Order, an executed copy of the Bond Order and a copy of this ordinance, certified by the City Clerk, which certificate shall recite that this ordinance has been duly adopted, shall be filed with the County Clerk of DuPage County, Illinois, and the County Clerk of Will County, Illinois, who are each hereby directed to ascertain the rate per cent required to produce the aggregate tax hereinbefore provided to be levied in the years 2020 to 2039, inclusive, and subject to adjustment as provided in paragraph (D) of this Section, to extend the same for collection on the tax books in connection with other taxes levied in said years, in and by the City for general corporate purposes of the City, and in said years such annual tax shall be levied and collected in like manner as taxes for general corporate purposes for said years are levied and collected and, when collected, such taxes shall be used for the purpose of paying the principal of and interest on the 2020 Bonds herein authorized as the same become due and payable.

(D) In the event that 2020 Bonds are to be issued in principal amounts and bearing interest such that for any tax levy year an amount less than that set forth in paragraph (A) of this Section is required to be produced to pay when due the principal of and interest on the 2020 Bonds, then the City Treasurer is authorized and directed to file with each of the aforesaid County Clerks, on or prior to the date of delivery of the 2020 Bonds, a direction for abatement of taxes specifying the exact amount of taxes to be levied to produce the required amounts for each of the various tax levy years.

Section 10. Taxes Levied for Prior Bonds. After the issuance of the 2020 Bonds authorized by this ordinance, the City Treasurer shall file with the County Clerk of DuPage County and the County Clerk of Will County, certificates listing the Prior Bonds

and the taxes theretofore levied for the 2020 tax levy year and subsequent years for the payment of the principal of and interest on the Prior Bonds, and said certificates shall direct the abatement of such taxes.

Section 11. Escrow Deposit Agreement. The form of 2020 Escrow Deposit Agreement by and between the City and UMB Bank, N.A., as Escrow Agent, on file in the office of the City Clerk, is hereby approved. The proper officers of the City are authorized and directed to execute and deliver the 2020 Escrow Deposit Agreement on behalf of the City.

Section 12. Application of Proceeds. The proceeds of sale of the 2020 Bonds shall be applied as follows:

1. To the 2020 Escrow Fund maintained under the 2020 Escrow Deposit Agreement, the amount, together with other moneys (if any) of the City deposited therein, necessary to provide for the redemption of the Prior Bonds on the applicable redemption date and to provide for interest to become due and payable on the Prior Bonds to their applicable redemption date.

2. To the 2020 Bond Proceeds Fund established by this ordinance, the amount of such proceeds of sale remaining after making the foregoing deposit.

Section 13. Debt Service Fund. Moneys derived from taxes herein levied (the "Tax Receipts") are appropriated and set aside for the purpose of paying principal of and interest on the 2020 Bonds when and as the same come due. All of such moneys, and all other moneys to be used for the payment of the principal of and interest on the 2020 Bonds, shall be deposited in the "2020 Debt Service Fund", which is hereby

established as a special fund of the City and shall be administered as a bona fide debt service fund under the Internal Revenue Code of 1986.

Pursuant to Section 13 of the Local Government Debt Reform Act, the Tax Receipts and the other moneys deposited or to be deposited into the 2020 Debt Service Fund, are pledged as security for the payment of the 2020 Bonds. All such Tax Receipts and the moneys held in the 2020 Debt Service Fund shall immediately be subject to the lien of such pledge without any physical delivery or further act and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the City irrespective of whether such parties have notice thereof.

Section 14. Bond Proceeds Fund. The “2020 Bond Proceeds Fund” is hereby established as a special fund of the City. Moneys in the 2020 Bond Proceeds Fund shall be used for the payment of costs of the Projects and costs of issuance of the 2020 Bonds, but may thereafter be reappropriated and used for other purposes if such reappropriation is permitted under Illinois law and will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the 2020 Bonds.

Section 15. Investment Regulations. No investment shall be made of any moneys in the 2020 Escrow Fund, the 2020 Debt Service Fund or the 2020 Bond Proceeds Fund except in accordance with the tax covenants set forth in Section 16 of this ordinance. All income derived from such investments in respect of moneys or securities in any Fund shall be credited in each case to the Fund in which such moneys or securities are held.

Any moneys in any Fund that are subject to investment yield restrictions may be invested in United States Treasury Securities, State and Local Government Series, pursuant to the regulations of the United States Treasury Department, Bureau of the Fiscal Service, or in any tax-exempt bond that is not an “investment property” within the meaning of Section 148(b)(2) of the Code. The City Treasurer and agents designated by her are hereby authorized to submit, on behalf of the City, subscriptions for such United States Treasury Securities and to request redemption of such United States Treasury Securities.

Section 16. Tax Covenants. The City shall not take, or omit to take, any action lawful and within its power to take, which action or omission would cause interest on any 2020 Bond to become subject to federal income taxes in addition to federal income taxes to which interest on such 2020 Bond is subject on the date of original issuance thereof.

The City shall not permit any of the proceeds of the 2020 Bonds, or any facilities financed with such proceeds, to be used in any manner that would cause any 2020 Bond to constitute a “private activity bond” within the meaning of Section 141 of the Code.

The City shall not permit any of the proceeds of the 2020 Bonds or other moneys to be invested in any manner that would cause any 2020 Bond to constitute an “arbitrage bond” within the meaning of Section 148 of the Code or a “hedge bond” within the meaning of Section 149(g) of the Code.

The City shall comply with the provisions of Section 148(f) of the Code relating to the rebate of certain investment earnings at periodic intervals to the United States of America.

Section 17. Continuing Disclosure. For the benefit of the beneficial owners of the 2020 Bonds, the City covenants and agrees to provide to the Municipal Securities Rulemaking Board (the “MSRB”) for disclosure on the Electronic Municipal Market Access (“EMMA”) system, in an electronic format as prescribed by the MSRB, (i) an annual report containing certain financial information and operating data relating to the City and (ii) timely notices of the occurrence of certain enumerated events. All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

The annual report shall be provided to the MSRB for disclosure on EMMA within 210 days after the close of the City’s fiscal year. The information to be contained in the annual report shall consist of the annual audited financial statement of the City and such additional information as noted in the Official Statement under the caption “Continuing Disclosure.” Each annual audited financial statement will conform to generally accepted accounting principles applicable to governmental units and will be prepared in accordance with standards of the Governmental Accounting Standards Board. If the audited financial statement is not available, then an unaudited financial statement shall be included in the annual report and the audited financial statement shall be provided promptly after it becomes available.

The City, in a timely manner not in excess of ten business days after the occurrence of the event, shall provide notice to the MSRB for disclosure on EMMA of

any failure of the City to provide any such annual report within the 210 day period and of the occurrence of any of the following events with respect to the 2020 Bonds: (1) principal and interest payment delinquencies; (2) non payment related defaults, if material; (3) unscheduled draws on debt service reserves reflecting financial difficulties; (4) unscheduled draws on credit enhancements reflecting financial difficulties; (5) substitution of credit or liquidity providers, or their failure to perform; (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of the 2020 Bonds, or other events affecting the tax-exempt status of the 2020 Bonds; (7) modifications to rights of bondholders, if material; (8) 2020 Bond calls, if material and tender offers; (9) defeasances; (10) release, substitution or sale of property securing repayment of the 2020 Bonds, if material; (11) rating changes; (12) bankruptcy, insolvency, receivership or similar event of the City; (13) the consummation of a merger, consolidation, or acquisition involving the City or the sale of all or substantially all of the assets of the City, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; (14) appointment of a successor or additional trustee or the change of name of a trustee, if material; (15) incurrence of a financial obligation of the City, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the City, any of which affect bondholders, if material; and (16) default, event of acceleration, termination event, modification of terms, or other

similar events under the terms of a financial obligation of the City any of which reflect financial difficulties. For the purposes of the event identified in clause (12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the City in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan or reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City. As used in clauses (15) and (16), the term financial obligation means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the MSRB consistent with Securities and Exchange Commission Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the "Rule").

It is found and determined that the City has agreed to the undertakings contained in this Section in order to assist participating underwriters of the 2020 Bonds and brokers, dealers and municipal securities dealers in complying with paragraph (b)(5) of the Rule. The City Treasurer or her designee is authorized and directed to do and perform, or cause to be done or performed, for or on behalf of the City, each and every

thing necessary to accomplish the undertakings of the City contained in this Section for so long as paragraph (b)(5) of the Rule is applicable to the 2020 Bonds and the City remains an “obligated person” under the Rule with respect to the 2020 Bonds.

The undertakings contained in this Section may be amended by the City upon a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of the obligated person, or type of business conducted, provided that (a) the undertaking, as amended, would have complied with the requirements of paragraph (b)(5) of the Rule at the time of the primary offering, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances and (b) in the opinion of nationally recognized bond counsel selected by the City, the amendment does not materially impair the interests of the beneficial owners of the 2020 Bonds.

Section 18. Bond Registrar. The City covenants that it shall at all times retain a bond registrar with respect to the 2020 Bonds, that it will maintain at the designated office of such bond registrar a place where 2020 Bonds may be presented for payment and registration of transfer or exchange and that it shall require that the bond registrar maintain proper registration books and perform the other duties and obligations imposed upon the bond registrar by this ordinance in a manner consistent with the standards, customs and practices of the municipal securities business.

The bond registrar shall signify its acceptance of the duties and obligations imposed upon it by this ordinance by executing the certificate of authentication on any 2020 Bond, and by such execution the bond registrar shall be deemed to have certified to the City that it has all requisite power to accept, and has accepted such duties and

obligations not only with respect to the 2020 Bond so authenticated but with respect to all the 2020 Bonds. The bond registrar is the agent of the City and shall not be liable in connection with the performance of its duties except for its own negligence or default. The bond registrar shall, however, be responsible for any representation in its certificate of authentication on the 2020 Bonds.

The City may remove the bond registrar at any time. In case at any time the bond registrar shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the bond registrar, or of its property, shall be appointed, or if any public officer shall take charge or control of the bond registrar or of its property or affairs, the City covenants and agrees that it will thereupon appoint a successor bond registrar. The City shall mail notice of any such appointment made by it to each registered owner of 2020 Bonds within twenty days after such appointment.

Section 19. Book-Entry System. In order to provide for the initial issuance of the 2020 Bonds in a form that provides for a system of book-entry only transfers, the ownership of one fully registered bond for each maturity of each series, in the aggregate principal amount of such maturity, shall be registered in the name of Cede & Co., as a nominee of The Depository Trust Company, New York, New York, as securities depository for the 2020 Bonds. The City Treasurer is authorized to execute and deliver on behalf of the City such letters to, or agreements with, the securities depository as shall be necessary to effectuate such book-entry system.

In case at any time the securities depository shall resign or shall become incapable of acting, then the City shall appoint a successor securities depository to

provide a system of book-entry only transfers for the 2020 Bonds, by written notice to the predecessor securities depository directing it to notify its participants (those persons for whom the securities depository holds securities) of the appointment of a successor securities depository.

If the system of book-entry only transfers for the 2020 Bonds is discontinued, then the City shall issue and the bond registrar shall authenticate, register and deliver to the beneficial owners of the 2020 Bonds, bond certificates in replacement of such beneficial owners' beneficial interests in the 2020 Bonds, all as shown in the records maintained by the securities depository.

Section 20. Defeasance and Payment. (A) If the City shall pay or cause to be paid to the registered owners of the 2020 Bonds, the principal, premium, if any, and interest due or to become due thereon, at the times and in the manner stipulated therein and in this ordinance, then the pledge of taxes, securities and funds hereby pledged and the covenants, agreements and other obligations of the City to the registered owners and the beneficial owners of the 2020 Bonds shall be discharged and satisfied.

(B) Any 2020 Bonds, whether at or prior to the maturity or the redemption date of such 2020 Bonds, shall be deemed to have been paid within the meaning of this Section if (1) in case any such 2020 Bonds are to be redeemed prior to the maturity thereof, there shall have been taken all action necessary to call such 2020 Bonds for redemption and notice of such redemption shall have been duly given or provision shall have been made for the giving of such notice, and (2) there shall have been deposited in trust with a bank, trust company or national banking association acting as fiduciary for such purpose either (i) moneys in an amount which shall be sufficient, or (ii) "Federal

Obligations” as defined in paragraph (C) of this Section, the principal of and the interest on which when due will provide moneys which, together with any moneys on deposit with such fiduciary at the same time for such purpose, shall be sufficient, to pay when due the principal of, redemption premium, if any, and interest due and to become due on said 2018 Bonds on and prior to the applicable redemption date or maturity date thereof.

(C) As used in this Section, the term “Federal Obligations” means (i) non-callable, direct obligations of the United States of America, (ii) non-callable and non-prepayable, direct obligations of any agency of the United States of America, which are unconditionally guaranteed by the United States of America as to full and timely payment of principal and interest, (iii) non-callable, non-prepayable coupons or interest installments from the securities described in clause (i) or clause (ii) of this paragraph, which are stripped pursuant to programs of the Department of the Treasury of the United States of America, or (iv) coupons or interest installments stripped from bonds of the Resolution Funding Corporation.

Section 21. Ordinance to Constitute a Contract. The provisions of this ordinance shall constitute a contract between the City and the registered owners of the 2020 Bonds. Any pledge made in this ordinance and the provisions, covenants and agreements herein set forth to be performed by or on behalf of the City shall be for the equal benefit, protection and security of the owners of any and all of the 2020 Bonds. All of the 2020 Bonds, regardless of the time or times of their issuance, shall be of equal rank without preference, priority or distinction of any of the 2020 Bonds over any other thereof except as expressly provided in or pursuant to this ordinance. This ordinance

shall constitute full authority for the issuance of the 2020 Bonds and to the extent that the provisions of this ordinance conflict with the provisions of any other ordinance or resolution of the City, the provisions of this ordinance shall control. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

As used in this ordinance, the term "City Manager" or the term "City Treasurer" or the term "Finance Director" includes any person appointed to that office, or authorized to perform the functions of that office, on a temporary or interim basis.

Section 22. Publication. The City Clerk is hereby authorized and directed to publish this ordinance in pamphlet form and to file copies thereof for public inspection in her office.

Section 23. Effective Date. This ordinance shall become effective upon its passage and approval.

Passed and adopted this 6th day of October, 2020, by roll call vote as follows:

Ayes:

Nays:

Approved: October 6, 2020

Mayor

Published in pamphlet form: October 7, 2020

(SEAL)

Attest:

City Clerk

CERTIFICATE

I, Pam R. Gallahue, City Clerk of the City of Naperville, Illinois, hereby certify that the foregoing ordinance entitled: "Ordinance Authorizing the Issuance of Not to Exceed \$40,500,000 General Obligation Bonds of 2020 of the City of Naperville, Illinois," is a true copy of an original ordinance that was duly adopted by the recorded affirmative votes of a majority of the members of the City Council of the City at a meeting thereof that was duly called and held at 7:00 p.m. on October 6, 2020, in the Council Chambers at the Municipal Center, and at which a quorum was present and acting throughout, and that said copy has been compared by me with the original ordinance signed by the Mayor on October 7, 2020, and thereafter published in pamphlet form on October 7, 2020 and recorded in the Ordinance Book of the City and that it is a correct transcript thereof and of the whole of said ordinance, and that said ordinance has not been altered, amended, repealed or revoked, but is in full force and effect.

I further certify that the agenda for said meeting included the ordinance as a matter to be considered at the meeting and that said agenda was posted at least 48 hours in advance of the holding of the meeting in the manner required by the Open Meetings Act, 5 Illinois Compiled Statutes 120, and was continuously available for public review during the 48 hour period preceding the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this _____ day of _____, 2020.

(SEAL)

City Clerk