

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF NAPERVILLE AND THE VILLAGE OF LISLE  
FOR THE GREEN TRAILS DRIVE IMPROVEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("**Agreement**") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Naperville, an Illinois municipality and home rule unit of local government under the laws and Constitution of the State of Illinois ("**City**"), and Village of Lisle, an Illinois municipality ("**Village**"). City and Village are hereinafter sometimes referred to individually as a "Party," and collectively as the "Parties."

**RECITALS**

- A. WHEREAS, Article VII, Section 10, of the Constitution of the State of Illinois of 1970 provides that units of local government may contract or otherwise associate among themselves to obtain or share services and to exercise, combine, or transfer any power or function in any manner not prohibited by law or by ordinance and may use their credit, revenues, and other resources to pay costs related to intergovernmental activities; and
- B. WHEREAS, intergovernmental cooperation is further authorized by the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. (2012) ("the Act"); and
- C. WHEREAS, the City and Village are public agencies as that term is defined by the Act, 5 ILCS 220/2; and
- D. WHEREAS, Green Trails Drive is a public street located in both the Village and the City; and
- E. WHEREAS, the Parties desire to enter into this Agreement to cooperate with the Illinois Department of Transportation ("**IDOT**") to resurface approximately four thousand feet (4000') of Green Trails Drive from Naper Boulevard to College Road as set forth herein (herein the "**Project**") and as depicted on **Exhibit A** attached hereto and made part hereof; and
- F. WHEREAS, approximately three thousand two hundred and sixty feet (3,260') of Green Trails Drive which are included in the Project are within the corporate limits of the Village, and approximately seven hundred and forty feet (740') of Green Trails Drive which are included in the Project are within the corporate limits of the City; and

- G. WHEREAS, there is a cost savings to resurface the portions of Green Trails Drive under the jurisdiction of both the Village and the City, and the Parties intend to share in the costs of the Project based on the proportional share of roadway resurfaced within their jurisdictions as those costs are reduced by a Federal Surface Transportation Program grant which will cover fifty percent (50%) of certain aspects of the Project as depicted on **Exhibit B** attached hereto and made part hereof; and
- H. WHEREAS, the Village will enter into an agreement with IDOT regarding the Green Trails Drive Project as described herein and shall serve as the designated lead local agency for the Project; and
- I. WHEREAS, the Parties have determined that it is in the best interests of their respective residents, as well as the public generally, to proceed with the Project, and desire to partner together to facilitate its completion; and
- J. WHEREAS, the Parties wish to define and establish their respective rights, responsibilities and obligations with respect to the construction, operation, and maintenance of the Project.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties the Parties agree as follows:

1. **RECITALS INCORPORATED.** The foregoing Recitals are incorporated herein by reference and made a part hereof as though fully set forth in this paragraph 1, the same constituting the factual basis for this Agreement.

2. **SCOPE OF PROJECT/COST SHARING.**

2.1 Green Trails Drive, as depicted on Exhibit A, will be resurfaced, including but not limited to variable milling, patching, and placement of a surface course ("**Project Work**"). The Village will serve as the designated lead local agency for the Project which responsibilities shall include but are not limited to being responsible for reimbursement for the local share of the Project to the Illinois Department of Transportation (IDOT) and providing construction engineering services in accordance with IDOT standards. IDOT will solicit bids, authorize the construction contract, issue payment to the Contractor, and coordinate and supervise completion of the Project Work.

2.2 Project Work will be completed in 2021 although billing therefor may be processed thereafter as dictated by IDOT.

2.3 A Federal Surface Transportation Program grant obtained by the Village ("**Federal Grant**") will cover fifty percent (50%) of certain aspects of the Project.

2.4 The Village and City agree to share the costs of the Project based on the proportional share of roadway resurfaced within their jurisdictions. The Village and the City will each be entitled to a fifty percent (50%) reduction in the costs of the Project within their respective jurisdictions for those components of the Project to which the Federal Grant is applicable.

2.5 The preliminary engineer's estimate of the City's share of the Project is approximately \$88,171.83, less a 50% reduction pursuant to the Federal Grant, plus an additional ten percent (10%) for engineering services. Therefore, the Village will invoice the City for reimbursement of the City's share of the actual costs of the Project up to an amount not to exceed sixty thousand dollars (\$60,000) plus up to a five percent (5%) contingency fee (hereinafter together referenced as the "**City's Cap**"). The Village shall provide any reasonable documentation requested by the City necessary to support the requested reimbursement. The City's share of the Project costs shall not exceed the City's Cap established by this Agreement unless additional amounts are approved by the Naperville City Council.

### 3. **INSURANCE.**

3.1 The Village agrees to include provisions in its agreement with IDOT pertaining to the Project requiring any contractors performing work on the Project ("**Contractors**") to maintain insurance in amounts required by IDOT and shall: (i) name the Village and the City, and their respective officers, agents and employees, as additional insureds on general liability and auto liability policies to the full value of the insurance provided; (ii) require that said Contractors' insurance shall be primary insurance with respect to the Village and the City, and their respective officers, agents and employees, and that any insurance or self-insurance maintained by the Village or the City, or their respective officers, agents and employees, shall be excess of the Contractors' insurance and shall not contribute with it; (iii) shall require that said Contractors agree to waive rights of subrogation which any insurer of the Contractors may acquire by virtue of the payment of any loss, and to obtain any endorsement that may be necessary to effectuate said waiver of subrogation; and (iv) shall also require that Contractors' workers' compensation policies be endorsed with a waiver of subrogation in favor of the Village and the City for all work performed by said Contractors and their employees, agents, and subcontractors.

### 4. **GENERAL RELEASE AND COVENANT NOT TO SUE.**

4.1 Each Party forever releases and discharges the other Party and its officers, employees and agents from all claims, demands, damages, actions or causes of action which may arise out of this Agreement, except for the negligent, intentional, or willful acts of the other Party or its officers, employees and agents.

4.2 Each Party covenants not to sue or otherwise bring any action in law or equity against the other Party and its officers, employees and agents for any claims, loss, damage, expense, debt or liability of any nature whatsoever which the Party, its employees, agents, and/or

students, may sustain as a result of its acts of omissions under this Agreement, except for the negligent, intentional, or willful acts of the other Party or its officials, employees and agents.

5. **NO WAIVER OF TORT IMMUNITY DEFENSES.** Nothing contained in this Agreement is intended to constitute nor shall constitute a waiver of the rights, defenses, and immunities provided or available to the Village or the City under the Illinois Local Governmental and Governmental Employees Tort Immunity Act with respect to claims arising out of or in any way related to this Agreement.

6. **MODIFICATIONS AND AMENDMENTS.** Any modifications of or amendments to this Agreement must be in writing, signed by both Parties, and dated on or subsequent to the date hereof.

7. **TERMINATION.** This Agreement is conditioned upon the faithful performance by both Parties of all the terms and provisions hereof. Either Party may give sixty (60) days' notice of a breach of a material term of this Agreement and an opportunity to cure the same. If a cure is not effectuated within sixty (60) days' of said notice, the Party which gave notice of a breach of a material term may terminate this Agreement.

8. **TERM.** Unless terminated as provided herein, the term of this Agreement shall be until the Project Work is complete and all invoices therefor have been paid as provided herein.

9. **COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, county, and local statutes, ordinances, rules, regulations, and codes.

10. **RELATIONSHIP OF THE PARTIES.** Nothing in this Agreement shall be deemed to create any joint venture or partnership between the Parties. Neither City nor the Village shall have the power to bind or obligate the other except as to the extent expressly set forth in this Agreement.

11. **NO THIRD-PARTY BENEFICIARIES.** Notwithstanding any provision herein to the contrary, this Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a Party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Village and/or the City.

12. **NO IMPLIED WAIVER.** No waiver of any rights which either Party has in the event of any default or breach by the other Party under this Agreement shall be implied from the non-breaching Party's failure to take any action on any such breach or default and no express waiver shall affect any breach or default other than the breach or default specified in the express waiver and then only for the time and to the extent therein stated.

13. **NOTICES.** Notice or other writings which either Party is required to, or may wish to, serve upon the other Party in connection with this Agreement shall be in writing and shall be delivered personally or sent by certified mail, return receipt requested, postage prepaid, or by personal delivery service with proof of delivery, addressed as follows:

If to the VILLAGE: Village Manager  
Village of Lisle  
925 Burlington Ave.  
Lisle, Illinois 60532

If to the CITY: City Engineer  
City of Naperville  
400 S. Eagle Street  
Naperville, IL 60540

or to such other address, or additional parties, as either Party may from time to time designate in a written notice to the other Party. Service by certified mail shall be deemed given on the third day following the mailing of said notice, and service by personal delivery or personal delivery service shall be deemed given upon actual delivery.

14. **ASSIGNMENT.** This Agreement may not be assigned, in whole or in part, by either Party without the prior written consent of the other Party.

15. **AUTHORITY.** The individual officers of City and the Village who have executed this Agreement represent and warrant that they have the full power and lawful authority to execute this Agreement and perform and fulfill the obligations and responsibilities contemplated hereunder on behalf of and in the name of their respective governing boards.

16. **GOVERNING LAW/VENUE.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be property only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

17. **HEADINGS.** The various headings used in this Agreement as headings for sections or otherwise are for convenience only and shall not be used in interpreting the text of the section in which they appear.

18. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Agreement.

19. **SURVIVAL.** The following paragraphs shall survive the expiration or termination of this Agreement; 2.5, 3.1, 3.2, 3.3, 4.1, 4.2, 14.3, 16, 19, and 20.

20. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties and supersedes any prior understanding or written or oral agreements between them regarding the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between and among the Parties hereto relating to the subject matter of this Agreement which are not fully expressed herein.

**IN WITNESS WHEREOF,** the Parties hereto have caused this Agreement to be signed by their duly authorized representatives on the day and date first written above.

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**CITY OF NAPERVILLE**

**VILLGE OF LISLE**

\_\_\_\_\_  
Steve Chirico  
Mayor

\_\_\_\_\_  
Christopher Pecak  
Mayor

ATTEST:

ATTEST:

\_\_\_\_\_  
Pam Gallahue, Ph.D.  
City Clerk

\_\_\_\_\_  
Lorna Turner  
Village Clerk

# Exhibit A - Green Trails Drive Resurfacing Project – Location Map



City of Naperville Jurisdiction



Village of Lisle Jurisdiction



## **DUPAGE MAYORS AND MANAGERS CONFERENCE**

*an association of municipalities representing 1,000,000 people*

1220 Oak Brook Road  
Oak Brook, Illinois 60523  
(630) 571-0480  
Fax: (630) 571-0484

*Founded June 19, 1962*

### **MEMBER MUNICIPALITIES**

Addison  
Aurora  
Bartlett  
Bensenville  
Bloomington  
Bolingbrook  
Burr Ridge  
Carol Stream  
Clarendon Hills  
Darien  
Downers Grove  
Elmhurst  
Glendale Heights  
Glen Ellyn  
Hanover Park  
Hinsdale  
Itasca  
Lemont  
Lisle  
Lombard  
Naperville  
Oak Brook  
Oakbrook Terrace  
Roselle  
Schaumburg  
Villa Park  
Warrenville  
Wayne  
West Chicago  
Westmont  
Wheaton  
Willowbrook  
Winfield  
Wood Dale  
Woodridge

Date: August 12, 2020

To: Eric Ertmoed, Village Manager  
Village of Lisle

From: Daniel Knickelbein, Transportation Project Manager  
DuPage Mayors and Managers Conference

Re: FY 21-25 Surface Transportation Program (STP)

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Eric,

On August 6, 2020, the DuPage Council gave final approval to the DuPage Mayors and Managers Conference (DMMC) FY 21-25 Surface Transportation Program (STP) Active and Contingency Programs. Lisle has one project included in the Active Program:

- Green Trails Drive/Abbeywood Drive (Resurfacing)– STP funding amount: **\$535,000** Funding Year: **2021**. This is a grandfathered project. The TIP ID for this project will continue to be 08-17-0016.

The first possible letting for this project is November 2020. Under new CMAP Active Program Management (APM) Policies, Lisle has until September 30, 2021 to obligate the funds for this project. If anticipated that the Village cannot obligate the funds by that date, the Village can request a one-time six-month extension by April 15th, 2021.

Lisle also has one project included in the Contingency Program:

- Ohio Street/Ohio Court/Short Street Resurfacing

There is no STP funding assigned to projects in the Contingency Program. Funds may be offered to projects in the Contingency Program if they come available.

The next DMMC STP call for projects will take place from January – March 2022. If you have any questions, please contact me at (630) 576-9137 or via email at [dknickelbein@dmmc-cog.org](mailto:dknickelbein@dmmc-cog.org). Thank you for your continued participation in the Conference's STP.

Cc: Jason Elias  
Adam Hall