

**THIRD AMENDMENT TO THE INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND
THE NAPERVILLE TOWNSHIP ROAD DISTRICT TO
RECONSTRUCT AND WIDEN NORTH AURORA ROAD
BETWEEN FRONTENAC ROAD AND WESTON RIDGE DRIVE
(AS AMENDED TO EXTEND TO FAIRWAY DRIVE)
FOR PHASES III & IV OF THE PROJECT**

This THIRD AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF NAPERVILLE AND THE NAPERVILLE TOWNSHIP ROAD DISTRICT TO RECONSTRUCT AND WIDEN NORTH AURORA ROAD BETWEEN FRONTENAC ROAD AND WESTON RIDGE DRIVE (AS AMENDED TO EXTEND TO FAIRWAY DRIVE) FOR PHASES III AND IV OF THE PROJECT (hereinafter "Third Amendment to the Intergovernmental Agreement") is entered into this _____ day of _____, 2019 (hereinafter "EFFECTIVE DATE"), between the City of Naperville, (hereinafter "NAPERVILLE"), a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois, with offices at 400 South Eagle Street, Naperville, Illinois 60540, and the Naperville Township Road District (hereinafter "TOWNSHIP"), a body corporate and politic, with offices at 31W331 North Aurora Road, Naperville, Illinois 60563-1719. NAPERVILLE and the TOWNSHIP may be referred to herein individually as "Party" or collectively as "Parties".

RECITALS

WHEREAS, on April 16, 2008 the Parties entered into an "Intergovernmental Agreement between the City of Naperville and the Naperville Township Road District to Reconstruct and Widen North Aurora Road Between Frontenac Road and Weston Ridge Drive" (hereinafter "Intergovernmental Agreement"); and

WHEREAS, the purpose of said Intergovernmental Agreement is to facilitate the safe flow of vehicular, bicycle, and pedestrian traffic from Frontenac Road to Weston Ridge Drive by widening North Aurora Road from three (3) lanes to five (5) lanes and installing curb and gutter, a closed drainage system, street lights, noise walls, a shared use path, and facilities for pedestrian and bicycle crossings (hereinafter "PROJECT"); and

WHEREAS, the limits of the PROJECT were expanded by agreement of the Parties in the First Amendment to the Intergovernmental Agreement dated August 17, 2017 which extended the reconstruction and widening of North Aurora Road easterly from Weston Ridge Drive to Fairway Drive in order to match the limits of the roadway improvements completed by the Illinois Department of Transportation for Illinois Route 59; and

WHEREAS, the First Amendment to the Intergovernmental Agreement established a revised PHASE II of the PROJECT to include: (i) updates to the Preliminary Engineering to ensure conformance with Federal standards; (ii) Design Engineering; and (iii) and negotiation services for land acquisition; and

WHEREAS, the First Amendment to the Intergovernmental Agreement further provided that the cost of acquisition of property rights required for the PROJECT would be addressed in a future amendment to the Intergovernmental Agreement; and

WHEREAS, on July 16, 2019 the Parties entered into a Second Amendment to the Intergovernmental Agreement to address the cost of acquisition of property rights for the PROJECT; and

WHEREAS, the final two Phases of the PROJECT are ready to be undertaken, namely Phase III-Construction Engineering, and Phase IV-Construction; and

WHEREAS, the terms of the Intergovernmental Agreement, and the First and Second Amendments thereto, are incorporated herein by reference in their entirety and shall remain in full force and effect except to the extent they are modified by the provisions contained herein.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties agree that:

1.0 RECITALS INCORPORATED

- 1.1 The foregoing Recitals are incorporated herein by reference as though fully set forth in this Subsection 1.1.

2.0 PHASE III – CONSTRUCTION ENGINEERING

2.1 The total cost for construction engineering services for the PROJECT is anticipated to be one million, one hundred and thirty-seven thousand eight hundred and fifty-one dollars (\$1,137,851.00) (hereinafter “ESTIMATED CONSTRUCTION ENGINEERING COST”). Based on frontage length along North Aurora Road, NAPERVILLE is responsible for 80.2% of the local share cost of the ESTIMATED CONSTRUCTION ENGINEERING COST, and the TOWNSHIP is responsible for 19.8% of the local share of the ESTIMATED CONSTRUCTION ENGINEERING COST, or nine hundred and twelve thousand five hundred fifty-six dollars and fifty cents (\$912,556.50)/NAPERVILLE and two hundred and twenty-five thousand two hundred and ninety-four dollars and fifty cents (\$225,294.50)/TOWNSHIP.

2.2 NAPERVILLE shall procure said construction engineering services and shall invoice the TOWNSHIP on a quarterly basis for the TOWNSHIP’S 19.8% share of the cost for the ESTIMATED CONSTRUCTION ENGINEERING COST services. The TOWNSHIP shall pay its share first from escrow funds previously provided to NAPERVILLE for the PROJECT. Subject to the provisions of Sections 2.3 and 2.4, herein, the TOWNSHIP shall pay NAPERVILLE within thirty (30) days from receipt of NAPERVILLE’s invoice.

2.3 If the cost of construction engineering for Phase III of the PROJECT exceeds the ESTIMATED CONSTRUCTION ENGINEERING COST by not more than ten percent (10%), each Party shall be responsible for payment thereof; NAPERVILLE shall be responsible for 80.2% of such overage and the TOWNSHIP shall be responsible for 19.8% of such overage. NAPERVILLE shall notify the TOWNSHIP as soon as practicable of such increase. Payment shall be made as provided herein.

2.4 If the cost of construction engineering for Phase III of the PROJECT exceeds the ESTIMATED CONSTRUCTION ENGINEERING COST by more than ten percent (10%), the TOWNSHIP shall be responsible for payment of 19.8% of any increase that exceeds ten percent (10%) of the ESTIMATED CONSTRUCTION ENGINEERING COST only if the TOWNSHIP agrees to such increase in writing after notice by NAPERVILLE. Likewise, NAPERVILLE shall be responsible for payment of 80.2% of any increase that exceeds ten percent (10%) of the ESTIMATED CONSTRUCTION COST only if NAPERVILLE agrees to such increase in writing.

2.5 If additional funds are required from the TOWNSHIP as provided herein, NAPERVILLE shall notify the TOWNSHIP of the amount of the additional funds needed, the reason(s) said additional funds are needed, and an accounting for TOWNSHIP funds previously contributed by the TOWNSHIP. Within sixty (60) days of receipt of the notification of the need for additional funds, or such other timeframe as agreed upon by the City Engineer and the Township Highway Commissioner, the TOWNSHIP shall issue payment to NAPERVILLE unless the TOWNSHIP has not agreed to pay amounts in excess of ten percent (10%) of the ESTIMATED CONSTRUCTION COST as provided in paragraph 2.4 above.

3.0 PHASE IV-CONSTRUCTION

3.1 The total cost for road construction for the PROJECT is estimated to be eleven million, two hundred dollars (\$11,200,000.00). Six million dollars (\$6,000,000.00) of the PROJECT is to be paid with Federal Surface Transportation Program Fund. The remaining local share of the PROJECT is estimated to be five million, two hundred thousand dollars (\$5,200,000.00) (hereinafter 'ESTIMATED CONSTRUCTION COST').

3.2 Based on frontage length along North Aurora Road, NAPERVILLE is responsible for 80.2% of the local share cost of the ESTIMATED CONSTRUCTION COST, and the TOWNSHIP is responsible for 19.8% of the local share of the ESTIMATED CONSTRUCTION COST, or four million, one hundred and seventy thousand four hundred dollars (\$4,170,400)/ NAPERVILLE and one million, twenty-nine thousand six hundred dollars (\$1,029,600)/TOWNSHIP.

3.3 In March of 2014, the Naperville Township Road District used a six hundred and forty thousand dollar (\$640,000.00) Congressional grant, as the grant was nearing expiration, for improvements to Diehl Road associated with the Route 59 Improvement: Aurora Avenue to Ferry Road project. Diehl Road, immediately west of Illinois Route 59, is under the NAPERVILLE'S jurisdiction. To offset the TOWNSHIP'S contribution for the Diehl Road improvements, NAPERVILLE agreed to give the TOWNSHIP a future credit of six hundred and forty thousand dollars (\$640,000.00) toward the PROJECT which is the subject of this Agreement. Therefore, the amount owed by the TOWNSHIP for Phase IV of the PROJECT is reduced from one million, twenty-nine thousand six hundred dollars (\$1,029,600.00) to three hundred and eighty-nine thousand six hundred dollars (\$389,600.00). The amount to be paid by NAPERVILLE for Phase IV of the PROJECT is increased from four million, one hundred and seventy thousand four hundred dollars (\$4,170,400.00) to four million, eight hundred and ten thousand four hundred dollars (\$4,810,400.00) (hereinafter "REVISED LOCAL SHARE COST").

3.4 The Illinois Department of Transportation (IDOT) will send periodic invoices to NAPERVILLE for the local share of the construction costs for the PROJECT. Upon receipt of an IDOT invoice, NAPERVILLE shall send an invoice to the TOWNSHIP for the TOWNSHIP'S proportionate share of the cost of the REVISED LOCAL SHARE COST.

The TOWNSHIP shall pay its share of the REVISED LOCAL SHARE COST first from escrow funds previously provided to NAPERVILLE for the PROJECT. Subject to the provisions of Sections 3.5 and 3.6, herein, the TOWNSHIP shall pay NAPERVILLE within sixty (60) days from receipt of NAPERVILLE'S invoice.

3.5 If the cost of construction for Phase IV of the PROJECT exceeds the ESTIMATED CONSTRUCTION COST by not more than ten percent (10%), each Party shall be responsible for payment thereof as follows: NAPERVILLE shall be responsible for payment of 80.2% of such overage and the TOWNSHIP shall be responsible for payment of 19.8% of such overage. NAPERVILLE shall notify the TOWNSHIP as soon as practicable of such increase. Payment shall be made as provided herein.

3.6 If the cost of construction for Phase IV of the PROJECT exceeds the ESTIMATED CONSTRUCTION COST by more than ten percent (10%), the TOWNSHIP shall be responsible for payment of 19.8% of any increase that exceeds ten percent (10%) of the ESTIMATED CONSTRUCTION COST only if the TOWNSHIP agrees to such increase in writing after notice by the TOWNSHIP. Likewise, NAPERVILLE shall be responsible for payment of 80.2% of any increase that exceeds ten percent (10%) of the ESTIMATED CONSTRUCTION COST only if NAPERVILLE agrees to such increase in writing.

3.7 If additional funds are required from the TOWNSHIP as provided herein, NAPERVILLE shall notify the TOWNSHIP of the amount of the additional funds needed, the reason(s) said additional funds are needed, and an accounting for TOWNSHIP funds previously contributed by the TOWNSHIP. Within sixty (60) days of receipt of the notification of the need for additional funds, or such other timeframe as agreed upon by the City Engineer and the Township Highway Commissioner, the TOWNSHIP shall issue

payment to NAPERVILLE unless the TOWNSHIP has not agreed to pay amounts in excess of ten percent (10%) of the ESTIMATED CONSTRUCTION COST as provided in paragraph 3.6 above.

4.0 TERM

4.1 This Third Amendment to the Intergovernmental Agreement shall remain in effect until construction of the PROJECT is completed and approved by the City Engineer of the City of Naperville and the Highway Commissioner of the Naperville Township Road District, or until the Parties agree to its termination.

5.0 NOTICES

5.1 Any notice required hereunder shall be deemed properly given to the Party to be notified at the time it is personally delivered, mailed by FedEx overnight mail, or mailed by certified mail, return receipt requested, to the Party's address. The address of each Party is specified below.

FOR THE CITY OF NAPERVILLE

City Engineer
Naperville Municipal Center
400 South Eagle Street
Naperville, IL 60134

FOR THE NAPERVILLE TOWNSHIP ROAD DISTRICT

Naperville Township Highway Commissioner
Naperville Township Road District
31W331 North Aurora Road
Naperville, IL 60563-1719

6.0 GENERAL PROVISIONS

6.1 Venue. This Third Amendment to the Intergovernmental Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

- 6.2 Ambiguity. This Third Amendment to the Intergovernmental Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- 6.3 No Waiver. No Party shall be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by waiving party and, then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event.
- 6.4 Severability. In the event any provision of this Third Amendment to the Intergovernmental Agreement is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the said Agreement. The remainder of the Agreement shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.
- 6.5 Amendment. This Third Amendment to the Intergovernmental Agreement may be amended by written agreement of each Party hereto.
- 6.6 Counterparts. For convenience, this Third Amendment to the Intergovernmental Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same document.
- 6.7 Entire Agreement. This Third Amendment to the Intergovernmental Agreement represents the entire agreement between the Parties as to the costs for construction engineering (Phase III) and construction (Phase IV) of the PROJECT and supersedes all previous communications or understandings whether oral or written.
- 6.8 Authority. The undersigned warrant that they are authorized to execute said Agreement.

6.9 Survival. The provisions of this Section 5 shall survive the termination or expiration of this Third Amendment to the Intergovernmental Agreement.

The Parties hereto by their signatures acknowledge they have read and understand this Third Amendment to the Intergovernmental Agreement and intend to be bound by its terms.

/SIGNATURES ON FOLLOWING PAGES/

CITY OF NAPERVILLE

By: Steve Chirico
Its: Mayor

ATTEST:

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

Date: _____

NAPERVILLE TOWNSHIP ROAD DISTRICT

By: Richard Novinger
Its: Highway Commissioner

ATTEST:

By: Nathaniel Sippel
Its: Road District Clerk

Date: _____

[https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/City-Naperville Twp. Third Amendment to Two-Party Agreement to Widen No. Aurora Road - Oct. 4, 2019.docx](https://cityofnaperville-my.sharepoint.com/personal/lordp_naperville_il_us/Documents/City-Naperville%20Twp.%20Third%20Amendment%20to%20Two-Party%20Agreement%20to%20Widen%20No.%20Aurora%20Road%20-%20Oct.%204,%202019.docx)