

EXHIBIT A

**FIRST 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
FOR PHASE II OF THE PROJECT**

This FIRST 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 FOR PHASE II OF THE PROJECT (hereinafter “First Amendment to the Intergovernmental Agreement”) is entered into this _____ day of _____, 2017 (hereinafter “EFFECTIVE DATE”), between the City of Naperville, (hereinafter "NAPERVILLE"), a municipal corporation 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 limits of the PROJECT as defined in the Intergovernmental Agreement pertained to reconstruction and widening of North Aurora Road from Frontenac Road to Weston Ridge Drive are hereby expanded in this First Amendment to the Intergovernmental Agreement to extend easterly from Weston Ridge Drive to Fairway Drive in order to match the limits of the recent roadway improvements completed by the Illinois Department of Transportation for Illinois Route 59; and

WHEREAS, NAPERVILLE has jurisdiction of the roadway from Weston Ridge Drive to Fairway Drive; and

WHEREAS, said Intergovernmental Agreement envisioned four (4) PHASES to the PROJECT as follows: (1) Preliminary Engineering, (2) Design Engineering, (3) Construction Engineering, and (4) Construction; and

WHEREAS, the Intergovernmental Agreement addressed PHASE I of the PROJECT; and

WHEREAS, the Parties now desire to enter into a First Amendment to the Intergovernmental Agreement in order to define the Parties' obligations with respect to PHASE II of the PROJECT; and

WHEREAS, the scope of PHASE II of the PROJECT is hereby revised 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 cost of land acquisition will be addressed in a future amendment to the Intergovernmental Agreement; and

WHEREAS, the terms of the Intergovernmental Agreement 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 II - TERM

2.1 Phase II of this Agreement shall be in effect from the EFFECTIVE DATE through completion of the Scope of Work provided for herein.

3.0 PHASE II SCOPE OF WORK

3.1 Scope of Work. The scope of work (“Scope of Work”) for PHASE II of the PROJECT shall include additional Preliminary Engineering to ensure conformance with Federal standards, Design Engineering, and negotiation services for land acquisition generally described as follows:

3.1.1 Preliminary Engineering. The Preliminary Engineering completed in PHASE I of the PROJECT will be reviewed and updated to ensure that all of the information is up-to-date and conforms to the requirements of the Federal Highway Administration as needed to qualify for federal funding.

3.1.2 Design Engineering. The Design Engineering shall include all work necessary to develop detailed plans and specifications and to obtain contractor bids through the Illinois Department of Transportation letting process.

3.1.3 Negotiation Services. Negotiation services for land acquisition shall include, but is not limited to, surveys, plats and legal descriptions for land acquisition, negotiation services and coordination meetings as needed to accomplish the PROJECT.

3.2 All work as set forth in Subsection 3.1 above shall be performed by an engineering consulting firm to be selected by agreement of the Parties hereto. A consultant services agreement (hereinafter “PHASE II CONTRACT”) shall be entered into and administered by NAPERVILLE as the lead local agency for the PROJECT.

4.0 COSTS

4.1 The total cost for PHASE II of the PROJECT is estimated at one million, three hundred forty-three thousand dollars (\$1,343,000), (hereinafter “ESTIMATED COST”). The actual cost of the CONTRACT (hereinafter “ACTUAL COST”) will be determined and finalized during the progression of the PROJECT. The ACTUAL COST may be less than or exceed the ESTIMATED COST.

5.0 PAYMENT OF COSTS

- 5.1 Each Party hereto shall be responsible for payment of their proportionate share of the costs of the PHASE II CONTRACT. Based on estimated construction costs and the proportion of roadway under the jurisdiction of each Party, NAPERVILLE shall be responsible for paying 80.2% of the ACTUAL COST and the TOWNSHIP shall be responsible for paying 19.8% of the ACTUAL COST.
- 5.2 As lead agency for the PROJECT, NAPERVILLE will collect and act as repository for funds contributed by the TOWNSHIP for PHASE II of the PROJECT as provided herein.
- 5.3 The TOWNSHIP has paid NAPERVILLE six hundred seventy-five thousand dollars (\$675,000) of its cost obligation for the PROJECT. The TOWNSHIP'S share of the ESTIMATED COST as set forth in Subsection 5.1 above shall be deducted from that amount.
- 5.4 Underpayment.
- 5.4.1 10% Increase. In the event that the ACTUAL COST exceeds the ESTIMATED COST for PHASE II of the PROJECT by no more than ten percent (10%), the Parties hereto shall share proportionally in such increased cost as set forth in Subsection 5.1 above. NAPERVILLE, as lead local agency for the PROJECT, will notify the TOWNSHIP as soon as practicable of any such increase. Said increased cost shall be paid by the TOWNSHIP as provided in Subsection 5.3 above.
- 5.4.2 Over 10% Increase. In the event that the ACTUAL COST exceeds the ESTIMATED COST for PHASE II of the PROJECT by more than ten percent (10%), any cost in excess of 10% shall be enforceable against any Party hereto only if said Party has agreed to such increase by further amendment to the Intergovernmental Agreement.
- 5.5 Overpayment. In the event that upon completion of PHASE II of the PROJECT the ACTUAL COSTS were less than the ESTIMATED COSTS, the TOWNSHIP'S

share of said remaining funds shall held by NAPERVILLE to be used by the TOWNSHIP for future PHASES of the PROJECT.

5.6 Funds upon Termination. In the event that this First Amendment to the Intergovernmental Agreement is terminated, the Parties shall agree as to the future use of such funds.

6.0 INSURANCE REQUIREMENTS

6.1 NAPERVILLE shall cause each consultant employed by it to perform the work described or referenced herein to maintain insurance in types and amounts, and from companies, acceptable to NAPERVILLE. NAPERVILLE shall require each such consultant to name the Parties and their respective officers, agents, and employees as additional insureds on all required coverages.

7.0 HOLD HARMLESS

7.1 The Parties shall hold each other harmless from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Scope of Work described or referenced herein.

8.0 ENTIRE AGREEMENT

8.1 This First Amendment to the Intergovernmental Agreement represents the entire agreement between the Parties as to PHASE II of the PROJECT, and supersedes all previous communications or understandings whether oral or written.

9.0 NOTICES

9.1 Any notice ("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 as specified below. Any Party may change their address for receiving notices by giving notice thereof in compliance with the terms of this Subsection 9.1.

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

10.0 GENERAL PROVISIONS

- 10.1 Venue. This 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.
- 10.2 Ambiguity. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
- 10.3 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.
- 10.4 Severability. In the event any provision of this Second 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.
- 10.5 Survival. The following provisions shall survive the expiration or termination of this Second Amendment to the Intergovernmental Agreement: Subsection 1.1,

Section 4 (including each subpart thereof), Subsection 7.1, and Subsections 10.1 through 10.5.

- 10.6 Amendment. This Second Amendment to the Intergovernmental Agreement may be amended by written agreement of each Party hereto.
- 10.7 Counterparts. For convenience, this Second 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.
- 10.8 Authority. The undersigned warrant and represent that have read and understand this Second Amendment to the Intergovernmental Agreement and that they are authorized to execute said Agreement.

The Parties hereto by their signatures acknowledge they have read and understand this Second 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: Nathanael Sippel
Its: Town Clerk

Date: 7/13/17