

**SECOND 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 PHASE II OF THE PROJECT**

This SECOND 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 PHASE II OF THE PROJECT (hereinafter “Second 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, the Parties have determined that it is now necessary to address the cost of acquisition of property rights for the PROJECT; and

WHEREAS, the terms of the Intergovernmental Agreement, and the First Amendment 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 ACQUISITION OF REQUIRED PROPERTY RIGHTS

2.1 To accomplish the objectives of the Intergovernmental Agreement, as amended, it is necessary to purchase certain properties and to obtain permanent easements and temporary construction easements over certain properties as determined by NAPERVILLE as the lead agency of the PROJECT (hereinafter cumulatively

referenced as “Property Interests”). The properties on which Property Interests for the PROJECT are to be acquired shall be individually referenced herein as “Property” and cumulatively as “Properties”. It is estimated that the total cost for the acquisition of property rights required for the PROJECT shall be \$803,700.00 (hereinafter “ESTIMATED COST”).

2.2 NAPERVILLE shall be responsible to pay compensation for acquisition of Property Interests for those Properties within its jurisdiction. Subject to Section 2.2.1, 2.2.2 and 2.2.3, the TOWNSHIP shall be responsible to pay compensation for acquisition of Property Interests for those Properties within its jurisdiction. Amounts due to pay for Property Interests for Properties within the jurisdiction of the TOWNSHIP shall be paid by NAPERVILLE from funds previously paid to the NAPERVILLE by the TOWNSHIP for the PROJECT.

2.2.1. In the event that the actual cost for the TOWNSHIP exceeds the ESTIMATED COST set forth in Subsection 2.1, by no more than ten percent (10%), NAPERVILLE, as the lead local agency for the PROJECT, will notify the TOWNSHIP as soon as practicable of such an increase.

2.2.2. In the event that the actual cost for the TOWNSHIP exceeds the ESTIMATED COST set forth in Subsection 2.1 in excess of ten percent (10%), any cost in excess of 10% shall be enforceable against the TOWNSHIP only after the TOWNSHIP agrees to such increase, in writing, after notice by NAPERVILLE.

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

2.3 The process for approval and payment for acquisition of the required Property Interests in the Properties shall be as follows:

2.3.1 The land acquisition negotiator retained by NAPERVILLE on behalf of the Parties (hereinafter the “Negotiator”) shall obtain appraisals of the fair market value for each of the Property Interests in question, and shall conduct preliminary negotiations with the owners of said Properties to compensate them for the Property Interests to be acquired.

2.3.2 Upon the Negotiator reaching a tentative agreement as to the compensation to be paid for one or more Property Interests with the owner of a Property, such compensation shall be subject to approval by NAPERVILLE or the TOWNSHIP, as applicable.

2.3.3 Upon approval of the proposed compensation, the Negotiator shall work with the NAPERVILLE to finalize payment and acquisition of the Property Interests for each Property.

3.0 TERM

3.1 This Second Amendment to the Intergovernmental Agreement shall remain in effect until the Property Interests necessary to be acquired in the Properties for the purposes of the PROJECT have been acquired, or until the Parties agree to its termination.

4.0 NOTICES

4.1 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

5.0 GENERAL PROVISIONS

- 5.1 Venue. This Second 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.
- 5.2 Ambiguity. This Second 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.
- 5.3 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.
- 5.4 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.
- 5.5 Amendment. This Second Amendment to the Intergovernmental Agreement may be amended by written agreement of each Party hereto.
- 5.6 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.
- 5.7 Entire Agreement. This Second Amendment to the Intergovernmental Agreement represents the entire agreement between the Parties as to the cost of acquisition of

property rights required for PHASE II of the PROJECT and supersedes all previous communications or understandings whether oral or written.

5.8 Authority. The undersigned warrant that they are authorized to execute said Agreement.

5.9 Survival. The provisions of this Section 5 shall survive the termination or expiration of this Second Amendment to the Intergovernmental 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: Nathaniel Sippel
Its: Town Clerk

Date: _____