

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DUPAGE AND
THE CITY OF NAPERVILLE
FOR MOWING ALONG COUNTY ROADS AND RIGHTS OF WAY

This intergovernmental agreement (hereinafter referred to as "Agreement"), entered into as hereinafter set forth, by and between the County of DuPage, a body corporate and politic of the State of Illinois (hereinafter referred to as the "COUNTY") and the City of Naperville (hereinafter referred to as the "CITY"), a municipal corporation. The COUNTY and the CITY are hereinafter individually referred to as a "party" or together as the "parties."

WITNESSETH

WHEREAS, the COUNTY and the CITY are authorized by the 1970 Illinois Constitution, Article VII, Para. 10 and the Intergovernmental Cooperation Act 5 ILCS 220/1 et seq., to contract with each other; and

WHEREAS, the CITY agrees to mow grass along certain roads and rights of way which are within the maintenance jurisdiction of the COUNTY and within the corporate limits of the CITY as follows (hereinafter referred to as "COUNTY MOWING"):

COUNTY MOWING:

Co Hwy #	Street Name	Street Side	Location Description	Mowing Instructions	Total Acres
33	75th St	Both Sides and Medians	Modaff Rd. to Palomino Dr.		35.03
				Grand Total:	35.03

and;

WHEREAS, the COUNTY and the CITY have determined that it is in the best interest of the citizens of DuPage County and the residents of the City of Naperville for the CITY to provide mowing along the above listed County Highways subject to the following GENERAL CONDITIONS AND SPECIFICATIONS:

GENERAL CONDITIONS

1. The CITY shall visit the site of the proposed work, and shall investigate, examine and familiarize itself with the premises and conditions relating to the mowing to be done in order that it may understand the difficulties and restrictions required to complete the mowing to be done under this Agreement.
2. The CITY shall furnish all labor, materials, equipment and transportation necessary to complete five (5) mowing cycles and up to fifteen (15) intermediate mowing(s) as necessary per year for three (3) years under the terms and conditions herein set forth. All materials and equipment shall be in strict compliance with the specifications hereinafter set forth; however, if no specifications are set forth for particular materials or equipment such material or equipment shall be of such specifications as are reasonably necessary and appropriate to carry out the terms and conditions of this Agreement. All labor and transportation shall be performed in accordance with the highest professional and technical standards in the field.
3. At the sole option of the COUNTY, the CITY shall furnish all labor, materials, equipment and transportation necessary to complete additional mowing cycles, on any portion or portions of said COUNTY MOWING, under the terms and conditions herein set forth. The COUNTY shall give written notice to the CITY of the portion or portions of roads and rights of way to be mowed not less than seven (7) days prior to the required starting date.
4. The safety of persons and property of the CITY, the COUNTY, and the general public is of primary concern, and shall take priority over all other terms and conditions of this Agreement.
5. All equipment and materials furnished by the CITY shall meet or exceed all safety standards for mowing prescribed by O.S.H.A. The CITY agrees, covenants, and understands that the CITY bears sole liability for any injury or damage caused by the CITY under this Agreement and that the COUNTY shall not accept any liability whatsoever from the CITY except where any injury or damage is caused by the COUNTY or its officers, agents or employees.
6. Indemnification
 - (a) The CITY shall indemnify, hold harmless and defend the COUNTY, its officials, officers, agents, and employees from and against all liability, claims, suits, demands, proceedings and actions arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property

resulting from, or connected with, the CITY's negligent or willful acts, errors or omissions or any of the CITY contractor's or agent's negligent or willful acts in its performance under this Agreement. The indemnification set forth herein shall not extend to any loss, injury, death, or damage caused by the negligent or willful acts, errors or omissions of the COUNTY or its officers, agents and employees.

- (b) Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers and employees, at their sole cost and expense, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, any attorney representing the COUNTY, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, in accordance with the applicable law. The COUNTY's participation in its defense shall not remove the CITY's duty to indemnify, defend, and hold the COUNTY harmless, as set forth above provided, however, that the CITY shall have the authority to direct the defense and to settle any claim, suit, demand, proceeding or action against the COUNTY for which the CITY would be required to indemnify the COUNTY hereunder subject to the approval of the State's Attorney to settle all claims. The State's Attorney shall not unreasonably withhold such approval. If the State's Attorney's approval is not provided to the CITY in writing within thirty (30) days of a request therefor by the CITY, or within any mutually agreed upon extension of that timeframe, the CITY'S defense and indemnification obligations set forth herein shall no longer apply.
- (c) Any indemnity as provided in this Agreement shall not be limited by reason of the enumeration of any insurance coverage herein provided. The CITY's indemnification of the COUNTY as provided herein shall survive the termination, or expiration, of this Agreement.
- (d) Neither the CITY nor the COUNTY waives any defenses or protections available to them under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 et seq.) or any other

applicable law by virtue of the provisions set forth in this Section 6, and each subsection thereof.

7. Insurance.

At all times during the period of this Agreement, the CITY and, if applicable, their contractor(s) shall maintain the following insurance coverage(s), or be self-insured to cover the following:

- (a) **Worker's Compensation Insurance** in the statutory amounts.
- (b) **Employer's Liability Insurance** in an amount not less than one million dollars (\$1,000,000.00) each accident/injury and one million dollars (\$1,000,000.00) each employee/disease.
- (c) **Commercial (Comprehensive) General Liability Insurance** with a limit of not less than three million dollars (\$3,000,000) total; including limits of not less than two million (\$2,000,000) dollars per occurrence and one million (\$1,000,000) dollars excess liability in the annual aggregate injury/property damage.
- (d) **Commercial (Comprehensive) Automobile Liability Insurance** with minimum limits of at least one million (\$1,000,000) dollars Combined Single Limit (Each Accident).
- (e) The coverage limits required under subparagraphs (c) and (d) above may be satisfied through a combination of primary and excess coverage. The CITY shall not allow any contractor to commence work until all the insurance coverage(s) required under this insurance section have been obtained. Satisfactory evidence of contractor's insurance including endorsements shall be provided by the CITY to the COUNTY immediately upon request.
- (f) The CITY shall require all contractors performing work under this Agreement to acquire and maintain insurance as set forth herein. Upon request by the COUNTY at any time, the CITY shall provide evidence of contractor's insurance coverage. The CITY will ensure that its contractors name the COUNTY as an additional insured as set forth herein. The CITY understands that it is to the CITY's benefit to diligently enforce this insurance requirement as the

CITY is obligated to indemnify the COUNTY, its officials, officers, agents, and employees in accord with the terms set forth in Paragraph 6 herein.

- (g) The CITY shall require that contractors it retains to perform services under this Agreement acquire and maintain insurance as described herein which insurance shall be provided by an insurance company acceptable to the CITY (and to the COUNTY if the COUNTY requests approval rights), and shall be licensed to do business in the State of Illinois; and shall include at least the specific coverage and be written for not less than the limits of the liability specified herein or required by law or regulation whichever is greater.
- (h) The CITY shall immediately notify the COUNTY upon the CITY's being notified or otherwise made aware that any contractor insurance required under this Agreement has been cancelled, materially changed, or renewal has been refused, and the CITY shall immediately suspend all work in progress and take the necessary steps to purchase, maintain and provide the required insurance coverage. Upon verification by the CITY that the contractor is in compliance with the insurance requirements set forth herein, the CITY may permit the contractor to resume work under this Agreement. Failure to provide and maintain the insurance coverage required herein shall be a basis for the COUNTY to terminate this Agreement.
- (i) The COUNTY and its officers and employees shall be deemed additional insureds under the CITY's self-insurance as to work performed under this Agreement. Any contractors hired by the CITY to perform work under this Agreement shall, as to the insurance required by paragraphs (c) and (d) above, name the COUNTY and the CITY, and their respective officers, agents, and employees, as additional insureds. Further, the CITY shall require that contractors performing work under this Agreement shall require and verify that all subcontractors performing work under this Agreement shall maintain insurance meeting the requirements stated herein, and contractors shall ensure that the City of Naperville and the County of DuPage, and their respective officers, agents, and employees, are named as additional insureds on such insurance. For CGL coverage, subcontractors shall provide coverage with

a form at least as broad as CG 20 38 04 13. All additional insured coverage provided for herein shall provide that it is provided on a primary and non-contributory basis.

Contractors' and subcontractors' Certificate of Insurance/endorsements shall state: "The County of DuPage the City of Naperville, and their respective officers, agents, and employees, are named as additional insureds in the Commercial (Comprehensive) General Liability Insurance and Commercial (Comprehensive) Automobile Liability Insurance policies with respect to claims arising from work performed under the Intergovernmental Agreement between the County of DuPage and the City of Naperville for Mowing Along County Roads and Rights of Ways. Said coverage is provided on a primary and non-contributory basis."

- (j) If the CITY will be using their own forces for the work covered in this Agreement, the CITY shall inform the COUNTY in writing following execution of this Agreement. If, however, the CITY will be hiring a contractor for the work covered in this Agreement, the CITY shall inform the COUNTY in writing following execution of this Agreement and shall provide a copy of said contract to the COUNTY upon request.

8. The terms and conditions of this Agreement may be amended or supplemented by written statement of the parties to make such amendment or supplement. The parties agree that no oral change orders will be allowed and that no claim based upon any purported oral change order shall be made.
9. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
10. The City shall comply with all applicable laws in its performance of this Agreement.
11. This Agreement shall be governed by the laws of the State of Illinois. The forum for resolving any disputes concerning the parties' respective performance, or failure to perform, under this Agreement, shall be the judicial circuit court for DuPage County.
12. In the event any provision of this Agreement is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the Agreement. The

remainder of this 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.

13. This Agreement may be terminated at any time by submission to the other party of written thirty (30) days advance notice served by overnight mail or by certified or registered mail, return receipt requested, properly addressed with postage prepaid and said notice shall be effective upon receipt as verified by the United States Postal Service, to the following addresses:

FOR THE CITY:

Douglas A. Krieger
City Manager
City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

With a Copy to:

Richard Dublinski
Director of Department of Public Works
180 Fort Hill Drive
Naperville, IL 60540

FOR THE COUNTY:

Christopher C. Snyder, P.E.
Director of Transportation/County Engineer
DuPage County Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187

14. This Agreement shall remain in full force and effect after execution by the parties as set forth below until November 30, 2021, unless terminated by thirty (30) days written notice to the other party as referenced above.

SPECIFICATIONS

1. All grassy areas heretofore set out in COUNTY MOWING shall be mowed from the edge of shoulder or back of curb to the right of way line. Median and island areas are also included as part of this Agreement (as referenced in table hereinabove) and shall be mowed back to back of curb.
2. Grass shall be mowed to the height of three (3) inches.

3. All mowing shall be performed in a manner to produce a finished appearance which is acceptable to the COUNTY. Such acceptability shall be based upon the reasonable application of professional standards in the mowing industry. The opinion of the DuPage County Division of Transportation Highway Operations Manager shall constitute prima facie evidence of a reasonable application of such professional standards.
4. Hand-cutting or cutting along fences and guardrails is included as part of the Agreement.
5. Hand-cutting around landscaping and other obstructions within the right of way shall be part of this contract. Grass cuttings shall not be allowed on roadways or curbs. Large grass clumps shall not remain on cut areas. Such cuttings or clumps shall be removed or blown clean.
6. Pick up of typical roadway trash (bottles, cans, paper, plastic bags, and miscellaneous small debris) will be the responsibility of the CITY and shall be included in the cost of mowing. Any areas where materials are encountered that would not be classified as "typical roadway trash" should be referred to the DuPage County Highway Operations Manager for removal.
7. Damage caused by the CITY to turf areas shall be repaired to the satisfaction of the DuPage County Highway Operations Manager prior to payment for the cycle in which damage occurred.
8. The CITY shall protect all work sites with proper traffic control as specified in the current "Manual of Uniform Traffic Control Devices" and applicable standards as included in these special provisions, and appropriate at any particular site. The safety of employees and the public shall be of primary concern.
9. Roadways shall be kept open to traffic in both directions at all times. The loading and unloading of materials and/or equipment shall be done in a protected area completely off the traveled roadway. If it is necessary for a slow-moving piece of equipment to travel for a short distance along the roadway, this piece of equipment shall be accompanied by a properly equipped escort vehicle during the entire time that it occupies any portion of the traveled roadway. The escort vehicle shall be equipped with an amber-colored, rotating-type warning light mounted on or above the cab of the escort vehicle. The escort vehicle shall also be equipped with two (2) amber colored flashing lights mounted to the rear of the escort vehicle at a minimum height of six (6) feet.

10. No equipment or material shall be stored on the pavement or shoulders at any time.
11. The starting date for each year's mowing cycle shall be no later than the following:

First Mowing - May 1
Second Mowing - June 1
Third Mowing - July 1
Fourth Mowing - August 1
Fifth Mowing - September 15
Fifteen (15) intermediate mowing cycles may be completed as weather and grass conditions warrant.
12. The COUNTY shall pay the CITY the lesser of \$1,751.50 or contractor pricing plus ten percent (10%) for construction engineering within forty-five (45) days of receipt of invoice after the completion of each mowing cycle of 35.03 acres.
13. **The CITY shall endeavor to submit a final invoice for all mowing no later than November 15th of each year for the term of this Agreement.**
14. The parties may agree to additions to the mowing acres during the mowing season. The County may direct deductions to the mowing acres during the mowing season as its sole discretion. Additions or deductions will be made to the payment due for a mowing cycle at a unit price of the lesser of Fifty Dollars per acre (\$50.00 per acre) or contractor pricing plus ten percent (10%) for construction engineering. The DuPage County Division of Transportation will notify the CITY in writing, of any additions or deductions made in the mowing cycle acres.

WHEREAS, the parties hereto have read and reviewed the terms of this Agreement and by their signature as affixed below represent that the signing party has the authority to execute this Agreement and that the parties intend to be bound by the terms and conditions contained herein.

WHEREAS, this Agreement shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.

WHEREAS, this Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

WHEREAS, this Agreement shall become effective on the day on which both parties hereto have executed this document.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers and to be attested to and their corporate seals to be hereunder affixed

/SIGNATURES ON FOLLOWING PAGES/



COUNTY OF DU PAGE

Signed this _____ day of _____, 2019 at Wheaton,
Illinois.

Daniel J. Cronin, Chairman
DuPage County Board

ATTEST:

Jean Kaczmarek, County Clerk



CITY OF NAPERVILLE

Signed this ____ day of _____, 2019, at Naperville,
Illinois.

Douglas A. Krieger, City Manager
City of Naperville

ATTEST:

Pam Gallahue, Ph.D. City Clerk
City of Naperville

