

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
THE CITY OF DARIEN
FOR TRAFFIC SIGNAL AND STREET LIGHTING IMPROVEMENTS
CH 9/LEMONT ROAD at CH 31/83rd STREET
and CH 9/LEMONT ROAD at CH 31/87th STREET
INCLUDING FUTURE MAINTENANCE/ENERGY RESPONSIBILITIES
SECTION NO. 16-00232-00-CH**

This Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2023, between the County of DuPage (hereinafter referred to as "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the City of Darien (hereinafter referred to as "CITY"), a home rule municipal corporation, with offices at 1702 Plainfield Road, Darien, Illinois. The COUNTY and the CITY are hereinafter sometimes individually referred to as a "PARTY" or collectively as the "PARTIES."

RECITALS

WHEREAS, the PARTIES, in order to facilitate the free flow of traffic and to ensure the safety of the public, desire to improve CH 9/Lemont Road from CH 31/83rd Street to CH 31/87th Street and CH 31/87th Street from Havens Drive to Lemont Road, to include intersection improvements at CH 31/83rd Street and at CH 31/87th Street, resurfacing, curb and gutter and drainage repairs, ADA ramps, and other appurtenance work (hereinafter referred to as "PROJECT"); and

WHEREAS, the PROJECT also includes traffic signal and street lighting improvements (hereinafter "TRAFFIC SIGNALS" and "STREET LIGHTING"); and

WHEREAS, the COUNTY, by virtue of its power set forth in "Counties Code" (55 ILCS 5/5-1001 et seq.) and "Illinois Highway Code" (605 ILCS 5/5-101 et seq.), is authorized to enter into this AGREEMENT; and

WHEREAS, the CITY, by virtue of their home rule powers and as set forth in the "Municipal Code" (65 ILCS 1/1-1-1 et seq.), are authorized to enter into this AGREEMENT; and

WHEREAS, the PARTIES desire to establish their jurisdictional, maintenance, and energy responsibilities and costs with respect to the TRAFFIC SIGNALS and STREET LIGHTING.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each PARTY to the other, the PARTIES do hereby mutually covenant, promise and agree as follows:

1.0 INCORPORATION

- 1.1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.
- 1.2. The headings of the paragraphs and subparagraphs of this AGREEMENT are the inserts for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

2.0 RESPONSIBILITIES OF THE COUNTY

- 2.1. The COUNTY shall prepare plans and specifications, furnish engineering inspection during construction, and cause the PROJECT, including TRAFFIC SIGNALS and STREET LIGHTING, to be built in accordance with the plans and specifications, incorporated herein by reference.
- 2.2. The COUNTY shall have the CITY named as additional insured for the Commercial General Liability in the Special Provisions section of the contract between the Illinois Department of Transportation and the Contractor.
- 2.3. Upon completion, inspection and approval by the COUNTY, the COUNTY shall own, operate and maintain the PROJECT improvements, except as herein defined as CITY ownership, operation and maintenance responsibilities, including the TRAFFIC SIGNALS at CH 9/Lemont Road and CH 31/83rd Street and at CH 9/Lemont Road and CH 31/87th Street and shall provide and pay for all costs associated with the future maintenance and repair of the TRAFFIC SIGNALS including pre-emption equipment and combination lighting with reimbursement from the CITY as referenced hereinafter.
- 2.4. The COUNTY retains the right to control and regulate the sequence and all other aspects of phasing and timing of the TRAFFIC SIGNALS.
- 2.5. The COUNTY shall establish the energy supply with the local power company to furnish the electrical energy for the operation of the TRAFFIC SIGNALS.
- 2.6. The COUNTY shall pay one hundred percent (100%) of all future energy costs of the TRAFFIC SIGNAL at CH 9/Lemont Road and CH 31/83rd Street and one hundred percent (100%) of all future energy costs for the TRAFFIC SIGNAL at CH 9/Lemont Road and CH 31/87th Street.

2.7. The COUNTY will be responsible for future maintenance, as required, of all pavement markings on CH 9/Lemont Road on CH 31/83rd Street (east leg), and on CH 31/87th Street (west leg).

2.8 The COUNTY will be responsible for future maintenance of the STREET LIGHTING system located within the county rights-of-way on CH 9/Lemont Road, on CH 31/83rd Street (east leg), as well as the two streetlights on the west leg of 83rd Street immediately west of the county's right-of-way, one (1) on the north and one (1) on the south side of 83rd Street. The COUNTY's maintenance responsibility will be limited to only those lights, controller equipment, and cables that are connected to the COUNTY's STREET LIGHTING system, as indicated on EXHIBIT A (Street Lighting County Maintenance Exhibit).

2.9 The COUNTY shall establish the energy supply with the local power company to furnish the electrical energy for the operation of STREET LIGHTING.

2.10 The COUNTY shall pay one hundred percent (100%) of all future energy costs of the STREET LIGHTING at CH 9/Lemont Road and CH 31/83rd Street and one hundred percent (100%) of all future energy costs for the STREET LIGHTING at CH 9/Lemont Road and CH 31/87th Street.

3.0 RESPONSIBILITIES OF THE CITY

3.1. The CITY shall reimburse the COUNTY twenty-five percent (25%) of all future routine maintenance costs for the TRAFFIC SIGNAL at CH 9/Lemont Road & CH 31/83rd Street, and at CH 9/Lemont Road & CH 31/87th Street, including traffic signal equipment and combination lights, by annual invoice from the COUNTY. Routine maintenance shall be invoiced to the CITY at the same unit price paid by the COUNTY for the COUNTY traffic signal maintenance contract in place at the time of the annual invoice.

3.2. The CITY agrees that the COUNTY shall repair damages to the TRAFFIC SIGNAL at CH 9/Lemont Road and CH 31/83rd Street, and at CH 9/Lemont Road & CH 31/87th Street, caused by motor vehicles or construction activities by others and shall invoice the CITY for twenty-five percent (25%) of said costs not recovered by the COUNTY. The COUNTY agrees to execute any necessary documentation subrogating the COUNTY's rights to the CITY for recovery of said cost, and the CITY agrees to execute any necessary documentation subrogating the CITY's rights to the COUNTY for recovery of said cost.

3.3. The CITY will be responsible for maintenance of all pavement markings on the west leg of the CH 9/Lemont Road and CH 31/83rd Street intersection and on the east leg of the CH 9/Lemont Road and CH 31/87th Street intersection.

4.0 MAINTENANCE RESPONSIBILITIES

4.1. It is understood and agreed by the PARTIES hereto that, other than the maintenance responsibilities specified in this AGREEMENT, all other maintenance responsibilities of the PARTIES are not changed or modified by this AGREEMENT. Specifically, the responsibility for maintenance of the streetlights on 83rd Street west of CH 9/Lemont Road that are not connected to the COUNTY's STREET LIGHTING system, will remain as they were prior to this AGREEMENT.

5.0 FUTURE MODERNIZATION/RECONSTRUCTION

5.1. If, in the future, it is determined by the COUNTY that the TRAFFIC SIGNALS require modernization or reconstruction due to age, condition, etc. or if the COUNTY improves CH 9/Lemont Road at CH 31/83rd Street or CH 9/Lemont Road at CH 31/87th Street which results in the need to modernize or reconstruct the TRAFFIC SIGNALS, the PARTIES hereby agree to share the cost of the improvement to the TRAFFIC SIGNALS, including engineering, construction, construction engineering and/or land acquisition, in proportion to the number of approaches to the intersection maintained by the respective PARTIES at the time of future improvements.

5.2. For the purposes of this AGREEMENT:

- (a) the east leg of the CH 9/Lemont Road and CH 31/83rd Street intersection and the west leg of the CH 9/Lemont Road and CH 31/87th Street intersection shall be considered as COUNTY maintained.
- (b) the west leg of the CH 9/Lemont Road and CH 31/83rd Street intersection and the east leg of the CH 9/Lemont Road and CH 31/87th Street intersection shall be considered as CITY maintained.

6.0 INDEMNIFICATION

6.1. The COUNTY shall indemnify, hold harmless and defend the CITY, their officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense,

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 COUNTY's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.

6.1.1. The PARTIES acknowledge that the COUNTY has made no representations, assurances or guaranties regarding the COUNTY's or any successor's or assign's authority and legal capacity to indemnify the CITY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the COUNTY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the CITY, or any person or entity claiming a right through the CITY, or in the event of change in the laws of the State of Illinois governing COUNTY's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties' rights and obligations provided for therein.

6.2. The CITY shall indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, including costs, fees and expense of defense, 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 in its performance under this AGREEMENT to the extent permitted by law.

6.2.1. The CITY and the COUNTY acknowledge that the CITY has made no representations, assurances or guaranties regarding the CITY's or any successor's or assign's authority and legal capacity to indemnify COUNTY as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that the CITY, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the COUNTY, or any person or entity claiming a right through COUNTY, or in the event of change in the laws of the State of Illinois governing the CITY's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the parties' rights and obligations provided for therein.

6.3. Nothing contained herein shall be construed as prohibiting the COUNTY, its officials, directors, officers, agents and employees, 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, 55 ILCS 5/3-9005, any attorney representing the COUNTY, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3- 9008. 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.

6.4. Nothing contained herein shall be construed as prohibiting the CITY, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. The CITY's participation in its defense shall not remove COUNTY's duty to indemnify, defend, and hold the CITY harmless, as set forth above.

6.5. The parties do not waive, by these indemnity requirements, 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 or any other Section of this AGREEMENT. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. The PARTIES' indemnification under Section 6.0 hereof shall terminate when the TRAFFIC SIGNAL work is completed, and the CITY assumes their maintenance responsibilities as set forth above.

7.0 ENTIRE AGREEMENT

7.1. This AGREEMENT represents the entire AGREEMENT between the PARTIES with respect to the TRAFFIC SIGNALS and STREET LIGHTING and supersedes all previous communications or understandings whether oral or written.

8.0 NOTICES

8.1. Any notice required hereunder shall be deemed properly given to the PARTY to be notified at the time it is personally delivered or mailed by certified mail, return receipt

requested, postage prepaid, to the PARTY's address or sent by confirmed facsimile or email, to the PARTY's address. The address of each PARTY is as specified below; either PARTY may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

For CITY:

Joseph A. Marchese, Mayor
City of Darien
1702 Plainfield Road
Darien, IL 60561
Phone: 630.852.5000
Email: jmarchese@darienil.gov

For COUNTY:

Director of Transportation
DuPage County Division of Transportation
421 N. County Farm Rd.
Wheaton, IL 60187
Phone: 630.407.6900
Email: dot@dupageco.org

9.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

9.1. No modification or amendment to this AGREEMENT shall be effective until approved by the PARTIES in writing.

10.0 NON-ASSIGNMENT

10.1. This AGREEMENT shall not be assigned by either PARTY without the written consent of the other PARTY, whose consent shall not be unreasonably withheld.

11.0 AUTHORITY TO EXECUTE/RELATIONSHIP

11.1. 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.

11.2. This AGREEMENT shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the PARTIES.

11.3. This AGREEMENT shall not be deemed or construed to create any rights or benefits in or to any third parties.

12.0 GOVERNING LAW

12.1. This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

12.2. 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.

13.0 SEVERABILITY

13.1. 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.

14.0 FORCE MAJEURE

14.1. The PARTIES shall not be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires and natural disasters.

15.0 COUNTERPARTS

15.1. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one in the same instrument.

(remainder of this page left intentionally blank)

IN WITNESS whereof, the PARTIES set their hands and seals as of the date first written above.

COUNTY OF DU PAGE

Deborah A. Conroy, Chair
DuPage County Board

CITY OF DARIEN

Joseph A. Marchese
Mayor

ATTEST:

Jean Kaczmarek
County Clerk

ATTEST:

JoAnne Ragona
City Clerk

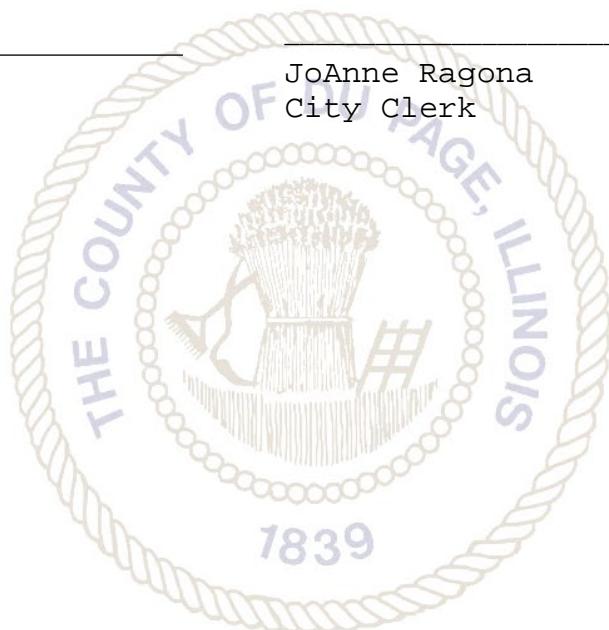


EXHIBIT A
Street Lighting County Maintenance

