

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF DU PAGE  
AND THE CITY OF WARRENVILLE  
FOR RESURFACING CH3/WARRENVILLE ROAD  
BETWEEN CH1/RIVER ROAD AND WARRENVILLE ROAD BRIDGE**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois and the City of Warrenville (hereinafter referred to as the "CITY"), a municipal corporation with offices at 3S258 Manning Avenue, Warrenville, IL 60555. The COUNTY and the CITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

**RECITALS**

WHEREAS, the CITY will be extending the underground watermain along the north side of CH3/Warrenville Road, from Batavia Road to the bridge carrying Warrenville Road over the West Branch of the DuPage River (hereinafter "Warrenville Road Bridge"), and resurfacing Batavia Road from Warrenville Road to IL56/Butterfield Road (herein after referred to as the "PROJECT"). This PROJECT will also include resurfacing a portion of CH3/Warrenville Road from CH1/River Road to the Warrenville Road Bridge; and

WHEREAS, the CITY has asked the COUNTY to share the cost for resurfacing the section of CH3/Warrenville Road, from the west right-of-way line of CH1/River Road to the Warrenville Road Bridge, (hereinafter referred to as the "WORK"); and

WHEREAS, the CITY and the COUNTY desire to cooperate in the construction of the PROJECT and the WORK because of the benefit to the residents of DuPage County, the City, and the Public; and

WHEREAS, the estimated COUNTY's cost of the WORK, for construction, is approximately \$18,000.00, and design & construction engineering, approximately \$4,500.00, and this is agreeable to the COUNTY, (as referenced on EXHIBIT A attached hereto and incorporated herein); and

WHEREAS, the COUNTY and the CITY desire to establish the parties' mutual costs and future maintenance responsibilities with respect to the PROJECT and the WORK; 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.*) and the CITY by virtue of its power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 *et seq.*) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*).

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 inserted for convenience of reference only and shall not be deemed to constitute part of this AGREEMENT or to affect the construction hereof.

**2.0 SCOPE OF PROJECT AND WORK**

- 2.1. The COUNTY and CITY agree to cooperate in and make every effort to cause the construction of the PROJECT and the WORK.
- 2.2. The PROJECT will include:
  - (a) the CITY extending the underground watermain, in the parkway, along the north side of Warrenville Road, from Batavia Road to west of the Warrenville Road Bridge and will include water and services to be relocated in or near the CH3/Warrenville Road right-of-way; and the CITY extending the watermain across CH3/Warrenville Road and south in the west parkway of CH1/River Road to connect to an existing watermain, as depicted on EXHIBIT B, attached hereto; and
  - (b) the CITY removing the sidewalk on the northside of CH3/Warrenville Road and installing a wider concrete sidewalk that connects to the north side of the Warrenville Road Bridge sidewalk; and

2.3 The WORK will include:

- (a) the CITY resurfacing CH3/Warrenville Road from CH1/River Road to the Warrenville Road Bridge, which will include west right-of-way resurfacing to the recent COUNTY paving limit of CH1/River Road (to be completed summer 2023), milling, patching, curb and gutter repairs, striping, and other appurtenant work.

### **3.0 RESPONSIBILITIES OF THE CITY**

- 3.1. The CITY shall act as the lead agency and be responsible for completing all preliminary and design engineering, permit processing (except as referenced in 4.1 below), right-of-way acquisition, awarding of contract(s), utility coordination, construction engineering and construction for the PROJECT and the WORK. The CITY shall be responsible for securing/paying for all PROJECT and WORK costs, subject to reimbursement from the COUNTY for the WORK as noted in Section 4.0 herein below.
- 3.2. Both the COUNTY and CITY agree that the CITY shall manage the contract for the construction of the PROJECT and the WORK. The CITY agrees to manage the PROJECT and the WORK in the best interest of both parties and to consult with, and keep advised, officials of the COUNTY regarding the progress of the PROJECT and the WORK and any problems encountered or changes recommended. No change order which affects COUNTY'S facilities, or COUNTY cost, except normal minor variations in quantities of pay items required to complete the WORK shall be authorized except with prior written approval by the COUNTY.
- 3.3. The CITY shall require the General Contractor selected for the PROJECT and the WORK to name the COUNTY as an additional-insured for the Commercial General Liability in the Special Provisions section of the contract for the PROJECT including the WORK.
- 3.4. The CITY will submit plans for the PROJECT and the WORK to the COUNTY for review and said review will not be unreasonably withheld by the COUNTY.

### **4.0 RESPONSIBILITIES OF THE COUNTY**

- 4.1. This AGREEMENT shall serve in lieu of COUNTY permit(s) for the construction of the PROJECT and the WORK and upon execution of this AGREEMENT, the CITY will be bound by the

General Terms of Highway Permits as they exist on the date of execution of this AGREEMENT by the COUNTY.

- 4.2. The COUNTY agrees to reimburse the CITY for its share of the costs per EXHIBIT A:
  - a) at the actual cost incurred by the CITY plus the cost of any additional items required to complete the WORK via change order pursuant to the provisions of paragraph 3.2 above. This actual cost is the bid, or change order, unit price submitted by the CITY'S contractor for the WORK items times the actual quantity of items installed plus the cost of any additional items required as a part of the WORK authorized in writing or via e-mail by the COUNTY.
  - b) The COUNTY agrees to reimburse the CITY ten (10%) percent of the awarded construction cost for the WORK for design engineering (estimated COUNTY cost \$1,800.00).
  - c) The COUNTY agrees to reimburse the CITY an additional fifteen (15%) percent of the actual final construction cost for its share of the construction engineering for the WORK (estimated COUNTY cost \$2,700.00).
- 4.3. The COUNTY agrees to pay the CITY eighty (80%) percent of the estimated construction cost for the WORK (\$14,400) upon award of the construction contract for the WORK based upon as-bid unit prices for the WORK.
- 4.4. The COUNTY agrees to pay the CITY one hundred (100%) percent of the actual design engineering costs for the WORK and eighty (80%) percent of the estimated construction engineering for the WORK upon award of the construction contract for the WORK based upon as-bid unit prices for the WORK.
- 4.5. Upon completion of the WORK and based upon the documentation of final costs and quantities, submitted by the CITY and a final invoice, the COUNTY agrees to reimburse the CITY for the balance of its share of the WORK costs for construction and construction engineering within sixty (60) days of receipt of a properly documented invoice from the CITY.
- 4.6. The COUNTY hereby grants to the CITY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the COUNTY property within the boundaries of the PROJECT and the WORK for the purpose of constructing the PROJECT and the WORK. The COUNTY shall retain the right of ingress and egress over said areas so long as it does not interfere with the CITY'S work. The

CITY shall provide twenty-four (24) hour notice when it will be entering COUNTY property and commence work. Upon completion of the PROJECT and the WORK, the right-of-entry shall terminate.

## **5.0 MAINTENANCE**

- 5.1. Upon completion of the PROJECT and the WORK, the COUNTY will be responsible for all future maintenance of CH3/Warrenville Road previously owned and under the jurisdiction of the COUNTY, from the west right-of-way line of CH1/River Road to Warrenville Road Bridge.
- 5.2 The CITY will own and be responsible for all future maintenance of the PROJECT excluding the WORK.
- 5.3 The CITY will own and be responsible for all future maintenance of the new concrete sidewalk on the north side of CH3/Warrenville Road from Batavia Road to the Warrenville Road Bridge.

## **6.0 INDEMNIFICATION**

- 6.1. The COUNTY shall, indemnify, hold harmless and defend the CITY, 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 COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.
- 6.2 The COUNTY and the CITY acknowledge that neither has made representations, assurances or guaranties regarding their or any successor's or assign's authority and legal capacity to indemnify the other as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that either, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the other, or any person or entity claiming a right through either, or in the event of change in the laws of the State of Illinois governing their 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. 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. The CITY does not hereby waive any defenses or immunity available to it with respect to third parties.
- 6.4. Nothing contained herein shall be construed as prohibiting either the COUNTY or 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. 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 or the CITY'S participation in its defense shall not remove the others duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
- 6.5. Neither party waives, releases or otherwise compromises, by these indemnity provisions, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 *et seq.*) or otherwise available to it, or to the other party, under the law." There are no third-party beneficiaries of these mutual indemnifications or this AGREEMENT.
- 6.6. Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided. Except with respect to occurrences arising before the completion of the Project, the CITY'S and COUNTY'S indemnification under Section 6.0 hereof shall terminate when the PROJECT is completed and the CITY and COUNTY assume its maintenance responsibilities as set forth in Section 5.0 hereof.

## **7.0 GENERAL**

- 7.1. It is understood and agreed by the parties hereto that this AGREEMENT is intended to address the PROJECT and the WORK and no changes to existing roadway and appurtenance maintenance and/or jurisdiction are proposed.

- 7.2 Whenever in this AGREEMENT, approval or review of either the COUNTY or CITY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 7.3 In the event of a dispute between the COUNTY and CITY representatives in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Engineer and the CITY Manager, or their assigned delegates, shall meet and resolve the issue.
- 7.4 No later than fourteen (14) days after the execution of this AGREEMENT, each party shall designate a representative to the other party who shall serve as the full time representative of said party during the carrying out of the construction of the PROJECT and the WORK. Each representative shall have authority, on behalf of such party, to receive notices and make inspections relating to the work covered in this AGREEMENT. Representatives shall be readily available to the other party.
- 7.5 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.

## **8.0 ENTIRE AGREEMENT**

- 8.1. This AGREEMENT represents the entire AGREEMENT between the parties with respect to the PROJECT and the WORK and supersedes all previous communications or understandings whether oral or written.

## **9.0 NOTICES**

- 9.1. Any notice required 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, 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.

### **City of Warrenville**

3S258 Manning Avenue

Warrenville, Illinois 60555

ATTN: Philip M. Kuchler

Public Works Director

Phone: 630.836.3033

Email: [pkuchler@warrenville.il.us](mailto:pkuchler@warrenville.il.us)

**County of DuPage**  
Division of Transportation  
421 N. County Farm Road  
Wheaton, IL 60187  
ATTN: Director of Transportation  
Phone: 630.407.6900  
Email: [dot@dupageco.org](mailto:dot@dupageco.org)

**10.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT**

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

**11.0 NON-ASSIGNMENT**

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

**12.0 AUTHORITY TO EXECUTE/RELATIONSHIP**

12.1. 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.

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

**13.0 GOVERNING LAW**

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

13.2. 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.



**14.0 SEVERABILITY**

14.1. 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.

**15.0 FORCE MAJEURE**

15.1. Neither party shall 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 or natural disasters.

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

COUNTY OF DU PAGE

CITY OF WARRENVILLE

**Signature on File**

\_\_\_\_\_  
Deborah A. Conroy, Chair  
DuPage County Board

\_\_\_\_\_  
Dave Brummel, Mayor

ATTEST:

ATTEST:

**Signature on File**

\_\_\_\_\_  
Jean Kaczmarek,  
County Clerk

\_\_\_\_\_  
Julie Clark, City Clerk



**EXHIBIT A**  
**ESTIMATE OF COUNTY'S COST for the WORK**

Estimated Construction Cost for the WORK	\$ 18,000.00
Design Engineering Cost for the WORK (10% of the estimated construction cost)	1,800.00
Construction Engineering Cost for the WORK (15% of actual construction cost)	2,700.00
<b>TOTAL ESTIMATE OF COUNTY COST FOR THE WORK</b>	<b>\$ 22,500.00</b>



DuPage County  
Information Technology Department / GIS Division  
421 N County Farm Rd.  
Wheaton, IL 60187

Ph# 1(630)407-5000  
Email [gis@dupageco.org](mailto:gis@dupageco.org)  
DuPage Maps Portal :  
<http://dupage.maps.arcgis.com/home>

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DuPage County Web Site :  
[www.dupageco.org](http://www.dupageco.org)

  
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Pt 1

DuPage County  
Information Technology Department / GIS Division  
421 N County Farm Rd.  
Wheaton, IL 60187

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**RESOLUTION NO. R2023-56**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE CITY OF WARRENVILLE AND THE COUNTY OF DUPAGE FOR  
RESURFACING OF WARRENVILLE ROAD BETWEEN RIVER ROAD AND THE  
WARRENVILLE ROAD BRIDGE**

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970; and

WHEREAS, the City and the County of DuPage ("**County**") are both public agencies under the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220 and are authorized to exercise their powers and duties in a cooperative manner among themselves as public agencies; and

WHEREAS, the City has identified the need to improve certain roads, including (i) the extension of the underground watermain along the north side of Warrenville Road, from Batavia Road to the bridge carrying Warrenville Road over the West Branch of the DuPage River ("**Warrenville Road Bridge**"); (ii) resurfacing Batavia Road from Warrenville Road to IL56/Butterfield Road; and (iii) resurfacing a portion of Warrenville Road from River Road to the Warrenville Road Bridge ("**Warrenville Road Resurfacing Work**"); and

WHEREAS, City and County desire to enter into an intergovernmental agreement to set forth their respective rights and obligations regarding the maintenance and costs associated with the Warrenville Road Resurfacing Work ("**Agreement**"); and

WHEREAS, pursuant to the Agreement, the City and the County will share the costs for the Warrenville Road Resurfacing Work; and

WHEREAS, the County share of the cost for the Warrenville Road Resurfacing Work is estimated to be \$22,500.00 ("**County Share**"); and

WHEREAS, upon completion of the Warrenville Road Resurfacing Work, and the final invoice submitted by the City to the County, the County will reimburse the County Share to the City; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with the County;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

**SECTION 1: Recitals.** The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

**SECTION 2: Approval of Agreement.** The Agreement with the County is hereby approved substantially in the form attached to this Resolution as **Exhibit A**, and in a final form to be approved by the City Administrator.

**SECTION 3: Execution.** The Mayor and the City Clerk are authorized and directed to execute the Agreement and transmit executed and sealed copies to the County.

**SECTION 4: Effective Date.** This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

PASSED THIS 18th day of September, 2023.

AYES: Aids: Lockett, Wilkie, Davolos, Weidner, Aschauer, Kruckenberg, and Augustynowicz

NAYS: None

ABSENT: Ald. Barry

ABSTAIN: None

APPROVED THIS 18th day of September, 2023.

# Signature on File

MAYCIN

ATTEST:

# Signature on File

CITY CLERK