

RESOLUTION R-79-07

A RESOLUTION AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE AND THE CITY OF WHEATON –
ILLINOS PRAIRIE PATH FROM MAIN STREET TO CROSS STREET

WHEREAS, the County of DuPage (County) and the City of Wheaton (City) entered into an Agreement dated August 21, 1991 (DT-046-91) for the construction of a parking lot on a portion of the DuPage Parkway a/k/a the Illinois Prairie Path (Path); and

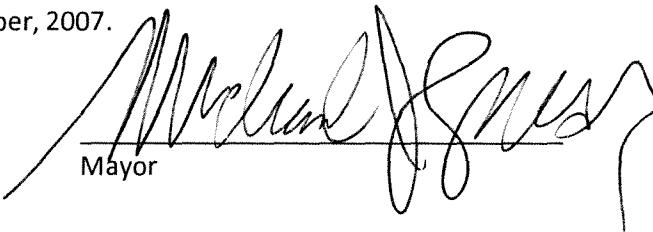
WHEREAS, any changes or modifications to said Agreement can only be made in writing and upon the necessary and proper signature of the County and the City; and

WHEREAS, the City desires to install a fence along the south side of the Path adjacent to the parking area; and

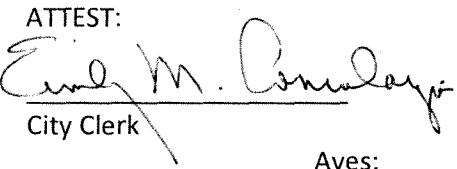
WHEREAS, the County agrees that it is in the best interests of the citizens of the City and the County to approve the installation of the fence.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute a First Amendment to an Intergovernmental Agreement Between the County of DuPage and the City of Wheaton which will allow the installation of a fence along the south side of the Prairie Path from Main Street to Cross Street adjacent to the parking area.

ADOPTED this 19th day of November, 2007.


Mayor

ATTEST:


Emily M. Corry
City Clerk

Ayes:

Roll Call Vote:

Councilman Mouhelis
Councilman Prendiville
Councilman Suess
Councilman Johnson
Councilman Levine
Mayor Gresk

Nays:

None

Absent:

Councilwoman Corry

Motion Carried Unanimously

FIRST AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN COUNTY OF DU PAGE AND THE CITY OF WHEATON
FOR CONSTRUCTION OF A PARKING LOT
ON THE DU PAGE PARKWAY A/K/A THE ILLINOIS PRAIRIE PATH
FROM MAIN STREET TO CROSS STREET
IN THE CITY OF WHEATON

This First Amendment ("AMENDMENT") is entered into as hereinafter set forth by and between the County of DuPage, a body corporate and politic of the State of Illinois ("COUNTY"), and the City of Wheaton, a municipal corporation in the State of Illinois ("CITY"),

WITNESSETH

WHEREAS, the COUNTY and the CITY entered into an Agreement dated August 27, 1991 (DT-046-91) for construction of a parking lot on a portion of the DuPage Parkway a/k/a the Illinois Prairie Path, a copy of which is attached as Exhibit A and incorporated herein by reference; and

WHEREAS, any changes or modifications to said Agreement can only be made in writing and upon the necessary and proper signature of the COUNTY and the CITY; and

WHEREAS, the CITY desires to install a fence along the south side of the path adjacent to the parking area; and

WHEREAS, the COUNTY agrees that it is in the best interests of the citizens of the CITY and the COUNTY to approve the installation of said fence.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the COUNTY and CITY agree as follows:

1. That the Agreement previously entered into between the parties is modified to reflect the addition of a fence along the south side of the path adjacent to the parking area.
2. That the CITY shall also obtain from the COUNTY the applicable permit required under current COUNTY ordinance for the installation of said fence for construction on the Illinois Prairie Path.
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 AMENDMENT to the extent permitted by law.

4. The COUNTY shall to the extent permitted by law, 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 AMENDMENT to the extent permitted by law.
5. If both the COUNTY and CITY are found to be negligent, the liability will be apportioned according to the respective degrees of negligence. Neither the COUNTY nor the CITY by this AMENDMENT waive or release any defenses, privileges or immunities available to them which defenses, privileges and immunities are specifically reserved. There are no intended third party beneficiaries of this AMENDMENT.
6. 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, under this paragraph or paragraph 7.1, 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 CITY'S duty to indemnify, defend, and hold the COUNTY harmless, as set forth above.
7. 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.

8. That the remaining covenants and promises in the original Agreement referenced herein that are not in conflict with the change reflected in this AMENDMENT remain unaltered.

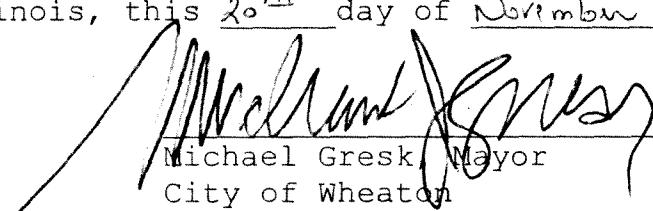
Dated at Wheaton, Illinois, this _____ day of _____, 2007.

Robert J. Schillerstrom, Chairman
DuPage County Board

ATTEST:

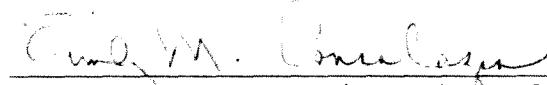
Gary A. King, County Clerk

Dated at Wheaton, Illinois, this 20th day of November,
2007.



Michael Gresk, Mayor
City of Wheaton

ATTEST:



Emily M. Consolazio, City Clerk
City of Wheaton

R E S O L U T I O N

DT-046-91

Parking Lot Construction
DuPage Parkway
Main Street to Cross Street
City of Wheaton

WHEREAS, the County of DuPage holds title to the former Chicago, Aurora & Elgin Railroad right-of-way within the City of Wheaton, (said right-of-way hereinafter referred to as "Du Page Parkway"); and

WHEREAS, the County and the Village desire to cooperate in an effort to construct a parking lot and recreational trail on a portion of the DuPage Parkway; and

WHEREAS, the County and the Village desire to cooperate in an effort to construct the improvement because of the immediate benefit of the improvement to the people of the City of Wheaton and to the residents of DuPage County; and

WHEREAS, the 1970 Illinois Constitution Art. VII, Sec. 10, and Illinois Revised Statutes, Ch. 127, Sec. 741 *et. seq.* authorizes the County and the Village to cooperate in the performance of their responsibilities by contract and other agreements; and

WHEREAS, the County has previously adopted a "Policy Statement for Municipal Parking, Maintenance and Support on DuPage Parkway Trail System" by Resolution DT-024-91; and

WHEREAS, an Agreement has been prepared and attached hereto in accordance with the above stated policy; and

WHEREAS, said Agreement must be accomplished before the improvement may be initiated.

NOW, THEREFORE, BE IT RESOLVED, by the County Board of DuPage County that the Clerk and Chairman of said Board be and they are hereby directed and authorized to execute the above mentioned Agreement with the City of Wheaton; and

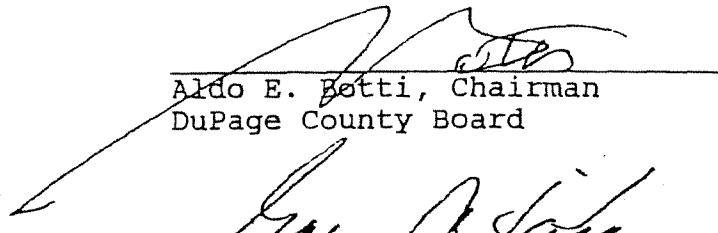
BE IT FURTHER RESOLVED, that certified copies of this Resolution and Agreement be sent to the City of Wheaton through the DuPage County Division of Transportation, and one

R-79-07

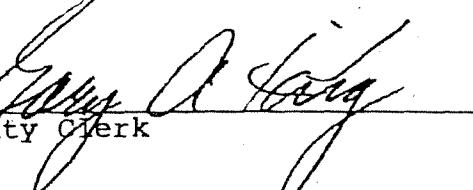
copy to the Treasurer, Auditor, Finance Department, County Board, State's Attorney's Office, Attn: Anna Harkins, and the DuPage County Division of Transportation.

Dated at Wheaton, Illinois, this 27th day of August, 1991.

Ayes: 16
Absent: 9


Aldo E. Potti, Chairman
DuPage County Board

ATTEST:


Gary A. Tracy
County Clerk

AGREEMENT
FOR
CONSTRUCTION OF A PARKING LOT
ON THE DU PAGE PARKWAY
BETWEEN MAIN STREET AND CROSS STREET
IN THE CITY OF WHEATON

This Agreement, entered by and between the County of DuPage, a body corporate and politic of the State of Illinois (hereinafter "COUNTY"), and the City of Wheaton, a municipal corporation in the State of Illinois (hereinafter "CITY"),

W I T N E S S E T H :

WHEREAS, the COUNTY owns certain real property within the corporate limits of the CITY and maintains a recreational trail on a portion of the property and the CITY desires to construct parking facilities (hereinafter "IMPROVEMENT") on a part of the DuPage Parkway as shown on Exhibit A; and

WHEREAS, the COUNTY and the CITY desire to cooperate in an effort to construct the IMPROVEMENT because of the immediate benefit of the IMPROVEMENT to the people of the City of Wheaton and to the residents of DuPage County; and

WHEREAS, the 1970 Ill. Const. Art. 7, Sec. 10 and Ill. Rev. Stat. Ch. 127, Sec. 741 et seq. authorizes the COUNTY and the CITY to cooperate in the performance of their responsibilities by contract and other agreements; and

WHEREAS, the COUNTY has adopted a statement of policy regarding the obligations of municipalities for transportation facilities.

NOW, THEREFORE, in consideration of the above-stated preambles and mutual covenants and promises hereinafter contained, the COUNTY and the CITY formally covenant, agree, and bind themselves as follows to-wit:

1. Both the COUNTY and the CITY agree to cooperate in and make every effort to cause construction of the IMPROVEMENT, but the covenants contained herein shall become null and void in the event that no contract for the construction of the IMPROVEMENT is awarded by the CITY within three (3) years from the approval of this agreement.
2. Both the COUNTY and the CITY agree that the scope of the IMPROVEMENT will include construction as shown on Exhibit B and that any modifications made to the recreational trail as a part of the IMPROVEMENT shall be designed in accordance with the current edition of "Guide for Development of New Bicycle Facilities" published by AASHTO with a minimum of fifteen (15) feet reserved for a recreational trail.

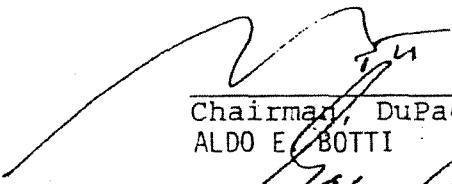
3. Both the COUNTY and the CITY agree that all costs associated with design and construction of the IMPROVEMENT will be borne by the CITY.
4. The COUNTY agrees to permit the CITY to collect fees for patrons using the new parking facilities, including those located on COUNTY property, and to retain all fees in partial consideration of the CITY's obligations hereunder.
5. The CITY will indemnify and hold the COUNTY harmless, to the extent allowed by law, for all claims, damages injuries and demands which arise out of the CITY's operation and maintenance of the parking facilities.
6. The COUNTY and CITY agree that the CITY will assume all maintenance responsibility, including landscaping for the new parking lot and recreational trail within the limits of the IMPROVEMENT. If the CITY does not perform maintenance to the reasonable satisfaction of the COUNTY, the COUNTY shall notify the CITY of the deficiency in or failure to maintain. If cure is not effected within 48 hours of notice, the COUNTY may, at its option, perform such maintenance and charge the CITY on a force account basis.
7. The COUNTY reserves the right, upon 180 days notice to the CITY, to remove that portion of the IMPROVEMENT located on its property if removal is necessitated by future COUNTY purposes. The COUNTY shall pay all demolition costs associated with removal, but shall not be obligated to compensate the CITY for lost revenues, diminution of value to the remaining parking facilities, or other costs. However, if the removal occurs within twenty (20) years of the date of this Agreement, the COUNTY will also pay the CITY the sum of Twenty-five hundred dollars (\$2,500.00) for each parking space removed.
8. The COUNTY and the CITY agree that the CITY shall receive bids and award the contract for the construction of the IMPROVEMENT. Prior to advertising for letting, the CITY shall submit plans and specifications to the COUNTY for its review and approval. Unless specifically objected to by the COUNTY with a 30-day period, the plans and specifications shall be deemed acceptable, but acceptance shall not indicate a guarantee or engineering opinion of the adequacy of the plans and specifications. No work shall commence on the IMPROVEMENT until any objections raised by the COUNTY are satisfied. No changes in the plans and specifications shall be made without further review and approval by the COUNTY. Minor field changes during construction may be made on the verbal approval of the COUNTY Superintendent of Highways. Any changes considered by the Superintendent to be other than minor field changes may be made by vote of the County

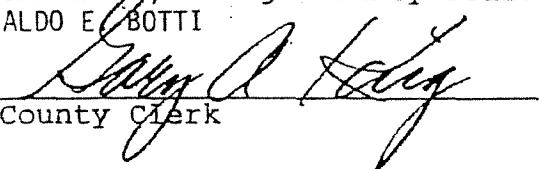
Transportation Committee. Any changes to the trail width established in #2 above may be made only by written approval of the COUNTY.

9. The CITY shall require, as part of the contract awarded under paragraph 7, that its contractor furnish a policy of adequate Workers' Compensation and general liability insurance which names COUNTY, its officers, agents and employees, as additional insured. The COUNTY shall also be named as an additional protected person on all performance bonds required to be furnished by the contractor. The CITY shall provide proof to the COUNTY that the foregoing provision has been satisfied prior to commencing work on the IMPROVEMENT.
10. This document shall be the final embodiment of the Agreement by and between the COUNTY and the CITY. No oral changes or modifications of this Agreement shall be permitted or allowed. Changes or modifications to this Agreement shall be made only in writing and upon the necessary and proper signature of the COUNTY and the CITY.
11. In the event that any provisions of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provisions hereto.
12. This Agreement shall be binding upon and inured to the benefits of the parties hereto, their successors and assigns.

Dated at Wheaton, Illinois, this 27th day of August, 1991.

ATTEST:


Chairman, DuPage County Board
ALDO E. BOTTI


County Clerk

Dated at Wheaton, Illinois, this 27th day of August, 1991.

By: 

ATTEST:


Emily M. Concolino

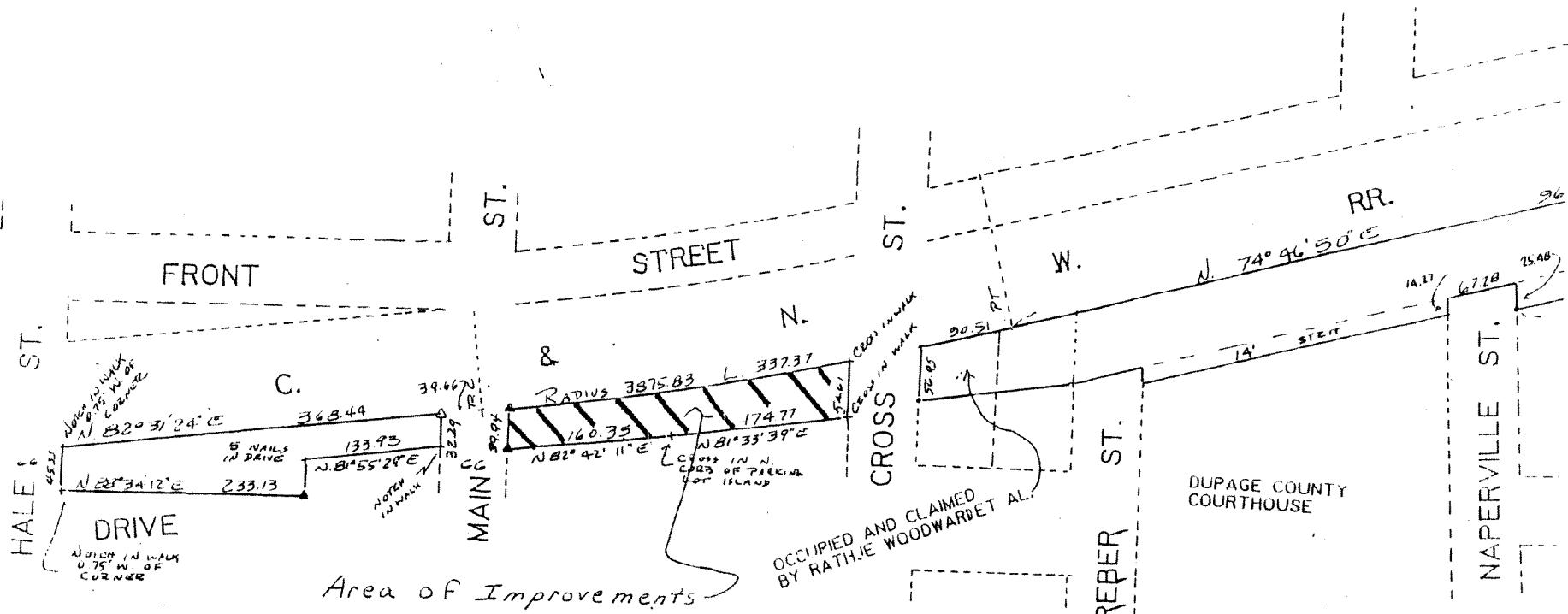


EXHIBIT A

101

$$L = 2131.03$$

EXHIBIT B

