

RESOLUTION R-48-17

**A RESOLUTION AUTHORIZING THE EXECUTION OF
AN INTERGOVERNMENTAL AGREEMENT WITH
THE MILTON TOWNSHIP ROAD DISTRICT FOR RESURFACING
STODDARD AVENUE BETWEEN GENEVA ROAD AND HAWTHORNE
BOULEVARD**

WHEREAS, the City of Wheaton and Milton Township has initiated a highway resurfacing improvement project for Stoddard Avenue from Geneva Road and Hawthorne Boulevard; and

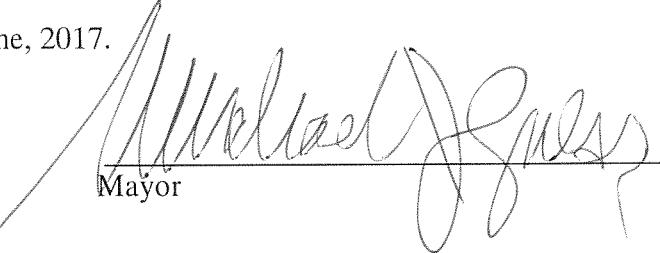
WHEREAS, Milton Township has requested that the City include resurfacing of Stoddard Avenue under the Township jurisdiction; and;

WHEREAS, the City is willing to include the resurfacing of Stoddard Avenue to the project subject to reimbursement by the Township of its share of funding for the improvements; and

WHEREAS, the City and Township are desirous in entering into an intergovernmental agreement covering the terms and conditions of the resurfacing work and cost reimbursement of said improvements.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois that the Mayor is authorized to execute an intergovernmental agreement with the Milton Township Road District for the resurfacing of Stoddard Avenue between Geneva Road and Hawthorne Boulevard.

ADOPTED this 5th day of June, 2017.


Mayor

ATTEST:


Anna Bennett Hager
City Clerk

Ayes:

Roll Call Vote:
Councilman Suess
Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk
Councilman Rutledge



Councilman Scalzo

Nays: None
Absent: None

Motion Carried Unanimously



INTERGOVERNMENTAL AGREEMENT BETWEEN
THE MILTON TOWNSHIP ROAD DISTRICT AND THE CITY OF WHEATON
FOR
RESURFACING STODDARD AVENUE BETWEEN GENEVA ROAD AND HAWTHORNE
BOULEVARD
SECTION NO.: 17-00115-00-RS

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 5th day of June, 2017, between the Milton Township Road District (hereinafter referred to as the "TOWNSHIP"), a body corporate and politic, with offices at 23W040 Poss Street, Glen Ellyn, Illinois and the City of Wheaton (hereinafter referred to as the "CITY"), a municipal corporation with offices at 303 West Wesley Street, Wheaton, Illinois. The TOWNSHIP and the CITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

RECITALS

WHEREAS, the CITY has prepared plans and specifications for an improvement known as 2017 Road, Sewer and Water Rehabilitation Program, CITY Section No.:17-00115-00-FP (hereinafter referred to as the "PROJECT"); and

WHEREAS, the PROJECT includes the resurfacing of Stoddard Avenue from Geneva Road to Hawthorne Boulevard which roadway limits cover portions of CITY and TOWNSHIP jurisdiction; and

WHEREAS, the TOWNSHIP has asked the CITY to incorporate resurfacing their portions of Stoddard Avenue, as shown on Exhibit A attached hereto and incorporated herein, and miscellaneous related improvements (hereinafter referred to as "WORK") as a part of the PROJECT to avoid disruption to the motoring public at a later date; and

WHEREAS, the CITY is willing to incorporate this WORK into the Plans and Specifications of the PROJECT that are incorporated herein by reference, subject to reimbursement by the TOWNSHIP of its share of the cost for resurfacing pavement for said PROJECT; and

WHEREAS, a cost estimate has been prepared for the TOWNSHIP's share of the WORK and the cost of approximately

\$31,446.15 is agreeable to the TOWNSHIP as referenced on Exhibit B attached hereto and incorporated herein.

WHEREAS, the TOWNSHIP and the CITY desire to establish the parties' mutual future maintenance responsibilities with respect to the PROJECT; and

WHEREAS, the TOWNSHIP by virtue of its power set forth in "Township Code" (60 ILCS 1/1-1 et seq.) and "Illinois Highway Code" (605 ILCS 5/1-101 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

- 2.1. The TOWNSHIP and CITY agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 2.2. The TOWNSHIP and CITY agree that the engineer's estimate of construction for the PROJECT is \$31,446.15.

2.3. The PROJECT includes resurfacing of Stoddard Avenue from Geneva Road to Hawthorne Boulevard, the WORK for the TOWNSHIP 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 hereinafter referenced), right-of-way acquisition, awarding of contract(s), utility coordination, construction engineering and construction for the PROJECT. The CITY shall be responsible for securing/paying for all PROJECT costs, subject to reimbursement from the TOWNSHIP as noted in Section 4.0 herein below.
- 3.2. Both the TOWNSHIP and CITY agree that the CITY shall manage the contract for the construction of the PROJECT. The CITY agrees to manage the PROJECT in the best interest of both parties and to consult with, and keep advised, officials of the TOWNSHIP regarding the progress of the PROJECT and any problems encountered or changes recommended. No change order which affects TOWNSHIP'S facilities, or TOWNSHIP 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 TOWNSHIP.
- 3.3. The CITY shall require the General Contractor selected for the Project to name the TOWNSHIP as an additional insured for the Commercial General Liability in the Special Provisions section of the contract for the PROJECT.

4.0 RESPONSIBILITIES OF THE TOWNSHIP

- 4.1. The TOWNSHIP hereby grants to the CITY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the TOWNSHIP property within the boundaries of the PROJECT for the purpose of constructing the PROJECT. The TOWNSHIP 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 TOWNSHIP property and commence work.

- 4.2. The TOWNSHIP agrees to reimburse the CITY for its share of the WORK construction costs 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 TOWNSHIP.
- 4.3. The TOWNSHIP agrees to reimburse the CITY one hundred (100%) percent of its share of the construction costs for the WORK estimated to be \$31,446.15 and any and all change orders reasonably necessary to complete the Work.
- 4.4. The TOWNSHIP acknowledges receipt of final PROJECT plans and upon execution of this AGREEMENT, confirms that the final plans, including design of the WORK components, are acceptable to the TOWNSHIP.
- 4.5. The TOWNSHIP agrees to pay the CITY one-hundred (100%) percent of its share of the WORK cost as attached hereto in Exhibit A upon completion of the contract for the PROJECT based upon as-bid unit prices for the WORK. Upon completion of the WORK and based upon the documentation of final costs and quantities, submitted by the CITY and a final invoice, the TOWNSHIP agrees to reimburse the CITY for the balance of its share of the WORK cost within thirty (30) days of receipt of a properly documented invoice from the CITY.

5.0 MAINTENANCE

- 5.1. Upon completion of the PROJECT, the CITY shall be responsible for future maintenance of that part of the PROJECT previously owned or under the jurisdiction of the CITY and the TOWNSHIP shall be responsible for all maintenance of that part of the PROJECT previously owned or under the jurisdiction of the TOWNSHIP.

5.2 The CITY will continue to maintain its roadway of Stoddard Avenue as depicted on Exhibit A.

6.0 INDEMNIFICATION

6.1. The TOWNSHIP 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 TOWNSHIP'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The TOWNSHIP does not waive any defenses or immunity available to it with respect to third parties.

6.2. The CITY shall indemnify, hold harmless and defend the TOWNSHIP, 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.

6.3. Nothing contained herein shall be construed as prohibiting either the TOWNSHIP 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.

6.4. 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.

6.5. 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 TOWNSHIP'S indemnification under Section 6.0 hereof shall terminate when the PROJECT is completed and the CITY and TOWNSHIP 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 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 TOWNSHIP 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 TOWNSHIP and CITY representatives in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the Township Engineer and the CITY Engineer shall meet and resolve the issue.
- 7.4 Upon 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. 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 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 Wheaton
303 West Wesley Street
Wheaton, IL 60187
ATTN: Michael Dzugan, City Manager
Phone: 630.260.2012
Facsimile: 630.260.2017
Email: mdzugan@wheaton.il.us

Milton Township Road District
23W040 Poss Street
Glen Ellyn, Illinois 60137
ATTN: Gary Muehlfelt, Highway Commissioner
Phone: 630.682.4270
Facsimile: 630.682.4629
Email: mthd@miltonhighway.com

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 Township.

14.0 SEVERABILITY

14.1. In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the

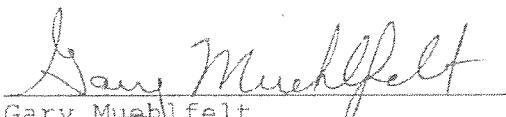
of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

15.0 FORCE MAJEURE

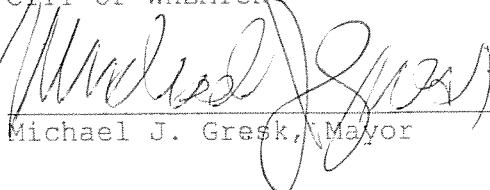
15.1. Neither party shall be liable for any delay or non performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.

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

MILTON TOWNSHIP


Gary Muellfelt
Milton Township Road District
Highway Commissioner

CITY OF WHEATON


Michael J. Gresk, Mayor

ATTEST:



ATTEST:


City Clerk

EXHIBIT A

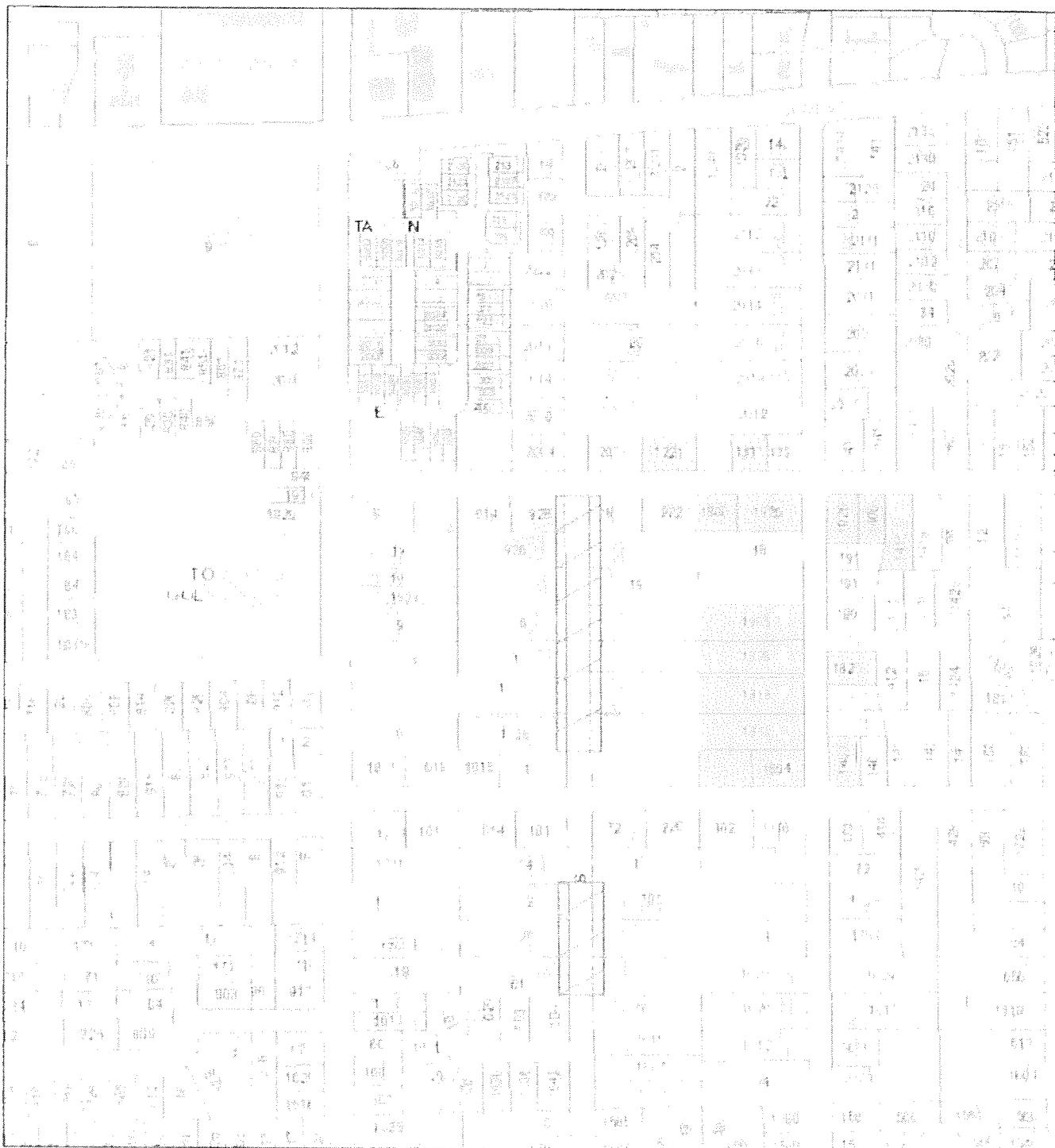


EXHIBIT B
ESTIMATE OF TOWNSHIP'S COST

Option 1 - Stoddard Avenue - 300' Hawthorne to Thomas Section - 700' Thomas to Daly Section

This estimate is for the resurfacing of the pavement areas as listed above. Includes 3" surface removal

1 1/2" level binder, 1 1/2" HMA surface, 2' wide shoulder stone and no base patching

No.	Line Item Description	Unit	Unit		Extension
					Price
				Quantity	Base Plan
23	Bituminous Materials (Prime Coat)	GA		\$0.01	475.00
24	Aggregate Prime	TN		\$1.00	3.00
25	Hot-Mix Asphalt Surface Course, Mix "D", N50	TN		\$59.91	200.00
26	Leveling Binder (Machine Method), N50	TN		\$59.85	200.00
33	Hot-Mix Asphalt Surface Removal, Variable Depth	SY		\$2.40	2,375.00
115	Aggregate Shoulder Type A, Variable Width	TN		\$31.90	56.00
					\$31,446.15

