

RESOLUTION R-2019-49

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF DU PAGE AND THE CITY OF WHEATON FOR MOWING ALONG  
COUNTY ROADS AND RIGHTS OF WAYS**

**WHEREAS**, the City of Wheaton, DuPage County, Illinois ("City") is an Illinois Home Rule municipality pursuant to provisions of Article VII, Section 6, of the Illinois Constitution, 1970, and as such the City may exercise any power and perform any function pertaining to its government and affairs; and

**WHEREAS**, the County of DuPage ("County") and the City are authorized by the 1970 Illinois Constitution to contract with each other; and

**WHEREAS**, the County and City have determined it is in the best interests of the citizens of DuPage County and the residents of the City for the City to provide mowing along certain roads and rights of way which are within the maintenance jurisdiction of the County and within the corporate limits of the City.

**NOW, THEREFORE, BE IT RESOLVED**, by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to an Intergovernmental Agreement Between the County of DuPage and the City of Wheaton for mowing along County roads and rights of way.

DATED this 3<sup>rd</sup> day of June 2019.

ATTEST:

Shawn Bennett Osgen  
City Clerk

\_\_\_\_\_  
Mayor

Philip J. Suess

Roll Call Vote:

Ayes: Councilman Rutledge  
Councilman Scalzo  
Councilwoman Bray-Parker  
Councilwoman Fitch  
Mayor Suess

Nays:

None

Absent:

Councilman Barbier

Motion Carried Unanimously

INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF DU PAGE AND  
THE CITY OF WHEATON  
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 Wheaton (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:

<b>Co Hwy #</b>	<b>Street Name</b>	<b>Street Side</b>	<b>Location Description</b>	<b>Mowing Instructions</b>	<b>Total Acre s</b>
23	Naperville Rd.	Both Sides	7 Gables Park Entrance to North of Farnham Lane		1.95
<b>Grand Total:</b>					1.95

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 Wheaton for the CITY to provide mowing along the above listed County Highways subject to the following GENERAL CONDITIONS AND SPECIFICATIONS:

## GENERAL CONDITIONS

1. All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for the Agreement.
2. 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.
3. The CITY shall furnish all labor, materials, equipment and transportation 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 reasonable professional and technical standards in the field.
4. 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.
5. 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. There are no third person beneficiaries of this Agreement and nothing contained herein shall be construed to waive or in any manner compromise the COUNTY or the CITY'S privileges and immunities which are fully reserved.

6. Indemnification

- (a) The CITY and the COUNTY shall indemnify, hold harmless and defend the other, their officials, officers, agents, and employees from and against all liability, claims, suits, demands, proceedings and actions, 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 other's negligent or willful acts, errors or omissions or any of the CITY's contractor's or agent's negligent or willful acts in its performance under this Agreement.
- (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.

- (c) Nothing contained herein shall be construed as prohibiting the CITY, 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. The City's participation in its defense shall not remove the COUNTY'S duty to indemnify, defend, and hold the CITY harmless, as set forth above provided, however, that the COUNTY shall have the authority to direct the defense and to settle a claim, suit, demand, proceeding or action against the CITY for which the COUNTY would be required to indemnify the CITY hereunder.
- (d) Any indemnity as provided in this Agreement shall not be limited by reason of the enumeration of any insurance coverage herein provided. The indemnification provided for in this Agreement shall survive the termination, or expiration, of this Agreement.
- (e) Neither party waives, by these indemnity requirements, 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, under the law."

7. At all times during the period of this Agreement, the CITY and COUNTY, if applicable, and their contractors 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. Additionally, the CITY shall include in all of its contracts a statement expressly declaring the COUNTY to be a third-party beneficiary of the insurance requirements provided for in this insurance section.
- (f) The CITY shall require all approved contractors, anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable under this Agreement, to acquire and maintain the insurance as set forth in Paragraph 8. (a) to (d) of the Agreement. The COUNTY retains the right to obtain evidence of contractor's insurance coverage at any time. The CITY will ensure that its contractors and subcontractors name the COUNTY as an additional insured as set out in the paragraphs below. The CITY understands that it is to the CITY's benefit to diligently enforce this insurance requirement as the CITY shall indemnify the COUNTY, its officials, officers, agents, and employees from all liability, in its performance under this Agreement pursuant to the terms in Paragraph 7 herein."

(g) The insurance required to be purchased and maintained by the CITY'S contractor, shall be provided by an insurance company acceptable to the COUNTY, and 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; and shall be so endorsed that the coverage afforded will not be canceled or materially changed until at least sixty (60) days prior written notice has been given to the COUNTY except for cancellation due to non-payment of premium for which at least fifteen (15) days prior written notice (five days allowed for mailing time) has been given to the COUNTY. If the CITY is satisfying insurance required through a combination of primary and excess coverage, the CITY shall require that said excess/umbrella liability policy include in the "Who is Insured" pages of the excess/umbrella policy wording such as "Any other person or organization you have agreed in a written contract to provide additional insurance" or wording to that affect. The CITY shall provide a copy of said section of the excess/umbrella liability policy upon request by the COUNTY.

(h) It is the duty of the CITY to immediately notify the COUNTY if any 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. If a suspension of work should occur due to insurance requirements, upon verification by the COUNTY of the required insurance coverage, the COUNTY shall notify the CITY that the CITY can proceed with the work that is a part of this Agreement. Failure to provide and maintain the required insurance coverage could result in the immediate cancellation of this Agreement, and the CITY shall accept and bear all costs that may result from the cancellation of this Agreement due to the CITY's or if applicable, their contractor's failure to provide and maintain the required insurance.

(i) The CITY's and if applicable, their contractor's insurance as required by paragraphs (c) and (d) above shall name the COUNTY, its officers, and employees as additional insured parties. The Certificate of Insurance/endorsements shall state: "The County of DuPage, its officers, and employees are named as additional insured(s) as defined in the Commercial

(Comprehensive) General Liability Insurance and Commercial (Comprehensive) Automobile Liability Insurance policies with respect to claims arising from the CITY's performance under this Agreement. The Endorsements must also be provided naming the County of DuPage c/o DuPage County Division of Transportation, 421 N. County Farm Road, Wheaton, IL 60187, as an additional insured. This additional insured is to be 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. All State and Federal Laws insofar as applicable to COUNTY contracts shall be hereby specifically made a part of this Agreement as set forth herein.
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 provisions of this Agreement are 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 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:

Michael Dzugan  
City Manager  
City of Wheaton  
303 W. Wesley Street  
Second Floor  
Wheaton, IL 60187

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. All mowing shall be performed in a manner to produce a finished appearance. Such acceptability shall be based upon the reasonable application of professional standards in the mowing industry.
3. Proper cutting along fences and guardrails is included as part of the Agreement.
4. 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.
5. 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.

6. 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.

The CITY or its contractor 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.

7. No equipment or material shall be stored on the pavement or shoulders at any time.
8. 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.

9. The COUNTY shall pay the CITY the lesser of \$97.50 or contractor pricing plus ten percent (10%) within forty-five (45) days of receipt of invoice after the completion of each mowing cycle of 1.95 acres.
10. **The CITY shall endeavor to submit a final invoice for all mowing no later than November 15<sup>th</sup> of each year for the term of this Agreement.**
11. Additions or deductions to the mowing acres may be required during the mowing season and will be done by the parties as a result of consultation. 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 proposed additions or deductions made in the mowing cycle acres.
12. 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.

13. This Agreement shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the parties.
14. 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.
15. 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.

COUNTY OF DU PAGE

Signed this 25<sup>th</sup> day of June, 2019 at Wheaton, Illinois.

  
Daniel J. Cronin, Chairman  
DuPage County Board

ATTEST:

  
Jean Kaczmarek, County Clerk

CITY OF WHEATON

Signed this 4<sup>th</sup> day of June, 2019, at Wheaton, Illinois.

  
Michael Ozugan, City Manager  
City of Wheaton

ATTEST:

  
Sharon Barrett-Hagen, City Clerk  
City of Wheaton