

## **RESOLUTION R-2023-23**

### **A RESOLUTION AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WHEATON AND DUPAGE COUNTY FOR MINOR PAVING TO CITY OF WHEATON STREETS AS A PART OF DUPAGE COUNTY'S RESURFACING OF JEWELL ROAD**

**WHEREAS**, the CITY OF WHEATON (hereinafter "the City") and DuPage County (hereinafter "the County"), are all parties to this Agreement; and

**WHEREAS**, the County, to facilitate the free flow of traffic and to ensure the safety and accessibility of the public, will construct the 2023 Pavement Maintenance Central Program (hereinafter "the Project") which includes resurfacing Jewell Road; and

**WHEREAS**, the City has identified three minor sections of City Streets immediately adjoining the County's project on Jewell Road that are in need of resurfacing; and

**WHEREAS**, the City and the County desire to cooperate in the construction of the Project because of the benefits to the residents of the City; and

**WHEREAS**, the City and the County are public agencies within the meaning of the Illinois Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*) and as authorized by Article 7, Section 10 of the Constitution of the State of Illinois; and

**WHEREAS**, the purposes of the "Intergovernmental Cooperation Act" and Article 7 of the Constitution of the State of Illinois include fostering cooperation among government bodies; and

**WHEREAS**, the City and the County desire to establish the parties' mutual costs and maintenance responsibilities with respect to the Project; 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 the Intergovernmental Cooperation Act.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule authority, as well as the Illinois Constitution and the Illinois Intergovernmental Cooperation Act that the Mayor is hereby authorized to sign, and the City Clerk is hereby directed to attest to that certain Intergovernmental Agreement between the City of Wheaton and DuPage County incorporated as EXHIBIT A.

**ADOPTED** this 20<sup>th</sup> day of March 2023.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

Ayes:                   **Roll Call Vote:**  
                            Councilman Brown  
                            Mayor Pro Tem Fitch  
                            Councilman Weller  
                            Councilman Barbier  
                            Councilwoman Bray-Parker

Nays:                   None  
Absent:                Mayor Suen  
                            Councilwoman Robbins

Motion Carried Unanimously

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF DU PAGE  
AND THE CITY OF WHEATON  
2023 PAVEMENT MAINTENANCE - CENTRAL REGION  
SECTION NO. 23-PVMTC-21-GM**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 25<sup>th</sup> day of April, 2023, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 N. County Farm Road, Wheaton, Illinois and the City of Wheaton (hereinafter referred to as the "CITY"), a municipal corporation and home rule unit of local government under the laws and Constitution of the State of Illinois with offices at 303 W. Wesley Street, Wheaton, Illinois, 60187. The COUNTY and the CITY are hereinafter sometimes individually referred to as a "party" or together as the "parties."

**RECITALS**

WHEREAS, the COUNTY, in order to facilitate the free flow of traffic and to ensure the safety and accessibility of the public, will construct the 2023 Pavement Maintenance Central Program, Section No. 23-PVMTC-21-GM (hereinafter "PROJECT"); and

WHEREAS, as part of the PROJECT, Jewell Road will be resurfaced from County Farm Road to Gary Avenue (hereinafter "PROJECT ROAD"); and

WHEREAS, the CITY has requested that the COUNTY extend road resurfacing beyond COUNTY Right-of-Way on multiple side streets along PROJECT ROAD within the CITY as part of the PROJECT; and

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

WHEREAS, the COUNTY and the CITY desire to establish the parties' mutual costs and maintenance responsibilities with respect to the PROJECT; 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**

- 2.1 The COUNTY and CITY agree to cooperate in and make every effort to cause the construction of the PROJECT.
- 2.2 The COUNTY and CITY agree that the scope of the PROJECT includes milling, patching and resurfacing PROJECT ROAD within the project limits including certain side streets, curb and gutter repairs, striping, and other appurtenant work.
- 2.3 The CITY has requested that the COUNTY extend the resurfacing beyond the right-of-way along several side streets (hereinafter "WORK").

The side streets to be resurfaced and distances from PROJECT ROAD edge of pavement are as follows:

- Champion Forest Court                      73 Ft South
- Woodlawn Street                              54 Ft North
- Falcon Drive                                  75 Ft North

- 2.4 The COUNTY has reviewed the CITY's request and concurs with adding the WORK to the PROJECT subject to the terms and conditions noted.

## **3.0 RESPONSIBILITIES OF THE COUNTY**

- 3.1. The COUNTY and CITY agree that the COUNTY shall act as the lead agency and administer the contract for the construction of the PROJECT. The COUNTY agrees to manage the PROJECT in the best interest of both parties and keep advised officials of the CITY regarding the progress of the PROJECT and any problems encountered or changes recommended.

#### **4.0 RESPONSIBILITIES OF THE CITY**

- 4.1 The CITY will be responsible for payment of the resurfacing beyond COUNTY Right-of-Way as stated in 2.3 above and the CITY's estimated cost of the WORK is approximately \$ 6,594.00. A Funding Table is attached hereto as "Exhibit A" and is incorporated herein.
- 4.2 The CITY hereby grants to the COUNTY, its employees, contractors and agents a right-of-entry for ingress and egress onto, over, under and above the CITY property within the boundaries of the PROJECT for the purpose of constructing the PROJECT. The CITY shall retain the right of ingress and egress over said areas so long as it does not interfere with the COUNTY's work. Upon completion of the PROJECT, the right-of-entry shall terminate.
- 4.3 The CITY shall agree to waive all local permit fees, if applicable for the PROJECT.
- 4.4 The CITY agrees to reimburse the COUNTY one hundred percent (100%) of the difference between the estimated cost for resurfacing and the actual costs for the WORK.
- 4.5 The CITY agrees to pay the COUNTY eighty percent (80%) of the estimated WORK cost upon award of the contract for the WORK based upon as-bid unit prices. Upon completion and acceptance of the WORK, not to be unreasonably withheld, and based upon the documentation of final costs and quantities submitted by the COUNTY and a final invoice, the CITY agrees to reimburse the COUNTY the balance of the actual cost as referenced herein above within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

#### **5.0 FUTURE MAINTENANCE**

- 5.1. The CITY agrees that it will be responsible for all future maintenance to pavements and pavement markings of the streets stated in 2.3 above. This includes all curb and gutter, drainage structures, pavement markings, and all other appurtenances up to the nearest edge of through pavement of PROJECT ROAD.

#### **6.0 GENERAL**

- 6.1 It is understood and agreed by the parties hereto that this AGREEMENT is intended to address funding, plan/construction and maintenance participation of the PROJECT and no changes to existing roadway and appurtenance maintenance and/or jurisdiction, beyond those explicitly described herein, are proposed.
- 6.2 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.

- 6.3 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 Engineer shall meet and resolve the issue.
- 6.4 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. 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.
- 6.5 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 and the same instrument.
- 6.6 This AGREEMENT and the covenants contained herein shall be null and void in the event the contract covering the construction work contemplated herein is not awarded within four (4) years subsequent to the execution of this AGREEMENT.

## **7.0 INDEMNIFICATION**

- 7.1. 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 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 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.
- 7.1.1. The COUNTY and the CITY 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 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 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 fortherein.

7.2. 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. The CITY does not hereby waive any defenses or immunity available to it with respect to third parties.

7.2.1. The COUNTY and the CITY 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 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.

7.3 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 55ILCS 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.

7.4 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 tort, or to the other party, under the law.



7.5 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 COUNTY'S indemnification under Section 7.0 hereof shall terminate when the WORK is completed and the CITY and COUNTY each assume its respective maintenance responsibilities as set forth in Section 5.0 hereof.

## **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 three days after it is mailed by certified mail, return receipt requested, or at the time it is sent by confirmed 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**

Department of Public Works  
303 W. Wesley Street  
Wheaton, Illinois 60187  
ATTN: Joseph Tebrugge  
Director of Engineering  
Phone: 630-260-2069  
Email: [JTebrugge@wheaton.il.us](mailto:JTebrugge@wheaton.il.us)

### **County of DuPage Division of Transportation**

421 N. County Farm Road  
Wheaton, IL 60187  
ATTN: Christopher C. Snyder, P.E.  
Director of Transportation/County Engineer  
Phone: 630-407-6900  
Email: [Christopher.snyder@dupageco.org](mailto:Christopher.snyder@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 any 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.

(signature page follows)

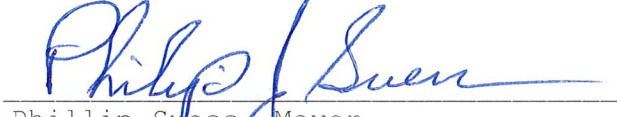
IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

COUNTY OF DU PAGE



Deborah A. Conroy, Chair  
DuPage County Board

CITY OF WHEATON



Phillip Sless, Mayor  
City of Wheaton

ATTEST:



Jean Kaczmarek, County Clerk

ATTEST:



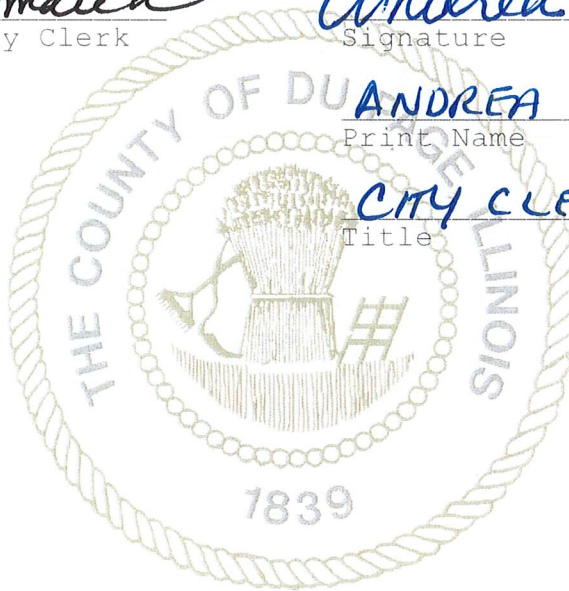
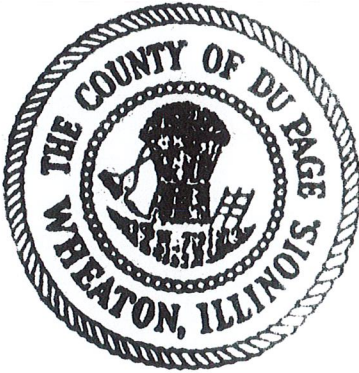
Signature

ANDREA ROSEDALE

Print Name

CITY CLERK

Title



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(signature page follows)

**EXHIBIT A**

CITY of Wheaton  
Resurfacing past County Rights-of-Way  
Cost Estimate

<b>WHEATON SIDE STREET QUANTITIES</b>							
	UNIT	CHAMPION FOREST COURT	WOODLAWN STREET	FALCON DRIVE	TOTAL QUANTITY	UNIT	COST
BITUMINOUS MATERIALS (TACK COAT)	POUND	123	68	73	264	\$ 0.25	\$ 66.00
POLYMERIZED LEVELING BINDER MACHINE METHOD IL- 4.75 N50	TON	8	4	5	17	\$ 115.00	\$ 1,955.00
HMA SURFACE COURSE, MIX "D", N70	TON	16	9	9	34	\$ 100.00	\$ 3,400.00
HMA SURFACE REMOVAL 2.25"	SQ YD	182	101	108	391	\$ 3.00	\$ 1,173.00
						<b>ESTIMATED TOTAL COST:</b>	<b>\$ 6,594.00</b>





City of Wheaton Pavement to be resurfaced by DuPage County





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**File #:** DT-R-0063-23

**Agenda Date:** 4/18/2023

**Agenda #:** 17.E.

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INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF DU PAGE AND  
THE CITY OF WHEATON  
2023 ROAD PAVEMENT MAINTENANCE-(CENTRAL) PROGRAM  
SECTION 23-PVMTC-21-GM  
(COUNTY TO BE REIMBURSED-ESTIMATED \$6,594.00)

WHEREAS, the County of DuPage (hereinafter COUNTY) and the City of Wheaton (hereinafter CITY) are public agencies within the meaning of Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

WHEREAS, Article VII, Section 10, of the 1970 Constitution of the State of Illinois encourages and provides for units of local government to contract and otherwise associate with each other to exercise, combine or transfer any power or function; and

WHEREAS, the COUNTY by virtue of its power set forth in the Counties Code, 55 ILCS 5/1001 *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 agreements and contracts; and

WHEREAS, the COUNTY has awarded a contract for the 2023 Pavement Maintenance (Central) Program, (hereinafter "PROJECT"); and

WHEREAS, as part of the PROJECT, Jewell Road will be resurfaced from County Farm Road to Gary Avenue; and

WHEREAS, the CITY has requested that the COUNTY extend road resurfacing beyond COUNTY Right-of-Way on multiple side streets along Jewell Road within the CITY, (hereinafter referred to as "WORK"); and

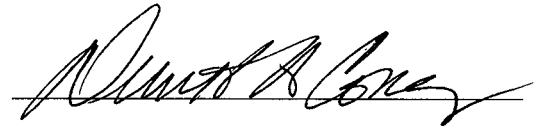
WHEREAS, an Intergovernmental Agreement has been prepared and is attached hereto that outlines the rights and responsibilities of the COUNTY and the CITY related to the WORK; and

WHEREAS, the Intergovernmental Agreement must be executed prior to the COUNTY initiating the WORK.

NOW, THEREFORE, BE IT RESOLVED that the Chairman and Clerk are hereby directed to execute the attached Agreement; and

BE IT FURTHER RESOLVED that one (1) certified original of this Resolution and Intergovernmental Agreement be sent to the CITY, by and through the Division of Transportation.

Enacted and approved this 25th day of April, 2023 at Wheaton, Illinois.



DEBORAH A. CONROY, CHAIR  
DU PAGE COUNTY BOARD

Attest: 

JEAN KACZMAREK, COUNTY CLERK

AYES 17  
NAYS 0  
ABSENT 1