

RESOLUTION R-40-17

A RESOLUTION AUTHORIZING EXECUTION OF  
AN INTERGOVERNMENTAL AGREEMENT WITH  
THE COUNTY OF DUPAGE FOR  
GARY AVENUE (COUNTY HIGHWAY 23) AT JEWELL ROAD  
INTERSECTION IMPROVEMENTS

WHEREAS, the City of Wheaton, DuPage County has initiated a highway resurfacing improvement project for Gary Avenue (FAU 2561) from Harrison Avenue to Jewell Road; and


WHEREAS, DuPage County has requested that the City extend the limits of the project to include resurfacing of the intersection of Gary Avenue (County Highway 23) and Jewell Road including related improvements; and

WHEREAS, the City is willing to include the intersection improvements to the project subject to reimbursement by the County of its share of funding for the improvements; and

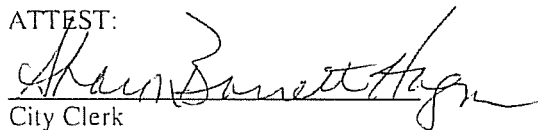
WHEREAS, the City and the County are desirous in entering into an intergovernmental agreement covering the terms and conditions of the intersection improvements and cost reimbursement of said improvements.

NOW, THEREFORE, BE IT 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 County of DuPage for the intersection improvements of Gary Avenue and Jewell Road.

ADOPTED this 15<sup>th</sup> day of May, 2017.

  
Mayor

ATTEST:

  
City Clerk

Ayes:

Roll Call Vote

Councilman Scalzo  
Councilman Suess  
Councilman Prendiville  
Mayor Gresk

Nays:

Councilman Rutledge

Absent:

None  
Councilman Barbier  
Councilwoman Fitch

Motion Carried Unanimously



INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE COUNTY OF DU PAGE AND THE CITY OF WHEATON  
FOR  
CH 23/GARY AVENUE AT JEWELL ROAD  
INTERSECTION IMPROVEMENTS  
SECTION NO.: 17-00237-14-MS

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this 13th day of June, 2017, 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 Wheaton (hereinafter referred to as the "CITY"), a municipal corporation with offices at 303 West Wesley Street, Wheaton, Illinois. The COUNTY 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 FAU 2561 Gary Avenue from Jewell Road to Harrison Avenue, CITY Section No.: 15-00111-00-RS (hereinafter referred to as the "PROJECT"); and

WHEREAS, the COUNTY has asked the CITY to incorporate resurfacing through the intersection of Gary Avenue and Jewell Road, structure adjustment, detector loop replacements, sidewalk/ADA ramps 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 COUNTY of its share of the local match since the CITY has received Surface Transportation Program (LAFO) funding for said PROJECT; and

WHEREAS, the COUNTY has assigned Section No.: 17-00237-14-MS for said WORK; and

WHEREAS, a cost estimate has been prepared for the COUNTY's share of the WORK including design and construction engineering and the cost of approximately \$27,575.24 is agreeable to the

COUNTY as referenced on Exhibit A attached hereto and incorporated herein.

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

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/1-1001 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 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 engineer's estimate of construction for the PROJECT is \$367,824.74 and the federal share is estimated to be \$202,303.61 and the local share is estimated to be \$165,521.13.

2.3. The PROJECT includes resurfacing of FAU 2561 Gary Avenue from Jewell Road to Harrison Avenue, the WORK for the COUNTY and other appurtenant work. The CITY acknowledges that the WORK is federally eligible.

### **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) through the Illinois Department of Transportation, 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 COUNTY 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. The CITY agrees to manage the PROJECT 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 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 to name the COUNTY 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 COUNTY**

4.1. 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 for the purpose of constructing the PROJECT. 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, the right-of-entry shall terminate.

- 4.2. The COUNTY 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 COUNTY.
- 4.3. The COUNTY agrees to reimburse the CITY one hundred (100%) percent of its share of the construction costs for the WORK estimated to be \$21,134.48 (45% of \$46,965.52).
- 4.4. The COUNTY agrees to reimburse the CITY for the actual cost to design the WORK estimated to be \$4,327.31.
- 4.5. The COUNTY agrees to reimburse the CITY an additional ten (10%) percent of the actual final construction cost of its share of the WORK for construction engineering estimated to be \$2,113.45.
- 4.6. The COUNTY 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 COUNTY.
- 4.7. The COUNTY agrees to pay the CITY ninety (90%) percent of its share of the WORK cost as attached hereto in Exhibit A upon award 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 COUNTY agrees to reimburse the CITY for the balance of its share of the WORK cost within sixty (60) 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 COUNTY shall be responsible for all maintenance of that part of the PROJECT previously owned or under the jurisdiction of the COUNTY.
- 5.2 It is the understanding of the parties that the COUNTY owns, operates, maintains, and controls the timing of the traffic signal and emergency preemption equipment, including the combination traffic signal/light poles, at CH 23/Gary Avenue at Jewell Road.
- 5.3 The CITY will continue to maintain its leg of Gary Avenue from the south edge of pavement of Jewell Road to Harrison Avenue.

## 6.0 INDEMNIFICATION

- 6.1. 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 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.
  - 6.1.1. 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.

- 6.2. 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.
- 6.3. 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.
- 6.4. 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 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 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 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. 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](mailto:mdzugan@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  
Facsimile: 630.407.6901  
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 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**

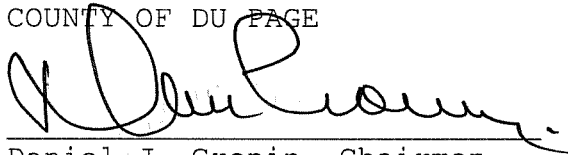
14.1. In the event, any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in 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.

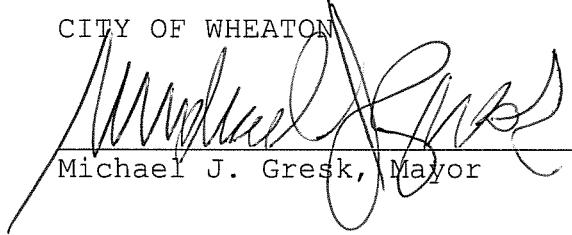
IN WITNESS whereof, the parties set their hands and seals as of the date first written above.

COUNTY OF DU PAGE



Daniel J. Cronin, Chairman  
DuPage County Board

CITY OF WHEATON




Michael J. Gresk, Mayor

ATTEST:



Paul Hinds  
County Clerk

ATTEST:



Sharon Barrett-Hagen  
City Clerk

**EXHIBIT A**  
**ESTIMATE OF COUNTY'S COST**

Estimate of COUNTY's share of WORK Construction Costs (45% of \$46,965.52)	\$21,134.48
Design Engineering (Actual)	\$ 4,327.31
Construction Engineering (10% of WORK)	<u>\$ 2,113.45</u>
Total Estimate of COUNTY's Cost:	\$27,575.24

