

RESOLUTION NO. R2020- 25

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF WARRENVILLE AND THE WARRENVILLE FIRE PROTECTION DISTRICT FOR IMPROVEMENTS TO WARRENVILLE FIRE PROTECTION DISTRICT PROPERTY AS PART OF THE 2020 ROAD PROGRAM

WHEREAS, the City is a home rule municipal corporation pursuant to Article VII, Section 6(a) of the Constitution of the State of Illinois of 1970 and the Warrenville Fire Protect District ("**District**") is an Illinois fire protection district; and

WHEREAS, the City and the District are both public agencies under the Illinois Constitution of 1970 and the Intergovernmental Cooperation Act, 5 ILCS 220 and are authorized to exercise their powers and duties in a cooperative manner among themselves as public agencies; and

WHEREAS, at the request of the District, the City included within the scope of work of the City's 2020 Road Project the resurfacing of certain areas located on District-owned property ("**District Work**"); and

WHEREAS, the City and the District desire to enter into an intergovernmental agreement to set forth their respective rights and obligations regarding the District Work ("**Agreement**"); and

WHEREAS, pursuant to the Agreement, the City will complete the District Work as part of the 2020 Road Program, and the District will reimburse the City for 100-percent of the actual cost to complete the District Work; and

WHEREAS, the Mayor and the City Council have determined that it is in the best interest of the City and the public to approve the Agreement with the District;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF WARRENVILLE, DUPAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: Recitals. The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

SECTION 2: Approval of Agreement. The Agreement with the District is hereby approved substantially in the form attached to this Resolution as Exhibit A, and in a final form to be approved by the City Administrator.

SECTION 3: Execution. The City Administrator and City Clerk of the City are authorized and directed to execute the Agreement and transmit executed and sealed copies to the District.

SECTION 4: Effective Date. This Resolution shall be in full force and effect following its passage and approval in the manner provided by law.

[Voting record and signature page follows]

PASSED THIS ____ day of _____, 2020.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED THIS ____ day of _____, 2020.

MAYOR

ATTEST:

CITY CLERK

#60353088_v1

EXHIBIT A
AGREEMENT

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF WARRENVILLE
AND THE WARRENVILLE FIRE PROTECTION DISTRICT**

This Intergovernmental Agreement ("**Agreement**") is made and entered into by and between the City of Warrenville ("**City**"), an Illinois home rule municipality, and the Warrenville Fire Protection District ("**District**"), an Illinois fire protection district. The City and the District are sometimes collectively referred to as the "Parties."

RECITALS

WHEREAS, the Constitution of the State of Illinois, 1970, Article VII, Section 10, authorizes units of local government to contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, the City and the District are units of government within the meaning of the Constitution of the State of Illinois, 1970, Article VII, Section 10, having the power and authority to enter into an intergovernmental agreement; and

WHEREAS, the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., authorizes and encourages intergovernmental cooperation; and

WHEREAS, in order to facilitate the free flow of traffic and ensure the safety of the motoring public, the City intends to make various road improvements throughout the City as part of its 2020 Road Program ("**Project**"); and

WHEREAS, as part of the Project, at the request of the District, the City will complete certain additional work to resurface certain areas located at the District Fire Station ("**District Property**") concurrent with the completion of the Project ("**Additional Work**"), which Additional Work is described more fully on **Exhibit A** to this Agreement; and

WHEREAS, the City solicited bids for the completion of the the Project, including the Additional Work, and the contract ("**Construction Contract**") was awarded to the lowest responsible bidder, Geneva Construction Company ("**Contractor**"); and

WHEREAS, in consideration for the completion by the City of the Additional Work, the District will reimburse the City for the actual cost of the Additional Work and assume maintenance responsibilities upon completion of the Additional Work by the City; and

WHEREAS, the City and the District, by this instrument, desire to memorialize their respective obligations and responsibilities toward the construction and funding of the Project, including the Additional Work, as well as future maintenance responsibilities upon completion of the Project, including the Additional Work; and

NOW THEREFORE, in consideration of the promises, covenants, terms and conditions set forth in this Agreement, the Parties hereto agree as follows:

SECTION 1. INCORPORATION OF RECITALS. The above recitals are incorporated into this Agreement as if fully set forth herein.

SECTION 2. TERM AND TERMINATION.

A. Term. This Agreement shall commence upon full execution by the Parties' authorized representatives and expire upon completion of the Project and the Additional Work. Notwithstanding the foregoing, the Parties hereto agree that the provisions of Sections 5.D Post-Project Maintenance, 5.E Payment to the City, and 5.F Indemnification shall survive termination of this Agreement, unless expressly terminated by the Parties.

B. Termination. The City shall have the right, for its convenience, to terminate this Agreement or suspend the Project or Additional Work whole or in part at any time by written notice to the District.

SECTION 3. DISTRICT COSTS. The District is responsible for the total actual cost of completing the Additional Work, which cost is estimated to be \$59,434.26 ("**District Costs**") based upon the unit prices set forth in the Construction Contract. The District Costs shall include any and all costs attributable to delays and unforeseen conditions when performing the Additional Work.

SECTION 4. CITY'S RESPONSIBILITIES.

A. City as Lead Agent. The City will act as the lead agent for the Project, including the Additional Work. The City will complete the Project, including and the Additional Work, at its sole cost and expense, and the District will reimburse the City for the total actual cost of the Additional Work in accordance with Section 3, Section 4.E, and Section 5.E of this Agreement.

B. Records. The City will maintain records of all Project costs associated with the Additional Work.

C. Observation and Inspection. The City will allow the District to observe all the construction of the Additional Work, address reasonable concerns expressed by the District regarding said construction, and allow the District to participate in the Final Inspection of the Additional Work.

D. Notification of Final Inspection. The City shall provide the District 10 days' advance notice of the Final Inspection of Additional Work constructed pursuant to this Agreement ("**Final Inspection**").

E. Invoice. Within 30 days after the City is invoiced by the Contractor for all of the Additional Work, the City will send an invoice ("**Invoice**") to the District detailing the District Costs, as defined in Section 3 of this Agreement.

SECTION 5. DISTRICT'S OBLIGATIONS.

A. Access to District Property. The District will allow the City, and its employees, agents, and contractors, including Contractor and its subcontractors, reasonable access to the District Property and adjacent District-owned property as necessary for the purposes of constructing the Project and the Additional Work.

B. Final Inspection. The Parties shall be present and participate in the Final Inspection, and the scheduling of such Final Inspection shall be solely at the discretion of the City, subject to the provisions of notice as required by Section 4.D of this Agreement. The District shall not cause a condition that would unreasonably delay the Final Inspection. The

District shall submit final punch list items within seven days prior to the Final Inspection date as determined by the City.

C. Post-Additional Work Maintenance. After the Final Inspection conducted jointly with the City and the District, the District will be responsible for all future maintenance of the Additional Work and the District Property.

D. Payment to the City. The District Costs shall be paid to the City in a lump sum within 45 days of the Invoice date.

E. Indemnification. The District shall, without regard to the availability or unavailability of any insurance, either of the City or the District, indemnify, save harmless, and defend the City, and its officials, employees, agents, and attorneys against any and all lawsuits, claims, demands, damages, liabilities, losses, and expenses, including attorneys' fees and administrative expenses, that arise, or may be alleged to have arisen, out of or in connection with, the Additional Work, whether or not due or claimed to be due in whole or in part to the active, passive, or concurrent negligence or fault of the District, except to the extent caused by the sole negligence of the City.

SECTION 6. GENERAL PROVISIONS.

A. Default. The District shall be in default hereunder in the event of a material breach by the District of any term or condition of this Agreement including, but not limited to, a representation or warranty, where the District has failed to cure such breach within thirty (30) days after written notice of breach is given to the District by the City, setting forth the nature of such breach. Failure of the City to give written notice of breach to the District shall not be deemed to be a waiver of the City's right to assert such breach at a later time. Upon default by the District, the City shall be entitled to exercise all available remedies at law and in equity, including but not limited to termination of this Agreement in accordance with Section 2.B of this Agreement.

B. Force Majeure. If the City is delayed, hindered, or prevented from performing any act required under this Agreement, or from fully supervising or monitoring Contractor as Contractor performs its obligations under the Contract because of (1) strikes, (2) lockouts, (3) inability to procure labor or materials, (4) failure of power, (5) restrictive laws, (6) riots, (7) insurrection, (8) war, (9) fire, (10) inclement weather, (11) pandemic, epidemic, or other health risk, (12) a federal, state, or local emergency or disaster declaration or quarantine, (13) or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the Association, financial inability excepted (each, a "***Force Majeure Event***"): (a) performance of such act by the City will be excused for the period of delay caused by the Force Majeure Event; (b) the City may postpone the performance of any act by Contractor for the period of delay caused by the Force Majeure Event; or (c) the City may terminate this Agreement.

C. Amendment. No amendment or modification to this Agreement shall be effective unless and until such amendment or modification is in writing, properly approved in accordance with applicable procedures, and executed.

D. Assignment. This Agreement may not be assigned by the City or by the District without the prior written consent of the other party.

E. Notice. Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid, (iv) by facsimile, or (v) by electronic internet mail (“e-mail”). Facsimile notices shall be deemed valid only to the extent that they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described in either (i), (ii), or (iii) above within three business days thereafter at the appropriate address set forth below. E-mail notices shall be deemed valid and received by the addressee thereof when delivered by e-mail and (a) opened by the recipient on a business day at the address set forth below, and (b) followed by delivery of actual notice in the manner described in either (i), (ii) or (iii) above within three business days thereafter at the appropriate address set forth below. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of (a) actual receipt; (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Subsection, each Party shall have the right to change the address or the addressee, or both, for all future notices and communications to such party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the City shall be addressed to, and delivered at, the following address:

City of Warrenville
3S258 Manning Avenue
Warrenville, Illinois 60555
Attention: Philip Kuchler
E-mail: pkuchler@warrenville.il.us

With a copy to:

Elrod Friedman LLP
325 N. LaSalle Street, Suite 405
Chicago, Illinois 60650
Attention: Brooke Lenneman
E-mail: brooke.lenneman@elrodfriedman.com

Notices and communications to the District shall be addressed to, and delivered at, the following address:

Warrenville Fire Protection District
3S472 Batavia Road
Warrenville, Illinois 60555
Attention: _____
Email: _____

F. Third Party Beneficiary. No claim as a third-party beneficiary under this Agreement by any person, firm, or corporation other than the District shall be made or be valid against the City.

G. Governing Laws. This Agreement shall be interpreted according to the internal laws, but not the conflict of laws rules, of the State of Illinois.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all previous or contemporaneous oral or written agreements and negotiations between the City and the District with respect to the Additional Work and the Project.

I. Waiver. No waiver of any provision of this Agreement shall be deemed to or constitute a waiver of any other provision of this Agreement (whether or not similar) nor shall any such waiver be deemed to or constitute a continuing waiver unless otherwise expressly provided in this Agreement.

J. Consents. Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

K. Counterpart Execution. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the District have caused this Agreement to be executed by their respective officials on the dates as shown.

CITY OF WARRENVILLE:

WARRENVILLE FIRE PROTECTION DISTRICT, an Illinois fire protection district

John Coakley
City Administrator

This ___ day of _____ 2020.

This ___ day of _____ 2020.

ATTEST: _____
City Clerk

ATTEST: _____

EXHIBIT A

ADDITIONAL WORK

The following work is to be completed at the Warrenville Fire Station:

- full width mill, 2-1/2" depth; Resurface 3/4" Leveling Binder & 2" HMA Surface Course
- Class D patch, 6" depth**
- Remove and Replace B-6.12 Curb & Gutter**
- Remove and Replace Sidewalk**
- Adjust Frames & Lids as needed/directed by the City or the City's consulting engineer for the Project ("Resident Engineer")
- Replace Striping as needed/directed by the City or the Resident Engineer
- Restore disturbed areas with Topsoil, Seed and Blanket as needed/directed by the City or the Resident Engineer.

**Locations marked in field by the City or the City's consulting Resident Engineer