

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF CHICAGO AND THE VILLAGE OF OAK PARK**

This Intergovernmental Agreement (the “Agreement”), made and entered into this _____ day of _____, 2019 by and between the City of Chicago, a municipal corporation and home rule unit of local government under Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois (the “City”), by and through its Department of Transportation (“CDOT”), the Village of Oak Park, an Illinois municipal corporation and home rule unit of local government under Article VIVV, Section 6(a) of the 1970 Constitution of the State of Illinois (“Oak Park”), collectively referred to as the “Parties” or each a “Party.”

RECITALS

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, and the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq. public agencies may contract or otherwise associate among themselves, or transfer any power or function, in any manner not prohibited by law or ordinance; and

WHEREAS, the Parties are “public agencies” within the meaning of the Illinois Intergovernmental Cooperation Act; and

WHEREAS, the Parties have the power and authority to enter into this Agreement pursuant to, but without limitation, the home rule powers under Section 6, Article VII of the 1970 Constitution of the State of Illinois; and

WHEREAS, the City desires to improve a portion of Austin Boulevard between Lake Street and North Avenue that lies within its boundaries with roadway resurfacing, partial curb and gutter replacement, and perform improvements to the sidewalk aprons consistent with the American Disabilities Act of 1990 as amended, as part of its Arterial Street Resurfacing #84 Central project (CDOT Project Number B-5-161) (the “City Resurfacing Project”); and

WHEREAS, the City shall award a contract to a contractor to perform the work pursuant to bids it receives for the City Resurfacing Project; and

WHEREAS, the City has received grants totaling \$_____ (the “Grant Funds”) from the federal government and the State of Illinois to pay for the costs the City Resurfacing Project; and

WHEREAS, the aforementioned section of Austin Boulevard is partially in Oak Park; and

WHEREAS, Oak Park desires to improve the portion of Austin Boulevard between Lake Street and North Avenue that lies within its boundaries with roadway resurfacing, partial curb and gutter replacement, and perform improvements to the sidewalk aprons consistent with the American Disabilities Act of 1990 as amended, (the “Oak Park Resurfacing Project,” and collectively with the City Resurfacing Project, the “Project”); and

WHEREAS, Oak Park desires to construct Project 19-17, Water and Sewer Main Improvements on a portion of Austin Boulevard between North Boulevard and Chicago Avenue

that lies within its boundaries with water main installation, storm sewer replacement, partial curb and gutter replacement, and pavement patching (the “Oak Park Water Main Project”) that lies within the boundaries of the Oak Park Resurfacing Project; and

WHEREAS, Oak Park wishes for the City to complete the Oak Park Resurfacing Project and to pay the City for the costs the Oak Park Resurfacing Project, of which the current estimate is \$730,000, and further identified on Exhibit A attached hereto and made a part hereof; and

WHEREAS, the City’s contractor for the City Resurfacing Project shall perform the work for the Oak Park Resurfacing Project pursuant to the award of the contract by the City; and

WHEREAS, the initial budget for the Project is indicated on Exhibit A and the Parties understand and agree that the final cost for the Oak Park Resurfacing Project will be calculated as indicated in Section 2.1(c) herein; and

WHEREAS, the City wishes to complete the Oak Park Resurfacing Project and shall not begin work on the Oak Park Resurfacing Project in the area of the Oak Park Water Main Project until Oak Park completes the Oak Park Water Main Project, or as authorized by Oak Park’s Village Engineer; and

WHEREAS, the Parties wish to associate, cooperate, and enter into an intergovernmental agreement to define each Party’s rights and responsibilities in regards to the Project; and

NOW, THEREFORE, in consideration of the foregoing recitals, and the mutual covenants and undertakings hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, it is agreed between the Parties hereto, as follows:

ARTICLE 1: INCORPORATION OF RECITALS

1.1 The recitals set forth above are incorporated herein by reference and made a part hereof.

ARTICLE 2: SERVICES AND FUNDING

2.1 Oak Park Resurfacing Project.

(a) All responsibilities of completing the Oak Park Resurfacing Project shall be the responsibility of the City, including the award of a contract to a contractor, and no work on the Oak Park Resurfacing Project shall begin until Oak Park provides written authorization to proceed. Upon award of a contract for construction of the Project, Oak Park will pay \$250,000 to the City for use towards completion of the Oak Park Resurfacing Project (the “Initial Payment”). Once the Initial Payment has been exhausted, the City may request reimbursement for the remaining balance for costs related to the completed work for the Oak Park Resurfacing Project upon completion of construction as provided in Section 2.1(c) below, but such request shall be submitted no sooner than January 1, 2020.

(b) If costs related to the Oak Park Resurfacing Project exceed the estimated amount indicated on the Initial Budget, the Parties agree to review the Initial Budget to narrow the scope or to ascertain funding alternatives. However, if the Parties cannot reach an agreement on how to do so, either Party may terminate this Agreement by providing written notice to the other Party, and such termination shall be effective as indicated by Article 6 hereof. Should either Party terminate this Agreement in accordance with this section, the City shall cease any further work on the Oak Park Resurfacing Project no later than ten (10) business days after the effective date of termination and provide Oak Park with a statement of costs related to the Oak Park Resurfacing Project incurred and not yet reimbursed (the “Unreimbursed Costs”). Oak Park shall reimburse the City for the Unreimbursed Costs no later than ten (10) business days after the effective date of such statement.

(c) The final costs for the Oak Park Resurfacing Project shall be determined by the actual completed work measured for payment and approved by City and shall include the City’s costs for construction engineering attributable to the Oak Park Resurfacing Project, which shall be calculated as 11.5% of the cost of the construction of the Oak Park Resurfacing Project (the “Final Cost”). The City shall provide Oak Park with a statement of the Final Cost (the “Statement”) and Oak Park shall have ten (10) business days to provide its approval of the Statement by signing the Statement where indicated. Upon approval of the Statement, Oak Park shall provide payment within thirty (30) calendar days of receipt of the Statement.

2.2 City Resurfacing Project

(a) All responsibilities of completing the City Resurfacing Project, including payment of the costs identified on the budget in Exhibit A, shall be the responsibility of the City. If the costs exceed those identified on Exhibit A, the City will be responsible for payment of the excess costs.

2.3 Maintenance. At the end of the term of the Agreement, Oak Park agrees that it is responsible for maintenance of the Oak Park Resurfacing Project and the City agrees that it is responsible for maintenance of the City Resurfacing Project.

ARTICLE 3: TERM

3.1 The term of the Agreement shall commence as of the Effective Date which shall be the last date of signature by one of the Parties hereto and shall expire upon completion of the Project and final payment by Oak Park to the City for the Oak Park Resurfacing Project, or termination of the Agreement according to its terms, whichever occurs first.

Either Party may terminate the Agreement for its convenience, at any time, by providing thirty (30) days notice in writing to the other Party. In the event either Party terminates this Agreement for convenience, any outstanding costs incurred and not yet reimbursed in connection to the Oak Park Resurfacing Project shall be paid by Oak Park in accordance with the procedure set forth in Section 2.1 herein.

ARTICLE 4: CONSENT

Whenever the consent or approval of a Party to this Agreement is required hereunder, such consent or approval shall be given by the authorized representative of each of the Parties and shall not be unreasonably withheld. The authorized representative for the City shall be the Commissioner of its Department of Transportation, or his or her designee. The authorized representative for Oak Park shall be the Village Manager, or his or her designee.

ARTICLE 5: NOTICE OF CLAIM OR SUIT

Upon receipt of a notice of claim or suit which in any manner results from, arises out of, or is connected with performance by any Party pursuant to this Agreement, each Party shall use its best efforts to provide timely notice of same to the other Parties and shall fully cooperate in the investigation of said claim or suit.

ARTICLE 6: NOTICE

Notice to Oak Park shall be addressed to:	Village of Oak Park 123 Madison Street Oak Park, Illinois 60302 Attention: Village Manager
With a copy to:	Village of Oak Park 123 Madison Street Oak Park, Illinois 60302 Attention: Village Attorney
Notice to the City shall be addressed to:	Department of Transportation 30 North LaSalle Street, Room 1100 Chicago, Illinois 60602-2570 Attention: Commissioner
With a copy to:	Corporation Counsel City Hall, Room 600 121 North LaSalle Street Chicago, Illinois 60602 Attention: Finance and Economic Development Division

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth above, by any of the following means: (a) personal service; (b) electronic communications, whether by telex, telegram, telecopy, electronic mail or facsimile (FAX) machine; (c) overnight courier; (d) registered or certified mail, return receipt requested.

Such addresses may be changed when notice is given to the other party in the same manner as provided above. Provided, any notice, demand or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch by electronic means. Any notice, demand or request sent pursuant to clause (c) shall be deemed

received on the day immediately following deposit with the overnight courier and, if sent pursuant to clause (d) shall be deemed received forty-eight (48) hours following deposit in the mail.

ARTICLE 7: ASSIGNMENT; BINDING EFFECT

7.1 This Agreement, or any portion thereof, shall not be assigned by either party without the prior written consent of the other.

7.2 This Agreement shall inure to the benefit of and shall be binding upon the City and Oak Park, and their respective successors and assigns. This Agreement is intended to be and is for the sole and exclusive benefit of the Parties hereto and such successors and assigns.

ARTICLE 8: COMPLIANCE WITH LAWS

8.1 The Parties shall comply with all federal, state and municipal laws, ordinances, rules and regulations relating to this Agreement.

ARTICLE 9: GOVERNING LAW AND SEVERABILITY

9.1 This Agreement shall be governed by the internal laws of the State of Illinois. If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part hereof.

ARTICLE 10: COUNTERPARTS

10.1 This Agreement may be executed in counterparts, each of which shall be deemed an original.

ARTICLE 11: ENTIRE AGREEMENT

11.1 This Agreement constitutes the entire agreement between the Parties and cannot be modified or amended except by mutual written agreement executed by all the Parties.

ARTICLE 12: AUTHORITY

12.1 Execution of this Agreement by the City is authorized by Section 2-101-030 of the Municipal Code of the City. Execution of this Agreement by Oak Park is authorized by Resolution _____ adopted by Oak Park's Village Board of Trustees on _____. Each Party represents and warrants to the other Parties that it has the authority to enter into this Agreement and perform its obligations hereunder.

ARTICLE 13: HEADINGS AND CONSTRUCTION

13.1 The headings and titles of this Agreement are for convenience only and shall not influence the construction or interpretation of this Agreement.

13.2 The use of the singular form of any word herein shall also include the plural, and vice versa. The use of the neuter form of any word herein shall also include the masculine and feminine forms, the masculine form shall include feminine and neuter, and the feminine form shall include masculine and neuter.

ARTICLE 14: DISCLAIMER OF RELATIONSHIP

14.1 Nothing contained in this Agreement nor any act of any Party shall be deemed or construed by any of the other Parties hereto or by third persons, to create any relationship of third party beneficiary, principal, agent, limited or general partnership, joint venture, or any association or relationship involving any Party.

ARTICLE 15: NO PERSONAL LIABILITY

No member, official, employee or agent of any Party shall be individually or personally liable in connection with this Agreement.

ARTICLE 16: INSURANCE

16.1 Liability Insurance. The City shall require its contractor(s) as applicable to provide Oak Park with the certificates and endorsements of insurance policies in accordance with the required insurance coverage provisions attached to this Agreement as Exhibit B. Oak Park and its officers, employees, volunteers and agents shall be additional insureds on a non-contributory basis under those policies.

16.1 Performance and Completion Security. The City shall require its construction contractor(s) as applicable to include Oak Park as a beneficiary of a performance bond and a labor and materials payment bond securing proper completion of the Oak Park Resurfacing Project for an amount equal to or greater of the costs to complete the Oak Park Resurfacing Project.

ARTICLE 17: REPRESENTATIVES

Immediately upon execution of this Agreement, the following individuals will represent the parties as a primary contact in all matters under this Agreement:

For Oak Park:

Village Engineer
Village of Oak Park
201 South Boulevard
Oak Park, Illinois 60302
Attention: Bill McKenna
Phone: (708) 358-5722

For the City:

Dan Burke
Managing Deputy Commissioner
CDOT, Division of Engineering
30 North LaSalle Street, Room 400
Chicago, Illinois 60602-2570
Attention: Jon Rualo
Telephone: 312-744-1987

Each Party agrees to promptly notify the other Party of any change in its designated representative, which notice shall include the name, address, telephone number, fax number and email address of the representative for such Party for the purpose hereof.

ARTICLE 18: COOPERATION

The Parties agree to cooperate fully, to execute any and all supplementary documents, and to take all additional actions which are consistent with and which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and to preserve and assert any claims that the Parties, individually or jointly, may have against a contractor performing work that is subject to the terms of this Agreement.

ARTICLE 19: DEFAULT AND REMEDY

In the event of any substantive breach of the terms and conditions of this Agreement, the aggrieved party shall notify the party alleged to be in breach of the nature of the breach. The party alleged to be in breach shall have 10 business days from receipt of the notice to cure the breach; if the nature of the breach is such that a cure cannot reasonably be effected within 10 business days, the party alleged to be breach shall not be held in default so long as it commences a cure in the 10 business day period and diligently pursues completion thereof. Upon default of this Agreement, the non-defaulting party shall have all legal and equitable remedies arising from the breach.

ARTICLE 20: AMENDMENTS

No changes, amendments, modifications or discharge of this Agreement, or any part of it, are valid unless in writing and signed by the authorized agents of the Parties.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first above written.

City of Chicago, by and through its Department of Transportation

By: _____

Thomas Carney
Acting Commissioner
Department of Transportation

Date _____, 2019

Village of Oak Park

By: _____

Cara Pavlicek
Village Manager

Date _____, 2019

EXHIBIT A

BUDGET

See attached.

Exhibit B

Required Insurance Coverage

Section 1. Commercial General and Umbrella Liability Insurance.

A. **Aggregate Limits.** Commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 for each occurrence and an aggregate annual limit of \$5,000,000. If such CGL insurance contains a general aggregate limit, it must apply separately to the Village.

B. **Required Commercial General Liability Insurance Form.** CGL insurance must be written on Insurance Services Office (ISO) occurrence form CG 00 01 I0 93, or a substitute form providing equivalent coverage, and must cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and must not be endorsed to exclude claims arising from athletic participation.

C. **Village as Additional Insured.** The Village and its officers, officials, employees, agents, and volunteers shall be named as an additional insureds on all insurance policies set forth herein except workers' compensation. The City's construction contractor shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village and its officers, officials, employees, agents and volunteers.

Section 2. Business Auto and Umbrella Liability Insurance.

A. **Required Auto Insurance.** Business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000.00 per each accident/occurrence. Such insurance must cover liability arising out of any auto including owned, hired, and non-owned autos.

B. **Required Auto Insurance Form.** Business auto insurance must be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy must be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Section 3. Workers Compensation Insurance.

Workers compensation and employers liability insurance. The commercial umbrella and/or employers liability limits must not be less than \$1,000,000.00 for each accident for bodily injury by accident or \$1,000,000.00 for each employee for bodily injury by disease.

Section 4. General Insurance Provisions.

A. **Evidence of Insurance.** Prior to start of construction, the Village must receive

certificates of insurance and all required policy endorsements, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above.

- (i) Required Notice to Village. All certificates must provide for written notice of 30 days to the Village prior to the cancellation or material change of any insurance referred to therein.
- (ii) No Waiver if Village Fails to Demand. Failure of the Village to demand a certificate, endorsement, or other evidence of full compliance with these insurance requirements or failure of the Village to identify a deficiency from evidence that is provided may not be construed as or deemed to be a waiver of the general contractor's obligation to maintain such insurance.
- (iii) Certified Copies Provided to Village. If requested by the Village, the contractor(s) shall provide certified copies of all insurance policies required above within 10 days after the request is made.

B. Acceptability of Insurers. For insurance companies that obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, then the Village has the right to reject insurance written by an insurer it deems unacceptable.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to the Village. At the option of the Village, the contractor(s) may be asked to reduce or eliminate such deductibles or self-insured retentions in respect to the Village and its officers, officials, employees, volunteers, and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration, and defense expenses.