

**RESOLUTION 2019-004**

**A RESOLUTION RESCINDING RESOLUTION 2018-063 AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT ESTABLISHING A JOINT PAVEMENT REHABILITATION PROGRAM FOR THE VILLAGES OF VERNON HILLS, LIBERTYVILLE AND MUNDELEIN AND RESOLVING TO ADD LIBERTYVILLE TOWNSHIP ROAD DISTRICT TO THE JOINT BID PROGRAM WITH THE VILLAGES OF VERNON HILLS, LIBERTYVILLE AND MUNDELEIN**

**WHEREAS**, the Villages of Libertyville, Mundelein and Vernon Hills and Libertyville Township Road District (“Parties”) share corporate boundaries within the County of Lake; and

**WHEREAS**, the Parties have determined that combining their respective annual roadway pavement rehabilitation programs could provide potential savings through a joint bid; and

**WHEREAS**, the Parties desire to establish an Intergovernmental Agreement between and among the Villages of Libertyville, Mundelein and Vernon Hills and Libertyville Township Road District to facilitate intergovernmental cooperation for a joint bid for the implementation of the Program; and

**WHEREAS**, Resolution 2018-063 was previously approved by the respective Village Boards and since this approval, Libertyville Township Road District has requested to participate in this joint bid; and

**WHEREAS**, Resolution 2019-004 includes Libertyville Township Road District in the joint bid visa via the Intergovernmental Agreement Establishing a Pavement Rehabilitation Program and rescinds Resolution 2018-063 which included the other three parties; and

**WHEREAS**, the attached Intergovernmental Agreement titled, “Intergovernmental Agreement Establishing a Joint Pavement Rehabilitation Program for the Villages of Libertyville, Mundelein and Vernon Hills and Libertyville Township Road District” is part and parcel to this Resolution; and

**WHEREAS**, the Village Board has determined that it is in the best interest of the Village and its residents to approve said Intergovernmental Agreement and work cooperatively with the Villages of Libertyville and Mundelein and the Libertyville Township Road District.

**NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF VERNON HILLS, LAKE COUNTY, ILLINOIS:**

**THAT**, the Village Manager is authorized to sign the attached Intergovernmental Agreement titled, “Intergovernmental Agreement Establishing a Joint Pavement Rehabilitation Program for the Villages of Libertyville, Mundelein and Vernon Hills and Libertyville Township Road District”.

Dated this 22nd day of January 2019

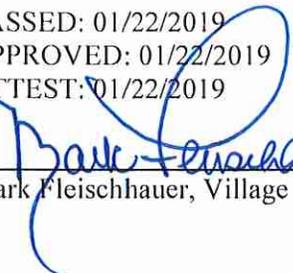
Adopted by roll call vote as follows:

AYES: 6 – Koch, Marquardt, Schultz, Oppenheim, Takaoka, Brown

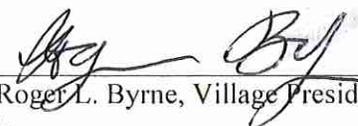
NAYS: 0 - None

ABSENT AND NOT VOTING: 0 - None

PASSED: 01/22/2019  
APPROVED: 01/22/2019  
ATTEST: 01/22/2019

  
Mark Fleischhauer, Village Clerk



  
Roger L. Byrne, Village President

INTERGOVERNMENTAL AGREEMENT ESTABLISHING  
A JOINT PAVEMENT REHABILITATION PROGRAM  
FOR THE VILLAGES OF  
LIBERTYVILLE, MUNDELEIN, VERNON HILLS AND LIBERTYVILLE TOWNSHIP ROAD DISTRICT

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered into as of the 1st day of February, 2019, by, between, and among the Lake County municipalities and township of:

1. The **VILLAGE OF LIBERTYVILLE**, an Illinois non-home rule municipal corporation ("**Libertyville**"); and
2. The **VILLAGE OF MUNDELEIN**, an Illinois home rule municipal corporation ("**Mundelein**"); and
3. The **VILLAGE OF VERNON HILLS**, an Illinois home rule municipal corporation ("**Vernon Hills**"); and
4. The **LIBERTYVILLE TOWNSHIP ROAD DISTRICT**, a body politic and corporate in Lake County, Illinois ("**Township**").

Libertyville, Mundelein, Vernon Hills and the Township are collectively referred to in this Agreement as the "**Parties**", and individually as "**Party**".

**WITNESSETH:**

**WHEREAS**, the previous Intergovernmental Agreement dated December 1, 2018 between Libertyville, Mundelein and Vernon Hills for a joint roadway pavement rehabilitation program is hereby rescinded by this new Agreement; and

**WHEREAS**, the Parties have individually and collectively determined that combining their respective annual roadway pavement rehabilitation programs, including related utility work on the affected roads (collectively, "**Program**") could provide potential savings through a joint project bid; and

**WHEREAS**, the Parties desire to establish an Intergovernmental Agreement between and among **Libertyville, Mundelein, Vernon Hills and the Township** to facilitate intergovernmental cooperation for a joint bid for the implementation of the Program; and

**WHEREAS**, to achieve these and other related objectives, the Parties desire to continue to utilize the powers and authority granted to them, individually and collectively, pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; the home rule powers of **Mundelein** and **Vernon Hills**; Article VII, Section 10 of the Illinois Constitution of 1970; and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*; and

**WHEREAS**, after full consideration of all planning, fiscal, and other intergovernmental issues affecting this matter, each of the Parties has determined that it is in the best interests of its citizens and of the general public welfare that this Agreement be executed and implemented by the Parties; and

**WHEREAS**, the Parties have each approved this Agreement by an ordinance or resolution duly adopted by the Party's corporate authorities;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements herein made and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, and pursuant to all applicable statutes and local ordinances, specifically including, but without limitation, the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*; the home rule powers of **Mundelein** and **Vernon Hills**; Article VII, Section 10 of the Illinois Constitution of 1970; and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, the Parties do hereby enter into the following:

**SECTION 1. RECITALS.**

The foregoing recitals are, by this reference, incorporated into and made a part of this Agreement.

**SECTION 2. PURPOSE.**

This Agreement is made for the purpose of establishing all of the authority, powers, and resources necessary and convenient to allow the Parties to jointly and efficiently address a common Program. This Agreement is further intended to allow the Parties to independently seek available local, state, and federal funds and other resources to assist in addressing the Program identified by the Parties as necessary, and being appropriate for, the joint action of the Parties.

**SECTION 3. TERM.**

- A. **Effective Date.** This Agreement shall take effect as of February 1, 2019.
- B. **Term; Renewal.** The term of this Agreement shall be one (1) year from the effective date of this Agreement (the "***Initial Term***"). The Agreement shall automatically renew for another one (1) year period (the "***Subsequent Term***"), among those Parties that have not given written notification of intent to terminate this Agreement not less than ninety (90) days prior to the expiration of the Initial Term, or unless the Agreement is otherwise terminated as set forth in Section 6 herein. At the end of any Subsequent Term, the Agreement shall continue to automatically renew for an additional one year period among the Parties that have not given notice of intent to terminate in the same manner as is provided in this Section.

- C. **Governance.** The Agreement shall be managed, and the duties under this Agreement performed, by the respective chief administrative officers of each Party, or their respective duly authorized representatives or designees ("**Party Representative**"). Each Party Representative shall operate and act with respect to Agreement affairs and actions only pursuant to action duly authorized by the Party Representative's corporate authorities. Unless otherwise unanimously agreed to by the Party Representatives with respect to a specific action or policy, all actions pursuant to the Agreement shall be taken or established only by the unanimous consent of the Party Representatives.

#### **SECTION 4. GENERAL COOPERATION.**

The Parties acknowledge and agree to cooperate with each other in furtherance of the purposes, goals, and objectives of the Agreement. Cooperation required by this Agreement specifically includes, but is not limited to, the sharing and joint utilization by and among the Parties of information and other materials possessed or developed by the Parties, either individually or collectively, and necessary to investigate, identify, and otherwise document the Pavement Rehabilitation Program.

#### **SECTION 5. CONTRACTING PROCESS; PAYMENTS AND EXPENSES**

- A. **Official Coordinator.** For the Initial Term of this Agreement, **Mundelein, Vernon Hills and the Township** shall each prepare and submit information about their proposed scope of work for their respective portions of the Program for year 2019 to **Libertyville**, who will serve as the Official Coordinator to bid the joint 2019 Pavement Rehabilitation Program. Thereafter, for Subsequent Terms, if any, the role of the Official Coordinator will rotate, as mutually agreed, among the Parties participating in the Pavement Rehabilitation Program.
- B. **Procedure for Developing Request for Proposals.** At such time as the Parties desire to advertise for and solicit competitive sealed bids ("**Sealed Bids**") from contractors for the Program, the Parties shall agree to follow the following process:
- i. The parties shall meet and confer and agree upon a set of technical specifications and requirements ("**Technical Requirements**") and bidding and contract documents ("**Contract Package**") for the Program.
  - ii. All parties shall have an adequate opportunity to review and comment on the Technical Requirements and Contract Package, and shall provide such comments to the Official Coordinator. Revised drafts of the Technical Requirements and Contract Package shall be prepared and reviewed by the Parties until such time as the Parties have approved these documents. The Contract Package and related specifications shall clearly delineate the work to be performed for each Party.

- iii. When all Parties are satisfied with the Technical Requirements and Contract Package, the Official Coordinator will advertise and make available for review such Technical Requirements and Contract Package in order to solicit prospective contractors or suppliers to solicit Sealed Bids and shall establish a deadline for the submission of Sealed Bids.
- iv. During the time following the issuance of the Technical Requirements and Contract Package, and prior to the deadline for submission of Sealed Bids, the Official Coordinator may issue addendum(s) to the prospective contractors as may be necessary to respond to the inquiries of such prospective contractors or to clarify the Technical Requirements and Contract Package. The Official Coordinator shall consult with the other Parties prior to issuing any such addenda. The Parties shall refer any inquiries or issues received or identified regarding the Technical Requirements and Contract Package to the Official Coordinator for possible inclusion in such an addendum.
- v. Following receipt of the Sealed Bids, the Official Coordinator shall provide copies of the Sealed Bids to each of the Parties. The Party Representatives shall examine and review the Sealed Bids and shall confer to discuss the Sealed Bids and to recommend to the Parties which contractor shall be selected.
- vi. The corporate authorities of the Party serving as Official Coordinator shall approve or reject the award of the contract for the Program ("Construction Contract") following approval by the corporate authorities of the other Parties, by resolution.

C. **Administration by the Official Coordinator and Parties.** The Official Coordinator and Parties shall have the right and obligation to manage the Construction Contract with the selected contractor for the Program. Such duties shall include, without limitation, meetings with representatives of the contractor, reviews of technical and administrative data, establishing testing programs, monitoring schedules and performance, ensuring that required repair and maintenance responsibilities are performed by the contractor, and the enforcement of the terms and conditions of the Construction Contract and the bonds and insurance required under the Construction Contract. All the Parties shall work together to achieve consensus regarding any alleged failures of the performance of either the contractor, or the work by the contractor, under the Construction Contract. No lawsuit to enforce the Construction Contract or the bonds shall be filed without the consensus of all Parties.

D. **Expenses.** The Parties acknowledge and agree to use their respective staffs and resources, at no cost to any other Party, for actions undertaken by or on behalf of one of the Parties. Each Party shall be responsible for, and each Party agrees to pay, its own expenses incurred for professional services, including legal fees, engineering inspection, quality control and pavement testing, and any and all other expenses incurred by that Party during construction of the Program under the Construction Contract. Any expenses to be shared between the Parties shall be approved in advance, and in writing, by each Party.

- E. **Insurance.** The contractor to whom the Construction Contract is awarded to will be required to obtain and maintain, for the duration of the Construction Contract, an appropriate individual Certificate of Insurance for each Party.

All certificates of insurance must be accompanied by a separate endorsement, which designates as an additional insured each Party separately and its officers, agents and employees. The endorsement must demonstrate, in a manner acceptable to each Party, that the endorsement has been bound by the insurance company. An example may include, but not limited to, being signed by an officer of the insurance company issuing the policy or by an authorized, designated agent of that insurance company.

The certificate and the insurance policies required shall contain a provision that coverage afforded under the policies will not be canceled or, non-renewed, and that a restrictive modification cannot be added until at least thirty days after written notice has been given to each Party. A mere intent to notify of cancellation is unacceptable. Insurance coverage that is to remain in force and effect after completion of the construction will require an additional certificate(s) evidencing continuation of such coverage.

- F. **Bonds.** The contractor to whom the Construction Contract is awarded to will be required to obtain and maintain, for the duration of the Construction Contract, separate bonds for each Party, each in the amount for all of the work under the Construction Contract for each Party. The Parties shall file such claims and take such actions as may be necessary to resolve any issues raised by any Party pursuant to the bond for their respective work.
- G. **Payments.** Pursuant to this Agreement, each Party shall be responsible to pay its respective share of the cost of the Program pursuant to the Construction Contract. The Construction Contract shall provide that the Contractor and/or suppliers shall only seek payment from a Party for its respective share of the cost of the Program based upon the delineation of Program work related to such Party as set forth in the Contract Package and related specifications. Each Party shall budget and appropriate sufficient funds to pay its respective share of the cost of the Construction Contract within its respective jurisdiction by an ordinance or resolution approved by the Party's corporate authorities.
- H. **Payout to the Contractor.** The Parties acknowledge and agree that the contractor will submit a separate application for payments to each Party for the work on the Program within that Party's jurisdiction, and each Party will be separately responsible for approving contractor's invoicing and payouts. Each Party will pay the contractor directly for each approved payment application for work on the Program within its jurisdiction and provide a report of such payment to the Official Coordinator. In the event that a lien on public funds is claimed by any subcontractor or supplier for work under the Construction Contract, the Party receiving notice of such a claim shall notify the other Parties, and the Parties shall coordinate their response to the lien claim in the manner required by law.

- I. **MFT Section Closing.** The Parties acknowledge and agree that each Party will be responsible for managing and closing its respective MFT accounts, including any auditing, with the Illinois Department of Transportation.

**SECTION 6. WITHDRAWAL; TERMINATION.**

- A. **Right to Withdraw.** Any Party may withdraw from this Agreement prior to going out to bid on the Pavement Rehabilitation Program in the Initial Term or any Subsequent Term.
- B. **Dissolution and Termination.** In addition to the termination provisions set forth in Section 3.B of this Agreement, the Agreement shall be dissolved and terminated (i) upon the written agreement of all the Parties hereto; or (ii) upon the event of only one Party remaining as a party to this Agreement.

**SECTION 7. GENERAL PROVISIONS.**

- A. **Notices.** All notices and other materials shall be delivered to all Parties. All notices required to be delivered to any Parties pursuant to this Agreement shall be in writing and shall be deemed delivered to the Party when delivered in person or by express mail or messenger, or three (3) days after deposit thereof in any main branch of the United States Post Office, properly addressed to the Party's principal office and to the attention of the Party's chief administrative official. All notices related to the Technical Requirements of the Program and routine compliance with the Construction Contract may be coordinated by the Party Representatives by electronic mail or other means of communication, as appropriate.

Notices and communications to each Party shall be addressed to; and delivered at the following address:

**Libertyville:**

Village of Libertyville  
200 E. Cook Avenue  
Libertyville, IL 60048  
Attention: Director of Public Works

**Mundelein:**

Village of Mundelein  
300 Plaza Circle  
Mundelein, IL 60060  
Attention: Director of Public Works

**Vernon Hills:**

Village of Vernon Hills  
290 Evergreen Parkway  
Vernon Hills, IL 60061  
Attention: Director of Public Works

**Township:**

Libertyville Township Road District  
343 Merrill Court  
Libertyville, IL 60048  
Attention: Highway Commissioner

- B. **Entire Agreement.** There are no representations, covenants, promises, or obligations not contained in this Agreement that form any part of this Agreement or upon which any of the Parties is relying in entering into this Agreement. This Agreement, and all covenants and provisions herein contained shall bind and inure to the benefit of each respective local governmental entity which is a party hereto and their respective successors and assigns.
- C. **Severability.** If any provision of this Agreement is construed or held to be void, invalid, or unenforceable in any respect, the remaining provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.
- D. **Interpretation.** It is the express intent of the Parties that this Agreement shall be construed and interpreted so as to preserve its validity and enforceability as a whole. In case of any conflict among the provisions of this Agreement, the provision that best promotes and reflects the intent of the Parties shall control. The Parties hereto have been represented by counsel and have had full opportunity to discuss this Agreement prior to execution. This Agreement shall be construed without regard to the identity of the Party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting thereof. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- E. **Amendments and Modifications.** This Agreement shall not be modified, changed, altered, or amended without the duly authorized and written consent of each of the Parties by their respective corporate authorities and pursuant to ordinances or resolutions duly adopted and approved by the Party's corporate authorities. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved by the corporate authorities of each Party and properly executed in accordance with all applicable law.

- F. **Authority to Execute.** Each Party hereby warrants and represents to each other Party that the person executing this Agreement on its behalf has been properly authorized to do so by the corporate authorities of the Party.
- G. **No Third Party Beneficiaries.** Nothing in this Agreement shall create, or shall be construed or interpreted to create, any third party beneficiary rights.
- H. **Indemnification.** Each Party hereby agrees to indemnify, hold harmless and defend the other Parties from and against any and all losses, claims, expenses and damages (including reasonable attorneys' fees) made against or incurred by another Party for any actions taken or failures to act by the Party in connection with the Construction Contract or the Program that arise out of the Construction Contract, the Program, or this Agreement, to the extent that such claims were not caused by actions, or failures to act, of another Party.
- I. **Execution.** This Agreement shall be executed by all of the Parties in identical original duplicates and each of the duplicates shall, individually and taken together, constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties have by their duty authorized officers and representatives set their hands and affixed their seals to be effective as of the date specified in Subsection 3A of this Agreement.

ATTEST:

VILLAGE OF LIBERTYVILLE

By: \_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Village Administrator

ATTEST:

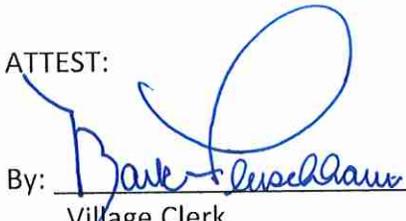
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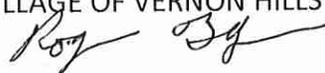
By: \_\_\_\_\_  
Village Clerk

By: \_\_\_\_\_  
Village President/Mayor

ATTEST:

VILLAGE OF VERNON HILLS

By:  \_\_\_\_\_  
Village Clerk

  
By: \_\_\_\_\_  
Village Manager

ATTEST:

LIBERTYVILLE TOWNSHIP ROAD DISTRICT

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Highway Commissioner