

**AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF NAPERVILLE, THE CITY OF AURORA, AND THE
VILLAGE OF NORTH AURORA REGARDING THE FUNCTION OF THE
NAPERVILLE EMERGENCY TELEPHONE SYSTEM BOARD**

WHEREAS, the Naperville Emergency Telephone System Board (hereinafter “Naperville ETSB”) was created by Section 15.4 of the Illinois Emergency Telephone System Act, 50 ILCS 750/15.4 and ordinance of the City of Naperville City Council for the purpose of planning and implementing a 9-1-1 emergency telephone system in the City of Naperville; and

WHEREAS, Naperville ETSB was issued a Certificate of Authority to operate a 9-1-1 system by the Illinois Commerce Commission, Order #92-0158, Modification 10-0623; and

WHEREAS, since 1992 the Naperville ETSB has operated a 9-1-1 system that serves the residents of the City of Naperville; and

WHEREAS, the City of Aurora and the Village of North Aurora, Illinois municipal corporations, have been members of the Kane County Emergency Telephone System Board (hereinafter “Kane County ETSB”) 9-1-1 System since its inception; and

WHEREAS, the City of Aurora and the City of Naperville have for many years provided failover 9-1-1 system services each for the other; and

WHEREAS, the City of Aurora at all times has maintained under the authority of the Kane County ETSB a public safety answering point (PSAP) at the Aurora Police Department which is responsible for answering 9-1-1 calls directed to the City of Aurora and to the Village of North Aurora and dispatching those calls to the appropriate public safety agency; and

WHEREAS, the City of Aurora and the Village of North Aurora recently came under the authority and jurisdiction of the Naperville ETSB; and

WHEREAS, the City of Aurora, Village of North Aurora and the City of Naperville are Illinois Municipal Corporations with the statutory power to enter into intergovernmental agreements between them, with the City of Aurora having an existing PSAP, and Naperville having an ETSB and an existing PSAP; and

WHEREAS, the City of Aurora and the City of Naperville have a history of collaboration to save taxpayers’ dollars by participating in joint purchasing agreements of police communications technology including a shared Harris Radio System and a joint video conference system; and

WHEREAS, the City of Naperville, the City of Aurora and the Village of North Aurora desire to set forth the operational and functional aspects of the Naperville ETSB in an Intergovernmental Agreement.

NOW THEREFORE IT IS AGREED BY THE CITY OF NAPERVILLE, THE CITY OF AURORA, AND THE VILLAGE OF NORTH AURORA AS FOLLOWS:

1. All recitals set forth above are incorporated herein and made a part thereof, the same constituting the factual basis for this Agreement.
2. **Scope of Agreement.** This Agreement sets forth the operational and functional aspects of the Naperville ETSB now that the City of Aurora and Village of North Aurora are part of the jurisdictional boundaries of the Naperville ETSB. This Agreement does not create a Joint ETSB under the Emergency Telephone System Act, 50 ILCS 750/01 et seq. but rather memorializes the merger of the City of Aurora's existing PSAP into the existing Naperville ETSB.
3. **Public Safety Answering Points ("PSAP").** The Naperville ETSB will now have two PSAPs, one located at 1350 Aurora Ave., Naperville ("Naperville PSAP") and a second located at 1200 E. Indian Trail, Aurora ("Aurora PSAP"). The City of Aurora and City of Naperville will continue to operate and maintain their own respective PSAPs. The City of Aurora will provide PSAP services to the Village of North Aurora pursuant to its Agreement, "North Aurora Agreement," which is attached hereto as Exhibit A.
4. **Dispatching Services.** This Agreement will not change the status quo of dispatch services for the City of Naperville or the City of Aurora or their respective PSAPs. The City of Naperville will provide dispatch services to the applicable residents of Naperville. The City of Aurora will provide dispatch services to the applicable residents of Aurora. The City of Aurora will also provide any dispatch services set forth in the North Aurora Agreement.
5. **Funding.** The intent of this Agreement is to ensure that the surcharge funds collected from or attributable to City of Naperville residents support the Naperville PSAP and that the surcharge funds collected from or attributable to City of Aurora and Village of North Aurora residents support the Aurora PSAP. To the extent possible, the funds for the two PSAPs shall be kept separate and the funds distributed for each PSAP shall be used to support the respective PSAP. To the extent that the funds are not distributed by the State of Illinois or Illinois State Police to the specific PSAP, the Naperville ETSB shall take all steps to distribute the funds to the appropriate PSAP and shall reflect the intent of this Agreement. The Naperville ETSB shall distribute the revenues according to the ESN lines for wireline funds and by ZIP code from cell phone, Voice over Internet Protocol ("VoIP"), and other applicable wireless technology customer bills for wireless

funds to the corresponding municipality. The intent of this Agreement is further that the expenditures from the ETSB Fund are tied to the respective municipal PSAPs and that no municipality shall be able to block or require the use or expenditure of another municipality's PSAP funds.

6. **ETSB Board.** The Naperville ESTB Board shall be amended include representation from the City of Aurora and Village of North Aurora. The members of the Naperville ETSB Board shall include:
 - a. Naperville Police Chief (Chairman)
 - b. Aurora Police Chief
 - c. North Aurora Police Chief
 - d. Naperville Fire Chief
 - e. Aurora Fire Chief
 - f. City Council Member from Naperville
 - g. City Council Member from Aurora
 - h. Naperville PSAP Director
 - i. Aurora PSAP Director (non-voting member)
 - j. Two (2) Naperville Residents; and
 - k. Aurora Resident

If the Naperville Police Chief, Aurora Police Chief, North Aurora Police Chief, Naperville Fire Chief, or Aurora Fire Chief are unable to attend a Naperville ETSB Board meeting, the absent Chief may, in said Chief's sole discretion, designate an employee from their respective department to attend the meeting in the absent Chief's stead. The absent Chief's designee shall serve as a proxy for the absent Chief and have all of the rights and responsibilities of the absent Chief including the right to vote on all matters before the Naperville ETSB Board.

The Naperville ETSB Board shall adopt a policy to allow members to participate electronically. In the event of a tie, the Board Chairman shall cast the tie-breaking vote.

The City of Naperville shall pass an ordinance amending the Naperville ETSB Board to reflect this Agreement.

7. **Equipment.** The intent of the Parties is that each municipality will be responsible for purchasing and maintaining its own equipment. Nothing in this Agreement shall require any municipality to pay for the maintenance, repair or replacement of the other municipality's equipment. However, nothing in this Agreement shall prohibit the Parties from agreeing to cooperate in the purchase, maintenance, repair or replacement of equipment.
8. **Backup/assistance.** The City of Naperville and the City of Aurora shall serve as the other's failover 9-1-1 system provider as is currently the arrangement between the Parties, a copy of the 9-1-1 Failover Agreement is attached as Exhibit [A].

9. **Liabilities.** As the dispatch services are being assumed by the separate PSAPs, The City of Naperville shall be responsible for any and all liability associated with the City of Naperville's dispatch services and Naperville's PSAP. Likewise, the City of Aurora shall be responsible for any and all liability associated with the City of Aurora's dispatch services and Aurora's PSAP. The City of Aurora and the Village of North Aurora further agree to release, defend and hold the Naperville ETSB and the City of Naperville and its officers, employees and agents harmless from and against any and all injury, claim, demand, suit, cause of action, judgment, execution, liability, debt, losses, damages or penalty as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever, (the "Claims") that may at any time arise out of, result from, or be alleged to arise out of or result from or in any manner connected with, directly or indirectly, City of Aurora and Village of North Aurora's operation of City of Aurora's PSAP or City of Aurora or Village of North Aurora's dispatching or police services. The City of Naperville further agree to release, defend and hold the Village of North Aurora and the City of Aurora and its officers, employees and agents harmless from and against any and all injury, claim, demand, suit, cause of action, judgment, execution, liability, debt, losses, damages or penalty as a result of bodily injury, sickness, death or property damage or as a result of any other claim or suit of any nature whatsoever, (the "Claims") that may at any time arise out of, result from, or be alleged to arise out of or result from or in any manner connected with, directly or indirectly, City of Naperville's operation of City of Naperville's PSAP or City of Naperville's dispatching or police services.

10. **General Provisions.**

A. 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, or (iv) by facsimile. Facsimile notices shall be deemed valid upon confirmed transmission followed by 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 provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt or the date of confirmed fax transmission. By notice complying with the requirements of this Section 9.A, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

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

City of Naperville
400 S. Eagle Street
Naperville, IL 60540
Attention: City Manager and Police Chief

With a copy to:

Jill Pelka-Wilger
400 S. Eagle Street
Naperville, IL 60540

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

City of Aurora
44 E. Downer Place
Aurora, IL 60505
Attention: City Manager and Police Chief

With a copy to:

Alayne Weingartz
44 E. Downer Place
Aurora, IL 60505

B. Time of the Essence. Time is of the essence in the performance of this Agreement.

C. Rights Cumulative. Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

D. Non-Waiver. No party shall be under any obligation to exercise any of the rights granted to it in this Agreement. The failure of any party to exercise at any time any right granted to such party shall not be deemed or construed to be a waiver of that right, nor shall the failure void or affect the party's right to enforce that right or any other right.

E. 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.

F. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the internal laws, but not the conflicts of laws rules, of the State of Illinois. The Parties agree that any disputes which arise as a result of this Agreement will be heard in a court of competent jurisdiction located in the Eighteenth Judicial Circuit, DuPage County Illinois.

G. Severability. It is hereby expressed to be the intent of the parties to this Agreement that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.

H. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any and all prior agreements and negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

I. Interpretation. 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 of this Agreement. 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.

J. Exhibits. Exhibit A attached to this Agreement is, by this reference, incorporated in, and made a part of this Agreement. In the event of a conflict between an exhibit and the text of this Agreement, the text of this Agreement shall control.

K. Amendments and Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by all parties to this Agreement in accordance with applicable law.

L. Changes in Laws. Unless otherwise provided in this Agreement, any reference to laws, statutes, ordinances, rules, or regulations shall be deemed to include any modifications of, or amendments to, such laws, statutes, ordinances, rules, or regulations that may occur in the future.

M. Authority to Execute. Each party hereby warrants and represents to the other parties that the persons executing this Agreement on its behalf have been properly authorized to do so by the corporate authorities of such party.

N. No Third Party Beneficiaries. No claim as a third party beneficiary under this Agreement by any person shall be made, or be valid, against the City of Aurora, the City of North Aurora and the City of Naperville.

O. Force Majeure. Neither the City of Naperville, the Naperville ETSB, the City of Aurora nor the Village of North Aurora will be obligated to perform any of their obligations hereunder if prevented from doing so by reasons outside of their reasonable control, including, but not limited to, events of force majeure.

P. Assignment. Neither the City of Naperville, the Naperville ETSB, the City of Aurora nor the Village of North Aurora will assign, delegate or otherwise transfer all or any part of their rights or obligations under this Agreement , or any part hereof, unless as approved in writing by the other party. The absence of written consent will void the attempted assignment, delegation or transfer and will render it of no effect.

Q. Cooperation. The City of Naperville, the Naperville ETSB, the City of Aurora and the Village of North Aurora agree at all times to use their best efforts to cooperate fully with one another in the implementation of this Agreement.

R. Counterparts. This Agreement may be comprised of several identical counterparts, each of which may be fully executed by the Parties hereto and, once executed, will be deemed an original having identical legal effect.

S. Non Liability of Public Officials. No official, employee or agent of the City of Naperville, the Naperville ETSB, the City of Aurora or the Village of North Aurora will be charged personally by the other party with any liability or expense of defense or be held personally liable under any term or provision of this Agreement or because of the City of Naperville, the Naperville ETSB, the City of Aurora or the Village of North Aurora's execution or attempted execution or because of any breach hereof.

DATED this _____ day of _____, 2016.

Mayor, City of Naperville

ATTEST: _____
City Clerk, City of Naperville

Mayor, City of Aurora

ATTEST: _____
City Clerk, City of Aurora

President, Village of North Aurora

ATTEST: _____
Village Clerk, Village of North Aurora