

## RESOLUTION NO. 22220

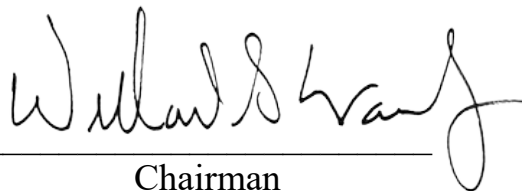
**Background**

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Underground Fuel Storage Tank Monitoring System Services. Pursuant to the Tollway’s Invitation for Bid No. 19-0150R, the Tollway has determined that Stenstrom Petroleum Services Group is the lowest responsive and responsible bidder for Underground Fuel Storage Tank Monitoring System Services for an upper limit of compensation not to exceed \$474,700.00 for an initial three-year term and an amount not to exceed \$316,466.67 for a possible two-year renewal term.

**Resolution**

The bid from Stenstrom Petroleum Services Group for the purchase of Underground Fuel Storage Tank Monitoring System Services is accepted. Contract No. 19-0150R is approved in an amount not to exceed \$474,700.00 for an initial three-year term and an amount not to exceed \$316,466.67 for a possible two-year renewal term. The Chairman and Chief Executive Officer of the Tollway is authorized to execute the appropriate documents in connection therewith, subject to the approval of the General Counsel and the Chief Financial Officer. The Chief of Contract Services is authorized to issue the necessary purchase orders and contract purchase orders and any other necessary documents in connection therewith, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

  
Chairman

## RESOLUTION NO. 22221

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-21-4563 for Plaza Modifications on the Veterans Memorial Tollway (I-355) from Mile Post 1.90 to Mile Post 4.42 (Plaza 99 Spring Creek). The lowest responsive and responsible bidder on Contract No. RR-21-4563 is Robe, Inc. in the amount of \$568,483.46.

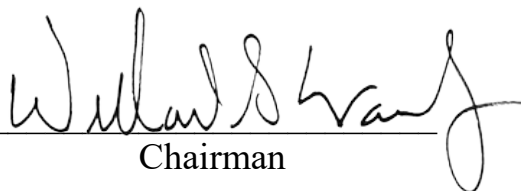
**Resolution**

Contract No. RR-21-4563 is awarded to Robe, Inc. in the amount of \$568,483.46, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by:



Chairman

## RESOLUTION NO. 22222

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-21-4573 for Plaza Improvements on the Jane Addams Memorial Tollway (I-90) from Mile Post 53.6 to Mile Post 79.5. The lowest responsive and responsible bidder on Contract No. RR-21-4573 is Robe, Inc. in the amount of \$2,016,064.40.

**Resolution**

Contract RR-21-4573 is awarded to Robe, Inc. in the amount of \$2,016,064.40, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

  
Chairman

## RESOLUTION NO. 22223

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-21-4574 for Plaza Improvements on the Tri-State Tollway (I-294) from Mile Post 38.25 (Plaza 29 Touhy Avenue) to Mile Post 42.0 (Plaza 33 Irving Park Road). The lowest responsive and responsible bidder on Contract No. RR-21-4574 is Western Remac, Inc. in the amount of \$1,104,175.60.

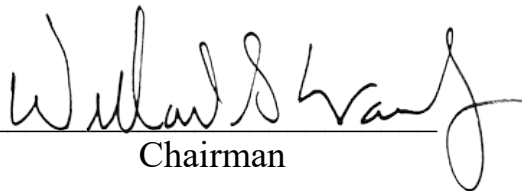
**Resolution**

Contract No. RR-21-4574 is awarded Western Remac, Inc. in the amount of \$1,104,175.60, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

  
Chairman

## RESOLUTION NO. 22224

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-21-4562 for Plaza Modifications on the Reagan Memorial Tollway (I-88) from Mile Post 116.5 to Mile Post 119.0 (Plaza 61 Aurora), Mile Post 85.0 to Mile Post 86.25 (Plaza 66 DeKalb) and Mile Post 55.25 to Mile Post 57.75 (Plaza 69 Dixon). The lowest responsive and responsible bidder on Contract No. RR-21-4562 is Robe, Inc. in the amount of \$1,778,909.58.

**Resolution**

Contract No. RR-21-4562 is awarded to Robe, Inc. in the amount of \$1,778,909.58, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by:   
Chairman

## RESOLUTION NO. 22225

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-20-4551 for Landscape Plantings on the Tri-State Tollway (I-294) from Mile Post 38.0 (O’Hare Oasis) to Mile Post 39.3 (UPRR). The lowest responsive and responsible bidder on Contract No. RR-20-4551 is City Escape Garden & Design, LLC in the amount of \$233,274.59.

**Resolution**

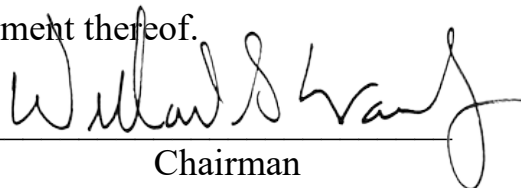
Contract No. RR-20-4551 is awarded to City Escape Garden & Design, LLC in the amount of \$233,274.59, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

Chairman



## RESOLUTION NO. 22226

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-20-4553 for Landscape Planting Improvements on the Reagan Memorial Tollway (I-88) from Mile Post 117.2 (Fox River) to Mile Post 140.0 (I-294). The lowest responsive and responsible bidder on Contract No. RR-20-4553 is Cardinal State, LLC in the amount of \$792,133.74.

**Resolution**

Contract No. RR-20-4553 is awarded to Cardinal State, LLC in the amount of \$792,133.74, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

  
Chairman

## RESOLUTION NO. 22227

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-20-4554 for Box Culvert Construction on the Tri-State Tollway (I-294) from Mile Post 27.8 (Ogden Avenue) to Mile Post 29.5 (Cermak Road). The lowest responsive and responsible bidder on Contract No. RR-20-4554 is Martam Construction, Inc. in the amount of \$15,896,363.61.

**Resolution**

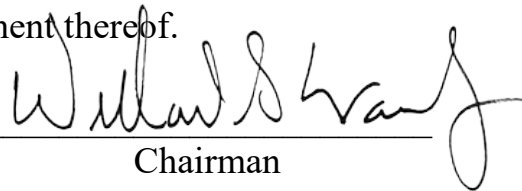
Contract No. RR-20-4554 is awarded to Martam Construction, Inc. in the amount of \$15,896,363.61, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

Chairman





## RESOLUTION NO. 22228

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-20-4555 for Bridge Replacement on the Tri-State Tollway (I-294) Plainfield Road over I-294 and Flagg Creek Mile Post 24.3 to Mile Post 24.6. The lowest responsive and responsible bidder on Contract No. RR-20-4555 is Lorig Construction Company in the amount of \$21,283,514.09.

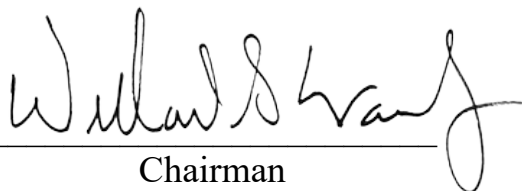
**Resolution**

Contract No. RR-20-4555 is awarded to Lorig Construction Company in the amount of \$21,283,514.09, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_



Chairman

## RESOLUTION NO. 22229

**Background**

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract I-19-4475 for I-57 Widening over CSX and B & OCT Railroads. The lowest responsive and responsible bidder on Contract No. I-19-4475 is Dunnet Bay Construction Company in the amount of \$20,793,926.70.

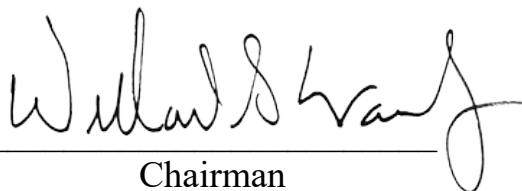
**Resolution**

Contract No. I-19-4475 is awarded to Dunnet Bay Construction Company in the amount of \$20,793,926.70, subject to all required approvals, the contractor satisfying applicable DBE, financial and all other contract award requirements, and execution of all contract documents by the bidder and the Tollway.

The Chairman and Chief Executive Officer of the Tollway is authorized to execute the aforementioned Contract, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

If the bidder fails to satisfy the contract award requirements, the Executive Director is authorized to approve an award to the next lowest responsible bidder in accordance with the applicable contract award requirements and execution of all contract documents by the bidder and the Tollway. The Chairman and Chief Executive Officer of the Tollway is authorized to execute any contract awarded to the next lowest bidder, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_



Chairman

## RESOLUTION NO. 22230

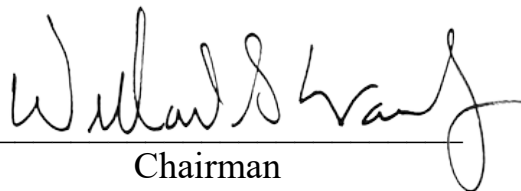
**Background**

The Illinois State Toll Highway Authority (“Tollway”), pursuant to Resolution No. 21113 approved on August 25, 2016, entered into Contract No. RR-16-4258 with William Charles Construction Company, LLC for Maintenance Facility Building Construction at the Maintenance Facility M-7 (Rockford) on the Jane Addams Memorial Tollway (I-90) at Mile Post 15.2 (Business US 20). It is in the best interest of the Tollway to increase the upper limit of Contract No. RR-16-4258, by an amount not to exceed \$287,000.00, to provide for additional site supervision and management associated with the completion of the M-7 Maintenance Facility. In accordance with the Tollway’s Board-approved process for approving change orders and extra work orders (individually, “Change Order” or “Extra Work Order”), which is set forth in Resolution Nos. 16832, 17250 and 19806, the Tollway recommends approval of an Extra Work Order increasing the upper limit of Contract No. RR-16-4258 in an amount not to exceed \$287,000.00.

**Resolution**

An Extra Work Order in the amount of \$287,000.00 and a commensurate increase in the upper limit of compensation on Contract No. RR-16-4258 (increasing the upper limit from \$28,212,692.92 to \$28,499,692.92) is approved. The Chairman and Chief Executive Officer of the Tollway is authorized to execute the appropriate documents in connection therewith, subject to the approval of the General Counsel and the Chief Financial Officer, and the Chief Financial Officer is authorized to issue and deliver warrants in payment thereof.

Approved by: \_\_\_\_\_



Chairman

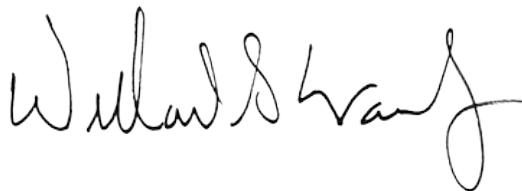
## RESOLUTION NO. 22231

**Background**

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Crash Attenuator Parts through the Central Management Services (“CMS”) master contract with John Thomas, Inc., Tollway Contract No. 20-0172, for an upper limit of compensation not to exceed \$1,000,000.00. The Tollway will utilize the CMS master contract only after all predicate steps are successfully completed. These goods and/or services are being obtained pursuant to 44 Ill. Adm. Code 1.1040.

**Resolution**

Utilization of the CMS master contract for the purchase of Crash Attenuator Parts from John Thomas, Inc. is approved in an amount not to exceed \$1,000,000.00. The Chairman and Chief Executive Officer of the Tollway is authorized to execute the appropriate documents in connection therewith, subject to the approval of the General Counsel and the Chief Financial Officer. The Chief of Contract Services is authorized to issue the necessary purchase orders and contract purchase orders and any other necessary documents in connection therewith, and the Chief Financial Officer is authorized to issue warrants in payment thereof.



Approved by: \_\_\_\_\_  
Chairman

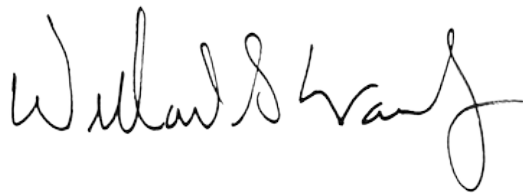
## RESOLUTION NO. 22232

**Background**

The Illinois State Toll Highway Authority (“Tollway”) is widening and reconstructing the Central Tri-State (I-294) between 95<sup>th</sup> Street and Balmoral Avenue (“Project”). Included in the Project is widening and reconstruction of I-294 bridges over Union Pacific Railroad (“UP”) tracks and right of way, which requires the Tollway to obtain property rights from the UP as well as UP services and cooperation as needed to facilitate the Tollway’s construction. It is in the best interest of the Tollway to enter into a “Public Highway Overpass Agreement,” “Real Estate Swap Agreement” and “Flyover Easement Agreement” with UP.

**Resolution**

The acting Chief Engineering Officer and the General Counsel are authorized to finalize the “Public Highway Overpass Agreement,” “Real Estate Swap Agreement” and “Flyover Easement Agreement” between the Tollway and UP in substantially the forms attached to this Resolution. The Chairman and Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said agreements, and the Chief Financial Officer is authorized to issue warrants in payment thereof.



Approved by: \_\_\_\_\_  
Chairman

UP Real Estate Folder No.: 3173-27  
Agreement Number \_\_\_\_\_

**PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Illinois 294  
DOT 174017J & 174018R  
Mile Posts 14.61 & - Geneva Subdivision & Proviso Yard MP 14.28  
Northlake/Berkley, Cook County, Illinois**

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, to be addressed at Real Estate Department, 1400 Douglas Street, Mail Stop 1690, Omaha, Nebraska 68179 ("Railroad") and **THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, instrumentality and an administrative agency the State of Illinois to be addressed at 2700 Ogden Ave., Downers Grove, Illinois 60515 ("Political Body").

By instrument dated February 15, 1958, the Chicago and North Western Railway Company and the Illinois State Toll Highway Commission or the Political Body entered into an agreement (the "Original Agreement") covering the construction, use, maintenance and repair of two grade separated overpass structures that carry vehicular traffic traversing on Illinois 294 over Railroad's track(s) at DOT 174017J near Railroad's Mileposts 14.61 on Railroad's Geneva Subdivision and DOT 174108R near Mile Post 14.28 in the Proviso Yard at or near Northlake/Berkley, Cook County, Illinois.

The Railroad named herein is successor in interest to the Chicago and North Western Railway Company.

The Political Body now desires to undertake as its project (the "Project") the reconstruction and widening of the two grade-separated structures that were constructed under the Original Agreement. The reconstructed structures as widened are hereinafter the "Structure or Structures" as demonstrated in the survey print attached as **Exhibit A** attached hereto and hereby made a part hereof. The Political Body's type, size and location prints of the Structure are marked **Exhibit A-1**, attached hereto and hereby made a part hereof.

The right of way granted by the Railroad to the Political Body under the terms of the Original Agreement or a separate document is not sufficient to allow for the reconstruction and widening of the Structure. Therefore, under this Agreement, the Railroad will be granting additional rights to the Political Body so that the Political Body can perform the Project work. The portion of Railroad's property that Political Body needs for the

reconstructed Structure (including the right of way area covered under the Original Agreement or a separate document) is shown on the survey print as the New Crossing Area marked **Exhibit A** and also described in the detailed prints marked **Exhibit A-1**, with each exhibit being attached hereto and hereby made a part hereof (the "Crossing Area").

The Railroad and the Political Body are entering into this Agreement to cover the above.

**AGREEMENT:**

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

**Section 1. EXHIBITS B AND D**

The general terms and conditions marked **Exhibit B**, and the Railroad's Coordination Requirements marked **Exhibit D**, are attached hereto and hereby made a part hereof.

**Section 2. GRANT OF EASEMENT**

Upon completion of the execution of this Agreement and Railroad's receipt from Political Body of **XXXXXXX (\$XXXXXX)**, the Railroad shall execute and deliver to the Political Body a limited non-exclusive roadway easement in the Easement Deed marked **Exhibit F**, attached hereto and hereby made a part hereof, for the property described and shown on **Exhibits A and A-1**.

**Section 3. DEFINITION OF CONTRACTOR**

For purposes of this Agreement the term "Contractor" shall mean the contractor or contractors hired by the Political Body to perform any Project work on any portion of the Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

**Section 4. CONTRACTOR'S RIGHT OF ENTRY AGREEMENT - INSURANCE**

A. Prior to Contractor performing any work within the Crossing Area involving the Project, and any subsequent maintenance or repair work, the Political Body shall require the Contractor to:

- execute the Railroad's then current Contractor's Right of Entry Agreement
- obtain the then current insurance required in the Contractor's Right of Entry Agreement; and

- provide such insurance policies, certificates, binders and/or endorsements to the Railroad.

B. The Railroad's current Contractor's Right of Entry Agreement is marked **Exhibit E**, attached hereto and hereby made a part hereof. The Political Body confirms that it will inform its Contractor that it is required to execute such form of agreement and obtain the required insurance before commencing any work on any Railroad property. Under no circumstances will the Contractor be allowed on the Railroad's property without first executing the Railroad's Contractor's Right of Entry Agreement and obtaining the insurance set forth therein and also providing to the Railroad the insurance policies, binders, certificates and/or endorsements described therein.

C. All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Senior Manager - Contracts  
Union Pacific Railroad Company  
Real Estate Department  
1400 Douglas Street, Mail Stop 1690  
Omaha, NE 68179-1690  
UP File Folder No. 3173-27

D. If the Political Body's own employees will be performing any of the Project work, the Political Body may self-insure all or a portion of the insurance coverage subject to the Railroad's prior review and approval.

#### **Section 5. FEDERAL AID POLICY GUIDE**

If the Political Body will be receiving any federal funding for the Project the current rules, regulations and provisions of the Federal Aid Policy Guide as contained in 23 CFR 140, Subpart I and 23 CFR 646, Subparts A and B are incorporated into this Agreement by reference.

#### **Section 6. NO PROJECT EXPENSES TO BE BORNE BY RAILROAD**

The Political Body agrees that no Project costs and expenses are to be borne by the Railroad. In addition, the Railroad is not required to contribute any funding for the Project.

#### **Section 7. WORK TO BE PERFORMED BY RAILROAD; BILLING SENT TO POLITICAL BODY; POLITICAL BODY'S PAYMENT OF BILLS**

A. The work to be performed by the Railroad, at the Political Body's sole cost and expense, is described in the Railroad's Material and Force Account Estimates marked **Exhibit C**, attached hereto and hereby made a part hereof (the "Estimate"). As set forth in the Estimates, the Railroad's estimated cost for the Railroad's work associated with the Project is **Two Million Six Hundred Fifty Nine Dollars and 07/100 (\$2,659,007)**.



B. The Railroad, if it so elects, may recalculate and update the Estimate submitted to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within six (6) months from the date of the Estimate.

C. The Political Body acknowledges that the Estimate does not include any estimate of flagging or other protective service costs that are to be paid by the Political Body or the Contractor in connection with flagging or other protective services provided by the Railroad in connection with the Project. All of such costs incurred by the Railroad are to be paid by the Political Body or the Contractor as determined by the Railroad and the Political Body. If it is determined that the Railroad will be billing the Contractor directly for such costs, the Political Body agrees that it will pay the Railroad for any flagging costs that have not been paid by any Contractor within thirty (30) days of the Contractor's receipt of billing.

D. The Railroad shall send progressive billing to the Political Body during the Project, and final billing to the Political Body within one hundred eighty (180) days after receiving written notice from the Political Body that all Project work affecting the Railroad's property has been completed.

E. The Political Body agrees to reimburse the Railroad within thirty (30) days of its receipt of billing from the Railroad for one hundred percent (100%) of all actual costs incurred by the Railroad in connection with the Project including, but not limited to, all actual costs of engineering review (including preliminary engineering review costs incurred by Railroad prior to the Effective Date of this Agreement), construction, inspection, flagging (unless flagging costs are to be billed directly to the Contractor), procurement of materials, equipment rental, manpower and deliveries to the job site and all direct and indirect overhead labor/construction costs including Railroad's standard additive rates.

## **Section 8. PLANS**

A. The Political Body, at its expense, shall prepare, or cause to be prepared by others, the detailed plans and specifications for the Project and the Structure and submit such plans and specifications to the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, for prior review and approval. The plans and specifications shall include all appurtenances, associated drainage, shoring, sheeting and excavations for bents and/or abutments next to or adjacent to the Railroad's tracks and, if applicable, all demolition and removal plans for the existing structure.

B. The final one hundred percent (100%) completed plans that are approved in writing by the Railroad's Assistant Vice President Engineering-Design, or his authorized representative, are hereinafter referred to as the "Plans". The Plans are hereby made a part of this Agreement by reference.

C. No changes in the Plans shall be made unless the Railroad has consented to such changes in writing.

D. Upon completion of the Structure, the Political Body, at its expense, shall furnish to the Railroad electronic reproducible Plans of the Structure.

E. The Railroad's review and approval of the Plans in no way relieves the Political Body or the Contractor from their responsibilities, obligations and/or liabilities under this Agreement, and will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of the Plans and that any reliance by the Political Body or Contractor on the Plans is at the risk of the Political Body and Contractor.

### **Section 9. NON-RAILROAD IMPROVEMENTS**

A. Submittal of plans and specifications for protecting, encasing, reinforcing, relocation, replacing, removing and abandoning in place all non-railroad owned facilities (the "Non Railroad Facilities") affected by the Project including, without limitation, utilities, fiber optics, pipelines, wirelines, communication lines and fences is required under Section 8. The Non Railroad Facilities plans and specifications shall comply with Railroad's standard specifications and requirements, including, without limitation, American Railway Engineering and Maintenance-of-Way Association ("AREMA") standards and guidelines. Railroad has no obligation to supply additional land for any Non Railroad Facilities and does not waive its right to assert preemption defenses, challenge the right-to-take, or pursue compensation in any condemnation action, regardless if the submitted Non Railroad Facilities plans and specifications comply with Railroad's standard specifications and requirements. Railroad has no obligation to permit any Non Railroad Facilities to be abandoned in place or relocated on Railroad's property.

B. Upon Railroad's approval of submitted Non Railroad Facilities plans and specifications, Railroad will attempt to incorporate them into new agreements or supplements of existing agreements with Non Railroad Facilities owners or operators. Railroad may use its standard terms and conditions, including, without limitation, its standard license fee and administrative charges when requiring supplements or new agreements for Non Railroad Facilities. Non Railroad Facilities work shall not commence before a supplement or new agreement has been fully executed by Railroad and the Non Railroad Facilities owner or operator, or before Railroad and Political Body mutually agree in writing to (i) deem the approved Non Railroad Facilities plans and specifications to be Plans pursuant to Section 8B, (ii) deem the Non Railroad Facilities part of the Structure, and (iii) supplement this Agreement with terms and conditions covering the Non Railroad Facilities.

### **Section 10. RAILROAD'S COORDINATION REQUIREMENTS**

The Political Body, at its expense, shall ensure that the Contractor complies with all of the terms and conditions contained in the Railroad's Coordination Requirements

that are described in **Exhibit D**, attached hereto and hereby made a part hereof, and other special guidelines and/or requirements that the Railroad may provide to the Political Body for this Project.

**Section 11. EFFECTIVE DATE; TERM; TERMINATION**

A. This Agreement is effective as of the Effective Date first herein written and shall continue in full force and effect for as long as the Structure remains on the Railroad's property.

B. The Railroad, if it so elects, may terminate this Agreement effective upon delivery of written notice to the Political Body in the event the Political Body does not commence construction on the portion of the Project located on the Railroad's property within twelve (12) months from the Effective Date.

C. If the Agreement is terminated as provided above, or for any other reason, the Political Body shall pay to the Railroad all actual costs incurred by the Railroad in connection with the Project up to the date of termination, including, without limitation, all actual costs incurred by the Railroad in connection with reviewing any preliminary or final Project Plans.

**Section 12. CONDITIONS TO BE MET BEFORE  
POLITICAL BODY CAN COMMENCE WORK**

Neither the Political Body nor the Contractor may commence any work within the Crossing Area or on any other Railroad property until:

- (i) The Railroad and the Political Body have executed this Agreement.
- (ii) The Railroad has provided to the Political Body the Railroad's written approval of the Plans.
- (iii) Each Contractor has executed Railroad's Contractor's Right of Entry Agreement and has obtained and/or provided to the Railroad the insurance policies, certificates, binders, and/or endorsements required under the Contractor's Right of Entry Agreement.
- (iv) Each Contractor has given the advance notice(s) required under the Contractor's Right of Entry Agreement to the Railroad Representative named in the Contractor's Right of Entry Agreement.

**Section 13. FUTURE PROJECTS**

Future projects involving substantial maintenance, repair, reconstruction, renewal and/or demolition of the Structure shall not commence until Railroad and Political Body

agree on the plans for such future projects, cost allocations, right of entry terms and conditions and temporary construction rights, terms and conditions.

**Section 14. ASSIGNMENT; SUCCESSORS AND ASSIGNS**

A. Political Body shall not assign this Agreement without the prior written consent of Railroad.

B. Subject to the provisions of Paragraph A above, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and Political Body.

**Section 15. SPECIAL PROVISIONS PERTAINING TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

If the Political Body will be receiving American Recovery and Reinvestment Act ("ARRA") funding for the Project, the Political Body agrees that it is responsible in performing and completing all ARRA reporting documents for the Project. The Political Body confirms and acknowledges that Section 1512 of the ARRA provisions applies only to a "recipient" receiving ARRA funding directing from the federal government and, therefore, (i) the ARRA reporting requirements are the responsibility of the Political Body and not of the Railroad, and (ii) the Political Body shall not delegate any ARRA reporting responsibilities to the Railroad. The Political Body also confirms and acknowledges that (i) the Railroad shall provide to the Political Body the Railroad's standard and customary billing for expenses incurred by the Railroad for the Project including the Railroad's standard and customary documentation to support such billing, and (ii) such standard and customary billing and documentation from the Railroad provides the information needed by the Political Body to perform and complete the ARRA reporting documents. The Railroad confirms that the Political Body and the Federal Highway Administration shall have the right to audit the Railroad's billing and documentation for the Project as provided in Section 9 of **Exhibit B** of this Agreement.

**Section 16. SUPPLEMENT TO THE EXISTING AGREEMENT**

The Original Agreement shall be supplemented by this Agreement. In the event of any conflict between the Original Agreement and this Agreement, the terms and provisions of this Agreement shall control.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the Effective Date first herein written.

**UNION PACIFIC RAILROAD COMPANY**  
(Federal Tax ID #94-6001323)

By \_\_\_\_\_

Printed Name:

\_\_\_\_\_  
Title: \_\_\_\_\_

**THE ILLINOIS STATE TOLL HIGHWAY  
AUTHORITY**

By \_\_\_\_\_

Willard Evans  
Chairman

By \_\_\_\_\_

Cathy R. Williams  
Chief Financial Officer

By \_\_\_\_\_

Kathleen R. Pasulka-Brown  
General Counsel

Approved as to Form and Constitutionality

\_\_\_\_\_  
Assistant Attorney General

**EXHIBIT A  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit A** will be a survey print showing the Crossing Area (see Recitals)

**EXHIBIT A-1  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit A-1** will be the type, size and location prints of the Structure (see Recitals)

**EXHIBIT B  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**SECTION 1 - CONDITIONS AND COVENANTS**

A. The Conditions and Covenants contained herein shall not conflict with or interfere with any rights contained in the Fly-Over Easement Agreement and shall not interfere with the Tollway's intended use or operation of the Structure. The Railroad makes no covenant or warranty of title for quiet possession or against encumbrances. The Political Body shall not use or permit use of the Crossing Area for any purposes other than those described in this Agreement. Without limiting the foregoing, the Political Body shall not use or permit use of the Crossing Area for railroad purposes, or for gas, oil or gasoline pipelines. Any lines constructed on the Railroad's property by or under authority of the Political Body for the purpose of conveying electric power or communications incidental to the Political Body's use of the property for highway purposes shall be constructed in accordance with specifications and requirements of the Railroad, and in such manner as not adversely to affect communication or signal lines of the Railroad or its licensees now or hereafter located upon said property. No nonparty shall be admitted by the Political Body to use or occupy any part of the Railroad's property without the Railroad's written consent. Nothing herein shall obligate the Railroad to give such consent.

B. The Railroad reserves the right to cross the Crossing Area with such railroad tracks as may be required for its convenience or purposes.

C. The right hereby granted is subject to any existing encumbrances and rights (whether public or private), recorded or unrecorded, and also to any renewals thereof. The Political Body shall not damage, destroy or interfere with the property or rights of nonparties in, upon or relating to the Railroad's property, unless the Political Body at its own expense settles with and obtains releases from such nonparties.

D. The Railroad reserves the right to use and to grant to others the right to use the Crossing Area for any purpose not inconsistent with the right hereby granted, including, but not by way of limitation, the right to construct, reconstruct, maintain, operate, repair, alter, renew and replace tracks, facilities and appurtenances on the property and the right to cross the Crossing Area with all kinds of equipment. The Railroad further reserves the right to attach signal, communication or power lines to the Structure, provided that such attachments shall comply with Political Body's specifications and will not interfere with the Political Body's use of the Crossing Area.

E. So far as it lawfully may do so, the Political Body will assume, bear and pay all taxes and assessments of whatsoever nature or kind (whether general, local or special) levied or



assessed upon or against the Crossing Area resulting from the existence of or operation of the Structure.

F. If any property or rights other than the right hereby granted are necessary for the construction, maintenance and use of the Structure and its appurtenances, or for the performance of any work in connection with the Project, the Political Body will acquire all such other property and rights at its own expense and without expense to the Railroad.

## **SECTION 2 - CONSTRUCTION OF STRUCTURE**

A. The Political Body, at its expense, will apply for and obtain all public authority required by law, ordinance, rule or regulation for the Project, and will furnish the Railroad upon request with satisfactory evidence that such authority has been obtained.

B. Except as may be otherwise specifically provided herein, the Political Body, at its expense, will furnish all necessary labor, material and equipment, and shall construct and complete the Structure and all appurtenances thereof. The appurtenances shall include, without limitation, all necessary and proper drainage facilities, guard rails or barriers, and right of way fences between the Structure and the railroad tracks. Upon completion of the Project, the Political Body shall remove from the Railroad's property all temporary structures and false work, and will leave the Crossing Area in a condition satisfactory to the Railroad.

C. All construction work of the Political Body upon the Railroad's property (including, but not limited to, construction of the Structure and all appurtenances and all related and incidental work) shall be performed and completed in a manner satisfactory to the Assistant Vice President Engineering-Design of the Railroad or his authorized representative and in compliance with the Plans, the Railroad's Coordination Requirements set forth in **Exhibit D** and other guidelines furnished by the Railroad.

D. All construction work of the Political Body shall be performed diligently and completed within a reasonable time. No part of the Project shall be suspended, discontinued or unduly delayed without the Railroad's written consent, and subject to such reasonable conditions as the Railroad may specify. It is understood that the Railroad's tracks at and in the vicinity of the work will be in constant or frequent use during progress of the work and that movement or stoppage of trains, engines or cars may cause delays in the work of the Political Body. The Political Body hereby assumes the risk of any such delays and agrees that no claims for damages on account of any delay shall be made against the Railroad by the Political Body and/or the Contractor.

## **SECTION 3 - INJURY AND DAMAGE TO PROPERTY**

If the Political Body, in the performance of any work contemplated by this Agreement or by the failure to do or perform anything for which the Political Body is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of the Railroad or of any other person lawfully occupying or using the property of the Railroad, such property shall be replaced or repaired by the Political Body at the Political Body's own expense, or by the Railroad at the expense of the Political Body, and to the satisfaction of the Railroad's Assistant Vice President Engineering-Design.

#### **SECTION 4 -RAILROAD MAY USE CONTRACTORS TO PERFORM WORK**

The Railroad may contract for the performance of any of its work by other than railroad forces. The Railroad shall notify the Political Body of the contract price within ninety (90) days after it is awarded. Unless the Railroad's work is to be performed on a fixed price basis, the Political Body shall reimburse the Railroad for the amount of the contract.

#### **SECTION 5 -MAINTENANCE; REPAIRS; FENCING AND GUARDRAILS**

A. The Political Body, at its expense, shall maintain, repair and renew, or cause to be maintained, repaired and renewed, the entire Structure, including, but not limited to, the superstructure, substructure, piers, abutments, walls, approaches and all backfill, grading and drainage required by reason of the Structure, as well as all graffiti removal or overpainting involving the Structure.

B. The Railroad, at its expense, will maintain, repair and renew, or cause to be maintained, repaired and renewed, the rails, ties, ballast and communication and signal facilities owned by the Railroad beneath the Structure.

C. If, in the future, it becomes apparent or deemed necessary by the Railroad, in Railroad's sole and absolute discretion, that the Structure should have fencing installed so as to prevent objects, substances, and materials thrown or discarded from the Structure onto the Railroad's track and other property, the Political Body shall install, maintain, repair and reconstruct such fencing at its sole cost and expense.

D. If the change, rearrangement or relocation of any existing track, or installation of future Railroad track(s) becomes necessary for Railroad convenience or on account of improvements for either the Railroad, highway or both, then Railroad shall determine, in Railroad's sole and absolute discretion, the necessity of inner guard rail(s) to be installed by Railroad, at Political Body's sole cost and expense.

#### **SECTION 6 -SAFETY MEASURES; PROTECTION OF RAILROAD COMPANY OPERATIONS**

It is understood and recognized that safety and continuity of the Railroad's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, it is agreed with respect to all of said work of the Political Body that the work will be performed in a safe manner and in conformity with the following standards:

A. **Definitions.** All references in this Agreement to the Political Body shall also include the Contractor and their respective officers, agents and employees, and others acting under its or their authority; and all references in this Agreement to work of the Political Body shall include work both within and outside of the Railroad's property.

B. **Entry on to Railroad's Property by Political Body.** If the Political Body's employees need to enter Railroad's property in order to perform an inspection of the Structure, minor maintenance or other activities, the Political Body shall first provide at least ten (10) working days advance notice to the Railroad Representative. With respect to such entry on to Railroad's property, the Political Body or its Contractor or Subcontractor, to the extent permitted by law, agrees to release, defend and indemnify the Railroad from and against any loss, damage, injury, liability, claim, cost or expense incurred by any person including, without limitation, the Political Body's employees, or damage to any property or equipment (collectively the "Loss") that arises from the presence or activities of Political Body's employees on Railroad's property, except to the extent that any Loss is caused by the sole direct negligence of Railroad.

C. **Flagging.**

(i) If the Political Body's employees need to enter Railroad's property as provided in Paragraph B above, the Political Body agrees to notify the Railroad Representative at least thirty (30) working days in advance of proposed performance of any work by Political Body in which any person or equipment will be within twenty-five (25) feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of any track. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within twenty-five (25) feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains. Upon receipt of such thirty (30) day notice, the Railroad Representative will determine and inform Political Body whether a flagman need be present and whether Political Body needs to implement any special protective or safety measures. If flagging or other special protective or safety measures are performed by Railroad, Railroad will bill Political Body for such expenses incurred by Railroad. If Railroad performs any flagging, or other special protective or safety measures are performed by Railroad, Political Body agrees that Political Body is not relieved of any of its responsibilities or liabilities set forth in this Agreement.

(ii) The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of flagmen used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed. In addition to the cost of such labor, a composite charge for vacation, holiday, health and welfare, supplemental sickness, Railroad Retirement and unemployment compensation, supplemental pension, Employees Liability and Property Damage and Administration will be included, computed on actual payroll. The composite charge will be the prevailing composite charge in effect at the time the work is performed. One and one-half times the current hourly rate is paid for overtime, Saturdays and

Sundays, and two and one-half times current hourly rate for holidays. Wage rates are subject to change, at any time, by law or by agreement between Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized governmental agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, Political Body shall pay on the basis of the new rates and charges.

(iii) Reimbursement to Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless the flagman can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other Railroad work. Reimbursement will also be required for any day not actually worked by the flagman following the flagman's assignment to work on the project for which Railroad is required to pay the flagman and which could not reasonably be avoided by Railroad by assignment of such flagman to other work, even though Political Body may not be working during such time. When it becomes necessary for Railroad to bulletin and assign an employee to a flagging position in compliance with union collective bargaining agreements, Political Body must provide Railroad a minimum of five (5) days notice prior to the cessation of the need for a flagman. If five (5) days notice of cessation is not given, Political Body will still be required to pay flagging charges for the five (5) day notice period required by union agreement to be given to the employee, even though flagging is not required for that period. An additional thirty (30) days notice must then be given to Railroad if flagging services are needed again after such five day cessation notice has been given to Railroad.

D. **Compliance With Laws.** The Political Body shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Political Body shall use only such methods as are consistent with safety, both as concerns the Political Body, the Political Body's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Political Body (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's premises. If any failure by the Political Body to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Political Body shall reimburse and, to the extent it may lawfully do so, indemnify the Railroad for any such fine, penalty, cost, or charge, including without limitation attorney's fees, court costs and expenses. The Political Body further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

E. **No Interference or Delays.** The Political Body shall not do, suffer or permit anything which will or may obstruct, endanger, interfere with, hinder or delay maintenance or operation of the Railroad's tracks or facilities, or any communication or signal lines, installations or any appurtenances thereof, or the operations of others lawfully occupying or using the Railroad's property or facilities.

F. **Supervision.** The Political Body, at its own expense, shall adequately police and supervise all work to be performed by the Political Body, and shall not inflict injury to persons or damage to property for the safety of whom or of which the Railroad may be responsible, or to property of the Railroad. The responsibility of the Political Body for safe conduct and adequate policing and supervision of the Project shall not be lessened or otherwise affected by the Railroad's approval of plans and specifications, or by the Railroad's collaboration in performance of any work, or by the presence at the work site of the Railroad's representatives, or by compliance by the Political Body with any requests or recommendations made by such representatives. If a representative of the Railroad is assigned to the Project, the Political Body will give due consideration to suggestions and recommendations made by such representative for the safety and protection of the Railroad's property and operations.

G. **Suspension of Work.** If at any time the Political Body's engineers or the Vice President-Engineering Services of the Railroad or their respective representatives shall be of the opinion that any work of the Political Body is being or is about to be done or prosecuted without due regard and precaution for safety and security, the Political Body shall immediately suspend the work until suitable, adequate and proper protective measures are adopted and provided.

H. **Removal of Debris.** The Political Body shall not cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon any property or facilities of the Railroad; and any such material and debris shall be promptly removed from the Railroad's property by the Political Body at the Political Body's own expense or by the Railroad at the expense of the Political Body. The Political Body shall not cause, suffer or permit any snow to be plowed or cast upon the Railroad's property during snow removal from the Crossing Area.

I. **Explosives.** The Political Body shall not discharge any explosives on or in the vicinity of the Railroad's property without the prior consent of the Railroad's Vice President-Engineering Services, which shall not be given if, in the sole discretion of the Railroad's Vice President-Engineering Services, such discharge would be dangerous or would interfere with the Railroad's property or facilities. For the purposes hereof, the "vicinity of the Railroad's property" shall be deemed to be any place on the Railroad's property or in such close proximity to the Railroad's property that the discharge of explosives could cause injury to the Railroad's employees or other persons, or cause damage to or interference with the facilities or operations on the Railroad's property. The Railroad reserves the right to impose such conditions, restrictions or limitations on the transportation, handling, storage, security and use of explosives as the Railroad, in the Railroad's sole discretion, may deem to be necessary, desirable or appropriate.

J. **Excavation.** The Political Body shall not excavate from existing slopes nor construct new slopes which are excessive and may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of the Railroad. The Political Body shall not do or cause to be done any work which will or may disturb the stability of any area or adversely affect the Railroad's tracks or facilities. The

Political Body, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by the Political Body in connection with construction, maintenance or other work. The shoring and cribbing shall be constructed and maintained with materials and in a manner approved by the Railroad's Assistant Vice President Engineering-Design to withstand all stresses likely to be encountered, including any stresses resulting from vibrations caused by the Railroad's operations in the vicinity.

K. **Drainage**. The Political Body, at the Political Body's own expense, shall provide and maintain suitable facilities for draining the Structure and its appurtenances, and shall not suffer or permit drainage water therefrom to flow or collect upon property of the Railroad. The Political Body, at the Political Body's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial, and including water from the Railroad's culvert and drainage facilities), so that said waters may not, because of any facilities or work of the Political Body, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of the Railroad or any part thereof, or property of others. The Political Body shall not obstruct or interfere with existing ditches or drainage facilities.

L. **Notice**. Before commencing any work, the Political Body shall provide the advance notice that is required under the Contractor's Right of Entry Agreement.

M. **Fiber Optic Cables**. Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Political Body shall telephone the Railroad during normal business hours (7:00 a.m. to 9:00 p.m. Central Time, Monday through Friday, except holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried anywhere on the Railroad's premises to be used by the Political Body. If it is, Political Body will telephone the telecommunications company(ies) involved, arrange for a cable locator, and make arrangements for relocation or other protection of the fiber optic cable prior to beginning any work on the Railroad's premises.

## **SECTION 7 - INTERIM WARNING DEVICES**

If at anytime it is determined by a competent authority, by the Political Body, or by agreement between the parties, that new or improved train activated warning devices should be installed at the Crossing Area, the Political Body shall install adequate temporary warning devices or signs and impose appropriate vehicular control measures to protect the motoring public until the construction or reconstruction of the Structure has been completed.

## **SECTION 8 - OTHER RAILROADS**

All protective and indemnifying provisions of this Agreement shall inure to the benefit of the Railroad and any other railroad company lawfully using the Railroad's property or facilities.

## **SECTION 9 - BOOKS AND RECORDS**

The books, papers, records and accounts of Railroad, so far as they relate to the items of expense for the materials to be provided by Railroad under this Project, or are associated with the work to be performed by Railroad under this Project, shall be open to inspection and audit at Railroad's offices in Omaha, Nebraska, during normal business hours by the agents and authorized representatives of Political Body for a period of three (3) years following the date of Railroad's last billing sent to Political Body.

## **SECTION 10 - REMEDIES FOR BREACH OR NONUSE**

A. If the Political Body shall fail, refuse or neglect to perform and abide by the terms of this Agreement, the Railroad, in addition to any other rights and remedies, may perform any work which in the judgment of the Railroad is necessary to place the Structure and appurtenances in such condition as will not menace, endanger or interfere with the Railroad's facilities or operations or jeopardize the Railroad's employees; and the Political Body will reimburse the Railroad for the expenses thereof.

B. Nonuse by the Political Body of the Crossing Area for public highway purposes continuing at any time for a period of eighteen (18) months shall, at the option of the Railroad, work a termination of this Agreement and of all rights of the Political Body hereunder.

C. The Political Body will surrender peaceable possession of the Crossing Area and Structure upon termination of this Agreement. Termination of this Agreement shall not affect any rights, obligations or liabilities of the parties, accrued or otherwise, which may have arisen prior to termination.

## **SECTION 11 - MODIFICATION - ENTIRE AGREEMENT**

No waiver, modification or amendment of this Agreement shall be of any force or effect unless made in writing, signed by the Political Body and the Railroad and specifying with particularity the nature and extent of such waiver, modification or amendment. Any waiver by the Railroad of any default by the Political Body shall not affect or impair any right arising from any subsequent default. This Agreement and Exhibits attached hereto and made a part hereof constitute the entire understanding between the Political Body and the Railroad and cancel and supersede any prior negotiations, understandings or agreements, whether written or oral, with respect to the work or any part thereof.



**EXHIBIT C  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit C** (if applicable) will be Railroad's Material and Force Agreement Estimate.

**EXHIBIT D**  
**TO**  
**PUBLIC HIGHWAY OVERPASS AGREEMENT**

**RAILROAD COORDINATION REQUIREMENTS**

**1.01 DEFINITIONS**

Agreement: Agreement that has been signed, or will be signed, between Railroad and Agency covering the construction and maintenance of the Project.

Agency: Illinois State Toll Highway Authority

AREMA: American Railway Engineering and Maintenance-of-way Association

Contractor: The contractor or contractors hired by the Agency to perform any project work on any portion of Railroad's property and shall also include the Contractor's subcontractors and the Contractor's and subcontractor's respective employees, officers and agents, and others acting under its or their authority.

MUTCD: Manual on Uniform Traffic Control Devices

Project: Agency's Project Number \_\_\_\_\_ covering I-294

Railroad: Union Pacific Railroad Company

Railroad Project Representative: Railroad's Manager of Industry and Public Projects for this Project (see Section 1.03)

Railroad MTM Representative: Railroad's Manager of Track Maintenance for this Project (see Section 1.03)

Requirements: The Railroad Coordination Requirements set forth in this Exhibit.

**1.02 DESCRIPTION**

This Project includes construction work within Railroad's right-of-way. These Requirements describe coordination with the Railroad when work by the Contractor will be performed upon, over or under the Railroad right-of-way or may impact current or future Railroad operations. The Contractor will coordinate with the Railroad while performing the work outlined in this Agreement and shall afford the same cooperation with the Railroad as it does with the Agency. All submittals and work shall be completed in compliance with these Requirements, Railroad guidelines and requirements, AREMA recommendations and/or as directed by the Railroad Local Representative and/or the Railroad MTM Representative.

**1.03 UPRR CONTACTS**

The Railroad Project Representative for this project is:

Kyle Nodgaard, PE  
Union Pacific Railroad  
Contractor - Public Projects  
W: 402-991-0364  
C: 402-630-0632  
[KNodgaard@benesch.com](mailto:KNodgaard@benesch.com)

For Railroad flagging services and track work, contact the following Railroad MTM Representative:

**Daniel M. Elhosni**  
MGR I TRACK MNTCE  
5370 MCDERMOTT DR  
BERKLEY, IL 60162  
402 677-5836  
delhosni@up.com

#### **1.04 PLANS / SPECIFICATIONS**

The plans and specifications for this Project, affecting the Railroad, are subject to the written approval by the Railroad. Changes in the plans made after the execution of the Agreement and/or the awarding of the Project to the Contractor are subject to the prior review and written approval of the Agency and the Railroad. No construction work shall commence until final stamped plans and/or changes to final stamped plans have been reviewed and approved by the Railroad in writing. The Railroad's review and approval of the Agency's and/or Contractor's plans in no way relieves the Agency and Contractor from their responsibilities, obligations and/or liabilities under this Agreement, Agency's agreement with the Contractor for the Project and/or in the separate Contractor's Right of Entry Agreement referenced in Section 1.08. Railroad's approval will be given with the understanding that the Railroad makes no representations or warranty as to the validity, accuracy, legal compliance or completeness of Agency's and/or Contractor's plans and that any reliance by the Agency or the Contractor with respect to such plans is at the risk of the Agency and the Contractor.

#### **1.05 UTILITIES AND FIBER OPTICS**

A. All installations shall be constructed in accordance with current AREMA recommendations and Railroad specifications and requirements. Railroad general guidelines and the required application forms for utility installations can be found on the Railroad website at <http://www.uprr.com/reus/pipeline/install.shtml>.

B. It shall be the responsibility of the Contractor, at its expense, to make arrangements directly with utility companies involving the protection, encasement, reinforcement, relocation, replacement, removing or abandonment in place of non-railroad facilities affected by the Project. Railroad has no obligation to supply additional Railroad property for non-railroad facilities affected by this Project, nor does the Railroad have any obligation to permit non railroad facilities to be abandoned in place or relocated on Railroad's property. Any facility and/or utility that crosses Railroad right of way must be covered under an agreement with the Railroad including, without limitation, any relocations of an existing facility and/or utility.

C. Any longitudinal fiber optic lines on Railroad right of way shall be treated as Railroad facilities. Project design may need to be altered to accommodate such facilities.

D. Any fiber optic relocations or protections that are required due to this Project will be at the Agency's expense.

#### **1.06 GENERAL**

A. It is essential that the proposed construction shall be performed without interference to Railroad operations and in compliance with all applicable Railroad and Federal Railroad Administration rules and regulations. The Railroad shall be reimbursed by the Contractor or Agency for train delay costs and lost revenue claims due to any delays or interruption of train operations resulting from the Contractor's construction or other activities.

B. Track protection is required for all work equipment (including rubber tired equipment) operating within 25 feet from nearest rail. All work shall be designed and executed outside the temporary construction clearance envelope defined in Section 1.12.

C. The Contractor is also advised that new facilities within the Project may be scheduled to be built by the Railroad and that certain Contractor's activities cannot proceed until that work is complete. The Contractor shall be aware of the limits of responsibilities, allow sufficient time in the schedule for that work to be accomplished and shall coordinate its efforts with the Railroad.

#### **1.07 RAILROAD OPERATIONS**

A. The Contractor shall be advised that trains and/or equipment should be expected on any track, at any time, and in either direction. The Contractor shall communicate with the Railroad MTM Representative to improve the Contractor's understanding of Railroad traffic volume and operation at the Project site. The Contractor's bid shall be structured assuming intermittent track windows as defined in Section 1.07 C

- B. All Railroad tracks within and adjacent to the Project site are to be assumed as active and rail traffic over these facilities shall be maintained throughout the Project. Activities may include both through moves and switching moves to local customers. Railroad traffic and operations can occur continuously throughout the day and night on these tracks and shall be maintained at all times as defined herein. The Contractor shall coordinate and schedule the work so that construction activities do not interfere with Railroad's operations.
- C. Work windows for this Project shall be coordinated with the Agency or Contractor and the Railroad Project Representative and the Railroad MTM Representative. Types of work windows include Conditional Work Windows and Absolute Work Windows, as defined below:
  - 1. **Conditional Work Window:** A period of time in which Railroad's operations have priority over construction activities. When construction activities may occur on and adjacent to the railroad tracks within 25 feet of the nearest track, a Railroad flag person will be required. At the direction of the flag person, upon approach of a train and when trains are present on the tracks, the tracks must be cleared (i.e., no construction equipment, materials or personnel within 25 feet from the nearest active track or as directed by the Railroad MTM Representative). Conditional Work Windows are available for the project subject to Railroad's local operating unit review and approval.
  - 2. **Absolute Work Window:** A period of time in which construction activities are given priority over Railroad's operations. During this time the designated Railroad track(s) will be inactive for train movements and may be fouled by the Contractor. Before the end of an Absolute Work Window, all Railroad tracks and signals must be completely operational for normal train operations. Also, all Railroad, Public Utilities Commission and Federal Railroad Administration requirements, codes and regulations for operational tracks must be complied with. Should the operating tracks and/or signals be affected, the Railroad will perform inspections of the work prior to placing the affected track back into service. Railroad flag persons will be required for construction activities requiring an Absolute Work Window. **Absolute Work Windows will generally not be granted. Any request will require a detailed written explanation for Railroad review and approval.**

#### **1.08 RIGHT OF ENTRY, ADVANCE NOTICE AND WORK STOPPAGES**

- A. Prior to beginning any work within the Railroad right-of-way, the Contractor shall enter into an agreement with the Railroad in the form of the Contractor's Right of Entry Agreement, attached as \_\_\_\_\_, or latest version thereof provided by the Railroad. There is a fee for processing of the agreement which shall be borne by the Contractor. The right of entry agreement shall specify working time frames, flagging, inspection and insurance requirements and any other items specified by the Railroad.
- B. The Contractor shall give advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing work in connection with construction upon or over Railroad's right-of-way and shall observe the Railroad rules and regulations with respect thereto.
- C. All work upon the Railroad right-of-way shall be done at such times and in such a manner as not to interfere with or endanger the operations of the Railroad. Whenever work may affect the operations or safety of trains, the method of doing such work shall first be submitted to the Railroad MTM Representative for approval, but such approval shall not relieve the Contractor from liability. Any work to be performed by the Contractor, which requires flagging service or inspection service, shall be deferred until the flagging protection required by the Railroad is available at the job site. See Section 1.21 for railroad flagging requirements.
- D. The Contractor shall make requests in writing to both the Railroad Project Representative and the Railroad MTM Representative for both Absolute and Conditional Work Windows, at least two weeks in advance of any work. The written request must include:
  - 1. Description of work to be done.
  - 2. The days and hours that work will be performed.
  - 3. The exact location of the work and proximity to the tracks.
  - 4. The type of window and amount of time requested.
  - 5. The designated contact person for the Contractor.

The Contractor shall provide a written confirmation notice to the Railroad MTM Representative at least fifteen (15) days prior to commencing work in connection with the approved work windows when work will be performed within **25 feet of any track center line**. All work shall be performed in accordance with previously approved work plans.

- E. Should a condition arise from, or in connection with, the work which requires immediate and unusual actions to be made to protect operations and property of the Railroad, the Contractor shall undertake such actions. If, in the judgment of the Railroad MTM Representative, such actions are insufficient, the Railroad MTM Representative may require or provide such actions as deemed necessary. In any event, such actions shall be at the Contractor's expense and without cost to the Railroad. The Railroad or Agency have the right to order the Contractor to temporarily cease operations in the event of an emergency or if, in the opinion of the Railroad MTM Representative, the Contractor's operations may inhibit the Railroads operations. In the event such an order is given, the Contractor shall immediately notify the Agency of the order.

### **1.09 INSURANCE**

The Contractor shall not begin work within the Railroad's right-of-way until the Railroad has been furnished the insurance policies, binders, certificates and endorsements required by the Contractor's Right-of-Entry Agreement, and the Railroad Project Representative has advised the Agency that such insurance is in accordance with such Agreement. The required insurance shall be kept in full force and effect during the performance of work and thereafter until the Contractor removes all tools, equipment, and material from Railroad property and cleans the premises in a manner reasonably satisfactory to the Railroad.

### **1.10 RAILROAD SAFETY ORIENTATION**

**All personnel employed by the Agency, Contractor and all subcontractors must complete the Railroad's course "Property Access Training" and be registered prior to working on Railroad property. This orientation is available at <https://www.up.com/aboutup/community/safety/erailsafe/up-pat/index.htm>. This training is required to be completed annually. The preceding training does not apply for longitudinal fiber optic installations.**

### **1.11 COOPERATION**

The Railroad shall cooperate with the Contractor in the scheduling of Project work with the understanding that Railroad's train operations at the job site shall have priority over the Contractor's activities.

### **1.12 CONSTRUCTION CLEARANCES**

The Contractor shall abide by the twenty-one foot six inch (21.6) foot temporary vertical construction clearance defined in section 4.4.1.1 and fifteen (15) foot temporary horizontal construction clearance defined in section 4.4.1.2 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects. It shall be the Contractor's responsibility to obtain such guidelines from the Agency or Railroad.

Reduced temporary construction clearances, which are less than construction clearances defined above, will require special review and approval by the Railroad.

Any proposed variance on the specified minimum clearances due to the Contractor's operations shall be submitted to the Railroad Project Representative through the Agency at least thirty (30) days in advance of the work. No work shall be undertaken until the variance is approved in writing by the Railroad Project Representative.

### **1.13 SUBMITTALS**

- A. Construction submittals and Requests for Information (RFI) shall be submitted per Section 3 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. The minimum review times, as indicated in tables 3-1 and 3-2 of Section 3.10 of the BNSF and UPRR Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals.

Guidelines for Railroad Grade Separation Projects, should be anticipated for review of all submittals. The details of the construction affecting the Railroad tracks and property, not already included in the contract plans, shall be submitted by the Agency to the Railroad Project Representative for the Railroad's review and written approval before such construction is undertaken. The Railroad shall not be liable to Agency, Contractor, and or any other person or entity if the Railroad's review exceeds a four-week review time.

- C. As Built Submittals shall be submitted per Section 3 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.

**1.14 MAINTENANCE OF PROPER DRAINAGE AND DAMAGE TO RAILROAD FACILITIES**

- A. The Contractor, at its expense, shall be required to maintain all ditches and drainage structures free of silt or other obstructions which may result from the Contractor's operations and to repair and restore any Railroad property, tracks and facilities of Railroad and/or its tenants.
- B. The Contractor must submit a proposed method of erosion control and have the method reviewed and approved by the Railroad prior to beginning any grading on the project site. Erosion control methods must comply with all applicable local, state and federal regulations.

**1.15 SITE INSPECTIONS BY RAILROAD PROJECT REPRESENTATIVE, RAILROAD MTM REPRESENTATIVE OR RAILROAD'S CONTRACTOR**

- A. In addition to the office reviews of construction submittals, site observations will be performed by the Railroad Project Representative, Railroad MTM Representative or Railroad's Contractor at significant points during construction per Section 4.11 of BNSF and UPRR Guidelines for Railroad Grade Separation Projects.
- B. Site inspections are not limited to the milestone events listed in the guidelines. Site visits to check the progress of work may be performed at any time throughout the construction process as deemed necessary by the Railroad.
- C. A detailed construction schedule, including the proposed temporary horizontal and vertical clearances and construction sequence for all work to be performed, shall be provided by the Contractor to the Agency for submittal to the Railroad's Project Representative for review and approval prior to commencement of work. This schedule shall also include the anticipated dates on which the above listed events will occur. This schedule shall be updated for all critical listed events as necessary but at least monthly so that site visits may be scheduled.

**1.16 RAILROAD REPRESENTATIVES**

- A. Railroad representatives, conductors, flag persons or watch persons will be provided by the Railroad at the expense of the Agency or Contractor (as stated elsewhere in these bid documents) to protect Railroad facilities, property and movements of its trains and engines. In general, the Railroad will furnish such personnel or other protective services as follows:
  - 1. When any part of any equipment or object, such as erection or construction activities, is standing or being operated within 25 feet, measured horizontally from centerline, of any track on which trains may operate.
  - 2. For any excavation below the elevation of track subgrade when, in the opinion of the Railroad MTM Representative, the track or other Railroad facilities may be subject to settlement or movement.
  - 3. During any clearing, grubbing, excavation or grading in proximity to Railroad facilities which, in the opinion of the Railroad MTM Representative, may affect Railroad facilities or inhibit operations.
  - 4. During any Contractor's operations when, in the opinion of the Railroad MTM Representative, the Railroad facilities, including, but not limited to, tracks, buildings, signals, wire lines or pipelines, may be endangered.
- B. The Contractor shall arrange with the Railroad Local Representative to provide the adequate number of flag

persons to accomplish the work.

### **1.17 WALKWAYS REQUIRED**

Parallel to the outer side of each exterior track of multiple operated track and on each side of single operated track, an unobstructed continuous space suitable for trainman's use in walking along trains, extending in width not less than twelve feet (12') perpendicular from centerline of track, shall be maintained. Any temporary impediments to walkways and track drainage encroachments or obstructions allowed during working hours must be covered, guarded and/or protected as soon as practical. Walkways with railings shall be constructed by the Contractor over open excavation areas when in close proximity of track, and railings shall not be closer than 9' perpendicular from the center line of tangent track or 9' - 6" horizontal from curved track.

### **1.18 COMMUNICATIONS AND SIGNAL LINES**

If required, the Railroad, at Agency's expense, will rearrange its communications and signal lines, grade crossing warning devices, train signals, tracks and facilities that are in use and maintained by Railroad forces in connection with its operation. This work by the Railroad will be done by its own forces or by contractors under a continuing contract and may or may not be a part of the work under this contract.

### **1.19 TRAFFIC CONTROL**

The Contractor's operations which control traffic across or around Railroad facilities shall be coordinated with and approved by the Railroad MTM Representative and shall be in compliance with the MUTCD.

### **1.20 CONSTRUCTION EXCAVATIONS;CALL BEFORE YOU DIG NUMBER**

- A. The Contractor shall be required to take special precautions and care in connection with excavating and shoring. Excavations for construction of footings, piers, columns, walls or other facilities that require shoring shall comply with requirements of OSHA, AREMA and Railroad "Guidelines for Temporary Shoring".
- B. In addition to calling the "811" number and/or the local "one call center", the Contractor shall call the Railroad's "Call Before Your Dig" number at least 48 hours prior to commencing work at 1-800-336-9193 during normal business hours (6:30 a.m. to 8:00 p.m. Central Standard Time, Monday through Friday, except holidays - also a 24 hour, 7 day a week number for emergency calls) to determine location of fiber optics. If a telecommunications system is buried anywhere on or near Railroad property, the Contractor will co-ordinate with the Railroad and the Telecommunication Company(ies) to arrange for relocation or other protection of the system prior to beginning any work on or near Railroad property. The determination of whether fiber optics will be affected by the Project shall be made during the initial design phase of the Project.
- C. The Railroad does not allow temporary at grade crossings unless absolutely necessary and there is no alternative route available to contractor to access the project site. Alternative plans should be considered to avoid crossing Railroad tracks at grade.

### **1.21 RAILROAD FLAGGING**

Performance of any work by the Contractor in which person(s) or equipment will be within twenty-five (25) feet of any track, or that any object or equipment extension (such as, but not limited to, a crane boom) will reach within twenty-five (25) feet of any track, require railroad flagging services or other protective measures. The Contractor shall give an advance notice to the Railroad as required in the Contractor's Right of Entry Agreement before commencing any such work, allowing the Railroad to determine the need for flagging or other protective measures which ensure the safety of Railroad's operations, employees and equipment. Contractor shall comply with all other requirements regarding flagging services covered by the Contractor's Right of Entry Agreement. Any costs associated with failure to abide by these requirements will be borne by the Contractor.

**The estimated pay rate for each flag person is \$1400.00 per day for a(n) 8 hour work day with time and one-half for overtime, Saturdays, Sundays; double time and one-half for holidays. Flagging rates are set by the Railroad and are subject to change due to, but not limited to, travel time, setup plus, per diem and rest time (if work is required at night).**

**1.22 CLEANING OF RIGHT-OF-WAY**

The Contractor shall, upon completion of the work to be performed within the right-of-way and/or properties of the Railroad and adjacent to its tracks, wire lines and other facilities, promptly remove from the Railroad right-of-way all Contractor's tools, implements and other materials whether brought upon the right-of-way by the Contractor or any subcontractors employee or agent of Contractor or of any subcontractor, and leave the right-of-way in a clean and presentable condition to the satisfaction of the Railroad.

**1.23 CONTRACTOR'S RESPONSIBILITY OF SUPERVISION**

The Contractor, at its expense, shall adequately supervise all work to be performed by the Contractor. Such responsibility shall not be lessened or otherwise affected by Railroad's approval of plans and specifications, or by the presence at the work site of the Railroad Project Representative, Railroad MTM Representative or any other Railroad representative or Railroad contractor providing inspection services, or by the compliance by the Contractor with any requests or recommendations made by such representatives. The Contractor will give due consideration to suggestions and recommendations made by such representatives for the safety and protection of the Railroad's property and operations.

**1.24 USE OF EXPLOSIVES AT PROJECT SITE PROHIBITED**

The Contractor's use of explosives at the Project site is expressly prohibited unless authorized in advance in writing by the Railroad Project Representative.



**EXHIBIT E  
TO  
PUBLIC HIGHWAY OVERPASS AGREEMENT**

**Exhibit E** will be Current Form of Contractor's Right of Entry Agreement



**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

The Illinois State Toll Highway Authority  
Attention: Land Acquisition Manager  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

Tollway Parcel: \_\_\_\_\_

PIN: \_\_\_\_\_

Situated in Cook County, Illinois

\_\_\_\_\_  
*(Space Above For Recorder's Use Only)*

**FLYOVER EASEMENT AGREEMENT  
(I-294 Central Tri-State Tollway)**

This FLYOVER EASEMENT AGREEMENT ("Easement Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_ ("Effective Date") by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") and THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of State of Illinois ("Grantee"), with an address of 2700 Ogden Avenue, Downers Grove, Illinois 60515. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby agree as follows:

Grantee is proposing to implement the I-294 Central Tri-State Tollway Widening and Reconstruction Project (the "Project"), which includes the widening and reconstruction of a portion of the I-294 Central Tri-State Tollway located in Cook County, Illinois. Pursuant to that certain Real Estate Swap Agreement, dated as of [\_\_\_\_\_] (the "Swap Agreement"), Grantee and Grantor have exchanged certain tracts of real property to facilitate Grantee's implementation of the Project, and Grantee desires to obtain certain easement rights from Grantor in order to maintain elements of the Project above the tract of real property obtained by Grantor under the Swap Agreement.

Subject to the terms and conditions of this Easement Agreement, Grantor hereby grants to Grantee a flyover easement (the "Aerial Easement") to maintain, repair and use the grade-separated overpass (the "Overpass") as the same exists on the Effective Date above certain real property located in the County of Cook, State of Illinois, as such real property is more particularly described on Exhibit B attached hereto and incorporated herein by this reference ("Real Property"). All support columns, structures, and systems that support the Overpass, if

any, are collectively referred to herein with the Overpass as the “Bridge.” The location of the Aerial Easement above the Real Property is identified on Exhibit C attached hereto and incorporated herein by this reference and is further described and delineated below (the “Flyover Easement Property”). The Overpass contemplated by this Easement Agreement is generally depicted on Exhibit E attached hereto and incorporated herein by this reference.

The Flyover Easement Property shall include (i) an exclusive Aerial Easement within the area expressly limited vertically (a) above a plane parallel with and twenty-four feet (24’) above the top of the rail of the highest of Grantor’s trackage facilities located on that portion of the Real Property located within fifteen (15) feet of the centerline of existing Track 130 (the “Track 130 ROW”) and (b) below a plane parallel with and seventy-five feet (75’) above the top of the rail of the highest of Grantor’s trackage facilities located on that portion of the Real Property located within the Track 130 ROW, (ii) an exclusive Aerial Easement within the area expressly limited vertically (y) above a plane parallel with and twenty-three feet (23’) and six inches (6”) above the top of the rail of the highest of Grantor’s trackage facilities located on that portion of the Real Property located outside the Track 130 ROW and (z) below a plane parallel with and seventy-five feet (75’) above the top of the rail of the highest of Grantor’s trackage facilities located on that portion of the Real Property located outside the Track 130 ROW, and (iii) a non-exclusive Aerial Easement within the area that is at or above a plane parallel with and seventy-five feet (75’) above the top of the rail of the highest of Grantor’s trackage facilities located on the Real Property.

This Easement Agreement is expressly subject to the terms, conditions, limitations and covenants contained in Exhibit A attached hereto and incorporated by this reference. Grantee, by its acceptance of this Easement Agreement, agrees for itself, its successors and assigns, to observe each and all of the terms, conditions, limitations, and covenants in this Easement Agreement, including, without limitation, those contained in Exhibit A.

This Easement Agreement shall be construed and enforced in accordance with the laws of the State of Illinois without regard to conflicts of law provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the day and year first above written.

GRANTOR:

UNION PACIFIC RAILROAD COMPANY,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GRANTEE:

THE ILLINOIS STATE TOLL HIGHWAY  
AUTHORITY

By: \_\_\_\_\_  
Name: Willard S. Evans, Jr.  
Title: Chairman and Chief Executive Officer

ILLINOIS ATTORNEY GENERAL,  
as to form and constitutionality

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DRAFT

STATE OF NEBRASKA    )  
  )  
COUNTY OF DOUGLAS    )

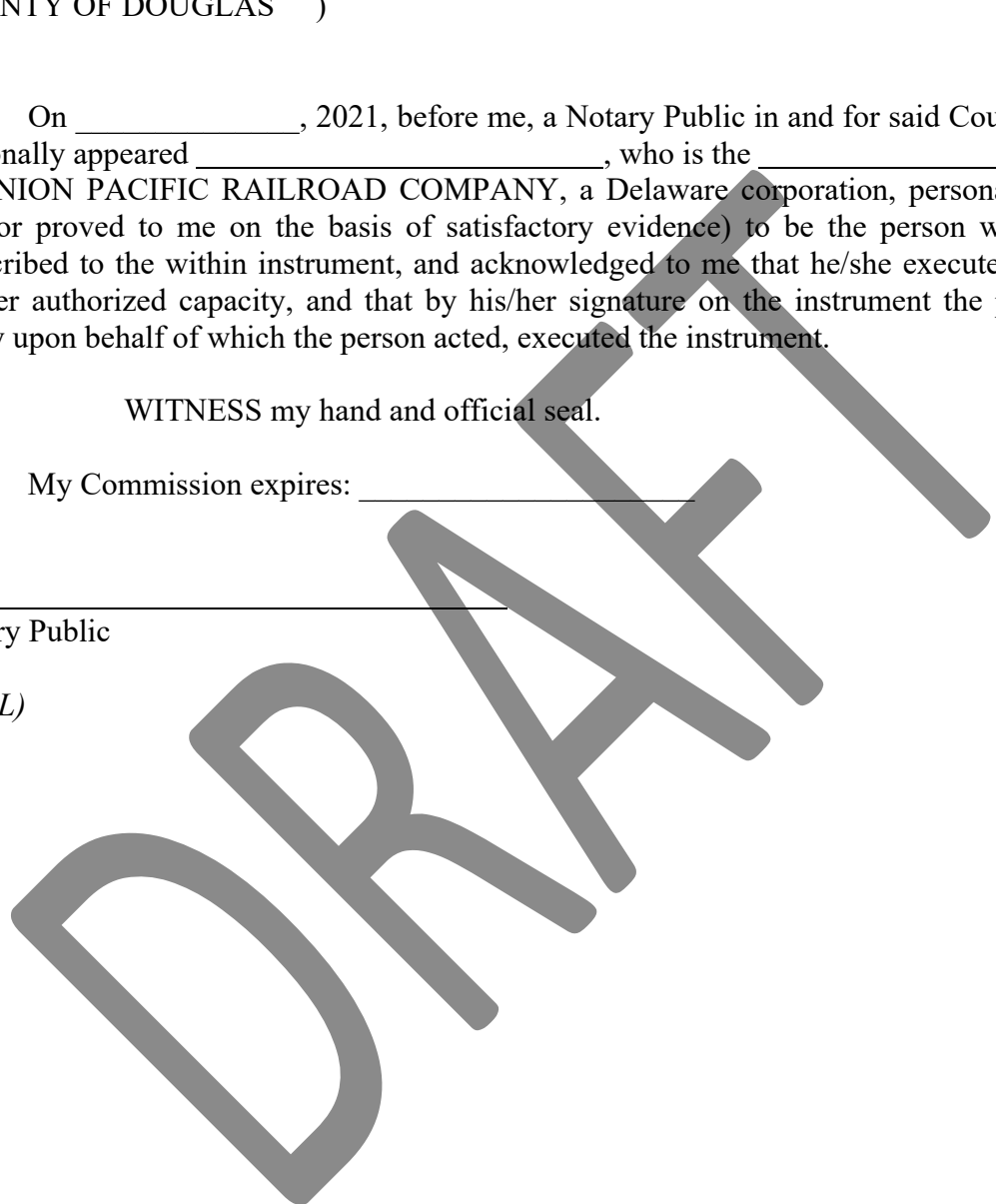
On \_\_\_\_\_, 2021, before me, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, who is the \_\_\_\_\_ of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(SEAL)



STATE OF ILLINOIS )  
 ) ss  
COUNTY OF DUPAGE )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2021, by Willard S. Evans, Jr., as Chairman and Chief Executive Officer of THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of State of Illinois.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

*(SEAL)*

**DRAFT**

## Exhibit A

(Attached to and made a part of the  
foregoing Flyover Easement Agreement  
between Union Pacific Railroad Company  
and The Illinois State Toll Highway Authority)

### Additional Terms and Conditions

This Exhibit A contains additional terms, conditions, limitations, and covenants applicable to the Easement Agreement to which it is attached and incorporated by reference. Unless otherwise specified herein, the capitalized terms used in this Exhibit A shall have the meanings set forth in the Easement Agreement.

1. Limited Purpose; Limitations on the Easement Agreement.

a. The Easement Agreement is granted only for the purposes stated in the Easement Agreement, and shall not be construed as conveying or otherwise vesting in Grantee the right to install or to authorize the installation of any ditches, pipes, drains, sewer or underground structures, or the facilities of any telegraph, telephone, fiber optic or electric power lines or other utilities in, upon, over, under, across or along the Real Property or the Flyover Easement Property, except as exists as of the Effective Date or as reasonably necessary for maintenance or operation of the Bridge, and then only with the prior written consent of Grantor, which consent shall not be unreasonably withheld or delayed. Grantee shall not use or permit use of the Flyover Easement Property for any purposes other than those described in this Easement Agreement. No nonparty to this Easement Agreement (other than Grantee's employees, contractors, subcontractors, agents or the traveling public using the highway road on the Bridge, subject to the terms set forth in this Exhibit A to the Easement Agreement) shall be admitted by Grantee to use or occupy any part of the Flyover Easement Property without Grantor's prior written consent, which consent shall not be unreasonably withheld or delayed. Nothing contained in the Easement Agreement shall be deemed to be a gift or dedication of any portion of the Flyover Easement Property to or for the general public.

b. All of the easements and other rights granted by this Easement Agreement are granted to and accepted by the Grantee in an "AS IS," "WHERE IS" and "WITH ALL FAULTS" basis and condition without warranty, express or implied. In furtherance of the forgoing and not in any way a limitation thereof, Grantor makes no covenant or warranty of title, for quiet possession or against encumbrances with respect to the Flyover Easement Property. This Easement Agreement is subject and subordinate to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title that may affect the Flyover Easement Property or the Real Property now or in the future (whether public or private) and whether recorded or unrecorded (including, without limitation, those in favor of grantees and lessees of Grantor's property and others); provided however, that Grantor shall make no license, easement, covenant or encumbrance after initial execution of the Easement Agreement that shall materially and adversely affect Grantee's rights (including without limitation the rights related to the maintenance and operation of the Bridge) in and to the Aerial Easement without Grantee's prior written consent.



2. Operations; Inspections.

a. Grantee, at its expense, shall maintain and operate the Bridge in a good and safe condition, and comply with all applicable federal, state and local laws, regulations and enactments applicable to the Bridge, including the approaches thereto (including without limitation lighting and drainage). Grantee acknowledges and agrees that Grantor shall have no obligation to maintain or operate the Bridge or to contribute to the cost thereof.

b. Without limiting any obligations of Grantee or Grantee's contractors, subcontractors or agents pursuant to the Right of Entry Agreement (defined below), if any utility, fiber optic or communication facilities located on, under or across the Real Property or the Flyover Easement Property require relocation as a result of Grantee's work on the Flyover Easement Property, all such relocations shall be arranged by Grantee with the entities owning or controlling the facilities being relocated, at the sole expense and cost of entities other than Grantor.

c. Upon not less than forty-eight (48) hours prior notice to Grantee (and at any time in the event of an emergency), Grantor and/or Grantor's contractors, subcontractors or agents shall have the right to enter upon the Flyover Easement Property, and any other property on which the Bridge is located, with reasonable frequency, and inspect the Bridge to determine if it conforms with the operational and maintenance standards set forth above. Notwithstanding anything to the contrary contained in the Easement Agreement, Grantor's inspections will be performed solely for its own purposes and benefit, and Grantor shall not be deemed to be liable to Grantee or any other party for the operational and maintenance standards set forth above. Grantor will deliver prompt notice to Grantee of any perceived deficiencies or defects of which Grantor becomes aware, on condition that failure to provide such notice shall not be deemed to be a default by Grantor hereunder and shall create no liability whatsoever for Grantor, whether to Grantee or to any third party. Grantee agrees to reimburse Grantor for its reasonable costs incurred in connection with (i) all inspections of the Bridge during any repair or reconstruction of the Bridge, (ii) all emergency inspections of the Bridge, (iii) one (1) inspection of the Bridge every calendar year, and (iv) any reports generated in connection with such inspections that relate specifically to the Bridge, within sixty (60) days after delivery to Grantee of an invoice therefor. Grantor shall provide to Grantee, upon Grantee's request, copies of any reports described in the preceding sentence, and Grantee shall pay the direct costs for all such copies.

d. Grantee shall bear the entire expense of maintaining, repairing, replacing and using the Bridge. Grantee acknowledges and agrees that any and all such costs and expenses incurred by Grantor solely on account of the exercise of Grantee's rights and obligations under this Easement Agreement shall be reimbursed to Grantor by Grantee.

e. Grantee shall promptly remove all graffiti, litter, weeds, debris, trash and garbage from and on the Bridge at its sole cost and expense.

3. Entry on the Real Property.

a. Grantee shall not enter onto the Real Property or otherwise utilize any of the rights granted by the Easement Agreement unless such entry or use is specifically permitted by, and then only in strict compliance with, the terms and conditions set forth in the Easement Agreement. In furtherance of the forgoing and not in any way a limitation thereof, no work related to any reconstruction of the Bridge by Grantee shall begin until Grantor has given its final approval of the submitted designs, plans and specifications at the one hundred percent (100%) design completion level for any such reconstruction of the Bridge.

b. None of Grantor or Grantor's contractors, subcontractors or agents shall enter on the Bridge (except in the event of an emergency or while using the public highway road on the Bridge) prior to obtaining a permit or authorization letter from Grantee.

4. Notice of Commencement of Work; Flagging.

If any emergency should arise with respect to the Bridge requiring immediate attention, Grantee shall provide as much notice as practicable to Grantor before commencing any work on the Flyover Easement Property, or any other property on which the Bridge is located, relating to such emergency. In all other situations, Grantee shall (i) notify Grantor at least thirty (30) days (or such lesser time as Grantor may allow) in advance of the commencement of any work within the Flyover Easement Property in connection with maintaining, repairing and/or replacing the Bridge, and (ii) enter into a limited form of Grantor's standard form of right of entry agreement ("Right of Entry Agreement"). Grantee shall also give at least five (5) days advance notice to Grantor (or such other time as Grantor may allow) of proposed performance of any work by Grantee on the Flyover Easement Property, or any other property on which the Bridge is located, in which any person or equipment will be within twenty-five (25) feet of any track of Grantor, or will be near enough to any such track that any equipment extension (such as, but not limited to, a crane boom) will reach to within twenty-five (25) feet of such track. Upon receipt of such notice, Grantor will determine and inform Grantee whether a flagman need be present and whether Grantee need implement any special protective or safety measures. If any flagman or other special protective or safety measures are performed by Grantor, such services will be provided at Grantee's expense with the understanding that if Grantor provides any flagging or other services Grantee shall not be relieved of any of its responsibilities set forth in the Easement Agreement. Grantee acknowledges and agrees that it shall be subject to and comply with the notice of commencement of work and flagging provisions as more particularly described in the Right of Entry Agreement.

5. No Interference with Grantor's Operations.

The Bridge shall be at all times maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of Grantor, except (i) in case of emergency (in which event Grantee shall provide immediate notice to Grantor and shall coordinate its response with Grantor) and otherwise (ii) with the prior written consent of Grantor, which may be withheld in

its sole discretion. Nothing shall be done or suffered to be done by Grantee at any time that would in any manner impair the safety or efficient operation of the tracks, property and facilities of Grantor. The Easement Agreement is subject and subordinate to the prior right of Grantor, its successors and assigns, to use all of the Real Property and the Flyover Easement Property in the performance of its duty as a common carrier, and Grantee acknowledges and agrees that it shall not interfere with the performance of such duty by Grantor, provided that the foregoing shall not interfere with Grantee's exercise of the specific rights conveyed under the Easement Agreement. Grantee agrees that any construction, reconstruction, maintenance, repair, replacement or use undertaken by Grantee or any of its contractors, subcontractors or agents as provided for herein shall be performed in a manner that preserves the functionality (in terms of speed, efficiency, capabilities and cost-effectiveness) of Grantor's freight rail operations, and that ensures that such operations will continue without interruption, except with the prior written consent of Grantor which may be withheld in its sole discretion (except as otherwise expressly provided herein). Grantee agrees further that any utilities necessary for the maintenance or operation of the Bridge shall not unreasonably interfere (including without limitation any radio or electromagnetic interference) with any Grantor or third-party utilities or other railroad operations (including without limitation any railroad communication systems), except with the prior written consent of Grantor, which may not be unreasonably withheld.

6. Protection of Fiber Optic Cable Systems.

Grantee acknowledges and agrees that it shall be subject to and comply with the fiber optic cable system provisions as more particularly described in the Right of Entry Agreement. In addition to (and not in limitation of), and without prejudice to or limitation of any other indemnity provisions or legal remedies in the Easement Agreement or any other remedies at law or in equity, Grantee or its contractor(s) shall, to the extent it may lawfully do so, indemnify, defend and hold harmless Grantor from and against all costs, liability and expenses whatsoever (including, without limitation, reasonable attorneys' fees, court costs and expenses) caused by or arising from the negligence of Grantee, its contractors, subcontractors, agents and/or employees, or the failure of Grantee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement, resulting in (i) any damage to or destruction of any fiber optic cable system located on or under the Real Property and/or the Flyover Easement Property and/or (ii) any injury to or death of any person employed by or on behalf of any telecommunications company owning such fiber optic cable, and/or its contractors, subcontractors agents and/or employees. Grantee further agrees that it shall not have or seek recourse against Grantor for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company owning such fiber optic cable or a customer or user of services of such fiber optic cable unless the same was not caused by or does not arise from the negligence of Grantee, its contractors, subcontractors, agents and/or employees, or the failure of Grantee to comply with the terms and conditions of the fiber optic cable system provisions contained in the Right of Entry Agreement.

7. Insurance.

Grantee will purchase and keep in effect at all times during its use, maintenance, and operation of the Bridge the insurance described in the attached **Exhibit D**.

8. Safety Measures.

Grantee understands and recognizes that safety and continuity of Grantor's operations and communications are of the utmost importance; and in order that the same may be adequately safeguarded, protected and assured, and in order that accidents may be prevented and avoided, Grantee shall require all work on the Flyover Easement Property to be performed in a safe manner and in conformity with the following standards:

a. All references to Grantee in this Section 8 shall include Grantee's contractors, subcontractors, agents, officers and employees, and others acting under its or their authority; and all references to work of Grantee in this Section 8 shall include all work on or about the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement and/or use of the Bridge.

b. Grantee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. Grantee shall use only such methods as are consistent with safety, as it concerns Grantee, Grantee's agents and employees, the officers, agents, employees and property of Grantor and the public in general. Without limiting the generality of the foregoing, Grantee shall comply with all applicable state and federal occupational safety and health acts and regulations.

c. Grantee, at its own expense, shall adequately police and supervise all work to be performed by Grantee. The responsibility of Grantee for safe conduct and adequate policing and supervision of its work shall not be lessened or otherwise affected by Grantor's approval of the designs, plans or specifications for any work pertaining to the Bridge, or by Grantor's collaboration in performance of any work, or by the presence at the work site of Grantor's representatives, or by compliance by Grantee with any requests or recommendations made by such representatives. If a representative of Grantor is assigned to the job site, Grantee will give due consideration to suggestions and recommendations made by such representative for the safety and protection of Grantor's property and operations; provided, however, that Grantee shall not be required to take any action that is contrary to law or would compromise the safety of Grantee's contractors, employees or passengers.

d. Neither party may discharge, store or use any explosives on or about the Flyover Easement Property without the written prior consent of the other party.

e. Grantee shall keep the Flyover Easement Property free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects that may affect the Flyover Easement Property. Grantee shall have a non-delegable duty to control its employees while they are on the Flyover Easement Property to be certain they do not use, be under the influence of or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work, including without limitation any maintenance or operations described herein, by the employee. For the purposes of this Section 8.e, an "employee" of Grantee shall mean a staff member of Grantee present on the Flyover Easement Property for purposes relating

to Grantee's use of the Flyover Easement Property. Employees, vendors, or contractors of any agent, contractor, or vendor of Grantee shall not be deemed to be an employee of Grantee for the purposes of this Section 8.e. If in the opinion of Grantor any of Grantee's equipment is unsafe for use on the Flyover Easement Property, Grantee, at the request of Grantor, shall remove such equipment from the Flyover Easement Property

f. Grantee shall not intentionally cause, suffer or permit material or debris to be deposited or cast upon, or to slide or fall upon, any property or facilities of Grantor without the written prior consent of Grantor; and any such material and debris (and any material and debris that is unintentionally deposited, cast upon or slides or falls upon any of Grantor's property or facilities) shall be promptly removed by Grantee at Grantee's own expense or by Grantor at the expense of Grantee. Grantee shall not excavate from existing slopes nor construct new slopes that are excessive or may create hazards of slides or falling rock, or impair or endanger the clearance between existing or new slopes and the tracks of Grantor. Grantee shall not undertake any work that will or may disturb the stability of the Real Property, the Flyover Easement Property or surrounding area or adversely affect Grantor's tracks or facilities without the written prior consent of Grantor. Grantee, at its own expense, shall install and maintain adequate shoring and cribbing for all excavation and/or trenching performed by Grantee in connection with any construction, reconstruction, maintenance, repair, replacement or use provided for herein. Grantee, at Grantee's own expense, shall provide adequate passageway for the waters of any streams, bodies of water and drainage facilities (either natural or artificial), so that said waters may not, because of any work described herein, be impeded, obstructed, diverted or caused to back up, overflow or damage the property of Grantor or any part thereof, or property of others. Grantee shall not obstruct or interfere with existing ditches or drainage facilities without the written prior consent of Grantor.

g. Grantee acknowledges and agrees that it shall be subject to and comply with the safety measures as more particularly described in the Right of Entry Agreement.

9. Claims and Liens for Labor and Material.

Grantee shall fully pay for all materials joined or affixed to and labor performed upon the Flyover Easement Property in connection with the construction, reconstruction, maintenance, repair, replacement, and use of the Bridge, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Real Property, Flyover Easement Property or other property of Grantor for any work done or materials furnished thereon at the instance or request or on behalf of Grantee.

10. Termination.

If, (i) at any time, Grantee provides written notice to Grantor that Grantee does not intend to use or will not use any portion of the Flyover Easement Property, or (ii) at any time, Grantee's final design or buildout of its grade-separated highway road overpass for the Project shows no portion of the Bridge located within the Flyover Easement Property, then the Easement Agreement shall automatically terminate. After termination of the Easement Agreement as provided herein, upon the request of Grantor at any time, Grantee shall execute and deliver to

Grantor a quitclaim deed as set forth in Section 11 of this Exhibit A.

11. Quitclaim Deed.

In the event that the Easement Agreement terminates or all or any portion of the Flyover Easement Property is reduced or abandoned pursuant to Section 10 of this Exhibit A, the portion of the Flyover Easement Property that is excluded from the Easement Agreement by virtue of such termination, reduction, abandonment or other modification, as applicable, shall thereupon automatically be released from, and no longer subject to, the Easement Agreement. Upon the request of Grantor at any time, Grantee shall execute and deliver to Grantor a quitclaim deed, covering the portions of the Flyover Easement Property excluded by such termination, reduction, abandonment or other modification within thirty (30) days after such request.

12. Other Railroads.

Any and all protective covenants of the Easement Agreement shall inure to the benefit of Grantor and any other railroad company lawfully using the Real Property or rail facilities located thereon or thereunder.

13. Notices.

All written notices and demands of any kind which either party may be required or may desire to serve on the other in connection with the Easement Agreement shall be served by personal delivery, electronic facsimile with a hard copy promptly posted in the U.S. mail, reputable overnight air courier or registered or certified mail, postage prepaid, return receipt requested, to the intended addressee at the address set forth below:

If to Grantor:

UNION PACIFIC RAILROAD COMPANY  
Attention: [ \_\_\_\_\_ ]  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690  
Telephone: [ \_\_\_\_\_ ]  
Email: [ \_\_\_\_\_ ]

with copies to:

UNION PACIFIC RAILROAD COMPANY  
Attention: Chris Kelly, Esq.  
General Attorney  
1400 Douglas Street, Mail Stop 1580  
Omaha, NE 68179  
Telephone: 402-544-4.35  
Email: cbkelly@up.com

If to Grantee:

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY  
Attention: Paul D. Kovacs, P.E.  
Chief Engineering Officer  
2700 Ogden Avenue  
Downers Grove, IL 60515  
Telephone: (630) 241-6800 x 4901  
Email: paulkovacs@getipass.com

with copies to:

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY  
Attention: Kathleen R. Pasulka-Brown, Esq.  
General Counsel  
2700 Ogden Avenue  
Downers Grove, IL 60515  
Telephone: (630) 241-6800 x 1500  
Email: kpasulkabrown@getipass.com

Any such communication shall be deemed to have been delivered (i) as of the date of receipt, in the case of personal delivery or electronic facsimile transmission, (ii) the date of receipt or first attempted delivery via reputable air courier, or (iii) as of the date of receipt or first attempted delivery, as evidenced by the return receipt card, in the case of mailing via certified or registered United States mail. Either may change the address at which it is to receive notice by so notifying the other party to the Easement Agreement in writing in the manner provided for above.

14. Assignment.

a. The Easement Agreement and the terms, covenants, and conditions hereof shall be binding upon, and inure to the benefit of, the parties and, except as expressly limited herein, their respective permitted successors and assigns. The qualifications and reputation of Grantee are material inducements to Grantor in entering into the Easement Agreement. Therefore, Grantee may not assign, in whole or in part, any of its rights in or delegate any of its duties under the Easement Agreement (an "Assignment") to any third party, without the prior written consent of Grantor, which consent may be withheld in Grantor's sole discretion. Without limiting the generality of the foregoing, no third party shall be eligible to become an assignee until and unless it has been qualified as a Qualified Proposed Assignee pursuant to Section 14.b hereof. Any Assignment, in whole or in part, or attempted Assignment, in whole or in part, by Grantee whether voluntary, by operation of law or otherwise, in violation of this Section 14, shall be absolutely void.

(i) Grantee shall make its request for Grantor's consent to an Assignment in writing (for each proposed Assignment, a "Consent Request") and shall include with such request the proposed form of agreement that Grantee intends to use to formalize such Assignment and shall include an update of the qualifying information required to be delivered pursuant to Section 14.b. The Assignment shall, among other things (a) specify the rights and obligations of Grantee that will be assigned, with reference to the Easement Agreement and any other document(s) that are the subject of such Assignment, (b) expressly provide that the

assignee shall assume and be bound by the terms and conditions of the Easement Agreement and any other document(s) that are the subject of such Assignment, and (c) expressly provide that Grantee shall remain primarily liable to Grantor for any and all obligations and duties under the Easement Agreement that arose prior to the effective date of the Assignment.

(ii) Within thirty (30) days after the later of (a) Grantor's receipt of a Consent Request or (b) Grantor's receipt of the update of the qualifying information described in Section 14.b, Grantor shall respond to Grantee in writing setting forth (1) Grantor's consent to such Assignment, (2) Grantor's refusal to consent to such Assignment or (3) Grantor's conditional consent to such Assignment setting forth the conditions that Grantee or such proposed assignee shall satisfy prior to obtaining Grantor's consent (which conditions may include revisions to the Assignment). Should Grantor fail to provide Grantee with a written response to any Consent Request within such thirty (30) day period, Grantor shall have been deemed to have refused consent to such Assignment.

(iii) Notwithstanding anything to the contrary contained herein or in any Assignment, no Assignment shall release Grantee from any of Grantee's duties or obligations under the Easement Agreement or any documents subject to the Assignment that arose prior to the effective date of the Assignment. Grantee shall, no later than ten (10) days after the effective date of an Assignment, provide Grantor with a fully executed copy of each Assignment.

b. Except as expressly allowed by Section 14.a, whenever Grantee desires to make an Assignment, Grantee shall seek Grantor's prior written approval of the proposed assignee as a "Qualified Proposed Assignee." All requests for Grantor's approval under this Section 14.b shall be in writing, shall state that Grantee intends to assign all or a portion of its rights and obligations under the Easement Agreement to such proposed assignee, shall describe the scope of the rights and obligations that Grantee intends to assign, and shall specify in detail the following qualifying information:

(i) legal name and address of the proposed assignee and the names, addresses and telephone numbers of the persons that own or have control of the proposed assignee;

(ii) information regarding the proposed assignee's prior business experience that may be relevant to Grantor;

(iii) bank and other credit references, business reputation references, financial statements and such other information as Grantor may reasonably require to assess the proposed assignee's business and financial responsibility and standing;

(iv) any other background information on such proposed assignee obtained by Grantee in connection with the Project; and

(v) any other follow-up information regarding such proposed assignee as Grantee may deem to be material or as may be requested by Grantor in its reasonable discretion.

Within thirty (30) days after the later of (a) Grantor's receipt of Grantee's request for approval of any proposed assignee or (b) Grantor's receipt of the necessary qualifying information regarding such proposed assignee, Grantor shall provide Grantee with written notice



of Grantor's approval or disapproval of such proposed assignee as a Qualified Proposed Assignee. Grantor's failure to respond within such thirty (30) day period shall be deemed to be a disapproval by Grantor of the proposed assignee. Notwithstanding anything to the contrary contained in this Section 14.b, an approval by Grantor of a Qualified Proposed Assignee hereunder shall not be deemed to be a consent to an Assignment under Section 14.a.

15. No Waiver.

No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof of the exercise of any other right, power or privilege hereunder.

16. Entire Agreement.

The Easement Agreement and the Swap Agreement, and all instrument and documents executed in connection therewith (including without limitation, all documents executed in connection with the closing of the various property transfers, all as contemplated by the Swap Agreement), are intended by the parties as a final expression of their agreement and intended to be a complete and exclusive statement of the agreement and understanding of the parties thereto in respect of the subject matter contained herein.

17. Binding Effect.

The parties intend that the promises and obligations of the Easement Agreement shall constitute covenants running with the land so as to benefit their respective permitted successors and assigns.

## Exhibit B

(Attached to and made a part of the  
foregoing Flyover Easement Agreement  
between Union Pacific Railroad Company  
and The Illinois State Toll Highway Authority)

### Legal Description of Real Property

T-7-4.EX

THAT PART OF LANDS IN TRACT "A" OF PARCEL T-7-4 AS DESCRIBED IN QUITCLAIM DEED RECORDED DECEMBER 30, 1958 AS DOCUMENT NUMBER 17415288 IN THE SOUTHWEST QUARTER OF FRACTIONAL SECTION 6, TOWNSHIP 39 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, COOK COUNTY, ILLINOIS, BEARINGS AND DISTANCES BASED ON THE ILLINOIS STATE PLANE COORDINATE SYSTEM, EAST ZONE, NAD83 (2011 ADJUSTMENT), WITH A COMBINED FACTOR OF 0.999963361, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID FRACTIONAL SECTION 6; THENCE EASTERLY ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER SOUTH 89 DEGREES 52 MINUTES 33 SECONDS EAST, 82.97 FEET TO THE WESTERLY RIGHT OF WAY LINE OF I-294 CENTRAL TRI-STATE TOLLWAY; THENCE SOUTH 0 DEGREES 05 MINUTES 07 SECONDS EAST ALONG SAID LINE, 100.96 FEET TO A POINT ON THE NORTH LINE OF THE UNION PACIFIC RAILROAD RIGHT OF WAY, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 43 DEGREES 33 MINUTES 23 SECONDS EAST, 115.22 FEET TO AN ANGLE POINT IN THE NORTH LINE OF AN EXISTING EASEMENT GRANTED TO THE ILLINOIS STATE TOLL HIGHWAY COMMISSION RECORDED DECEMBER 30, 1958 AS DOCUMENT NUMBER 17415289; THENCE SOUTH 37 DEGREES 34 MINUTES 51 SECONDS WEST ALONG THE NORTH LINE OF SAID EASEMENT, 130.14 FEET TO THE WESTERLY LINE OF SAID EASEMENT; THENCE NORTH 0 DEGREES 05 MINUTES 07 SECONDS WEST ALONG SAID LINE, 19.63 FEET TO THE POINT OF BEGINNING.

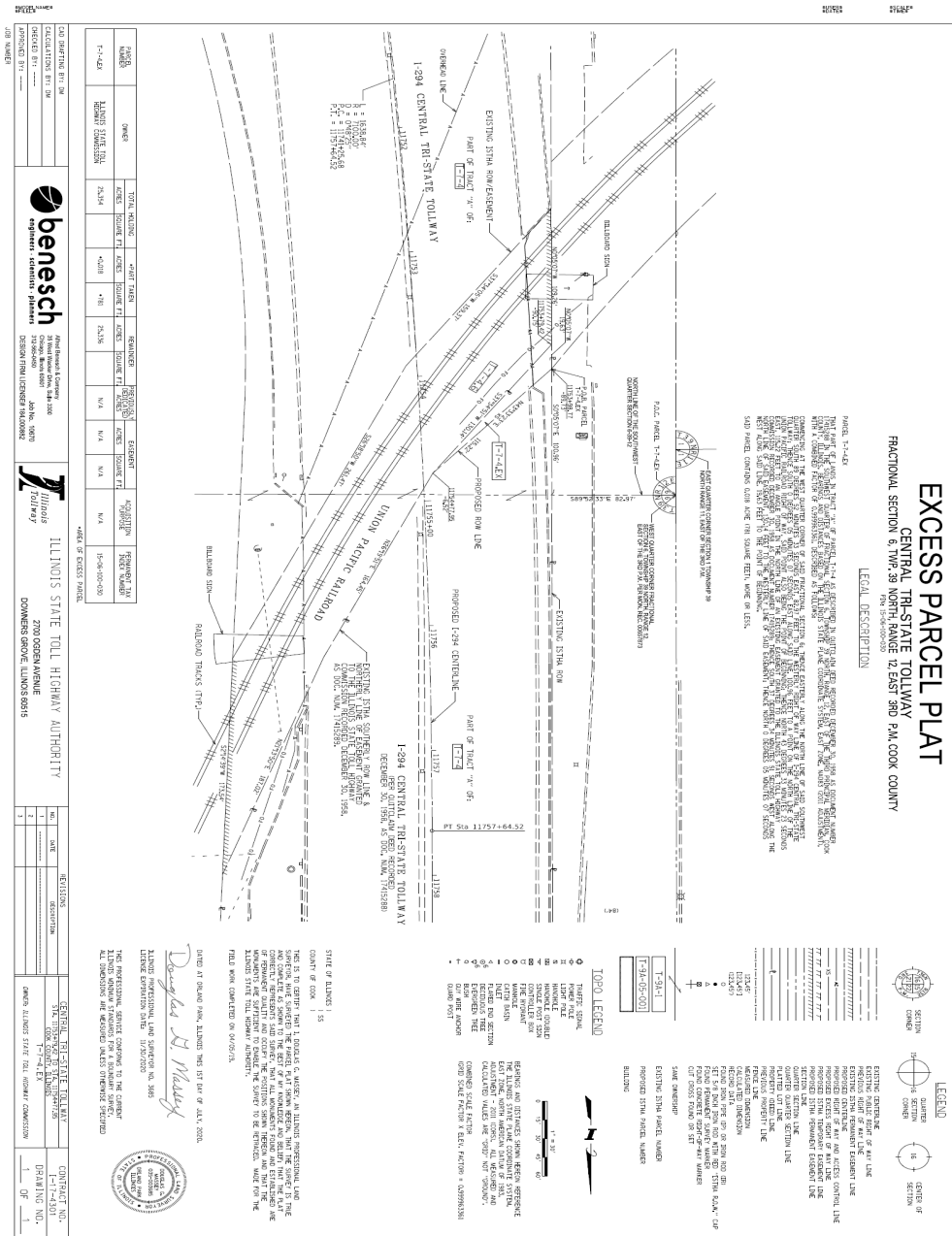
SAID PARCEL CONTAINS 0.018 ACRE (781 SQUARE FEET), MORE OR LESS.

The foregoing being depicted on **Exhibit B-1** attached hereto as the area denoted T-7-4.EX .

# Exhibit B-1

(Attached to and made a part of the foregoing Flyover Easement Agreement between Union Pacific Railroad Company and The Illinois State Toll Highway Authority)

## Depiction of Real Property



## Exhibit C

(Attached to and made a part of the  
foregoing Flyover Easement Agreement  
between Union Pacific Railroad Company  
and The Illinois State Toll Highway Authority)

### Flyover Easement Property

#### Exclusive Aerial Easement property:

(A) The area that is expressly limited vertically (a) above a plane parallel with and twenty-four feet (24') above the top of the rail of the highest of Grantor's trackage facilities located on that portion of the Real Property (as described in Exhibit B of the Easement Agreement) located within fifteen (15) feet of the centerline of existing Track 130 (the "Track 130 ROW") and (b) below a plane parallel with and seventy-five feet (75') above the top of the rail of the highest of Grantor's trackage facilities located on that portion of the Real Property (as described in Exhibit B of the Easement Agreement) located within the Track 130 ROW.

(B) The area that is expressly limited vertically (a) above a plane parallel with and twenty-three feet (23') and six inches (6") above the top of the rail of the highest of Grantor's trackage facilities located on that portion of the Real Property (as described in Exhibit B of the Easement Agreement) located outside the Track 130 ROW and (b) below a plane parallel with and seventy-five feet (75') above the top of the rail of the highest of Grantor's trackage facilities located on that portion of the Real Property (as described in Exhibit B of the Easement Agreement) located outside the Track 130 ROW.

#### Non-exclusive Aerial Easement property:

The area that is expressly limited vertically at or above a plane parallel with and seventy-five feet (75') above the top of the rail of the highest of Grantor's trackage facilities located on the Real Property (as described in Exhibit B of the Easement Agreement).

## Exhibit D

(Attached to and made a part of the  
foregoing Flyover Easement Agreement  
between Union Pacific Railroad Company  
and The Illinois State Toll Highway Authority)

### Insurance

- A. **Commercial General Liability** insurance. Commercial general liability (CGL) with a limit of not less than \$10,000,000 each occurrence and an aggregate limit of not less than \$20,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Railroad Company Property” as the Designated Job Site.
- Designated Construction Project(s) General Aggregate Limit ISO Form CG 25 03 03 97 (or a substitute form providing equivalent coverage) showing the project on the form schedule.

- B. **Business Automobile Coverage** insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$10,000,000 for each accident and coverage must include liability arising out of any auto (including owned, hired and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing “Union Pacific Property” as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

- C. **Workers' Compensation and Employers' Liability** insurance. Coverage must include but not be limited to:

- Grantee's statutory liability under the workers' compensation laws of the state where the work is being performed.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Grantee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S.

Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

- D. Railroad Protective Liability insurance.** Grantee must maintain "Railroad Protective Liability" (RPL) insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$10,000,000 per occurrence and an aggregate of \$20,000,000. The definition of "JOB LOCATION" and "WORK" on the declaration page of the policy shall refer to this agreement and shall describe all WORK or OPERATIONS performed under this agreement. Grantee shall provide this agreement to Grantee's insurance agent(s) and/or broker(s) and Grantee shall instruct such agent(s) and/or broker(s) to procure the insurance coverage required by this agreement. A BINDER STATING THE POLICY IS IN PLACE MUST BE SUBMITTED TO RAILROAD BEFORE THE WORK MAY COMMENCE AND UNTIL THE ORIGINAL POLICY IS FORWARDED TO UNION PACIFIC RAILROAD.
- E. Umbrella or Excess insurance.** If Grantee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.
- F. Pollution Liability insurance.** Pollution liability coverage must be included when the scope of the work as defined in the agreement includes installation, temporary storage, or disposal of any "hazardous" material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

If required, coverage may be provided in separate policy form or by endorsement to Grantee's CGL or RPL. Any form coverage must be equivalent to that provided in ISO form CG 24 15 "Limited Pollution Liability Extension Endorsement" or CG 28 31 "Pollution Exclusion Amendment" with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Grantee must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

## **1.2 Other Requirements**

- G.** All policy(ies) required above (except business automobile, worker's compensation and employers liability) must include Railroad as "Additional Insured" using ISO Additional Insured Endorsements CG 20 10, and CG 20 37 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall not be limited by Grantee's liability under the indemnity provisions of this agreement. BOTH GRANTEE AND RAILROAD EXPECT THAT UNION PACIFIC RAILROAD COMPANY WILL BE PROVIDED WITH THE BROADEST POSSIBLE COVERAGE

AVAILABLE BY OPERATION OF LAW UNDER ISO ADDITIONAL INSURED FORMS CG 20 10 AND CG 20 37.

- H.** Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed.
- I.** Grantee waives all rights of recovery, and its insurers also waive all rights of subrogation of damages against Railroad and its agents, officers, directors and employees for damages covered by the workers compensation and employers liability or commercial umbrella or excess liability obtained by Grantee required in this agreement where prohibited by law. This waiver must be stated on the certificate of insurance.
- J.** Prior to commencing the work, Grantee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this agreement.
- K.** All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the work is being performed.
- L.** The fact that insurance is obtained by Grantee or by Railroad on behalf of Grantee will not be deemed to release or diminish the liability of Grantee, including, without limitation, liability under the indemnity provisions of this agreement. Damages recoverable by Railroad from Grantee or any third party will not be limited by the amount of the required insurance coverage.

**Exhibit E**

(Attached to and made a part of the  
foregoing Flyover Easement Agreement  
between Union Pacific Railroad Company  
and The Illinois State Toll Highway Authority)

**Depiction of Overpass**

(See attached)

DRAFT



## **REAL ESTATE SWAP AGREEMENT**

THIS REAL ESTATE SWAP AGREEMENT (this “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021 (the “**Effective Date**”), by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois (“**Tollway**”), with an address of 2700 Ogden Avenue, Downers Grove, Illinois 60515, and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (“**Union Pacific**”), with an address of 1400 Douglas Street, Omaha, Nebraska 68179; sometimes collectively referred to as the “**Parties**” and sometimes individually referred to as a “**Party**”.

### **W I T N E S S E T H:**

WHEREAS, Tollway is presently involved in the planning and construction of the I-294 Central Tri-State Tollway Widening and Reconstruction Project (the “**Project**”), which includes the widening and reconstruction of a portion of the I-294 Central Tri-State Tollway located in Cook County, Illinois;

WHEREAS, Tollway proposes to acquire certain real property rights from Union Pacific to complete the Project and, in exchange, Union Pacific desires to obtain certain real property rights from Tollway for use in connection with Union Pacific’s adjacent rail lines and railroad facilities;

WHEREAS, Union Pacific is the fee owner of a certain tract of real property located in Cook County, Illinois, comprised of approximately 0.011 acres, and more particularly described on **Exhibit A** attached hereto and made a part hereof (the “**Union Pacific Parcel**”);

WHEREAS, Tollway desires that Union Pacific quitclaim its right, title and interest in the Union Pacific Parcel to Tollway or its designee, and Union Pacific is willing to cause such conveyance to occur in accordance with the terms and conditions of this Agreement;

WHEREAS, Tollway is the fee owner of a certain tract of real property located in Cook County, Illinois, comprised of approximately 0.018 acres, and more particularly described on **Exhibit B** attached hereto and made a part hereof (the “**Tollway Parcel**”); and

WHEREAS, Union Pacific desires that Tollway quitclaim its right, title and interest in the Tollway Parcel to Union Pacific or its designee, and Tollway is willing to cause such conveyance to occur in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein granted and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **TRANSFER OF PROPERTY; EASEMENT RIGHTS**

- 1.1 **Fee Transfer to Union Pacific.** Subject to the terms and conditions hereinafter set forth, including, without limitation, Section 1.3 below, Tollway hereby agrees to quitclaim and convey to Union Pacific, and Union Pacific hereby agrees to acquire on the date of closing as herein provided (hereinafter referred to as the “**Closing Date**” or “**Closing**”), all of Tollway’s right, title and interest in and to the Tollway Parcel, including, without limitation, any improvements, fixtures, easements and rights-of-way, appurtenances, privileges and rights located thereon or appertaining thereto.
- 1.2 **Fee Transfer to Tollway.** Subject to the terms and conditions hereinafter set forth, Union Pacific hereby agrees to quitclaim and convey to Tollway, and Tollway hereby agrees to acquire on the Closing Date, all of Union Pacific’s right, title and interest in and to the Union Pacific Parcel, including, without limitation, any improvements, fixtures, easements and rights-of-way, appurtenances, privileges and rights located thereon or appertaining thereto.
- 1.3 **Reservation of Easement Rights by Tollway.** Tollway presently maintains a structural support column upon the Tollway Parcel for the purpose of supporting the flyover structure (the “**Flyover Structure**”) comprising part of the I-294 Central Tri-State Tollway (the “**Abutment**”), and which Abutment is more particularly described on **Exhibit C** attached hereto and made a part hereof. Tollway shall reserve an easement at Closing to maintain, use, repair and replace the Abutment upon the Tollway Parcel (the “**Abutment Easement**”) until such time as Tollway no longer requires use of the Abutment. At such time as Tollway shall cease to use the Abutment, Tollway shall remove the Abutment from the Tollway Parcel and return the Tollway Parcel to a safe and level condition, all at Tollway’s sole cost and expense. The Abutment Easement shall automatically terminate at such time as the Abutment is removed from the Tollway Parcel; provided, however, that Tollway shall provide Union Pacific a written release of the Abutment Easement in recordable form upon written request by Union Pacific for purpose of confirming such termination and release of record.
- 1.4 **Grant of Aerial Easement to Tollway.** Subject to the terms and conditions hereinafter set forth, Union Pacific hereby agrees to grant to Tollway on the Closing Date an aerial easement above the Tollway Parcel to maintain, use, repair and replace the Flyover Structure (the “**Aerial Easement**”) until such time as Tollway no longer requires use of the Flyover Structure. The form of the Aerial Easement is attached hereto as **Exhibit F**.

2. **PURCHASE PRICE; COSTS OF CLOSING; TITLE COMPANY**

- 2.1 **Purchase Price.** It is understood and agreed by the Parties that the rights, interests and covenants to be granted and exchanged between Union Pacific and Tollway in accordance with the terms of this Agreement are substantially equivalent in value as to each Party and, as such, no monetary consideration will

be due, owing or otherwise exchanged with respect to the transactions contemplated by this Agreement.

## 2.2 **Closing Costs and Prorations.**

- (a) Tollway shall be responsible for all applicable recording costs, transfer taxes (but specifically excluding any type of personal income tax or capital gains tax attributable to a seller generally) and escrow/closing fees payable at Closing with respect to the conveyances contemplated by this Agreement. There are no rents, income or other expenses to be prorated at Closing. With respect to the Union Pacific Parcel and the Tollway Parcel, all real property taxes accrued or accruing and attributable to the calendar year in which Closing occurs shall be prorated as of the Closing Date, with the conveying Party responsible for all such taxes attributable to the parcel so conveyed for the period thorough and including the Closing Date. If actual levy amounts are yet unknown at the time of Closing, an estimated amount shall be prorated on the basis of one hundred percent (100%) of the last known actual real property taxes payable according to public record for the corresponding parcel. Taxes for all prior years shall be paid by the conveying Party with respect to the parcel so conveyed. Assessments, either general or special, for improvements completed prior to Closing, whether matured or unmatured, shall be paid current (including all principal and interest) through the Closing Date by the conveying Party with respect to the parcel so conveyed. Each Party shall be solely responsible for its own legal fees and due diligence costs incurred in connection with the transactions contemplated by this Agreement.
- (b) Notwithstanding anything to the contrary in Section 2.2(a), there shall be no proration of real property taxes, special taxes or assessments attributable to the Union Pacific Parcel during the tax year in which Closing occurs if, as of the Closing Date, the Union Pacific Parcel is centrally assessed as part of Union Pacific's real estate holdings in the State of Illinois. Tollway shall not be responsible for, and Union Pacific shall indemnify and hold Tollway harmless against, any real property taxes, special taxes or assessments attributable to the Union Pacific Parcel prior to 12:01 a.m. on the Closing Date, and any taxes paid by Union Pacific with respect to the Union Pacific Parcel as part of its central assessment for the tax year in which Closing occurs.

- 2.3 **Title Company.** The Closing contemplated by this Agreement shall be handled and administered by Wheatland Title Company, with a business address of 105 W. Veterans Parkway, Yorkville, IL 60560 (the "**Title Company**").

## 3. **TITLE, SURVEY, INSPECTIONS AND AS-IS.**

- 3.1 **Survey.** The Tollway and Union Pacific may obtain, at its own cost and without obligation to do so, an ALTA/ACSM survey ("**Survey**") for either of the parcels

being transferred under this Agreement. A copy of any Survey performed hereunder by a Party shall be provided to the other Party prior to Closing.

- 3.2 **Title Policy.** The Tollway and Union Pacific may obtain, at its own cost and without obligation to do so, a current ALTA form of title commitment (“**Title Commitment**”) and/or owner’s policy (“**Title Policy**”), issued by the Title Company, reflecting current title matters with respect to the parcel being acquired by such Party as part of this Agreement. Any request for a Title Commitment or issuance of a Title Policy at Closing shall be at the requesting Party’s sole expense. The Parties acknowledge and agree that neither Party will require an extended owner’s title insurance policy as a condition of Closing.
- 3.3 **Inspections.** The Tollway and Union Pacific hereby acknowledge and agree that any due diligence activities or inspections desired by each such Party with respect to the transactions contemplated by this Agreement have been completed to the satisfaction of said Party as of the Effective Date. Any decision by Tollway or Union Pacific to consummate the transactions contemplated by this Agreement shall be based upon each such Party’s own independent investigations and findings and not in reliance on any information provided by the other Party or its employees, agents or contractors.
- 3.4 **Condition of Union Pacific Parcel: AS-IS.** Tollway hereby acknowledges and agrees that, except as otherwise provided herein, Union Pacific has not made and does not hereby make any covenants, representations or warranties, of any kind whatsoever, expressed or implied, with respect to the condition of the Union Pacific Parcel. The Union Pacific Parcel is sold and shall be conveyed in its existing “AS IS” condition. Tollway shall rely solely on its own audits, inspections and investigations of the Union Pacific Parcel and not on any information provided or to be provided by Union Pacific, its agents or contractors. Union Pacific hereby specifically disclaims: (a) all warranties implied by law arising out of or with respect to the execution of this Agreement or the quitclaim deed to be delivered hereunder, any aspect or element of the Union Pacific Parcel, or the performance of Union Pacific's obligations hereunder with respect to the condition or suitability of the Union Pacific Parcel, including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (b) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Union Pacific Parcel or other items conveyed hereunder with respect thereto, including, without limitation, the water, soil, and geology, the suitability thereof and of the Union Pacific Parcel or other items conveyed hereunder for any and all activities and uses which Tollway may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including, but not limited to, the presence of asbestos or other hazardous substances) or compliance with applicable environmental laws; (ii) except as expressly contemplated by this Agreement, the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise affecting the Union

Pacific Parcel; and (iii) the compliance of the Union Pacific Parcel or any improvements thereon or their operation with any applicable laws.

3.5 **Condition of Tollway Parcel: AS-IS.** Union Pacific hereby acknowledges and agrees that, except as otherwise provided herein, Tollway has not made and does not hereby make any covenants, representations or warranties, of any kind whatsoever, expressed or implied, with respect to the condition of the Tollway Parcel. The Tollway Parcel is sold and shall be conveyed in its existing “AS IS” condition. Union Pacific shall rely solely on its own audits, inspections and investigations of the Tollway Parcel and not on any information provided or to be provided by Tollway, its agents or contractors. Tollway hereby specifically disclaims: (a) all warranties implied by law arising out of or with respect to the execution of this Agreement or the quitclaim deed to be delivered hereunder, any aspect or element of the Tollway Parcel, or the performance of Tollway's obligations hereunder with respect to the condition or suitability of the Tollway Parcel, including, without limitation, all implied warranties of merchantability, habitability and/or fitness for a particular purpose; and (b) any warranty, guaranty or representation, oral or written, past, present or future, of, as to, or concerning (i) the nature and condition of the Tollway Parcel or other items conveyed hereunder with respect thereto, including, without limitation, the water, soil, and geology, the suitability thereof and of the Tollway Parcel or other items conveyed hereunder for any and all activities and uses which Union Pacific may elect to conduct thereon, the existence of any environmental hazards or conditions thereon (including, but not limited to, the presence of asbestos or other hazardous substances) or compliance with applicable environmental laws; (ii) except as expressly contemplated by this Agreement, the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition or otherwise affecting the Tollway Parcel; and (iii) the compliance of the Tollway Parcel or any improvements thereon or their operation with any applicable laws.

4. **INTENTIONALLY OMITTED.**

5. **CASUALTY LOSS OR EMINENT DOMAIN.** Each of Tollway and Union Pacific shall have the right, at its election, to cancel and terminate this Agreement, within five (5) days thereafter in the event (i) of any loss or damage exceeding Ten Thousand and No/100 Dollars (\$10,000.00) due to fire, wind, storm, tornado or other casualty normally insured under standard fire and extended coverage insurance clauses to any improvements located on the Tollway Parcel or the Union Pacific Parcel prior to the Closing Date, or (ii) the Tollway Parcel or the Union Pacific Parcel, or any part thereof, is taken or threatened to be taken pursuant to eminent domain. If no Party so elects to cancel this Agreement following any such condemnation or casualty event, the acquiring Party shall be entitled to receive an assignment of all of the conveying Party's right, title and interest in any applicable insurance policies and insurance or condemnation proceeds relating to such condemnation or casualty event with respect to the subject parcel at Closing.

6. **TIME OF CLOSING.** The Closing Date shall be on a date mutually agreed upon by the Parties hereto. In the event that Closing does not occur on or before [\_\_\_\_\_] (the

“**Outside Closing Date**”), either Union Pacific or Tollway may, by written notice to the other, terminate this Agreement. **[UP TO CONFIRM OUTSIDE CLOSING DATE]**

7. **CLOSING.** Upon each Party’s compliance with all obligations of such Party set forth herein, the transactions contemplated by this Agreement, comprised of the conveyance in fee of the Tollway Parcel and the Union Pacific Parcel, and the reservation of the Abutment Easement and the grant of the Aerial Easement with respect to the Tollway Parcel, all as contemplated hereby, shall be closed at 10:00 a.m. at the offices of the Title Company on the Closing Date, in accordance with the instructions to the Title Company set forth herein or otherwise supplied it by both Tollway and Union Pacific.

7.1 **Tollway Closing Deliveries.** At Closing, Tollway shall execute, acknowledge and deliver to the Title Company:

- (a) A quitclaim deed, executed by Tollway as grantor, conveying to Union Pacific all of Tollway’s right, title and interest in and to the Tollway Parcel (the “**Quitclaim Deed for Tollway Parcel**”), in such form set forth at **Exhibit D** attached hereto and incorporated herein;
- (b) The Quitclaim Deed for Union Pacific Parcel (as defined below) executed by Tollway as grantee;
- (c) The Aerial Easement executed by Tollway as grantee;
- (d) Such certified resolutions, certificates of good standing, and certificates of authority, as shall be reasonably required by the Title Company or by Union Pacific, authorizing (i) execution of this Agreement, (ii) conveyance of the Tollway Parcel pursuant to the terms and conditions hereof, and (iii) execution of all additional and further documents required or necessary to be executed pursuant to the provisions of this Agreement;
- (e) The final closing statement, in form and content satisfactory to the Title Company, Tollway and Union Pacific (“**Closing Statement**”), signed by Tollway; and
- (f) Any other documents or instruments required to be executed by Tollway pursuant to provisions of this Agreement, or otherwise reasonably necessary to be executed or delivered by Tollway for consummation of the transactions contemplated hereby.

7.2 **Union Pacific Closing Deliveries.** At Closing, Union Pacific shall execute, acknowledge and/or otherwise deliver to the Title Company:

- (a) A quitclaim deed, executed by Union Pacific as grantor, conveying to Tollway all of Union Pacific’s right, title and interest in and to the Union Pacific Parcel (the “**Quitclaim Deed for Union Pacific Parcel**”), in such form set forth at **Exhibit E** attached hereto and incorporated herein;

- (b) The Quitclaim Deed for Tollway Parcel executed by Union Pacific as grantee;
- (c) The Aerial Easement executed by Union Pacific as grantor;
- (d) The Closing Statement, signed by Union Pacific;
- (e) Such certified resolutions, certificates of good standing, and certificates of authority, as shall be reasonably required by the Title Company or by Tollway, authorizing (i) execution of this Agreement, (ii) sale of the Union Pacific Parcel pursuant to the terms and conditions hereof, and (iii) execution of all additional and further documents required or necessary to be executed pursuant to the provisions of this Agreement; and
- (f) Any other documents or instruments required to be executed by Union Pacific pursuant to provisions of this Agreement, or otherwise reasonably necessary to be executed or delivered by Union Pacific for consummation of the transactions contemplated hereby.

7.3 **Close of Escrow.** The Title Company shall, upon delivery of all of the aforementioned documents and any funds set forth on the Closing Statement, and subject to such further instructions as may be given it by both Tollway and Union Pacific, (i) cause the Quitclaim Deed for Tollway Parcel, the Quitclaim Deed for Union Pacific Parcel and the Aerial Easement to be recorded in the real property records of Cook County, Illinois, and (ii) issue any Title Policy(ies) requested by Union Pacific or Tollway (at each Party's own expense) to such requesting Party.

8. **POSSESSION OF THE PREMISES.** Tollway shall deliver possession of the Tollway Parcel to Union Pacific on the Closing Date. Union Pacific shall deliver possession of the Union Pacific Parcel to Tollway on the Closing Date.

9. **DEFAULT**

9.1 **Default by Tollway.** In the event Union Pacific fulfills all of its obligations hereunder and meets all conditions precedent and concurrent to Closing for which it is responsible and Tollway is unable, fails or refuses to meet its obligations hereunder and continues to fail and refuse to honor its obligations hereunder, Union Pacific shall be entitled to terminate this Agreement upon written notice to Tollway. In addition, Union Pacific shall have the right to pursue an action to enforce specific performance of Tollway's obligations under this Agreement. Union Pacific shall have no right to seek any monetary damages, including punitive, consequential or treble damages against Tollway under this Agreement.

9.2 **Default by Union Pacific.** In the event Tollway fulfills all of its obligations hereunder and meets all conditions precedent and concurrent to Closing for which it is responsible and Union Pacific is unable, fails or refuses to meet its obligations hereunder and continues to fail and refuse to honor its obligations hereunder, Tollway shall be entitled to terminate this Agreement upon written

notice to Union Pacific. In addition, Tollway shall have the right to pursue an action to enforce specific performance of Union Pacific's obligations under this Agreement. Tollway shall have no right to seek any monetary damages, including punitive, consequential or treble damages against Union Pacific under this Agreement.

10. **MISCELLANEOUS.**

10.1 **Notices.** Any notice, demand, or other document which either Party is required or may desire to give or deliver to, or make upon, the other Party shall, in the case of a notice, be in writing, and may be (i) hand delivered, (ii) delivered by US Postal Service, or (iii) given by reputable overnight delivery courier (*e.g.*, Federal Express or UPS) specifying next business day delivery, addressed to the Parties at their respective addresses set forth hereinabove, with copies to be sent to any additional person whose name and address has been supplied by one Party to the other. Either Party hereto may designate a different address for itself by notice similarly given. Notice shall be deemed received (a) upon delivery (or refusal) if by hand delivery, (b) two (2) business days following posting if by US Postal Service, and (c) and the next business day if by overnight delivery courier.

10.2 **Validity of Agreement.** Each Party hereto hereby warrants, represents and agrees that the execution of this Agreement, and any other documents executed and delivered pursuant to the provisions hereof, have been duly authorized by it, that this Agreement is duly executed by it and the obligations herein set forth are its valid and binding obligations enforceable in accordance with their terms. This Agreement shall be construed in accordance with the laws of the State of Illinois. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement, or any document executed and delivered pursuant hereto, shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any document executed and delivered pursuant hereto. Time is of the essence of this Agreement.

10.3 **Amendments.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect unless contained in a written amendment. Any amendment to this Agreement shall not be binding upon either of the Parties unless such amendment is in writing and executed by the authorized representatives of the Parties.

10.4 **Expenses.** Each Party shall pay (a) its own attorney fees and expenses; (b) any Survey costs and expenses incurred by such Party; (c) any Title Commitment and/or Title Policy costs and premiums incurred by such Party; and (d) any due diligence costs incurred by such Party. Tollway shall be solely responsible for



payment at Closing of (x) any fees of the Title Company for handling the Closing; (y) any recording fees for the instruments to be recorded hereunder; and (z) any transfer taxes applicable to the transactions to be consummated hereunder.

- 10.5 **Benefits.** This Agreement shall be binding upon, and inure to the benefit of, the Parties, and their respective successors, transferees and assigns. Neither Tollway nor Union Pacific shall have any right to assign its interests hereunder to any other person or entity without the non-assigning Party's prior written consent.
- 10.6 **Brokers.** Union Pacific and Tollway each represent to the other that it has dealt with no broker in connection with the transaction contemplated by this Agreement and each Party agrees to indemnify, hold harmless and defend the other from any and all claims from real estate brokers, agents or other parties claiming to be entitled to a fee, commission or other compensation from the indemnifying Party as a result of the execution of this Agreement or the Closing contemplated herein. The indemnification obligations of this Section 10.6 shall survive Closing.
- 10.7 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement.

THE REMAINDER OF THIS PAGE  
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**UNION PACIFIC:**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TOLLWAY:**

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**,  
an instrumentality and administrative agency of the State of Illinois

By: \_\_\_\_\_  
Name: Willard S. Evans  
Its: Chairman and Chief Executive Officer

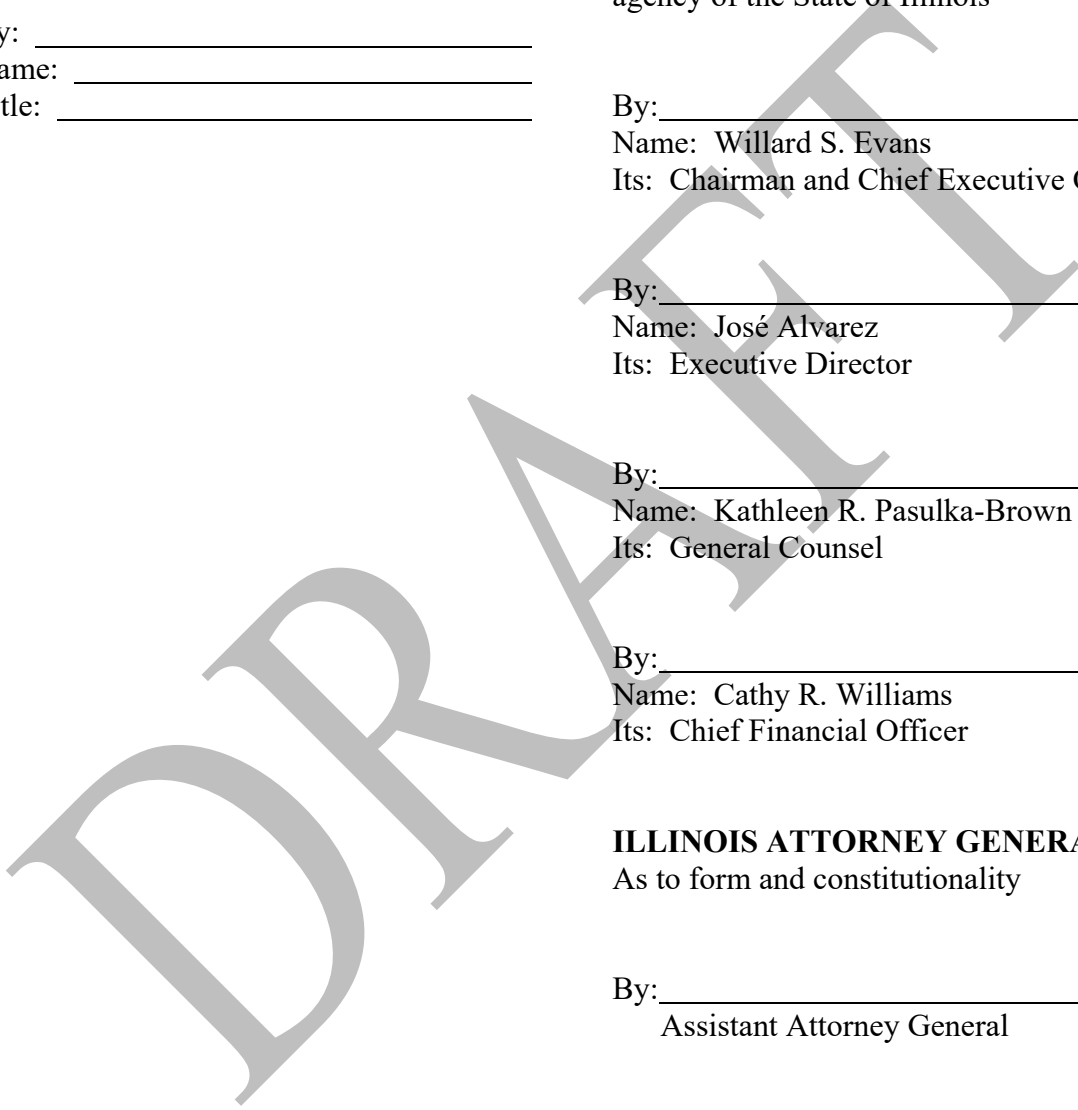
By: \_\_\_\_\_  
Name: José Alvarez  
Its: Executive Director

By: \_\_\_\_\_  
Name: Kathleen R. Pasulka-Brown  
Its: General Counsel

By: \_\_\_\_\_  
Name: Cathy R. Williams  
Its: Chief Financial Officer

**ILLINOIS ATTORNEY GENERAL**,  
As to form and constitutionality

By: \_\_\_\_\_  
Assistant Attorney General



## EXHIBIT A

### Description of Union Pacific Parcel

TW-7-16-040

That part of lands described in Easement Deed recorded June 12, 1986 as Document Number 86239659 in the Southwest Quarter of Fractional Section 6, Township 39 North, Range 12, East of the Third Principal Meridian, Cook County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 adjustment), with a combined factor of 0.999963361, described as follows:

Commencing at the West Quarter Corner of said Fractional Section 6; thence easterly along the north line of said Southwest Quarter South 89 degrees 52 minutes 33 seconds East, 82.97 feet to the westerly right of way line of I-294 Central Tri-State Tollway; thence South 0 degrees 05 minutes 07 seconds East along said line, 100.96 feet to a point on the north line of the Union Pacific Railroad right of way, said point also being the northeast corner of the lands described in said Easement Deed; thence continuing South 0 degrees 05 minutes 07 seconds East along the east line of the lands described in said Easement Deed, 128.89 feet to the Point of Beginning; thence continuing South 0 degrees 05 minutes 07 seconds East along said line, 37.17 feet to the south right of way of the Union Pacific Railroad; thence southwesterly 18.54 feet along said south right of way also being a curve to the right, having a radius of 1467.00 feet, the chord of said curve bears South 39 degrees 56 minutes 19 seconds West, 18.54 feet; thence North 3 degrees 49 minutes 15 seconds West, 33.19 feet; thence North 37 degrees 34 minutes 05 seconds East, 23.06 feet to the Point of Beginning.

Said parcel contains 0.011 Acre (475 Square Feet), more or less.

BEING GENERALLY DEPICTED ON EXHIBIT A-1 ATTACHED HERETO.



## EXHIBIT B

### Description of Tollway Parcel

T-7-4.EX

That part of lands in Tract "A" of Parcel T-7-4 as described in Quitclaim Deed recorded December 30, 1958 as Document Number 17415288 in the Southwest Quarter of Fractional Section 6, Township 39 North, Range 12, East of the Third Principal Meridian, Cook County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 adjustment), with a combined factor of 0.999963361, described as follows:

Commencing at the West Quarter Corner of said Fractional Section 6; thence easterly along the north line of said Southwest Quarter South 89 degrees 52 minutes 33 seconds East, 82.97 feet to the westerly right of way line of I-294 Central Tri-State Tollway; thence South 0 degrees 05 minutes 07 seconds East along said line, 100.96 feet to a point on the north line of the Union Pacific Railroad right of way, said point also being the Point of Beginning; thence North 43 degrees 33 minutes 23 seconds East, 115.22 feet to an angle point in the north line of an existing easement granted to the Illinois State Toll Highway Commission recorded December 30, 1958 as Document Number 17415289; thence South 37 degrees 34 minutes 51 seconds West along the north line of said easement, 130.14 feet to the westerly line of said easement; thence North 0 degrees 05 minutes 07 seconds West along said line, 19.63 feet to the Point of Beginning.

Said parcel contains 0.018 Acre (781 Square feet), more or less.

BEING GENERALLY DEPICTED ON EXHIBIT B-1 ATTACHED HERETO.



# EXHIBIT C

## Description of Abutment

Remove the existing north abutment.

The new earth retaining structure shall be located off the Railroad right-of-way and shall provide the required UPRR operating clearance to preserve the Railroad's ability to construct a future track at 15 ft centers.

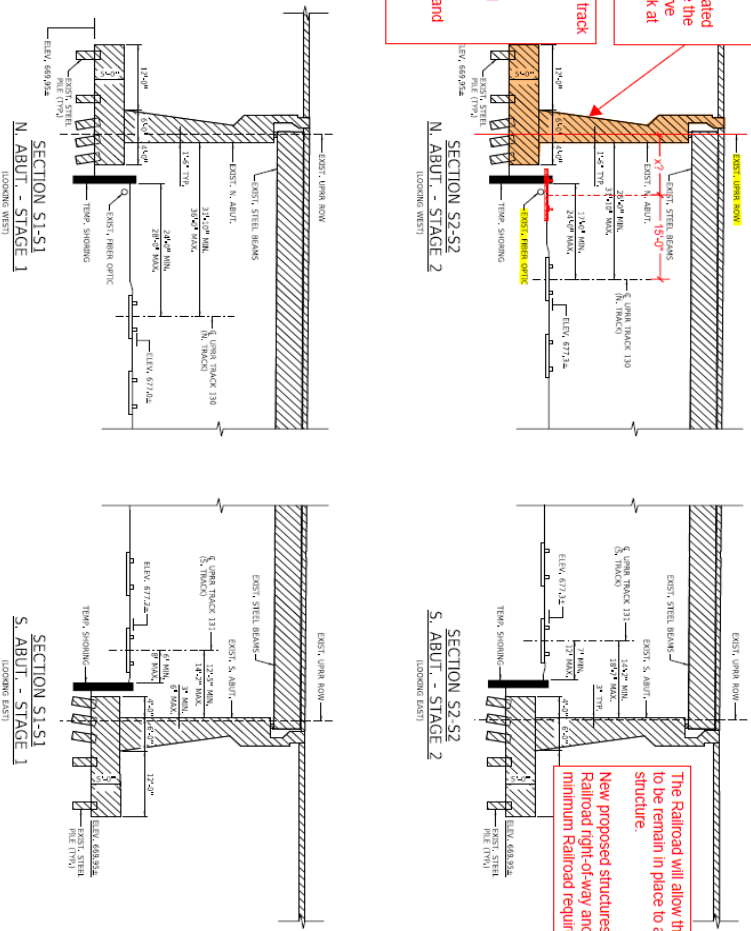
Provide the horizontal alignment of the future track location. Assume the top of rail elevation will match the existing top of rail elevation.

Provide the resulting permanent clearance envelope which includes increased horizontal clearance due to the future track curvature.

Provide and show these details on the plans and review.

The Railroad will allow the existing south abutment to be remain in place to act as a earth retaining structure.

New proposed structures shall be located off the Railroad right-of-way and designed to meet the minimum Railroad requirements.



<p>DRAWN BY: [REDACTED]</p> <p>CHECKED BY: [REDACTED]</p>	<p>DATE: [REDACTED]</p> <p>DATE: [REDACTED]</p>	<p>THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY          2700 OGDEN AVENUE          ARLINGTON HEIGHTS, ILLINOIS 60010</p>	<p>CONTRACT NO. FA-5N 17A18B - STHA EN 231232          UPRR ROW IMPACTS EXHIBIT</p>	<p>DRAWING NO. 2 OF 3</p>
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**EXHIBIT D**

**Form of Quitclaim Deed (Union Pacific to Tollway)**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

The Illinois State Toll Highway Authority  
Attention: Land Acquisition Manager  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

Tollway Parcel: \_\_\_\_\_

PIN: \_\_\_\_\_

Situated in Cook County, Illinois

**MAIL TAX BILLS TO:**

The Illinois State Toll Highway Authority  
Attention: Land Acquisition Manager  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

\_\_\_\_\_  
*\_(Space Above For Recorder's Use Only)*

**QUITCLAIM DEED**

**UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (“Grantor”), in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois (“Grantee”), whose address is 2700 Ogden Avenue, Downers Grove, Illinois 60515, and unto its successors and assigns forever, all of Grantor's right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (“Property”) situated in Cook County, State of Illinois, as more particularly described in **Exhibit A**, attached hereto and made a part hereof. This Quitclaim Deed is being entered into pursuant to that certain Real Estate Swap Agreement between the parties, dated effective [\_\_\_\_\_], 2021 (“Agreement”).

THIS CONVEYANCE IS MADE SUBJECT TO THE FOLLOWING:

“As-Is” Sale. Grantee, for itself, its heirs and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property



is to be sold and quitclaimed to and accepted by Grantee in an “as-is” condition with all faults. Grantor makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Grantor makes no representations or warranties with respect to any water rights owned by Grantor, if any, including, without limitation, legal ownership of water rights, the regulatory status of the water rights, or the quality or fitness for any particular purpose of the water to be used by Grantee, or regarding any well conveyed as part of the Property, the initial or continued accessibility or supply of water with respect to such well, the usability thereof for any desired purpose, or the existence or nature of any water rights associated therewith, nor does Grantor make any representations or warranties with respect to the use, condition, title, occupation or management of the Property, or its compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Grantee acknowledges and agrees that the Property has been sold and quitclaimed on the basis of Grantee’s own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. To the fullest extent allowed by applicable law, Grantee has waived any receipt of a seller disclosure statement.

The foregoing covenants, conditions, and provisions shall run with the Property.

*(Remainder of page intentionally left blank.)*

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officer the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTOR:

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

Attest:

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

IN WITNESS WHEREOF, Grantee has caused these presents to be signed by its duly authorized officer the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTEE:

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois

By: \_\_\_\_\_  
Printed Name: Willard S. Evans, Jr.  
Title: Chairman and Chief Executive Officer

STATE OF ILLINOIS )  
  ) ss.  
COUNTY OF DUPAGE )

This instrument was acknowledged before me on \_\_\_\_\_, 2021 by Willard S. Evans, Jr., as Chairman and Chief Executive Officer of THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

**EXHIBIT A TO QUITCLAIM DEED**

**LEGAL DESCRIPTION OF THE PROPERTY**

TW-7-16-040

That part of lands described in Easement Deed recorded June 12, 1986 as Document Number 86239659 in the Southwest Quarter of Fractional Section 6, Township 39 North, Range 12, East of the Third Principal Meridian, Cook County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 adjustment), with a combined factor of 0.999963361, described as follows:

Commencing at the West Quarter Corner of said Fractional Section 6; thence easterly along the north line of said Southwest Quarter South 89 degrees 52 minutes 33 seconds East, 82.97 feet to the westerly right of way line of I-294 Central Tri-State Tollway; thence South 0 degrees 05 minutes 07 seconds East along said line, 100.96 feet to a point on the north line of the Union Pacific Railroad right of way, said point also being the northeast corner of the lands described in said Easement Deed; thence continuing South 0 degrees 05 minutes 07 seconds East along the east line of the lands described in said Easement Deed, 128.89 feet to the Point of Beginning; thence continuing South 0 degrees 05 minutes 07 seconds East along said line, 37.17 feet to the south right of way of the Union Pacific Railroad; thence southwesterly 18.54 feet along said south right of way also being a curve to the right, having a radius of 1467.00 feet, the chord of said curve bears South 39 degrees 56 minutes 19 seconds West, 18.54 feet; thence North 3 degrees 49 minutes 15 seconds West, 33.19 feet; thence North 37 degrees 34 minutes 05 seconds East, 23.06 feet to the Point of Beginning.

Said parcel contains 0.011 Acre (475 Square Feet), more or less.

**EXHIBIT E**

**Form of Quitclaim Deed (Tollway to Union Pacific)**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

Union Pacific Railroad Company  
Attention: Chris Kelly  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690

Tollway Parcel: \_\_\_\_\_

PIN: \_\_\_\_\_

Situated in Cook County, Illinois

**MAIL TAX BILLS TO:**

Union Pacific Railroad Company  
Attention: [\_\_\_\_\_] ]  
1400 Douglas Street, Stop 1690  
Omaha, NE 68179-1690

\_\_\_\_\_  
*\_(Space Above For Recorder's Use Only)*

**QUITCLAIM DEED**

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois (“Grantor”), in consideration of the sum of Ten Dollars (\$10.00), and other valuable consideration to it duly paid, the receipt whereof is hereby acknowledged, does hereby REMISE, RELEASE and forever QUITCLAIM unto **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (“Grantee”), whose address is 1400 Douglas Street, Stop 1690, Omaha, NE 68179-1690, and unto its successors and assigns forever, all of Grantor’s right, title, interest, estate, claim and demand, both at law and in equity, of, in, and to the real estate (“Property”) situated in Cook County, State of Illinois, as more particularly described in **Exhibit A**, attached hereto and made a part hereof. This Quitclaim Deed is being entered into pursuant to that certain Real Estate Swap Agreement between the parties, dated effective [\_\_\_\_\_] , 2021 (“Agreement”).

EXCEPTING from this quitclaim and RESERVING unto Grantor, its successors and assigns, the following:

(a) Abutment Easement. PERPETUAL, EXCLUSIVE EASEMENT in, on, under, upon, over, through and across that portion of the Property used for a structural support column supporting the flyover structure comprising part of the I-294 Central Tri-State Tollway (the "Abutment"), and for maintaining, using, operating, reconstructing, replacing, renewing, and repairing the same (the "Abutment Easement"). Grantor and its employees, guests, invitees, and contractors, shall have the right to use the Abutment Easement. The Abutment Easement shall automatically terminate and be of no further force or effect upon such date as Grantor no longer requires use of the Abutment or otherwise abandons the same (the "Reservation Termination Date"). Upon written request of the Grantee, Grantor shall remove the Abutment from the Property and return the Property to a safe and level condition, all at Grantor's sole cost and expense. No later than thirty (30) days after the Reservation Termination Date, Grantor agrees to execute, acknowledge, and deliver to Grantee a written release of its rights relative to the Abutment Easement, in recordable form acceptable to Grantee in its reasonable discretion. Grantor agrees to be responsible for all costs associated with the preparation and recording of the release described in this paragraph. Grantee shall have no obligation to maintain the Abutment or any other liability hereunder for the acts or omissions of Grantor and its employees, guests, invitees, and contractors, in the exercise of their right to use the Abutment Easement. Grantor shall use the Abutment Easement only for the purposes set forth herein, and shall maintain the Abutment and that portion of the Property subject to the Abutment Easement in a good and safe condition in accordance with all applicable laws. Any entry upon the property of Grantee, including, without limitation, any portion of the Property, shall require the prior written consent of Grantee and be subject to such conditions and restrictions as may then be in effect by Grantee.

THIS CONVEYANCE IS MADE SUBJECT TO THE FOLLOWING:

"As-Is" Sale. Grantee, for itself, its heirs and assigns, including any successor owner of any interest in the Property, acknowledges and agrees that the Property is to be sold and quitclaimed to and accepted by Grantee in an "as-is" condition with all faults. Grantor makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the Property; in particular, but without limitation, Grantor makes no representations or warranties with respect to any water rights owned by Grantor, if any, including, without limitation, legal ownership of water rights, the regulatory status of the water rights, or the quality or fitness for any particular purpose of the water to be used by Grantee, or regarding any well conveyed as part of the Property, the initial or continued accessibility or supply of water with respect to such well, the usability thereof for any desired purpose, or the existence or nature of any water rights associated therewith, nor does Grantor make any representations or warranties with respect to the use, condition, title, occupation or management of the Property, or its compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record). Grantee acknowledges and agrees that the Property has been sold and

quitclaimed on the basis of Grantee's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions, and Grantee assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. To the fullest extent allowed by applicable law, Grantee has waived any receipt of a seller disclosure statement.

The foregoing covenants, conditions, and provisions shall run with the Property.

*(Remainder of page intentionally left blank.)*

DRAFT

IN WITNESS WHEREOF, Grantor has caused these presents to be signed by its duly authorized officer the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTOR:

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**, an instrumentality and administrative agency of the State of Illinois

By: \_\_\_\_\_  
Printed Name: Willard S. Evans, Jr.  
Title: Chairman and Chief Executive Officer

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DUPAGE                )

This instrument was acknowledged before me on \_\_\_\_\_, 2021 by Willard S. Evans, Jr., as Chairman and Chief Executive Officer of THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)



IN WITNESS WHEREOF, Grantee has caused these presents to be signed by its duly authorized officer the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

GRANTEE:

**UNION PACIFIC RAILROAD COMPANY,**  
a Delaware corporation

Attest:

\_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Printed Name: Chris D. Goble  
Title: Assistant Vice President – Real Estate

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Chris D. Goble and \_\_\_\_\_, Assistant Vice President – Real Estate and Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, on behalf of the corporation.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(Seal)

**EXHIBIT A TO QUITCLAIM DEED**

**LEGAL DESCRIPTION OF THE PROPERTY**

T-7-4.EX

That part of lands in Tract "A" of Parcel T-7-4 as described in Quitclaim Deed recorded December 30, 1958 as Document Number 17415288 in the Southwest Quarter of Fractional Section 6, Township 39 North, Range 12, East of the Third Principal Meridian, Cook County, Illinois, bearings and distances based on the Illinois State Plane Coordinate System, East Zone, NAD83 (2011 adjustment), with a combined factor of 0.999963361, described as follows:

Commencing at the West Quarter Corner of said Fractional Section 6; thence easterly along the north line of said Southwest Quarter South 89 degrees 52 minutes 33 seconds East, 82.97 feet to the westerly right of way line of I-294 Central Tri-State Tollway; thence South 0 degrees 05 minutes 07 seconds East along said line, 100.96 feet to a point on the north line of the Union Pacific Railroad right of way, said point also being the Point of Beginning; thence North 43 degrees 33 minutes 23 seconds East, 115.22 feet to an angle point in the north line of an existing easement granted to the Illinois State Toll Highway Commission recorded December 30, 1958 as Document Number 17415289; thence South 37 degrees 34 minutes 51 seconds West along the north line of said easement, 130.14 feet to the westerly line of said easement; thence North 0 degrees 05 minutes 07 seconds West along said line, 19.63 feet to the Point of Beginning.

Said parcel contains 0.018 Acre (781 Square feet), more or less.

**EXHIBIT F**

**Form of Aerial Easement**

[SEE ATTACHED]

DRAFT

## RESOLUTION NO. 22233

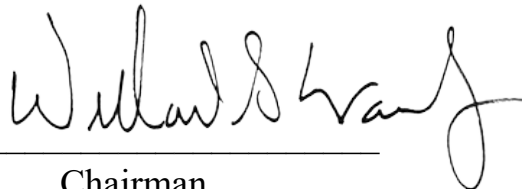
**Background**

The Illinois State Toll Highway Authority (“Tollway”) is constructing I-490, connecting the Jane Addams Memorial Tollway (I-90) to the Tri-State Tollway (I-294) as part of the EOWA Project (“Project”), including reconstructing I-294 between North Avenue and Wolf Road and the toll highway mainline, bridges, ramps, stormwater detention, watermain, sanitary sewer, lighting, ITS and landscaping. An Intergovernmental Agreement defines the maintenance responsibilities of all parties, including but not limited to underpass lighting, signal maintenance and electrical costs relating to the same. Also, the City of Northlake (“City”) requested that the Tollway perform work on its behalf as part of the Project, specifically, that the Tollway install watermain within a steel casing beneath I-294. The Tollway agreed to perform the requested work, subject to reimbursement by the City in an estimated amount of \$309,580. The City agreed to reimburse the Tollway for the actual cost of the work requested. It is in the best interest of the Tollway to enter into the Intergovernmental Agreement to memorialize all parties’ understandings regarding maintenance and cost participation related to the Project.

**Resolution**

The acting Chief Engineering Officer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between the Tollway and all other parties in substantially the form attached to this Resolution. The Chairman and Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said agreement, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_

  
Chairman

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,  
THE ILLINOIS DEPARTMENT OF TRANSPORTATION,  
THE COUNTY OF COOK,  
THE COUNTY OF DUPAGE  
THE VILLAGE OF FRANKLIN PARK  
AND  
THE CITY OF NORTHLAKE**

This INTERGOVERNMENTAL AGREEMENT (“AGREEMENT”) is entered into upon the last dated signature below, by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois, (“ILLINOIS TOLLWAY”), THE STATE OF ILLINOIS, acting by and through its DEPARTMENT OF TRANSPORTATION, (“DEPARTMENT”), THE COUNTY OF COOK, a body politic and corporate of the State of Illinois, acting by and through its COOK COUNTY DEPARTMENT OF TRANSPORTATION AND HIGHWAYS (“COOK COUNTY”), the COUNTY OF DUPAGE, a body corporate and politic of the State of Illinois, (“DUPAGE COUNTY”), THE VILLAGE OF FRANKLIN PARK, a municipal corporation of the State of Illinois, (“VILLAGE”), and THE CITY OF NORTHLAKE, a municipal corporation of the State of Illinois, (“CITY”), individually referred to as “PARTY”, and collectively referred to as “PARTIES”.

**RECITALS:**

WHEREAS, the ILLINOIS TOLLWAY in order to facilitate the free flow of traffic and ensure safety to the motoring public, has improved the existing Elgin O’Hare Expressway, extended the expressway from its eastern terminus at Rohlwing Road (Illinois Route 53) to Illinois Route 83, known in its entirety as Illinois Route 390, and intends to further extend Illinois Route 390 to O’Hare International Airport (“O’Hare Airport”) including ramps to and from O’Hare Airport and construct I-490 connecting the Jane Addams Memorial Tollway (I-90) with the Tri-State Tollway (I-294) (sometimes referred to as the Elgin O’Hare Western Access “EOWA”), and in accordance with multiple ILLINOIS TOLLWAY construction contracts. The ILLINOIS TOLLWAY will implement, operate and maintain the mainline improvements as tolled facilities (sometimes referred to as “Toll Highway”);

WHEREAS, certain construction contracts occur within the PARTIES’ jurisdictional limits, and this AGREEMENT includes the scope of improvements for the ILLINOIS TOLLWAY Contract I-17-4338, advance fiber along east side of I-294 between North Avenue and Wolf Road; the ILLINOIS TOLLWAY Contract I-17-4339, I-294 roadway and bridge widening and reconstruction from Grand Avenue to Wolf Road; and the ILLINOIS TOLLWAY Contract I-19-4458, I-294 roadway and bridge widening and reconstruction from North Avenue to Grand Avenue;

WHEREAS, the scope of work for the ILLINOIS TOLLWAY Contract I-17-4338 includes abandonment and removal of existing underground conduit duct and fiber optic

cable and installation of new underground conduit duct and fiber optic cable along I-294 between North Avenue (Illinois Route 64) and Wolf Road. The contract also includes landscaping, Intelligent Transportation Systems (ITS) installation, fence removal and installation, and all other work necessary to complete the contract in accordance with the approved plans and specifications;

WHEREAS, the scope of work for the ILLINOIS TOLLWAY Contract I-17-4339 includes the widening and reconstruction of I-294 mainline roadway from south of Grand Avenue to Wolf Road, the widening and reconstruction of the I-294 bridges over Grand Avenue and over Union Pacific Railroad (“UPRR”), and the construction of the southbound I-490 to southbound I-294 ramp (“Ramp S1”) bridge and the northbound I-294 ramp to northbound I-490 (“Ramp S2”) bridge. The contract also includes installation of new traffic signals at the Grand Avenue/County Line Road and Grand Avenue/Northwest Avenue intersections with emergency vehicle pre-emption, ITS infrastructure construction, construction of retaining walls, relocation of watermain and sanitary sewer, drainage, underpass lighting installation on the I-294 bridges over Grand Avenue, lighting installation, erosion control, maintenance of traffic, landscaping, and all other work necessary to complete the contract in accordance with the approved plans and specifications;

WHEREAS, the scope of work for the ILLINOIS TOLLWAY Contract I-19-4458 includes the widening and reconstruction of I-294 mainline roadway from Illinois Route 64 to south of Grand Avenue. The I-294 bridges over Illinois Route 64/Lake Street (U.S. Route 20) and Connector A (roadway connector between County Line Road and Northwest Avenue) will also be widened and reconstructed along with the southbound I-294 to westbound I-290 exit ramp bridge over the westbound I-290 to eastbound U.S. Route 20 exit ramp. The contract also includes construction of retaining walls, ITS infrastructure and toll plaza construction, underpass lighting installation on the I-294 bridges over U.S. Route 20 and Connector A, lighting installation, erosion control, maintenance of traffic, landscaping, and all other work necessary to complete the contract in accordance with the approved plans and specifications;

WHEREAS, for purposes of this AGREEMENT, the above ILLINOIS TOLLWAY contracts shall together be referred to as the “PROJECT”;

WHEREAS, the CITY requests that the ILLINOIS TOLLWAY include in its PROJECT installation of watermain within a steel casing under I-294 to allow for a future connection to the installed watermain by the CITY (hereinafter referred to as “CITY IMPROVEMENTS”);

WHEREAS, the ILLINOIS TOLLWAY agrees to the CITY’s request to include CITY IMPROVEMENTS in the PROJECT as part of Contract I-17-4339 and said improvements are located on ILLINOIS TOLLWAY right of way;

WHEREAS, the VILLAGE owns, operates and maintains watermain, storm and sanitary sewers located along the west side of I-294 from north of Grand Avenue to UPRR

(“VILLAGE FACILITIES”) located in or about the area to be traversed by the PROJECT and have interest in land and right of way therein. The VILLAGE FACILITIES are required to be removed, adjusted, reconstructed, protected or relocated to avoid such interference as part of the PROJECT;

WHEREAS, the PARTIES by this instrument desire to determine and establish their respective responsibilities toward engineering, right of way acquisition, utility relocation, construction, funding and maintenance of the PROJECT as proposed;

WHEREAS, the ILLINOIS TOLLWAY by virtue of its powers as set forth in the Toll Highway Act, 605 ILCS, 10/1, *et seq.*, is authorized to enter into this AGREEMENT;

WHEREAS, the DEPARTMENT by virtue of its powers as set forth in 605 ILCS 5/101, *et seq.* is authorized to enter into this AGREEMENT;

WHEREAS, DUPAGE COUNTY and COOK COUNTY by virtue of their powers as set forth in the Counties Code, 55 ILCS 5/1-1001, *et seq.*, are authorized to enter into this AGREEMENT;

WHEREAS, the VILLAGE and CITY by virtue of their powers as set forth in the Illinois Municipal Code, 65 ILCS 5/1-1-1 *et seq.*, are authorized to enter into this AGREEMENT;

WHEREAS, a cooperative Intergovernmental Agreement is appropriate and such an Agreement is authorized by Article VII, Section 10 of the Illinois Constitution and the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*;

NOW, THEREFORE, in consideration of the aforementioned recitals and the mutual covenants contained herein, the PARTIES agree as follows:

**I. ENGINEERING**

- A. The ILLINOIS TOLLWAY agrees to perform preliminary and final design engineering, obtain necessary surveys, and prepare the final construction plans, specifications, special provisions (collectively, the “plans and specifications”) for the PROJECT, subject to reimbursement by the CITY as hereinafter stipulated. During the design and preparation of the plans and specifications, the ILLINOIS TOLLWAY shall submit the plans and specifications to the PARTIES for their review and comment at the following stages of plan preparation:

60% Complete

95% Complete (pre-final)

Final

- B. The final approved plans and specifications for the PROJECT shall be promptly delivered via hard copy and DVD format to all PARTIES by the ILLINOIS TOLLWAY.
- C. The PARTIES shall review the plans and specifications which impact their respective maintained facilities within thirty (30) calendar days of receipt thereof. If the ILLINOIS TOLLWAY does not receive comments or objections from any PARTY within this time period, or receive a request for an extension of time, which request shall be reasonably considered, the lack of response shall be deemed the PARTY's approval of the plans and specifications. Approval by the PARTIES shall mean the respective PARTIES agree with all specifications in the plans pertaining to the alignment and location of the PROJECT improvements which impact their maintained facilities. In the event of disapproval, any PARTY shall detail in writing its objections to the proposed plans and return them to the ILLINOIS TOLLWAY for review and consideration.
- D. The PARTIES shall work cooperatively to address and resolve the review comments and objections. Any dispute concerning the plans and specifications shall be resolved in accordance with Section IX of this AGREEMENT.
- E. The ILLINOIS TOLLWAY agrees to assume the overall PROJECT responsibility, including ensuring that all permits and approvals (U.S. Army Corps of Engineers, Illinois Department of Natural Resources, Metropolitan Water Reclamation District of Greater Chicago, Illinois Environmental Protection Agency, etc.) and joint participation and/or force account agreements (County, Township, Municipal, Railroad, Utility, etc.), as may be required by the PROJECT, are secured by the PARTIES in support of general project schedules and deadlines. All PARTIES agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of said permits and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the PROJECT.
- F. The ILLINOIS TOLLWAY agrees to assume responsibility for securing a utility crossing permit on behalf of the VILLAGE for the proposed watermain and sanitary sewer, included as part of the Contract I-17-4339, to be located under UPRR tracks on UPRR right of way. The VILLAGE agrees to cooperate with the ILLINOIS TOLLWAY and UPRR as required.
- G. The PARTIES shall grant and consent to any and all permission, rights of access (ingress and egress), and/or temporary use of its property within the PROJECT limits to the ILLINOIS TOLLWAY and/or its agents, without charge of permit fees to the ILLINOIS TOLLWAY. Any permission for right of access and/or temporary use of any of the PARTIES property shall not be unreasonably withheld by any PARTY.



## II. RIGHT OF WAY

- A. The ILLINOIS TOLLWAY shall perform all survey work and prepare all parcel plats and legal descriptions for all right of way (both permanent and temporary) necessary for the construction of the PROJECT.
- B. The ILLINOIS TOLLWAY shall acquire all necessary rights of way (both permanent and temporary) as needed for the construction of the PROJECT pursuant to the approved plans and specifications. Throughout the acquisition processes the ILLINOIS TOLLWAY will conduct its activities in accord with its written Policies and Procedures.
- C. The acquisition or transfer of permanent right of way required between the DEPARTMENT and ILLINOIS TOLLWAY for land deemed necessary for construction or future maintenance and operations associated with the EOWA project was conveyed as part of separate Intergovernmental Agreements between the ILLINOIS TOLLWAY and DEPARTMENT.
- D. The acquisition or transfer of permanent right of way interests between DUPAGE COUNTY and the ILLINOIS TOLLWAY for the EOWA project is defined as part of a separate Intergovernmental Agreement executed between the ILLINOIS TOLLWAY and DUPAGE COUNTY on October 4, 2017.
- E. The CITY agrees to convey a fee simple title to the ILLINOIS TOLLWAY for Parcel TW-7-16-901, as shown on EXHIBIT A. The parcel will be transferred to the ILLINOIS TOLLWAY and conveyed free and clear of all encumbrances.
- F. To effectuate the transfers contemplated in Section II. D and E above, the ILLINOIS TOLLWAY shall provide necessary documents, including plats, legal descriptions and all necessary title documents to affect the transfer of properties to the ILLINOIS TOLLWAY.
- G. All land conveyances pursuant to this AGREEMENT will be fully executed, tendered and accepted for recordation and all supporting documentation provided before issuance of final payments and before financial credit will be recognized pursuant to Section V. of this AGREEMENT.
- H. The acquisition or transfer of permanent right of way interests is not required from COOK COUNTY or the VILLAGE for the construction of this PROJECT pursuant to the approved plans and specifications, nor is the transfer of any interest in the COOK COUNTY or VILLAGE property or rights of way which the ILLINOIS TOLLWAY deems necessary for the maintenance and operation of their Toll Highway system. Any required transfer of permanent right of interests from the ILLINOIS TOLLWAY to the COOK COUNTY will be included as part of a separate subsequent agreement. Therefore, it is understood by the PARTIES that

there will be no exchange of any interest in COOK COUNTY's or the VILLAGE's right of way to the ILLINOIS TOLLWAY in regard to this AGREEMENT.

- I. Prior to any transfer of real property owned by the PARTIES, to advance the PROJECT and not delay any schedules, the PARTIES shall grant the ILLINOIS TOLLWAY use, access, ingress, and egress necessary for the construction of the PROJECT. The PARTIES shall grant the ILLINOIS TOLLWAY access and use of its property without charge and shall waive any and all surety or bonding requirements. In any event the ILLINOIS TOLLWAY, to the extent permitted by law, shall indemnify and hold the PARTIES and their employees, officers, directors and agents harmless from all claims for death, injuries and damages to persons or property resulting from the negligence or intentional misconduct of the ILLINOIS TOLLWAY or its agents.
- J. In the event the ILLINOIS TOLLWAY identifies areas of any PARTY's right of way temporarily needed for the ILLINOIS TOLLWAY to enter, access and use to allow the ILLINOIS TOLLWAY and/or its contractor(s) to construct the PROJECT, the PARTY shall, upon the ILLINOIS TOLLWAY's completion and submittal of the PARTY's permit form, together with permit required plan sets, issue the ILLINOIS TOLLWAY a permit without charge of permit fees to the ILLINOIS TOLLWAY, allowing the ILLINOIS TOLLWAY all temporary use required for construction of the PROJECT. In addition, the respective PARTY shall waive any surety bonding requirement. The ILLINOIS TOLLWAY agrees, upon completion of the PROJECT, that those lands temporarily used are to be restored by the ILLINOIS TOLLWAY, at its sole cost and expense, to an "as good as – or – better" than pre-construction condition. The ILLINOIS TOLLWAY further agrees that the ILLINOIS TOLLWAY's contractor shall indemnify and hold harmless any permitting PARTY from any liability, claim, or cause of action relating to the ILLINOIS TOLLWAY contractor's use of such land. Approval of any permit shall not be unreasonably withheld by any of the PARTIES, but shall not be granted as a matter of right.
- K. Transition lighting installed as part of the PROJECT is to be located on DUPAGE COUNTY right of way along Grand Avenue and COOK COUNTY right of way along County Line Road. Both DUPAGE COUNTY AND COOK COUNTY agree to allow the transition lighting within their respective right of way. The DEPARTMENT is responsible for the maintenance and jurisdiction of the transition lighting as defined in Section V.C.

### **III. UTILITY RELOCATION**

- A. The ILLINOIS TOLLWAY agrees to provide all PARTIES, as soon as they are identified, the locations (existing and proposed) of public and/or private utility facilities within existing PARTY rights of way which require adjustment as part of the PROJECT.

- B. The ILLINOIS TOLLWAY agrees to make all reasonable efforts to minimize the number of utility adjustments in the design of the PROJECT.
- C. The PARTIES agree to make arrangements for and issue permits, at no cost to the ILLINOIS TOLLWAY, for PROJECT required adjustments to utility facilities located on existing PARTIES' right(s)-of-way or property, and on proposed PARTIES' right(s)-of-way or property which are outside areas of ILLINOIS TOLLWAY jurisdiction, where improvements to PARTIES' facilities are proposed to be done as part of the PROJECT.
- D. The ILLINOIS TOLLWAY agrees to make arrangements for and issue all permits for the PROJECT required adjustments to utility facilities located on existing ILLINOIS TOLLWAY rights of way, and on proposed ILLINOIS TOLLWAY rights of way which are outside areas of the other PARTIES' jurisdiction, where improvements to ILLINOIS TOLLWAY facilities are proposed to be done as part of the PROJECT, at no expense to the other PARTIES.
- E. The VILLAGE and CITY agree to obtain from the ILLINOIS TOLLWAY an approved permit for the VILLAGE FACILITIES and the CITY IMPROVEMENTS constructed by the PROJECT and located on ILLINOIS TOLLWAY property, and to abide by all conditions set forth therein.
- F. At all locations where any PARTY's utilities are located on ILLINOIS TOLLWAY rights of way or on other PARTY's rights of way and must be adjusted due to work proposed by another PARTY, the PARTY in question agrees to obtain from the ILLINOIS TOLLWAY and/or another PARTY, an approved permit for the facility, and to abide by all conditions set forth therein. The PARTY agrees to reimburse the ILLINOIS TOLLWAY for any and all utility relocation costs the ILLINOIS TOLLWAY may incur in causing the aforementioned utility or utilities to be adjusted except as otherwise described under Section III. G.
- G. At all locations where utilities are located on the PARTIES' rights of way and must be adjusted due to work proposed by the ILLINOIS TOLLWAY, the PARTY agrees to cooperate with the ILLINOIS TOLLWAY in making arrangements with the applicable utility and issue all permits for the requisite adjustment(s) at no cost to the ILLINOIS TOLLWAY.
- H. The ILLINOIS TOLLWAY will cause all utility companies to protect, adjust, relocate or remove utility facilities in conflict with the PROJECT, at no cost to the PARTIES.
- I. In the event utility facilities are relocated within the PROJECT limits, the ILLINOIS TOLLWAY shall grant to the utility company and its successors and

assigns, owning or operating any utility facilities, the right to operate the same in the new location or locations on the property for as long a period and upon the same terms and conditions as it had the right to maintain and operate the facilities in their former location or locations.

- J. At all locations where the ILLINOIS TOLLWAY's infrastructure (remote traffic microwave sensors, message signs, weather stations, weigh-in-motion sites, signs, roadway lighting controllers, electrical services, fiber optic cable system and data connections) that are installed as part of the PROJECT within ILLINOIS TOLLWAY right-of-way, and must be adjusted due to future work proposed by any PARTY, the PARTY agrees to reimburse the ILLINOIS TOLLWAY for any and all out of pocket costs the ILLINOIS TOLLWAY may incur in causing the aforementioned infrastructure to be adjusted.

#### **IV. CONSTRUCTION**

- A. The ILLINOIS TOLLWAY shall advertise and receive bids, provide construction engineering inspections for and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications.
- B. After award of the construction contract(s), any proposed deviations from the plans and specifications that affect any of the PARTIES shall be submitted to the respective PARTY for approval prior to commencing such work. The respective PARTY shall review the proposed deviations affecting the PARTY's maintained facilities within thirty (30) calendar days of receipt thereof. If the ILLINOIS TOLLWAY does not receive comments or objections from the respective PARTY within this time period, or receive a request for an extension of time, which request shall be reasonably considered, the lack of response shall be deemed the respective PARTY's approval of the proposed deviations. Approval by the respective PARTY shall mean it agrees with all specifications in the plans pertaining to the alignment and location of the PROJECT deviations which impact its maintained facilities. In the event of disapproval, the respective PARTY will detail in writing its objections to the proposed deviations from the plans and specifications and return them to the ILLINOIS TOLLWAY for review and consideration.
- C. After award of the construction contract(s), the ILLINOIS TOLLWAY shall provide no less than thirty (30) calendar days' written notice to the PARTIES prior to commencement of work on the PROJECT.
- D. All PARTIES and their authorized agents shall have all reasonable rights of inspection (including pre-final and final inspection) during the progress of work included in the PROJECT that affects their maintained facilities. All PARTIES may assign personnel to perform inspections on behalf of the respective PARTY of all work included in the PROJECT that affects the respective PARTY's system, and will deliver written notices to the Chief Engineering Officer of the ILLINOIS

TOLLWAY advising the ILLINOIS TOLLWAY as to the identity of the individual(s) assigned to perform said inspections.

- E. The PARTIES shall work cooperatively to address and resolve the review comments and objections. Notices required to be delivered by PARTIES pursuant to this AGREEMENT shall be delivered as indicated in Section IX of this AGREEMENT.
- F. The ILLINOIS TOLLWAY shall require its contractor(s) working within the COUNTY's right of way to comply with the indemnification provision contained at Section 107.26 in the ILLINOIS TOLLWAY Supplemental Specifications for construction, issued March 2020, or the indemnification provision in the applicable version of the ILLINOIS TOLLWAY's Supplemental Standard Specifications subsequently in effect.
- G. The ILLINOIS TOLLWAY shall require that the PARTIES, and their agents, officers and employees be included as additional insured parties in the General Liability Insurance the ILLINOIS TOLLWAY requires of its contractor(s) and that the PARTIES be added as an additional protected parties on all performance bonds required of the contractor(s). These requirements shall be included in the Special Provisions of the construction contract(s).
- H. The ILLINOIS TOLLWAY shall give notice to the PARTIES upon completion of 70% and 100% of all PROJECT construction contracts to be subsequently maintained by the PARTIES, and the PARTIES shall make an inspection thereof not later than fifteen (15) calendar days after notice thereof. If any PARTY does not perform a final inspection within twenty-one (21) calendar days after receiving notice of completion of 100% of all PROJECT construction contracts or other inspection arrangements are not agreed to by the PARTIES, the PROJECT shall be deemed accepted by that PARTY. At the request of a PARTY, the ILLINOIS TOLLWAY's representative shall join in on such inspection. In the event said inspections disclose work that does not conform to the approved final plans and specifications, the PARTY's representative shall give immediate verbal notice to the ILLINOIS TOLLWAY's representative of any deficiency, and shall thereafter deliver within fifteen (15) calendar days a written list identifying such deficiencies to the Chief Engineering Officer of the ILLINOIS TOLLWAY. Deficiencies thus identified shall be subject to joint re-inspection upon completion of the corrective work. The PARTY shall perform such joint re-inspections within ten (10) calendar days after receiving notice from the ILLINOIS TOLLWAY that the deficiencies have been remedied.
- I. The ILLINOIS TOLLWAY shall have the right, in its sole judgment and discretion, to cancel or alter any or all portions of the work, except as referenced in Section IV B, due to circumstances either known or unknown at the time of bidding or arising after the Contract(s) was entered into, in accordance with the Canceled Items Provision 109.06 included in the most current version of the ILLINOIS

TOLLWAY Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction.

- J. As-built drawings of the PROJECT and utility relocations performed by the ILLINOIS TOLLWAY shall be provided to the PARTIES, in both paper and electronically, within sixty (60) days after completion of the PROJECT.
- K. The ILLINOIS TOLLWAY shall be obligated to replace the VILLAGE FACILITIES that it adjusts or relocates with facilities of like size, capacity and materials. If the VILLAGE wishes to increase the size or capacity of the VILLAGE FACILITIES or to use different materials or in any other way improve the VILLAGE FACILITIES over those which currently exist, the VILLAGE shall notify the ILLINOIS TOLLWAY immediately with a description of the betterments it desires and the ILLINOIS TOLLWAY will attempt to incorporate said work into its contract(s) for all other work to be performed. Separate bid items shall be established for said work. The VILLAGE shall pay all substantiated differential costs thereof, for such betterments, to the ILLINOIS TOLLWAY in accordance with Section V. H. It is agreed, however, that the use of ductile iron pipe, in lieu of asbestos cement pipe, shall not be considered betterment for purposes of this section and the VILLAGE shall not be required to pay for the use of ductile iron pipe.
- L. All materials and equipment installed and constructed by the ILLINOIS TOLLWAY in connection with the construction of the VILLAGE FACILITIES and CITY IMPROVEMENTS under this AGREEMENT and the completed VILLAGE FACILITIES and CITY IMPROVEMENTS shall become the sole property of the VILLAGE and CITY, respectively, as installed, and full legal and equitable title thereto shall be then vested in the VILLAGE and CITY, free and clear of any liens, without the requirement of any written document of transfer to the VILLAGE and CITY or acceptance by the VILLAGE and CITY. The ILLINOIS TOLLWAY shall grant permits for each facility within ILLINOIS TOLLWAY property, to provide for future access/maintenance.

## **V. FINANCIAL**

- A. Except as otherwise identified herein, the ILLINOIS TOLLWAY agrees to pay all PROJECT related engineering, right of way, construction engineering and construction costs subject to reimbursement by the CITY as hereinafter stipulated.
- B. It is mutually agreed by the PARTIES that preliminary and design engineering costs shall be computed as 5% of the actual construction costs and that construction engineering shall be computed as 10% of actual construction costs.
- C. It is mutually agreed by the ILLINOIS TOLLWAY and CITY that the estimated cost to the CITY for the CITY IMPROVEMENTS is \$269,200.00 for construction costs, \$13,460.00 (5% of construction costs) for preliminary and design

engineering, and \$26,920.00 (10% of construction costs) for construction engineering, for a total estimated cost of \$309,580.00.

- D. The CITY agrees to convey Parcel TW-7-16-901 as shown on EXHIBIT A to the ILLINOIS TOLLWAY. The approved appraised market value is \$23,500.00 to be credited to the CITY to partially offset the cost of the CITY IMPROVEMENTS.
- E. The CITY agrees that its total estimated costs for the CITY IMPROVEMENTS are \$309,580.00. The CITY and the ILLINOIS TOLLWAY agree that the credit for Parcel TW-7-16-901 is to be used by the CITY to partially offset the cost of the CITY IMPROVEMENTS, leaving an estimated balance due the ILLINOIS TOLLWAY of \$286,080.00. The CITY agrees that upon award of the contract for this improvement and receipt of an invoice from the ILLINOIS TOLLWAY, the CITY will pay to the ILLINOIS TOLLWAY an amount equal to 50% of its obligation incurred under this AGREEMENT, based upon actual bid prices, and will pay the ILLINOIS TOLLWAY the remainder of its obligation in a lump sum, upon completion of the PROJECT based on final actual costs.
- F. The CITY shall have the ability to request reduction of or elimination from the PROJECT of those enhancement improvements and/or CITY IMPROVEMENTS, which would have been the CITY's responsibility for payment, in the event the contract bid prices are substantially higher than those contained in the engineers estimate or subject to the CITY budgetary constraints. The CITY shall be responsible for costs incurred for those items that would have been the CITY's responsibility prior to providing notice for the reduction or elimination of said items.
- G. Any PARTY may request, after the construction contract(s) are let by the ILLINOIS TOLLWAY, that supplemental work that increases the total costs of the PROJECT or more costly substitute work be added to the construction contract(s). The ILLINOIS TOLLWAY will cause said supplemental work or such substitute work to be added to the construction contract(s), provided that said work will not delay construction of the PROJECT. The PARTY requesting or causing said supplemental work or more costly substitute work shall pay for the cost increases of said work in full.

## **VI. MAINTENANCE - DEFINITIONS**

- A. The term "local" means any PARTY to this AGREEMENT other than the ILLINOIS TOLLWAY. With respect to this AGREEMENT, it means the DEPARTMENT, COOK COUNTY, DUPAGE COUNTY, VILLAGE and CITY.
- B. The term "local road" refers to any highway, road or street under the jurisdiction of the DEPARTMENT, COOK COUNTY, DUPAGE COUNTY, VILLAGE and/or CITY.

- C. As used herein, the terms "maintenance" or "maintain" mean keeping the facility being maintained in good and sufficient repair and appearance. Such maintenance includes the full responsibility for the construction, removal and/or replacement of the maintained facility when needed and, unless specifically excluded in Section VII, MAINTENANCE - RESPONSIBILITIES, other activities as more specifically set forth in the following subparts of this Section VI. Maintenance includes but is not limited to:
1. "Routine maintenance" refers to the day to day pavement maintenance, pothole repair, anti-icing and de-icing, snow removal, sweeping, pavement marking, mowing, litter and debris removal, and grate and scupper cleaning and repair, including compliance with state laws and local ordinances.
  2. "Structural maintenance" refers to the integrity of the grade separation structure, including abutments and piers, bridge girders/beams, bridge deck, expansion joints, parapet walls and drainage structures.
  3. "Signal maintenance" refers to all aspects of installation, repair, replacement, timing, and operation of traffic signals, including signal loops, signal supports or bases, interconnects to Ramp Queue Detection Warning Systems and power, but shall not include permanently installed variable message signs or temporary signals or signs relating to construction or repair projects.
  4. "Lighting maintenance" refers to all aspects of installation, repair, replacement and operation of roadway lighting including power, but shall not include temporary lighting relating to construction or repair projects.
  5. "Emergency maintenance" refers to any maintenance activity which must be performed immediately in order to avoid or to repair a condition on the roadway or right of way which causes or threatens imminent danger or destruction to roadway facilities or rights of way of the PARTIES, to the motoring public and/or to public health, safety or welfare, including but not limited to accident restoration, chemical or biological removal or remediation, or response to acts of God or terrorism.
- D. The term "drainage facilities" refers to both open and enclosed systems. The term "drainage structures" refers to enclosed systems only, and includes those elements of the drainage facility affixed to the bridge superstructures downstream from the scupper.
- E. The terms "notify", "give notice" and "notification" refer to written, verbal or digital communication from one PARTY to another concerning a matter covered by this AGREEMENT, for which the PARTY transmitting the communication produces and retains a record which substantiates the content, date, time, manner of communication, identification of sender and recipient, and manner in which the recipient may respond to the sender, as to the communication.



- F. The terms "be responsible for" or "responsibility" refer to the obligation to ensure performance of a duty or provision of a service under this AGREEMENT, provided, that a PARTY may arrange for actual performance of the duty or provision of the service by another competent entity if the other affected PARTY to this AGREEMENT is notified of such arrangement, but in no case shall the entity with the duty be relieved of ultimate responsibility for performance of the duty or provision of the service.
- G. The terms "consultation" or "consult with" refer to the duty of a PARTY to give notice to another PARTY of a proposed action, with reasonable time for that PARTY to respond, but the PARTY with the duty to consult may proceed with the proposed action if the other PARTY does not respond within the time frame set forth in the notice provided, or in the case of the ILLINOIS TOLLWAY, it may proceed with the proposed action if deemed necessary by the Chief Engineering Officer.
- H. The term "approve" refers to the duty of a PARTY not only to consult with the other PARTY but also for the other PARTY to provide consent for the proposed action and to retain a record which documents such consent.
- I. The term "grade separation structure" refers to all structural elements between the abutments and below the wearing surface of a bridge carrying one roadway over another, unless otherwise specified.
- J. These are four types of bridge structures that intersect the ILLINOIS TOLLWAY Toll Highway:
1. Type 1. An intersection where a grade separation structure has been constructed to carry the Toll Highway over the local road and/or railroad.
  2. Type 2. An intersection where a grade separation structure has been constructed to carry the local road over the Toll Highway.
  3. Type 3. An intersection where a partial or complete ramp interchange system, as well as a grade separation structure, has been constructed between the local road and the Toll Highway.
  4. Type 4. An intersection where a grade separation structure has been constructed to carry the Toll Highway over another Toll Highway and/or railroad.

## **VII. MAINTENANCE - RESPONSIBILITIES**

- A. The maintenance and jurisdiction responsibilities are as shown on EXHIBIT A and as detailed below.

- B. The ILLINOIS TOLLWAY agrees to maintain I-294 and I-490, in their entirety, including but not limited to ramps, retaining walls, toll plazas, lighting and drainage.
- C. The DEPARTMENT agrees to maintain, or cause to maintain Grand Avenue from County Line Road to the east within the PROJECT limits, in its entirety, including the traffic signals at the Grand Avenue/County Line Road and Grand Avenue/Northwest Avenue intersections and associated combination and transition lighting. The DEPARTMENT also agrees to maintain underpass lighting on the I-294 bridges over Grand Avenue and the I-294 bridges over U.S. Route 20, and any work the ILLINOIS TOLLWAY is including in the PROJECT for the DEPARTMENT at the DEPARTMENT's request, in its entirety.
- D. DUPAGE COUNTY agrees to maintain, or cause to maintain Grand Avenue from west of the west edge of through pavement of County Line Road within the PROJECT limits, in its entirety, excluding the transition lighting described in Section II. K. and Section VII. C above.
- E. COOK COUNTY agrees to maintain, or cause to maintain County Line Road and Connector A, in their entirety, and the underpass lighting on the I-294 bridges over Connector A.
- F. The VILLAGE agrees to maintain, or cause to maintain existing, relocated and/or adjusted watermain, storm and sanitary sewers along the west side of I-294 from north of Grand Avenue to UPRR, with the exception of the CITY requested watermain installation included in the PROJECT, within the VILLAGE limits and affected by the PROJECT, the emergency vehicle pre-emption at the Grand Avenue/County Line Road intersection, and any work the ILLINOIS TOLLWAY is including in the PROJECT for VILLAGE at the VILLAGE's request, in its entirety.
- G. The CITY agrees to maintain, or cause to maintain Northwest Avenue, in its entirety, the watermain and associated steel casing under I-294 (CITY IMPROVEMENTS), the emergency vehicle pre-emption at the Grand Avenue/Northwest Avenue intersection, and any work the ILLINOIS TOLLWAY is including in the PROJECT for CITY at the CITY's request, in its entirety.
- H. The bridge improvements being constructed under this AGREEMENT are of the following types as described in Section VI, Paragraph J above and involve the following roadway(s):

Type of Bridge Structure	Affected Roadway
Type 4	Southbound I-490 to southbound I-294 (Ramp S1) over UPRR (Structure Number 1658)

Type 4	Northbound I-294 to northbound I-490 (Ramp S2) over I-294 mainline and over UPRR (Structure Number 1659)
Type 1	Northbound I-294 and over UPRR (Structure Number 285)
Type 1	Southbound I-294 and over UPRR (Structure Number 286)
Type 1	Northbound I-294 over Grand Avenue (Structure Number 285)
Type 1	Southbound I-294 over Grand Avenue (Structure Number 286)
Type 1	Northbound I-294 over U.S. Route 20, Illinois Route 64 and Connector A (Structure Number 233)
Type 1	Southbound I-294 over U.S. Route 20, Illinois Route 64 and Connector A (Structure Number 234)
Type 1	Southbound I-294 to westbound I-290 exit ramp bridge over westbound I-290 to eastbound U.S. Route 20 exit ramp (Structure Number 235)

- I. Type 1 - ILLINOIS TOLLWAY Toll Highway over a Local Road
- a. The ILLINOIS TOLLWAY has all maintenance responsibility as to all portions of the Toll Highway, as set forth herein, including but not limited to the entire grade separation structure, drainage facilities, bridge slope walls and embankments within ILLINOIS TOLLWAY access control fencing, and fences.
  - b. The DEPARTMENT has all maintenance responsibility for Grand Avenue, U.S. Route 20, Illinois Route 64 and I-290 and COOK COUNTY has all maintenance responsibility for Connector A, and including the following:
    - i. All highway roadways, guardrail and other protective devices, pier protective structures or devices, roadway slopes and shoulders, including but not limited to the portions thereof underneath the grade separation structure within their jurisdictional boundaries;

- ii. All drainage facilities which drain their respective highway facilities, except such facilities installed by the ILLINOIS TOLLWAY on their property for the purpose of carrying exclusively Toll Highway drainage;
  - iii. All underpass lighting;
  - iv. All local traffic signals under their respective jurisdiction;
- J. Type 4 – ILLINOIS TOLLWAY Toll Highway over a Toll Highway and/or railroad.
- a. The ILLINOIS TOLLWAY has all maintenance responsibility of the entire roadway and structure, which includes but is not limited to all portions of the Toll Highway, as set forth herein, including but not limited to the entire grade separation structure, drainage facilities, bridge slope walls and embankments within ILLINOIS TOLLWAY access control fencing, and fences.
- K. Upon acceptance by the PARTIES of the traffic signal work included herein, the financial responsibility for the maintenance and electrical energy charges for the operation of the traffic signal(s) shall be proportioned as follows:

<b>Intersection</b>	<b>Responsibility</b>	<b>Maintenance Cost</b>	<b>Elec. Energy Cost</b>
Grand Avenue @ County Line Road	DEPARTMENT Share	100%	100%
Grand Avenue @ Northwest Avenue	DEPARTMENT Share	50%	50%
	CITY Share	50%	50%

- L. The PARTIES agree that each PARTY has the duty to perform such regular inspections, surveys and reviews as are reasonably necessary to fulfill their respective obligations under this AGREEMENT.

**VIII. ADDITIONAL MAINTENANCE PROVISIONS**

- A. It is understood and agreed by the PARTIES that this AGREEMENT shall supersede any and all earlier agreements entered into by the PARTIES regarding maintenance of highways and Toll Highway facilities within the limits of this PROJECT.

- B. During construction, the PARTIES shall continue to maintain all portions of the PROJECT within the respective PARTY's existing maintenance/jurisdictional responsibilities that are not to be improved or maintained by the construction contractor(s) pursuant to the approved plans and specifications.
- C. Nothing herein is intended to prevent or preclude any PARTY from entering into reciprocal agreements in the future for any particular interchange for the efficient removal of snow, ice, and debris or for incident management.
- D. All items of construction which are stipulated in this AGREEMENT to be maintained by a PARTY shall, upon completion of construction and final inspection, be the sole maintenance responsibility of that respective PARTY.
- E. Attached "EXHIBIT A" also identifies the PARTIES' respective maintenance responsibilities. In the event there is a conflict between the aforementioned exhibit and the maintenance provisions contained in Section VII of this AGREEMENT, the text in Section VII shall control.

## **IX. GENERAL PROVISIONS**

- A. It is understood and agreed that this is an AGREEMENT between the Illinois Department of Transportation (DEPARTMENT), the County of Cook (COOK COUNTY), the County of DuPage (DUPAGE COUNTY), Village of Franklin Park (VILLAGE), the City of Northlake (CITY) and the Illinois State Toll Highway Authority (ILLINOIS TOLLWAY).
- B. It is understood and agreed by the PARTIES, that the PARTIES shall have jurisdiction of the roadways and facilities as stated in Section VII. For the purpose of this AGREEMENT, jurisdiction shall mean the authority and obligation to administer, control, construct, maintain, and operate.
- C. It is understood and agreed that this AGREEMENT constitutes the complete and exclusive statement of the agreement of the PARTIES relative to the subject matter hereof and supersedes all previous oral and written proposals, negotiations, representations or understandings concerning such subject matter.
- D. Wherever in this AGREEMENT approval or review by any of the PARTIES is provided for, said approval or review shall not be unreasonably delayed or withheld.
- E. Not later than thirty (30) calendar days after execution of this AGREEMENT each PARTY shall designate in writing a representative who shall serve as the full-time representative of the said PARTY during the carrying out of the execution of this AGREEMENT. Each representative shall have authority, on behalf of such PARTY, to make decisions relating to the work covered by this AGREEMENT.

Representatives may be changed, from time to time, by subsequent written notice. Each representative shall be readily available to the other PARTIES.

- F. The descriptive headings of various sections of this AGREEMENT are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- G. In the event of a dispute between PARTIES in the carrying out of the terms of this AGREEMENT, the Chief Engineering Officer of the ILLINOIS TOLLWAY, the Region One Engineer of the DEPARTMENT, the Superintendent of Transportation and Highways of COOK COUNTY, the Director of Transportation/County Engineer of DUPAGE COUNTY, the Engineer of VILLAGE and/or the Mayor of CITY shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of a dispute concerning the plans and specifications for the PROJECT, the decision of the Chief Engineering Officer of the ILLINOIS TOLLWAY shall be final, subject to Section IX.H below.
- H. In the event of a dispute between any PARTY in the carrying out of the terms of this AGREEMENT in reference to the respective PARTY's requested work (utilities, facilities, roadways, etc.), or a dispute concerning the plans and specifications for the PARTY's requested work (utilities, facilities, roadways, etc.), the Chief Engineering Officer of the ILLINOIS TOLLWAY and the respective PARTY's representative as stated above shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of the dispute concerning the respective PARTY's requested work (utilities, facilities, roadways, etc.), the decision of that PARTY's representative shall be final as long as that decision does not delay delivery of the PROJECT or be detrimental to the maintenance and operation of the Toll Highway.
- I. In the event there is a conflict between the written terms contained in this document and the attached EXHIBIT A, the terms included in this document shall control.
- J. This AGREEMENT may be executed in six (6) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- K. The ILLINOIS TOLLWAY agrees that in the event any work is performed by forces other than ILLINOIS TOLLWAY forces, the applicable provisions of the "Prevailing Wage Act," 820 ILCS 130/1, shall apply.
- L. Under penalties of perjury, COOK COUNTY certifies that its correct Federal Tax Identification number is 36-6006541 and it is doing business as a governmental entity, whose mailing address is the Cook County Department of Transportation and Highways, 69 West Washington Street, 24th Floor, Chicago, Illinois 60602.

- M. Under penalties of perjury, DUPAGE COUNTY certifies that its correct Federal Tax Identification number is 36-6006551 and it is doing business as a governmental entity, whose mailing address is the DuPage County Division of Transportation, Jack T. Knuepfer Administration Building, 421 North County Farm Road, Wheaton, Illinois 60187.
- N. Under penalties of perjury, the VILLAGE certifies that its correct Federal Tax Identification number is 36-6005882 and it is doing business as a governmental entity, whose mailing address is Village of Franklin Park, 9500 West Belmont Avenue, Franklin Park, Illinois 60131.
- O. Under penalties of perjury, CITY certifies that its correct Federal Tax Identification number is 36-6006021 and it is doing business as a governmental entity, whose mailing address is City of Northlake, 55 East North Avenue, Northlake, Illinois 60164.
- P. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES.
- Q. This AGREEMENT and the covenants contained herein shall become null and void in the event the individual contracts covering the construction work contemplated herein are not awarded within three (3) years subsequent to the date of execution of this AGREEMENT.
- R. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective successors and approved assigns. This AGREEMENT does not, and shall not be construed to, create any rights, responsibilities, or causes of action in any third parties except as specified herein.
- S. The failure by any PARTY to seek redress for violation of or to insist upon the strict performance of any condition or covenant of this AGREEMENT shall not constitute a waiver of any such breach or subsequent breach of such covenants, terms, conditions, rights and remedies. No provision of this AGREEMENT shall be deemed waived by the PARTIES unless such provision is waived in writing.
- T. It is agreed that the laws of the State of Illinois shall apply to this AGREEMENT and that, in the event of litigation, venue shall lie in Cook County, Illinois.
- U. All written reports, notices and other communications related to this AGREEMENT shall be in writing and shall be personally delivered, mailed via certified mail, overnight mail delivery, or electronic mail delivery to the following persons at the following addresses:

To the ILLINOIS TOLLWAY:

The Illinois Toll Highway Authority  
2700 Ogden Avenue  
Downers Grove, Illinois 60515

Attn: Chief Engineering Officer  
paulkovacs@getipass.com

To the DEPARTMENT:

The Illinois Department of  
Transportation  
201 W. Center Court  
Schaumburg, Illinois 60196  
Attn: Region One Engineer  
Anthony.Quigley@illinois.gov

To COOK COUNTY:

The Cook County Department of  
Transportation and Highways  
69 West Washington Street, 24th  
Floor  
Chicago, Illinois 60602  
Attn: Acting Superintendent  
Jennifer.Killen@cookcountyil.gov

To DUPAGE COUNTY:

The DuPage County Division of  
Transportation  
Jack T. Knuepfer Administration  
Building  
421 North County Farm Road  
Wheaton, Illinois 60187  
Attn: Director of  
Transportation/County Engineer  
Christopher.Snyder@dupageco.org

To the VILLAGE:

The Village of Franklin Park  
9500 West Belmont Avenue  
Franklin Park, Illinois 60131  
Attn: Village Engineer  
dtalbott@vofp.com

To the CITY:

The City of Northlake  
55 East North Avenue  
Northlake, Illinois 60164  
Attn: Mayor  
northlakemayor@comcast.net

- V. The PARTIES agree to maintain books and records related to the performance of this AGREEMENT for a minimum of five (5) years from the last action on the AGREEMENT. The PARTIES further agree to cooperate fully with any audit and to make their books and records, and books and records within their custody or control available to the Illinois Attorney General, the Illinois Auditor General, the ILLINOIS TOLLWAY Inspector General, the ILLINOIS TOLLWAY Department



of Internal Audit, the ILLINOIS TOLLWAY or any other governmental agency or agent thereof that is authorized to audit or inspect such books and records.

- W. The PARTIES also recognize that, pursuant to Section 8.5 of the Toll Highway Act (605 ILCS 10/8.5), the Inspector General of the Illinois State Toll Highway Authority (“OIG”) has the authority to conduct investigations into certain matters including but not limited to allegations of fraud, waste and abuse, and to conduct reviews. The PARTIES will fully cooperate in any OIG investigation or review and shall not bill the ILLINOIS TOLLWAY for such time. Cooperation includes providing access to all information and documentation related to the performance of this AGREEMENT, and disclosing and making available all personnel involved or connected with, or having knowledge of, the performance of this AGREEMENT.
- X. The introductory recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.

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IN WITNESS THEREOF, the PARTIES have executed this AGREEMENT on the dates indicated.

**THE VILLAGE OF FRANKLIN PARK**

By: \_\_\_\_\_  
Barrett F. Pederson  
Mayor

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Please Print Name)

**THE CITY OF NORTHLAKE**

By: \_\_\_\_\_  
Jeffrey Sherwin  
Mayor

Attest: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
(Please Print Name)

**THE COUNTY OF COOK**

By: \_\_\_\_\_  
Toni Preckwinkle, President  
Cook County Board of Commissioners

Attest: \_\_\_\_\_  
County Clerk

Date: \_\_\_\_\_

(SEAL)

RECOMMENDED BY:

APPROVED AS TO FORM:  
Kimberly M. Foxx, State's Attorney

\_\_\_\_\_  
Jennifer (Sis) Killen, P.E., PTOE  
Acting Superintendent  
County of Cook  
Department of Transportation and Highways

\_\_\_\_\_  
Assistant State's Attorney

**THE COUNTY OF DUPAGE**

By: \_\_\_\_\_  
Daniel J. Cronin, Chairman  
DuPage County Board

Attest: \_\_\_\_\_  
Jean Kaczmarek  
County Clerk

Date: \_\_\_\_\_

**THE STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Jose Rios, P.E.  
Region One Engineer

Date: \_\_\_\_\_

**THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY**

By: \_\_\_\_\_  
Willard S. Evans, Jr.  
Chairman & Chief Executive Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Cathy R. Williams  
Chief Financial Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Kathleen R. Pasulka-Brown  
General Counsel

Date: \_\_\_\_\_

Approved as to Form and Constitutionality

\_\_\_\_\_  
Robert Lane, Assistant Attorney General

## RESOLUTION NO. 22234

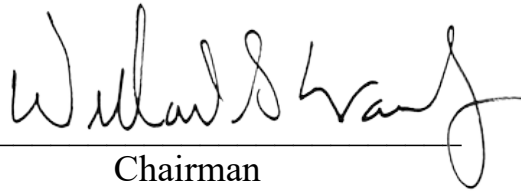
**Background**

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to settle *ISTHA v. Bailey Development, L.L.C.*, 2019 L 050423, an eminent domain matter concerning Tollway parcel WA-1D-12-039.

**Resolution**

The above proposed litigation settlement is approved. The General Counsel is authorized to finalize the settlement agreement consistent with the terms presented to the Board of Directors in Executive Session. The Chairman/Chief Executive Officer of the Tollway is authorized to execute any and all necessary documents to effectuate the settlement and resolve all related legal matters, subject to the approval of the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by:



Chairman

## RESOLUTION NO. 22235

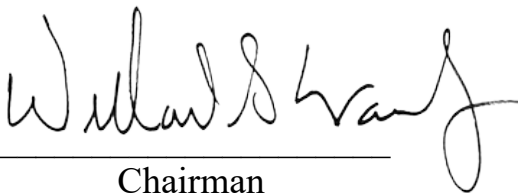
**Background**

The Illinois State Toll Highway Authority (“Tollway”) will be mediating claims filed by the Estate of Samuel Gradman. It is in the best interest of the Tollway to participate in the mediation and potentially settle said claims.

**Resolution**

The Tollway is authorized to participate in the above-referenced mediation in accordance with the Board’s discussion during Executive Session. The General Counsel is authorized to negotiate and finalize a settlement agreement consistent with the terms presented to the Board. The Chairman and Chief Executive Officer of the Tollway and the General Counsel are authorized to execute any and all necessary documents to effectuate a settlement and resolve all related legal matters, and the Chief of Finance is authorized to issue warrants in payment thereof.

Approved by:

  
\_\_\_\_\_

Chairman

## RESOLUTION NO. 22236

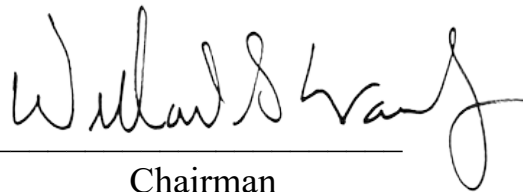
**Background**

The Illinois State Toll Highway Authority (“Tollway”) has negotiated a proposed settlement regarding workers’ compensation claims filed by John Bocskovits. It is in the best interest of the Tollway to enter into the settlement.

**Resolution**

The settlement of John Bocskovits’ workers’ compensation claim is approved. The General Counsel is authorized to finalize the settlement agreement consistent with the terms presented to the Board in Executive Session. The Chairman and Chief Executive Officer of the Tollway and the General Counsel are authorized to execute any and all necessary documents to effectuate this settlement and resolve all related legal matters, and the Chief of Finance is authorized to issue warrants in payment thereof.

Approved by:



\_\_\_\_\_

Chairman

## RESOLUTION NO. 22237

**Background**

The Illinois State Toll Highway Authority (“Tollway”) currently administers an economic assistance program called I-PASS Assist. The I-PASS Assist program helps income-eligible customers obtain I-PASS accounts, and thereby benefit from the substantially lower rates available to I-PASS customers, by lowering initial account-related enrollment costs. Specifically, whereas I-PASS customers generally are required to pay a \$10 deposit for a transponder and put \$20 on their accounts to cover future tolls, to mitigate the impact Tollway policies have on low-income households, I-PASS Assist customers are required to pay a \$10 transponder deposit and only put \$10 on their accounts to cover future tolls.

To further mitigate the impact Tollway policies have on low-income households, the Tollway will be enhancing its above-described I-PASS Assist program. Specifically, for both new and old I-PASS Assist customers, the Tollway will waive the \$10 transponder deposit and will require new I-PASS Assist customers to put only \$4 on their accounts to cover future tolls.

In addition, the Tollway has updated its Affidavit of Nonliability to enable all I-PASS Assist customers to potentially avoid invoice fees they may incur for tolls not paid through their I-PASS Assist accounts.

Eligibility to participate in the Tollway’s I-PASS Assist program is based on income. Individuals with incomes less than 250% of the Federal Poverty Level, based upon household composition as verified by the Illinois Department of Revenue (“IDOR”), will be eligible to enroll in I-PASS Assist.

To implement the enhanced I-PASS Assist program, the Tollway will enter into an intergovernmental agreement (“IGA”) with IDOR, pursuant to which IDOR will verify the eligibility of individuals who seek to participate in the I-PASS Assist program.



## RESOLUTION NO. 22237


**Background - continued**

Also, the Tollway is requesting authority to expend an amount not to exceed \$400,000.00 on non-cash marketing incentives (*e.g.*, merchant gift cards) not to exceed \$20 per customer. The Tollway will use the incentives in its marketing campaign relative to the enhanced I-PASS Assist program to encourage qualified individuals to enroll in I-PASS Assist. Customers will not be able to use the marketing incentives to pay tolls or to cover the \$4 required to open I-PASS Assist accounts.

In addition to providing substantial benefit to income-eligible customers, the Tollway's enhanced I-PASS Assist program also will benefit the Tollway because the use of transponders is the most cost-efficient method by which to conduct toll transactions. Toll transactions made without the use of a transponder are significantly more expensive than toll transactions made with a transponder.

**Resolution**

To provide additional needed relief to income-eligible customers, the Tollway is authorized to implement its enhanced I-PASS Assist program, as described above. Among other things, the Tollway is (i) authorized to expend an amount not to exceed \$400,000.00 to procure non-cash marketing incentives that cannot be used to pay tolls to encourage enrollment in the enhanced I-PASS Assist program, and (ii) directed to adopt policies and procedures necessary to implement its enhanced I-PASS Assist program on or before June 30, 2021.

Approved by:   
Chairman

## RESOLUTION NO. 22238

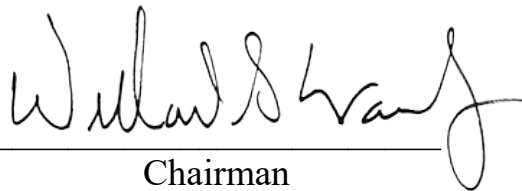
**Background**

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Internal Auditing Services through the Central Management Services (“CMS”) master contract with Baker Tilly Virchow Krause, LLP, Tollway Contract No. 21-0060, for an upper limit of compensation not to exceed \$5,964,022.50. The Tollway will utilize the CMS master contract only after all predicate steps are successfully completed. These goods and/or services are being obtained pursuant to 44 Ill. Adm. Code 1.1040.

**Resolution**

Utilization of the CMS master contract for the purchase of Internal Auditing Services from Baker Tilly Virchow Krause, LLP is approved in an amount not to exceed \$5,964,022.50. The Chairman and Chief Executive Officer of the Tollway is authorized to execute the appropriate documents in connection therewith, subject to the approval of the General Counsel and the Chief Financial Officer. The Chief of Contract Services is authorized to issue the necessary purchase orders and contract purchase orders and any other necessary documents in connection therewith, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: \_\_\_\_\_



Chairman