

RESOLUTION NO. 21852
RESCINDING RESOLUTION NOS. 20899 AND 21284

Background

For many years, various stakeholders, including The Illinois State Toll Highway Authority (“Tollway”), have considered possible transportation improvements in the Central Lake County Corridor to address, among other things, population growth, increasing environmental pressures, desires for new economic development and rising congestion in Lake County. As a result, a project initially known as the Illinois Route 53/120 project and later known as the Tri-County Access Project and/or Tri-County Access Study (“Project”) was developed.

In 2011, to assist in determining whether the Tollway should advance the Project consistent with a plan developed by the Chicago Metropolitan Agency for Planning, the Tollway established an Illinois Route 53/120 Blue Ribbon Advisory Council, comprised of representatives from government, business, labor, planning and environmental groups, to develop a regional consensus.

In 2015, based on then existing local support for the Project, the Tollway Board of Directors (“Tollway Board”) passed Resolution 20899, directing the Tollway to partner with the Federal Highway Administration (“FHWA”), the Illinois Department of Transportation (“IDOT”) and the Lake County Division of Transportation (“LCDOT”) to initiate the preparation of an Environmental Impact Statement (“EIS”) pursuant to the National Environmental Policy Act (“NEPA”).

Subsequently, the Project lost a substantial amount of the support it previously enjoyed, including the support of the Lake County Board. Nonetheless, the Tollway Board passed Resolution 21284, dated May 25, 2017, approving a \$25,000,000.00 contract in connection with the Project (“Contract I-16-4266”), which provided funding for the first portion of the EIS. The following year, on July 6, 2018, the Tollway entered into a Memorandum of Understanding with IDOT setting forth the parties’ roles and responsibilities relative to the Project and associated preliminary engineering and financial studies, public involvement, related policy considerations, design and alternative evaluations. Shortly thereafter, on July 16, 2018 the Federal Highway

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Background – Continued

Administration published a Notice of Intent (“NOI”) in the Federal Register stating that an EIS would be prepared in cooperation with IDOT and the FHWA.

To date, the Tollway has spent approximately \$13,000,000.00 on Contract I-16-4266. The estimated cost to complete (i) Contract I-16-4266, and (ii) the remainder of the EIS, is approximately \$37,000,000, consisting of the remaining budgeted amount on Contract I-16-4266 and an additional sum of approximately \$25,000,000, which the Board would need to approve in early 2020.

Consistent with discussions between Tollway management and the current Tollway Board, the Tollway recently endeavored to determine the financial viability and current level of support for the Project. As a result of its efforts, the Tollway discovered that the Project lacks clear financial viability and local consensus and learned that the Lake County Board recently adjusted its strategic plan to “monitor and utilize the data developed from the EIS on Route 53/120 to help engage stakeholders in a process to evaluate and consider alternatives” other than the Project.

Based on the current views of interested stakeholders and the Tollway’s substantial engagement in certain major construction projects (*e.g.*, the rebuilding and widening of the Central Tri-State Tollway (I-294) and the delivery of western access to O’Hare International Airport *via* the new I-490 Tollway, both of which are part of the Tollway’s \$14,000,000,000.00 *Move Illinois* capital program), it is not in the Tollway’s interest to lead further development of the Project or the EIS. Accordingly, on July 12, 2019, the Tollway requested that the FHWA rescind the NOI, and on or about the same time, the Tollway discontinued its pursuit of work on the EIS. Notably, however, data compiled as a result of EIS-related work completed to date will provide an extremely useful foundation for any future local, state or federal efforts to improve transportation in the Central Lake County region.

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RESOLUTION NO. 21852
RESCINDING RESOLUTION NOS. 20899 AND 21284

Resolution

The Board hereby rescinds Resolution 20899, which directed the Tollway to partner with the FHWA, IDOT and LCDOT to initiate the preparation of an EIS. The Board hereby rescinds Resolution 21284, which approved Contract I-16-4266, and directs the Tollway to terminate said Contract. The Board further directs the Tollway to terminate the July 6, 2018 Memorandum of Understanding between the Tollway and IDOT.

Approved by: William S. Kravitz
Chairman

RESOLUTION NO. 21853

Background

Section 6z-27 of the State Finance Act, 30 ILCS 105/6z-27, provides that the Auditor General of the State of Illinois (“Auditor General”) may bill entities for the cost, incurred on their behalf, of audits, studies, and investigations, unless specifically prohibited from doing so under trust fund provisions.

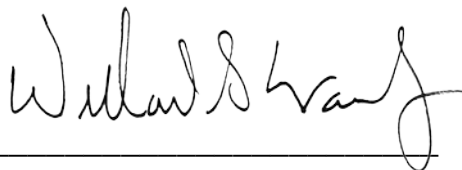
The Office of the Auditor General, in carrying out its statutory duties under the Illinois State Auditing Act, 30 ILCS 5/1-1, *et seq.*, performed an audit of The Illinois State Toll Highway Authority’s (“Tollway”) 2018 financial statements and notified the Tollway of its obligation to pay for the audit.

The Auditor General determined that, pursuant to 30 ILCS 105/6z-27, the Tollway is obligated to direct the State Comptroller and State Treasurer to request a transfer of \$499,550.00 to the Audit Expense Fund to reimburse the allocated costs of the above-referenced audit.

Resolution

Payment of \$499,550.00 to the Audit Expense Fund to reimburse the Auditor General of the State of Illinois for costs incurred in connection with the Tollway audit period ending December 31, 2018 is approved. The Chief Financial Officer is authorized to approve the issuance of warrants or other proper form of intra-agency reimbursement in payment thereof.

Approved by: _____



Chairman

RESOLUTION NO. 21854

Background

The Illinois State Toll Highway Authority (“Tollway”), with the approval of its Consulting Engineer, instituted a self-insured workers’ compensation program effective May 1, 1988. Paragraph 715.4(1) of the Amended and Restated Trust Indenture of The Illinois State Toll Highway Authority, dated March 31, 1999, requires that “each such self-insurance program shall include an actuarially sound reserve fund, if any, as recommended by the Consulting Engineer, out of which claims are to be paid and the adequacy of such funds shall be evaluated not later than 90 days after the end of each insurance year.”

The Tollway has established a locally-held depository account known as the Workers’ Compensation Insurance Claim Reserve Fund (“Fund”) for its workers’ compensation self-insurance program (“Program”), the balance of which is net of all workers’ compensation claims paid through such date. Based on the current, annual actuarial report, the Tollway and the Consulting Engineer are recommending approval of funding for the Program year of May 1, 2019 through April 30, 2020 in the amount of \$7,310,000.00.

Consistent with the Trust Indenture requirement that the Tollway maintain an actuarially sound reserve, it is in the best interest of the Tollway to fund future Program years in accordance with future annual actuarial reports reviewed and approved of by the Tollway and the Consulting Engineer.

Resolution

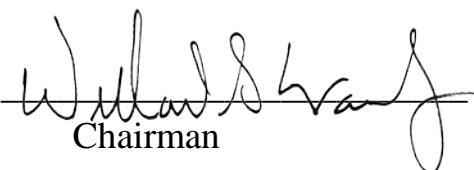
The Chief Financial Officer is authorized to: (1) approve deposits totaling \$7,310,000.00 to the Fund for the May 1, 2019 through April 30, 2020 Program year; (2) approve deposits to (and deductions from) the Fund to maintain an appropriate and sufficient balance in the Fund throughout said Program year; (3) approve deposits to the Fund in accordance with future annual actuarial reports reviewed and approved by the Tollway and the Consulting Engineer; (4) approve

RESOLUTION NO. 21854

Resolution Continued

deposits to (and deductions from) the Fund to maintain an appropriate and sufficient balance in the Fund throughout such future Program years; and (5) approve Fund payments for workers' compensation settlements, authorized and approved consistent with Resolution No. 21380, and workers' compensation claims expenses owed by the Tollway pursuant to law.

The Chief Financial Officer is further authorized to take administrative actions, consistent with the foregoing and regular Tollway practices, to achieve the effect of an actuarially sound workers' compensation reserve fund.

Approved by: 
Chairman

RESOLUTION NO. 21855

Background

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Toll Technology Revenue Security as a Sole Source Contract (No. 19-0077) with Accenture LLP for an upper limit of compensation not to exceed \$8,000,000.00. The Tollway is authorized to procure these goods and services pursuant to Section 20-25 of the Illinois Procurement Code, 30 ILCS 500/20-25, which requires advance public notice of at least two weeks. The Tollway is currently working with the State’s Chief Procurement Officer for General Services on the Sole Source process for this procurement, and a contract would only be entered after all upcoming predicate steps are successfully completed.

Resolution

The sole source quote from Accenture LLP for the purchase of Toll Technology Revenue Security is accepted. Contract No. 19-0077 is approved in an amount not to exceed \$8,000,000.00 and subject to successful completion of all legal and regulatory requirements to appropriately enter into a Sole Source Contract for the procurement. As may be necessary, the Chairman/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 Procurement 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: William S. Kravitz
Chairman

RESOLUTION NO. 21856

Background

The Illinois State Toll Highway Authority (“Tollway”) has previously purchased New Holland Tractor Repair, Parts and Services (“Contract No. 16-0131”) from Martin Implement Sales, Inc. It is in the best interest of the Tollway to exercise the renewal option of Contract No. 16-0131 and increase the upper limit of compensation to Martin Implement Sales, Inc. by an amount not to exceed \$70,000.00 for the purchase of additional New Holland Tractor Repair, Parts and Services.

Resolution

The renewal option and associated increase to the upper limit of compensation of Contract No. 16-0131 for the purchase of additional New Holland Tractor Repair, Parts and Services from Martin Implement Sales, Inc. is approved in an amount not to exceed \$70,000.00 (increase from \$73,662.00 to \$143,662.00). As may be necessary, the Chairman/Chief Executive Officer of the Tollway or the Executive Director 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 Procurement 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: William S. Kravitz
Chairman

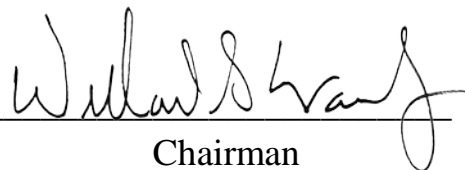
RESOLUTION NO. 21857

Background

The Illinois State Toll Highway Authority (“Tollway”) is interested in procuring Desktop Replacements through the Illinois Department of Innovation & Technology (“DoIT”) master contract with CDW Government LLC (“Tollway Contract No. 19-0093”) for an upper limit of compensation not to exceed \$1,812,302.00. These goods and/or services are being obtained pursuant to 44 Ill. Adm. Code 1.1040.

Resolution

The utilization of the DoIT master contract for the purchase of Desktop Replacements from CDW Government LLC is approved in an amount not to exceed \$1,812,302.00. As may be necessary, the Chairman/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 Procurement 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. 21858

Background

The Illinois State Toll Highway Authority (“Tollway”) has previously purchased the services of Hearing Officers (“Contract No. 16-0019”) from Margaret E. Chapello, Marcie R. Claus, Robert J. Dargis, Christopher R. Gorman, Esq., Patricia Kladis-Schiappa, Esq., The Law Office of William G. Worobec, P.C. (William G. Worobec), LeBac Law, P.C. (Kimberly Backman), Legal Resolve, Inc. (Shelby Webb, Jr., Esq.), Lawrence Necheles, Sharon Finegan Patterson, Simpson Dattilo, LLC (Matthew Thomas Dattilo), Susan Davis Brunner LLC (Susan Davis Brunner), Thomas D. Resnick, P.C. (Thomas D. Resnick), Lorri Scott, Joel R. Skinner, Evan T. Voboril, and Zachary C. Wilson. It is in the best interest of the Tollway to renew Contract No. 16-0019 and increase the upper limit of compensation of said contract by an aggregate amount not to exceed \$180,200.00 for the purchase of additional Hearing Officer services.

Resolution

The renewal and associated increase to the upper limit of compensation of Contract No. 16-0019 for the purchase of additional Hearing Officer services from Margaret E. Chapello, Marcie R. Claus, Robert J. Dargis, Christopher R. Gorman, Esq., Patricia Kladis-Schiappa, Esq., The Law Office of William G. Worobec, P.C. (William G. Worobec), LeBac Law, P.C. (Kimberly Backman), Legal Resolve, Inc. (Shelby Webb, Jr., Esq.), Lawrence Necheles, Sharon Finegan Patterson, Simpson Dattilo, LLC (Matthew Thomas Dattilo), Susan Davis Brunner LLC (Susan Davis Brunner), Thomas D. Resnick, P.C. (Thomas D. Resnick), Lorri Scott, Joel R. Skinner, Evan T. Voboril, and Zachary C. Wilson is approved in an aggregate amount not to exceed \$180,200.00 (increase from \$544,500.00 to \$724,700.00). As may be necessary, the Chairman/Chief Executive Officer of the Tollway or the Executive Director is authorized to execute the appropriate

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Resolution (continued)

documents in connection therewith, subject to the approval of the General Counsel and the Chief Financial Officer. The Chief of Procurement 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: William S. Kravitz
Chairman

RESOLUTION NO. 21859

Background

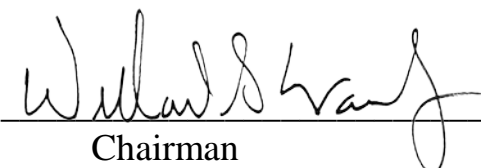
The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-19-4470 for Intermittent Pavement Repairs on the Tri-State Tollway (I-294) from Mile Post 17.7 (95th Street) to Mile Post 36.9 (Franklin Street) and Illinois Route 390 Tollway (IL 390) from Mile Post 7.6 (West Irving Park Road) to Mile Post 11.2 (Meacham Road). The lowest responsive and responsible bidder on Contract No. RR-19-4470 is K-Five Construction Corporation in the amount of \$2,146,432.15.

Resolution

Contract No. RR-19-4470 is awarded to K-Five Construction Corporation in the amount of \$2,146,432.15, 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/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/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. 21860

Background

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-19-4471 for Pavement Resurfacing and Intermittent Pavement Repairs on the Jane Addams Memorial Tollway (I-90) from Mile Post 14.87 (North of Business Route US 20) to Mile Post 17.00 (Newburg Road). The lowest responsive and responsible bidder on Contract No. RR-19-4471 is Curran Contracting Company in the amount of \$440,519.61.

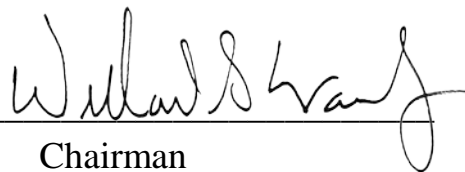
Resolution

Contract No. RR-19-4471 is awarded to Curran Contracting Company in the amount of \$440,519.61, 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/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/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. 21861

Background

The Illinois State Toll Highway Authority (“Tollway”) advertised for sealed bids on Contract RR-19-9216 for Pavement Marking, Systemwide. The lowest responsive and responsible bidder on Contract No. RR-19-9216 is A C Pavement Striping Company in the amount of \$1,945,259.78.

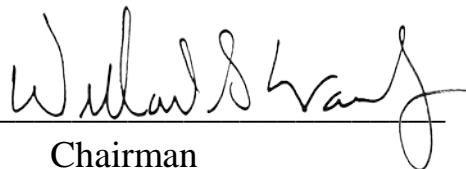
Resolution

Contract No. RR-19-9216 is awarded to A C Pavement Striping Company in the amount of \$1,945,259.78, 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/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/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. 21862

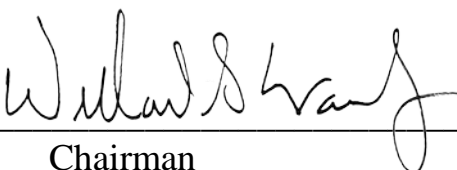
Background

The Illinois State Toll Highway Authority (“Tollway”), pursuant to Resolution No. 20209 approved January 23, 2014, entered into an Agreement with Parsons Transportation Group, Inc. on Contract RR-13-4116 for Design Services on the Reagan Memorial Tollway (I-88) from Mile Post 138.1 (York Road Plaza) to Mile Post 140.5 (I-290).

Per Tollway request, Parsons Transportation Group, Inc. submitted a proposal to provide Supplemental Design Services for Contract RR-13-4116, increasing the contract upper limit by \$240,096.57, from \$3,882,578.95 to \$4,122,675.52. It is necessary and in the best interest of the Tollway to accept the proposal from Parsons Transportation Group, Inc.

Resolution

The Chief Engineering Officer is authorized to negotiate a Supplemental Agreement with Parsons Transportation Group, Inc., consistent with the aforementioned proposal, to increase the contract upper limit by \$240,096.57, subject to review and approval of the General Counsel. The Chairman/Chief Executive Officer or the Executive Director of the Tollway is authorized to execute the Agreement, 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. 21863

Background

The Illinois State Toll Highway Authority (“Tollway”), pursuant to Resolution No. 21470 approved January 25, 2018, entered into an Agreement with GSG Consultants, Inc. on Contract RR-16-4281 for Construction Management Services on the Tri-State Tollway (I-294) at Mile Post 6.3 (159th Street).

Per Tollway request, GSG Consultants, Inc. has submitted a proposal to provide Supplemental Construction Management Services for Contract RR-16-4281, increasing the contract upper limit by \$149,635.40, from \$2,181,348.15 to \$2,330,983.55. It is necessary and in the best interest of the Tollway to accept the proposal from GSG Consultants, Inc.

Resolution

The Chief Engineering Officer is authorized to negotiate a Supplemental Agreement with GSG Consultants, Inc. consistent with the aforementioned proposal to increase the contract upper limit by \$149,635.40, subject to review and approval of the General Counsel. The Chairman/Chief Executive Officer or the Executive Director of the Tollway is authorized to execute the Agreement, subject to the approval of the Chief Financial Officer, and the Chief Financial Officer is authorized to issue warrants in payment thereof.

Approved by: William S. Kravitz
Chairman

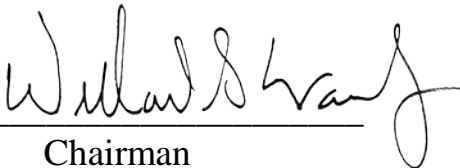
RESOLUTION NO. 21864

Background

The Illinois State Toll Highway Authority (“Tollway”) has identified the need for compensatory stormwater storage as part of the Central Tri-State Reconstruction Project (“Project”). The County of DuPage (“County”) has identified the opportunity to expand the capacity of the Elmhurst Quarry Flood Control Facility (“Facility”), which expanded capacity the Tollway can use for stormwater control. It is in the best interest of the Tollway to enter into an Intergovernmental Agreement with the County and contribute to the construction costs to expand the Facility. The Tollway is contributing an estimated \$1,330,000 toward the construction costs.

Resolution

The Chief Engineering Officer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between The Illinois State Tollway Highway Authority and the County of DuPage in substantially the form attached to this Resolution. The Chairman/Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said agreement.

Approved by: 
Chairman

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY
AND THE COUNTY OF DUPAGE**

This INTERGOVERNMENTAL AGREEMENT (hereinafter referred to as the “AGREEMENT”) is entered into this _____ day of _____, 2019, by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois, hereinafter called the "ILLINOIS TOLLWAY", and the COUNTY OF DUPAGE, a body politic and corporate of the State of Illinois, acting by and through its DUPAGE COUNTY DEPARTMENT OF STORMWATER MANAGEMENT, hereinafter called the “COUNTY,” individually referred to as “PARTY,” and collectively referred to as “PARTIES.”

WITNESSETH:

WHEREAS, the ILLINOIS TOLLWAY, in order to facilitate the free flow of traffic and continue to ensure the safety to the motoring public, intends to improve the Tri-State Tollway (I-294) from 95th Street (Mile Post 17.5) to Balmoral Avenue (Mile Post 40.0), (hereinafter sometimes referred to as "Toll Highway"). The contemplated improvements are substantially included in, but not limited to, multiple ILLINOIS TOLLWAY construction contracts (hereinafter referred to as the “PROJECT”) which include, among other things, the addition of a fifth lane in each direction along the most congested section of the corridor, reconfigurations and improvements to major system interchanges, new interchanges, replacement and rehabilitation of existing bridges and improvements to toll plazas, drainage, retaining walls and noise abatement walls; and

WHEREAS, the COUNTY operates the Elmhurst Quarry Flood Control Facility (hereinafter referred to as the “ELMHURST QUARRY”) to provide flood relief for the communities along Salt Creek and has identified the opportunity to expand the capacity of the ELMHURST QUARRY to provide additional stormwater storage (hereinafter referred to as the “ELMHURST QUARRY PROJECT”); and

WHEREAS, the ILLINOIS TOLLWAY, as a result of the improvements constructed as part of the PROJECT is required to provide compensatory stormwater storage and the ILLINOIS TOLLWAY’s assistance with the delivery of the ELMHURST QUARRY PROJECT, as more fully set forth below, allows the ILLINOIS TOLLWAY to satisfy its requirement of additional compensatory stormwater storage in a cost effective and timely manner; and

WHEREAS, the ILLINOIS TOLLWAY and the COUNTY, by this instrument, desire to determine and establish their respective responsibilities toward engineering and funding of the ELMHURST QUARRY PROJECT as proposed and outlined in the Memorandum of Understanding dated December 14, 2018; and

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; and

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

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 hereto agree as follows:

I. ENGINEERING

- A. The ILLINOIS TOLLWAY agrees to assume the overall PROJECT responsibility, including assuring that all permits and approvals (U.S. Army Corps of Engineers, Illinois Department of Natural Resources, Metropolitan Water Reclamation District of Greater Chicago, DuPage County Soil and Water Conservation District (SWPPP), DuPage County, 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 hereto in support of general project schedules and deadlines. All PARTIES hereto 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.
- B. The COUNTY shall secure all permits directly associated with the ELMHURST QUARRY PROJECT. The ILLINOIS TOLLWAY will assist with coordination to gain clearance from the regulatory agencies.
- C. The COUNTY shall perform the engineering, and stormwater modeling as necessary, for the ELMHURST QUARRY PROJECT and shall be responsible to maintaining a record of this work associated to the ELMHURST QUARRY PROJECT.
- D. The COUNTY will provide the ELMHURST QUARRY facility as a means of accommodating approximately ten (10) acre-feet of compensatory stormwater storage required as a result of the ILLINOIS TOLLWAY reconstruction project adjacent to or near Salt Creek.

II. RIGHT OF WAY

- A. It is mutually agreed by the PARTIES that the acquisition of right-of-way (both permanent and temporary) is not necessary for the construction of the ELMHURST QUARRY PROJECT pursuant to the approved plans and specifications (as may be amended as permitted by this AGREEMENT) or for the future maintenance of the ELMHURST QUARRY as improved. Therefore, it is understood by the PARTIES that there will be no conveyance or exchange of any property interests or jurisdictional transfers pursuant to this AGREEMENT.

III. CONSTRUCTION

- A. The COUNTY shall advertise and receive bids, provide construction engineering inspections for and cause the ELMHURST QUARRY PROJECT to be constructed in accordance with the ELMHURST QUARRY PROJECT plans and specifications; provided, however, that the ILLINOIS TOLLWAY shall have the right to review said plans and specifications to ensure that they will accommodate the ILLINOIS TOLLWAY's needs for compensatory storage as set forth herein .
- B. After award of the construction contract(s), any proposed deviations from the plans and specifications that affect the Toll Highway shall be submitted to the ILLINOIS TOLLWAY for approval prior to commencing such work. The ILLINOIS TOLLWAY shall review the proposed deviations and indicate its approval or disapproval thereof in writing. If the proposed deviation to the plans and specifications are not acceptable, the ILLINOIS TOLLWAY shall detail in writing its specific objections. If the COUNTY receives no written response from the ILLINOIS TOLLWAY within fifteen (15) calendar days (or if the fifteenth day is a weekend or other non-business day, the later of the first business day or the first day with United States Postal Service regular delivery, after the fifteenth day) after actual, physical delivery to the ILLINOIS TOLLWAY of the proposed deviation shall be deemed approved by the ILLINOIS TOLLWAY. Notwithstanding any disapproval by the ILLINOIS TOLLWAY, the COUNTY may, after considering the ILLINOIS TOLLWAY's objections, and consulting with the ILLINOIS TOLLWAY proceed as the Engineer of the COUNTY deems appropriate with a written explanation to the ILLINOIS TOLLWAY within ten (10) calendar days.
- C. After award of the construction contract(s), assuming there are no proposed deviations from the plans and specifications that affect the ILLINOIS TOLLWAY, the COUNTY shall provide no less than five (5) calendar days written notice to the ILLINOIS TOLLWAY prior to commencement of work on the ELMHURST QUARRY PROJECT.
- D. Notices required to be delivered by either PARTY pursuant to this AGREEMENT shall be delivered as indicated in Section VIII of this AGREEMENT.

- E. No inspections or approvals by the ILLINOIS TOLLWAY or its employees, officers or agents shall relieve the COUNTY or its contractor(s) of any tier of responsibility and liability for the proper performance of the work as determined by the ILLINOIS TOLLWAY. COUNTY inspections and approvals shall not be considered a waiver of any right the ILLINOIS TOLLWAY may have at law, at equity, or pursuant to this AGREEMENT. All ILLINOIS TOLLWAY communications and correspondence with the COUNTY's contractor(s) or relating to a contract for the work on the ELMHURST QUARRY PROJECT shall be through the COUNTY, unless otherwise specifically directed or allowed by the COUNTY. In the event an ILLINOIS TOLLWAY representative discovers ILLINOIS TOLLWAY related work that either is not being performed or has not been performed in accordance with the approved plans and specifications, the representative shall promptly notify in writing the COUNTY or the COUNTY's duly designated representative. In such event, the COUNTY shall insure that the work is performed in accordance with the approved plans and specifications or as otherwise agreed in writing by the PARTIES.
- F. The ILLINOIS TOLLWAY proposes to reconstruct the Toll Highway in the vicinity of Salt Creek. Subject to change, this work is anticipated to take place approximately from April 2021 through December 2024. The COUNTY will endeavor to accommodate the ILLINOIS TOLLWAY compensatory stormwater storage prior to the completion of the ILLINOIS TOLLWAY improvements requiring compensatory storage within the Salt Creek Watershed resulting from the proposed Toll Highway reconstruction work. The required compensatory stormwater storage volume was calculated per the COUNTY stormwater ordinance for the total 10.0 acre-feet between the normal and 10 year, and between 10-year and 100-year floodplain levels.

IV. FINANCIAL

- A. The COUNTY agrees to pay all for ELMHURST QUARRY PROJECT-related engineering, design engineering, construction engineering, construction, and operating costs as well as for use of compensatory stormwater storage within the ELMHURST QUARRY, subject to reimbursement by the ILLINOIS TOLLWAY as hereinafter stipulated.
- B. Either the COUNTY or the ILLINOIS TOLLWAY may request, after the construction contract(s) are let by the COUNTY, that supplemental work that increases the total costs of the ELMHURST QUARRY PROJECT or more costly substitute work be added to the construction contract(s). The COUNTY 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 ELMHURST QUARRY 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.

- C. It is mutually agreed by the PARTIES that the estimated cost to the ILLINOIS TOLLWAY for ELMHURST QUARRY PROJECT work is \$1,330,000; provided, however, that notwithstanding this estimate, the ILLINOIS TOLLWAY, subject to audit and verification, agrees that upon completion of the ELMHURST QUARRY PROJECT and receipt of an invoice from the COUNTY, agrees to pay the COUNTY a lump sum amount equal to 100% of its obligation incurred under this AGREEMENT based on final actual costs.

V. MAINTENANCE - DEFINITIONS

- A. The term "local" means the COUNTY.
- B. The term "local road" refers to any highway, road, street, or facility under the jurisdiction of the COUNTY.
- 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, 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 V. 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, bridge deck beams, bridge deck (except wearing surface), expansion joints, parapet walls and drainage structures.
 - 3. "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 hereto, to the motoring public, 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.
 - 4. 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.

5. 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.
6. 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 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.
7. The terms "consultation" or "consult with" refer to the duty of a PARTY to give notice to the other 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.
8. The term "approve" refers to the duty of a PARTY not only to consult with the other PARTY but also to provide consent for the proposed action and to retain a record which documents such consent. In those instances when a non-response constitutes approval under this AGREEMENT, the failure to approve shall not constitute a violation of this AGREEMENT.

VI. MAINTENANCE - RESPONSIBILITIES

- A. The ILLINOIS TOLLWAY shall continue its maintenance of I-294.
- B. The COUNTY shall continue its maintenance of the ELMHURST QUARRY including improvements made to the ELMHURST QUARRY as part of the ELMHURST QUARRY PROJECT.

VII. ADDITIONAL MAINTENANCE PROVISIONS

- A. It is understood and agreed by the PARTIES hereto that this AGREEMENT, except to the extent that it directly contradicts of any prior agreements, shall not supersede any and all earlier Agreements entered into by the PARTIES hereto regarding maintenance of COUNTY facilities and ILLINOIS TOLLWAY facilities within the limits of the PROJECT.

- B. During construction, the COUNTY shall continue to maintain all portions of the ELMHURST QUARRY and abide by the ELMHURST QUARRY PROJECT's approved plans and specifications (as may be amended as allowed by this AGREEMENT). The ILLINOIS TOLLWAY shall continue to maintain, or cause to be maintained, all portions of the Toll Highway that are not required to be maintained by the COUNTY's construction contractor(s).
- C. All items of construction which are stipulated in this AGREEMENT to be maintained by the COUNTY shall, upon completion of construction and final inspection, be the sole maintenance responsibility of the COUNTY, and all items of construction which are stipulated in this AGREEMENT to be maintained by the ILLINOIS TOLLWAY shall, upon completion of construction, be the sole maintenance responsibility of the ILLINOIS TOLLWAY.
- D. Nothing herein is intended to prevent or preclude the COUNTY and the ILLINOIS TOLLWAY from entering into reciprocal agreements in the future.

VIII. GENERAL PROVISIONS

- A. 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.
- B. Wherever in this AGREEMENT approval or review by either the COUNTY or the ILLINOIS TOLLWAY is provided for, said approval or review shall not be unreasonably delayed or withheld.
- C. Not later than fourteen (14) 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 PARTY. The PARTIES may exchange contact information for the representatives, including telephone numbers and e-mail addresses without amending this AGREEMENT.
- D. In the event of a dispute between the COUNTY and the ILLINOIS TOLLWAY in the carrying out of the terms of this AGREEMENT in reference to the ELMHURST QUARRY PROJECT or the ELMHURST QUARRY compensatory stormwater storage, or to a dispute concerning the plans and specifications for the ELMHURST QUARRY PROJECT or the ELMHURST QUARRY compensatory stormwater

storage, the Chief Engineering Officer of the ILLINOIS TOLLWAY and the COUNTY's Engineer shall meet and resolve the issue. In the event that they cannot mutually agree on the resolution of the dispute concerning the ELMHURST QUARRY PROJECT or the ELMHURST QUARRY compensatory stormwater storage, the decision of the COUNTY's Engineer shall be final as long as that decision does not delay delivery of the PROJECT or be detrimental to the construction of, or maintenance and operations of the Toll Highway or the ILLINOIS TOLLWAY and so long as that decision does not deprive the ILLINOIS TOLLWAY of the compensatory stormwater storage to be provided for in this AGREEMENT.

- E. This AGREEMENT may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.
- F. The 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 County of DuPage, 421 N. County Farm Road, Wheaton, IL 60187.
- G. The ILLINOIS TOLLWAY certifies that its correct Federal Tax Identification Number is 36-2811931 and it is an instrumentality and administrative agency of the State of Illinois, whose mailing address is the Illinois State Toll Highway Authority, 2700 Ogden Avenue, Downers Grove, Illinois 60515.
- H. This AGREEMENT may only be modified by written modification executed by duly authorized representatives of the PARTIES hereto.
- I. This AGREEMENT and the covenants contained herein shall, at the discretion of the ILLINOIS TOLLWAY, become null and void in the event the contract covering the construction work contemplated herein is not awarded within three (3) years subsequent to the date of execution of this AGREEMENT.
- J. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES hereto and their respective successors and approved assigns, but does not, and shall not be construed to create, any rights, remedies, responsibilities, or causes of action in, or for the benefit of, any third-party unless specifically created or required in this AGREEMENT.
- K. The failure by the ILLINOIS TOLLWAY or the COUNTY 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 ILLINOIS TOLLWAY or the COUNTY unless such provision is waived in writing.

L. It is agreed that the laws of the State of Illinois (except for the law of the conflicts of law) shall apply to this AGREEMENT and that, in the event of litigation, venue shall lie in the Circuit Court of Du Page County, Illinois.

M. All notices shall be in writing and shall be personally delivered or mailed to the following persons at the following addresses:

To the ILLINOIS TOLLWAY: The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515
Attn: Chief Engineering Officer

To the COUNTY: The County of DuPage
421 North County Farm Road
Wheaton, IL 60187
Attn: Director of Stormwater Management

The PARTIES may exchange e-mail addresses or other contact information for any message under this Paragraph without amending this AGREEMENT. By agreement, the PARTIES may change the addresses or contact person or information by giving notice under this Paragraph without amending this AGREEMENT. Notwithstanding the above contact persons, if the ILLINOIS TOLLWAY sends any notice or communication under this AGREEMENT to the COUNTY's Engineer, as text or context found in this AGREEMENT may indicate, such notice or communication shall satisfy its responsibilities under this AGREEMENT.

N. Whether or not the Illinois Procurement Code (30 ILCS 500/1-1, *et seq.*) applies to this AGREEMENT, the COUNTY certifies that it is not barred from doing business or being awarded a contract with an agency of the State of Illinois under 30 ILCS 500/50-10. Section 50-10 prohibits a person or an entity from entering into a contract with a State agency if that person or entity has been convicted of a felony and 5 years have not passed from the completion of the sentence for that felony. The PARTIES further acknowledge that the appropriate government official may declare this AGREEMENT or any contract made pursuant to, or in fulfillment of, this AGREEMENT void if this certification is false.

O. The PARTIES shall maintain books and records related to the performance of this AGREEMENT. Books and records, including information stored in databases or other computer systems, shall be maintained by the PARTIES for a period of five (5) years from the later of the date of final payment under this AGREEMENT or completion of the work performed under this AGREEMENT. Books and records required to be maintained under this section shall be available for review or audit by representatives of the Auditor General, the Executive Inspector General, the Illinois Tollway Inspector General, ILLINOIS TOLLWAY internal auditors, the COUNTY's auditor, or other governmental entities with monitoring authority, upon reasonable notice and during normal business hours.

- P. The COUNTY also recognizes 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 COUNTY will fully cooperate fully 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.
- Q. 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 COUNTY OF DU PAGE

By: _____

Daniel J. Cronin
Chairman, DuPage County Board

Attest: _____

Jean Kaczmarek
County Clerk

Date: _____

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____

José R. Alvarez
Executive Director

Date: _____

By: _____

Michael Colsch
Chief Financial Officer

Date: _____

By: _____

Kathleen Pasulka-Brown
General Counsel

Date: _____

Approved as to Form and Constitutionality

Tom Fogue, Assistant Attorney General, State of Illinois

RESOLUTION NO. 21865

Background

As part of the Elgin O'Hare Western Access Corridor ("EOWA"), it is in the best interest of The Illinois State Toll Highway Authority ("Tollway") to enter into an Intergovernmental Agreement with the County of Cook ("County") and the City of Elmhurst ("City") to participate in a project to reconstruct County Line Road, west of I-294 from Grand Avenue to north of North Avenue, realigned in part to accommodate a future southbound I-294 exit ramp. Cook County is leading the project, which was awarded CMAQ funding. Tollway participation includes financial participation for portions of the construction project not covered by CMAQ funding, ROW acquisition, utility relocation, and design engineering. The Tollway is contributing an estimated \$10,449,475 to project construction costs.

Resolution

The Chief Engineering Officer and the General Counsel are authorized to negotiate and prepare an Intergovernmental Agreement between The Illinois State Tollway Highway Authority, the County of Cook and the City of Elmhurst in substantially the form attached to this Resolution. The Chairman/Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said agreement.

Approved by: William S. Kravitz
Chairman

INTERGOVERNMENTAL AGREEMENT

THE COUNTY OF COOK
THE ILLINOIS TOLLWAY
AND
THE CITY OF ELMHURST

County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

This Intergovernmental Agreement (the "Agreement") is made and entered into by and between the County of Cook, a body politic and corporate of the State of Illinois acting through its Department of Transportation and Highways (the "County"); the Illinois State Toll Highway Authority, an instrumentality and administrative agency of the State of Illinois (the "Illinois Tollway"); and the City of Elmhurst, a municipal corporation of the State of Illinois, hereinafter called "Elmhurst". The County, the Illinois Tollway, and Elmhurst are sometimes individually referred to as "Party" and collectively referred to as the "Parties."

RECITALS

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

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

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

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 intergovernmental agreement; and

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

WHEREAS, the EOWA includes multiple construction contracts and this Agreement includes the scope of improvements for Contract S01-B, County Line Road: Grand Avenue to Lake Street (hereinafter referred to as the "Project"); and

WHEREAS, the Project scope of improvements consist of the reconstruction of County Line Road from north of North Avenue (IL 64) to Grand Avenue, including a portion of County Line Road that will be realigned to accommodate construction of a future southbound I-294 southbound exit ramp ("Ramp R1").

Intergovernmental Agreement
County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

The Project includes improvements to Romans Road, a private drive at the business located west of County Line Road –McMaster-Carr Supply Company (hereinafter referred to as “McMaster”). The existing three McMaster driveway entrances will be consolidated into two entrances at the County Line Road/Romans Road/future Ramp R1 intersection and at the County Line Road/south McMaster driveway intersection where new black powder coated traffic signals and combination lighting will be installed as part of the Project. The Project includes the installation of a closed drainage system along County Line Road and the extension of culverts at the Addison Creek Tributary and at the Addison Creek culvert that cross both I-294 and County Line Road. The Project also includes signing, pavement markings, landscaping and all other work necessary to complete the project in accordance with the approved plans and specifications; and

WHEREAS, as part of separate construction contracts, the Illinois Tollway is including construction of a new southbound I-294 exit ramp (“Ramp R1”), tolling infrastructure, retaining walls and the widening of I-294 in the vicinity of the Project; and

WHEREAS, the Illinois Tollway is responsible for the final design of the Project; and

WHEREAS, the County, as the “Project Sponsor”, will implement construction of the Project improvements, to be identified as Section: 18-W7331-00-RP; and

WHEREAS, the County submitted an application in 2015 for a Congestion Mitigation Air Quality (CMAQ) grant for both a separate contract (Section: 16-W7331-00-RP , County Line Road: I-294 Ramp to North Avenue hereinafter referred to as the “South Project”) and for the Project improvements, which would provide funding for 80% of the eligible portions of the construction and construction engineering. Funding for such portions of the proposed improvements was approved by the Chicago Metropolitan Agency for Planning (CMAP) on October 30, 2015; and

WHEREAS, the awarded CMAQ funding is based on the proposed improvements being implemented in stages. The first stage consists of the construction of the South Project improvements and the second stage includes construction of the Project (Contract S01-B); and

WHEREAS, the County is anticipating the award of the South Project and construction is anticipated to extend through 2020. The contract improvements consist of widening the existing Lake Street (US 20) bridge over IL 64 and the construction of a new connector roadway from the bridge to eastbound IL 64; and

WHEREAS, the CMAQ funding will first be allocated toward the actual cost of the South Project up to a maximum not to exceed amount, as defined in the Uniform Intergovernmental Agreement (No. C-91-200-17) executed between the County and the Illinois Department of Transportation on February 14, 2019 (hereinafter referred to as the “UIGA”), and the remaining funding will be allocated to the Project as defined herein; and

WHEREAS, the CMAQ eligible portion of the Project includes the realignment and reconstruction of County Line Road for the future southbound I-294 exit ramp and the non-participating (or non-CMAQ eligible portion) of the Project includes the reconstruction of County Line Road from Grand Avenue to the south, as depicted on Exhibit A attached hereto; and

WHEREAS, the PARTIES executed a separate intergovernmental agreement for the South Project on February 21, 2019 that defines their respective responsibilities for engineering, right-of-way acquisition, utility relocation, construction, maintenance and funding (hereinafter referred to as the “South Project

Agreement”); and

WHEREAS, Elmhurst owns an existing 84-inch storm sewer located under a portion of County Line Road realigned as part of the Project; and

WHEREAS, the Project improvements maintain the existing operations of the detention basin, the Arlington Cemetery Reservoir, located south of McMaster.

WHEREAS, it is the practice of the County, that at intersections of County Highways and municipal streets or local access, the County will be responsible for the physical maintenance and timing/phasing of the traffic signals and the municipal corporation is to bear a share of the signal’s maintenance and energy costs; and, this share is represented by the relative number of approaches to the intersection for which the municipal corporation is responsible with respect to the total number of approaches; and

WHEREAS, the County, the Illinois Tollway, and Elmhurst, by this instrument, desire to memorialize their respective obligations and responsibilities toward engineering, right-of-way acquisition, utility relocation, construction, funding of the Project as proposed as well as future maintenance responsibilities of the completed Project.

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

SECTION 1. INCORPORATION OF RECITALS

The above recitals are incorporated into this Agreement as if fully set forth herein.

SECTION 2. TERM AND TERMINATION

This Agreement between the County, the Illinois Tollway, and Elmhurst shall not become effective unless authorized and executed by the Cook County Board of Commissioners, the Illinois Tollway Board of Directors and Executive Director, and an authorized representative from Elmhurst. This Agreement, once duly authorized by the above-named authorities is a legal, valid and binding agreement, enforceable against the Parties in accordance with its terms. This Agreement shall terminate upon completion of the Project. This Agreement may also be terminated in the event that CMAQ grant federal funding become unavailable. Notwithstanding the foregoing, the Parties hereto agree that the provisions of Sections 4.10 Post-Project Maintenance, 5.6 Post-Project Maintenance, 5.7 Payment to the County and 6.5 Post-Project Maintenance, herein shall survive termination of this Agreement, unless expressly terminated by the Parties.

SECTION 3. PROJECT FUNDS

- 3.1 **Federal Funds.** A total of Twenty-nine Million, Four Hundred Sixty-nine Thousand, Eight Hundred and Seventy-four Dollars (\$29,469,874.00) of federal funding from CMAQ funds has been awarded for the South Project and the Project. The awarded amount will be utilized to fund the South Project first up to a maximum not to exceed amount and remaining funds will be allocated to the Project, where a total of 80% of the CMAQ program eligible costs will be funded utilizing the associated grant with the remaining 20% of CMAQ program eligible costs being required to be funded, directly or indirectly, by the Project Sponsor.

The South Project is anticipated to be awarded for a total construction contract value of

\$27,667,287. The CMAQ eligible construction costs are estimated at \$27,335,677 (or the final bid amount less \$331,610 of non-participating costs as defined in the South Project Agreement) of which the 80% reimbursement amount is \$21,868,541. However, the maximum not to exceed CMAQ funding for construction of the South Project is \$20,801,625 based on the UIGA. As such, a total of \$20,801,625 in federal funding will be applied to the South Project construction costs.

The awarded South Project construction engineering costs are \$3,743,405 of which the 80% reimbursement amount is \$2,994,724. The maximum not to exceed CMAQ funding for construction engineering of the South Project as included in the UIGA is greater than 80% of the awarded construction engineering costs or \$3,120,245; therefore \$2,994,724 of federal funding will be applied to the South Project construction engineering costs.

The total federal reimbursement for the South Project is anticipated to be \$23,796,349. Responsibilities for reimbursement are documented in the South Project Agreement.

The remaining balance of federal funding, an estimated total of \$5,673,525 will be allocated to the construction costs of the CMAQ eligible portion of the Project. The construction cost of the CMAQ eligible portion of the Project is estimated at \$8,590,000. The remaining federal funding for the Project (\$5,673,525) is less than the allowable 80% of the construction costs of the CMAQ eligible portion of the Project (\$6,872,000); therefore, the entire remaining balance will be applied to the CMAQ eligible construction costs. Federal reimbursement will not exceed the CMAQ awarded amount where the allowance will be based on up to 80% of the actual costs of portions of the Project eligible for reimbursement.

- 3.2 South Project Funding. The South Project Agreement defines the County and Illinois Tollway's responsibility for costs associated with the South Project. The cost responsibilities identified in the South Project Agreement have been updated based on the final bid costs of the anticipated to be awarded contract. As defined in the South Project Agreement, the County is responsible for the local match (20%) of construction and construction engineering costs of the "County Work". Based on the final bid costs of the anticipated contract to be awarded, the County Work construction cost is \$113,787 and construction engineering cost (15% of construction cost) is \$17,068 with the County being responsible for the 20% local match or an estimated total of \$26,171. The Illinois Tollway is responsible for reimbursing the County for the local match (20%) of construction and construction engineering of the South Project less the County Work and any remaining CMAQ eligible construction costs after the capped CMAQ amount is applied. Based on the final bid costs of the anticipated contract to be awarded, the Illinois Tollway is responsible for \$6,511,294 in construction costs and \$712,106 in construction engineering or a total of \$7,223,401.
- 3.3 County's Share of the Project. The County shall finance the entire cost of construction and construction engineering for the Project, as the Project Sponsor, subject to 100% reimbursement as herein stipulated.
- 3.4 Illinois Tollway's Share of the Project. The Illinois Tollway's share of the Project includes an amount equal to 100% of the remaining balance of the CMAQ eligible portion of the Project construction costs after the federal funding is applied, or an estimated \$2,916,475 to be reimbursed to the Project Sponsor. The Illinois Tollway will also reimburse the Project Sponsor for 100% of the non-participating construction costs estimated at \$5,430,000. Additionally, the Illinois Tollway agrees to reimburse the Project Sponsor for construction engineering, estimated at 15% of total Project construction costs or \$2,103,000, for a total estimated cost responsibility of \$10,449,475.

The Illinois Tollway shall also be responsible for 100% of the right of way acquisition, utility relocation and design engineering costs associated with Project.

- 3.5 The aforementioned costs shall be based upon actual costs for design, design engineering, construction, and construction engineering for the Project. In the event that any portion of the Federal Funds described in 3.1 above are not available for the Project through no fault of the Parties, the Illinois Tollway shall remain responsible for the estimated local match amount agreed to herein or for the local match for the work actually performed to the date at the time of loss of Federal Funds, whichever is less. Loss of Federal Funds may be deemed grounds for terminating the Agreement.
- 3.6 Elmhurst's Share of the Project. Elmhurst shall not incur any costs of the Project.
- 3.7 Cost Estimates. A funding breakdown for the Project is incorporated and attached hereto as Exhibit B. The funding breakdown is only an estimate and does not limit the financial obligations of the Parties as described in 3.1 through 3.6 above.

SECTION 4. COUNTY'S RESPONSIBILITIES

4.1 Construction.

- 4.1.1 The County shall advertise and receive bids, make a recommendation for award and provide the Illinois Tollway opportunity to review and concur with the recommendation inclusive of the bid tabulations from prospective bid awardees (for work to be funded wholly or partially by the Illinois Tollway), let, award the contract(s), provide construction engineering inspections for and cause the Project to be constructed in accordance with the approved Project construction plans, specifications and construction contract, subject to reimbursement by the Illinois Tollway.
- 4.1.2 After award of the construction contract, any proposed deviations from the approved plans and specifications that affect the Illinois Tollway shall be submitted to the Illinois Tollway for approval prior to commencing such work. The Illinois Tollway shall review the proposed deviations and indicate its approval or disapproval thereof in writing. If the proposed deviation to the plans and specifications are not acceptable, the Illinois Tollway shall detail in writing its specific objections. If the County receives no written response from the Illinois Tollway within fifteen (15) calendar days after delivery to the Illinois Tollway of the proposed deviation, the proposed deviation shall be deemed approved by the Illinois Tollway.
- 4.1.3 Subsequent to the award of the construction contract, and before any work is started on the Project, a pre-construction conference shall be held between the Illinois Tollway, the County, the Illinois Department of Transportation, the interested contractor(s), Elmhurst, and the affected utility agencies, at a time and place as designated by the County's representative, for the purpose of coordinating the work to be performed by the several contingents, and at which time a schedule of operations will be adopted.
- 4.1.4 The County shall require all construction performed within the Illinois Tollway right-of-way to comply with the current Illinois Department of Transportation Standard Specifications for Road and Bridge Construction and the Illinois Tollway Supplemental

Specifications to the Illinois Department of Transportation Standard Specifications for construction, issued March 2019, as amended.

- 4.1.5 The County shall provide Phase III construction engineering services.
- 4.2 County as Project Sponsor; Appropriation of Funds. The County shall finance the construction and construction engineering costs and act as Project Sponsor or Lead Agent for the Project.
- 4.3 Finance and Expenditures. The County shall provide annual financial updates for the Project to the Illinois Tollway for the duration of the Project. The County shall provide expenditures to date (as of September 30 of each year) for funding sources and a forecast of annual expenditures for the remainder of the Project for each funding source on or before October 30 of each year.
- 4.4 Permits.
- 4.4.1 The County shall assume responsibility for assuring that permits (Metropolitan Water Reclamation District of Greater Chicago (MWRDGC), Illinois Environmental Protection Agency (IEPA), etc.) and joint participation and/or force account agreements (County, Township, Municipal, Railroad, Utility, etc.) as may be required for the Project, are secured in support of the general Project schedule and deadline. The Illinois Tollway shall provide support and information as necessary to allow for the County to secure required permits.
- 4.4.2 The County shall secure permits as required for construction on public right of way owned by the Illinois Department of Natural Resources (IDNR) or others. The Illinois Tollway shall provide support and information as necessary to allow for the County to secure required permits.
- 4.4.3 The County shall be responsible for adhering to the conditions of the EOWA Section 401/404 Clean Water Act Permit Application (LRC-2007-00802) in conjunction with the construction of the Project.
- 4.5 Coordination with Elmhurst.
- 4.5.1 The County agrees to grant Elmhurst the right to own and maintain the 84-inch storm sewer to be located under the realigned portion of County Line Road within County right-of-way, at no cost to Elmhurst, as part of this Agreement.
- 4.6 Agreements.
- 4.6.1 The County shall be the lead agency for coordination, preparation and execution of Intergovernmental Agreements necessary for the Project.
- 4.6.2 The Uniform Intergovernmental Agreement with the Illinois Department of Transportation shall be fully executed prior to receiving authorization to advertise the Project.
- 4.7 Coordination with the Illinois Tollway.
- 4.7.1 The Illinois Tollway shall provide support and information as necessary to allow for the County to complete and secure a valid Preliminary Environmental Site Assessment (PESA)

and a Preliminary Site Investigation (PSI) for the Project prior to receiving authorization to advertise the Project.

- 4.8 Construction Operations. The County shall have the authority to direct its contractor(s) to use specific locations within the Project construction limits as defined in the construction plans to store machinery and equipment, stockpile surplus materials, excess embankment, falsework, rubbish or temporary buildings. Upon completion of the Project, the contractor shall be required to remove said items and leave the storage area(s) in a neat and not worse than existing condition, reasonably satisfactory to the authorized representative of the County and the property owner.
- 4.9 Notification of Final Inspection. The County shall provide the Illinois Tollway and Elmhurst fourteen (14) days advance notice of the Final Inspection of all work constructed as part of the Project ("Final Inspection"). The County shall provide notice to the Illinois Tollway and Elmhurst upon completion of 70% and 100% of the Project construction and allow for joint inspection of the Project at such milestones. In the event said inspections disclose work that does not conform to the approved final plans and specifications, the Illinois Tollway and/or Elmhurst representatives shall give immediate verbal notice to the County's representative of any deficiency and shall thereafter deliver within five (5) calendar days a written list identifying such deficiencies to the Superintendent of the County. Deficiencies thus identified shall be subject to joint re-inspection upon completion of the corrective work. The Illinois Tollway and Elmhurst shall perform such joint re-inspections within ten (10) calendar days after receiving notice from the County that the deficiencies have been remedied.
- 4.10 Post-Project Maintenance. The County shall own, operate and maintain County Line Road, including the closed drainage system, in its entirety; the extension of the Addison Creek Culvert under County Line Road; the extension of the Addison Creek Tributary Culvert under County Line Road; and the retaining wall along the west side of County Line Road at the Addison Creek Tributary Culvert. The County shall also own, operate and maintain the traffic signal and combination lighting installations at the County Line Road/Romans Road/future I-294 Ramp R1 intersection and at the County Line Road/south McMaster driveway intersection. The County will assume seventy-five percent (75%) financial responsibility of maintenance and electrical energy costs for operation of the signal at the County Line Road/Romans Road/ future I-294 Ramp R1 intersection. The responsibilities are depicted on Exhibit A attached hereto.
- 4.11 Black Traffic Signal and Combination Lighting Maintenance. The County will replace all knockdown equipment at the County Line Road/Romans Road/future I-294 Ramp R1 intersection and at the County Line Road/south McMaster driveway intersection with standard (galvanized) equipment that can be painted black as coordinated by Elmhurst (see Section 6.5.4) after the recommended waiting period for the surfaces to weather. The County reserves the right to inspect all aspects of the preparation and painting of the black traffic signal and combination lighting equipment and to reject any unsatisfactory work. The County also has the right to require Elmhurst to repaint any traffic signal installation or portion thereof if, in the opinion of the County, it is required.
- 4.12 Additional Work. The County shall pay for one hundred (100%) percent of the costs for any additional work associated with County infrastructure added to the Project, including design engineering, construction and construction engineering, either directly or through other funding sources; said items including but not limited to new storm sewer, street lighting, etc.

SECTION 5. ILLINOIS TOLLWAY'S OBLIGATIONS

- 5.1 Final Design. The Illinois Tollway shall complete final design engineering, obtain necessary engineering related survey data, and prepare the final plans and specifications for the Project.
- 5.2 Permits. The Illinois Tollway shall submit the EOWA Section 401/404 Clean Water Act Permit Application (LRC-2007-00802) for the Project. The Illinois Tollway will also coordinate and secure permits or approvals from the U.S. Department of Agriculture (USDA), as required for the Project.
- 5.3 Right-of-Way. The Illinois Tollway shall be the lead agency for proposed right-of-way acquisition for the Project and all acquisitions shall follow the federal process for federally funded projects.
 - 5.3.1 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 pursuant to the approved construction plans and specifications.
 - 5.3.2 The Illinois Tollway shall acquire all necessary right-of-way (both permanent and temporary) as needed for the construction of the Project pursuant to the approved construction plans and specifications, at its sole expense. All right-of-way acquisitions must be certified by the Illinois Department of Transportation before the Project is authorized for Project advertisement.
 - 5.3.3 Right-of-way costs shall include the purchase price thereof, as well as the costs of negotiations, appraisals, title evidence, relocation assistance payment, property management, and such legal fees and expenses as may be necessary to acquire said right-of-way. Said costs shall be solely Illinois Tollway expenses.
 - 5.3.4 Upon acquisition of lands related to those highways under County jurisdiction, the Illinois Tollway will execute the transfer of all acquired interests to the County via a quitclaim deed. All such transfers shall be upon completion of the Project, as part of a separate intergovernmental agreement.
 - 5.3.5 The Illinois Tollway shall provide the County with official correspondence regarding the current right-of-way parcel acquisition process. The correspondence shall identify appraisers, relocation agents, negotiators, plats and legal descriptions involved in the process.
 - 5.3.6 The Illinois Tollway shall allow the County access to Illinois Tollway owned right-of-way or utility easements for the purposes of constructing the Project.
- 5.4 Utility Relocation.
 - 5.4.1 The Illinois Tollway shall be the lead agency for utility coordination and relocations. The Illinois Tollway will ensure that the necessary documents are submitted to the County for the respective Utility Permit(s) as needed. If there are locations where utilities are not located on existing County or local public right of way and if said utilities are eligible for reimbursement for any adjustments or relocations caused by the Project, the Illinois Tollway shall be responsible for financing said utility reimbursement costs.

- 5.4.2 The Illinois Tollway agrees to provide the 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 Project. As part of its engineering responsibilities, the Illinois Tollway shall identify adjustments to the aforementioned existing utilities. The Illinois Tollway agrees to make all reasonable efforts to minimize the number and extent of utility adjustments in the design of improvements.
- 5.4.3 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, at no expense to the Parties.
- 5.5 Landscaping. Any tree plantings to be included as part of the Project shall be determined in accordance with the Illinois Tollway's tree replacement policy.
- 5.6 Post-Project Maintenance. Following acceptance of the Project after a Final Inspection conducted jointly with the Parties, the Illinois Tollway, as depicted on Exhibit A attached hereto, shall:
- 5.6.1 Own, operate and maintain I-294 in its entirety, including Ramp R1 to be constructed separately by the Illinois Tollway.
- 5.6.2 Own, operate and maintain the extension of the Addison Creek Culvert (Structure Number 016-2747) under I-294 within the Illinois Tollway right-of-way and the extension of the Addison Creek Tributary Culvert under I-294 within the Illinois Tollway right-of-way.
- 5.7 Payment to the County. The costs that the Illinois Tollway is obligated to pay to the County for the construction and construction engineering, an amount less the federal match carried forward from the South Project, estimated at \$6,006,432, are described in Section 3. Project funds as further itemized in the approved contract document Summary of Quantities, shall be paid in three installments as follows:
- 5.7.1 The first installment (approximately 50%) in the amount of \$3,003,000 shall be invoiced by the County within ninety (90) days following the Project construction contract award, and the Illinois Tollway shall pay the County within sixty (60) days after receipt of invoice from the County.
- 5.7.2 The second installment in the amount of 30% of the Project cost, estimated at \$1,802,000, shall be invoiced by the County one (1) year following the Project construction contract award, and the Illinois Tollway shall pay the County within sixty (60) days after receipt of invoice from the County.
- 5.7.3 The final installment for the Project cost, estimated at \$1,201,432, the remaining balance of Illinois Tollway obligations based upon the actual quantities used and the contract unit prices as awarded shall be invoiced by the County subsequent to completion of Project construction contract, and the Illinois Tollway shall pay the County within sixty (60) days after receipt of invoice from the County.
- 5.7.4 Payments to the County shall be by check payable to the Treasurer of Cook County, for deposit into the County's Motor Fuel Tax Fund (600-585 Account) and identified as

Section: 16-W7331-00-RP. The check shall be delivered to the Superintendent, Cook County Department of Transportation and Highways.

- 5.8 Additional Work. The Illinois Tollway shall pay for one hundred (100%) percent of the costs for any additional work associated with Illinois Tollway infrastructure added to the Project, including design engineering, construction and construction engineering, either directly or through other funding sources; said items including but not limited to new storm sewer, lighting, etc.

SECTION 6. ELMHURST'S OBLIGATIONS

- 6.1 Elmhurst Owned Right-of-Way. Elmhurst shall allow the County access to Elmhurst owned right-of-way or utility easements, if applicable, for the purposes of constructing the Project.
- 6.2 Coordination with the County.
- 6.2.1 Elmhurst shall assign a representative to coordinate and monitor the Project improvements involving Elmhurst's facilities under construction and bring to the attention of the County's Resident Engineer any matters of concern with respect to same.
- 6.3 Final Inspection. The Parties shall be present and participate in the Final Inspection, and the scheduling of such Final Inspection shall be solely at the discretion of the County. Elmhurst shall not cause a condition that would unreasonably delay the Final Inspection. Elmhurst shall submit final punch list items within seven (7) days prior to the Final Inspection date as determined by the County.
- 6.4 Additional Work. Elmhurst shall pay for one hundred (100%) percent of the costs for any additional work associated with Elmhurst infrastructure added to the Project, including design engineering, construction and construction engineering, either directly or through other funding sources; said items including but not limited to new storm sewer, sanitary sewer, street lighting, etc.
- 6.5 Post-Project Maintenance. Following acceptance of the Project after a Final Inspection conducted jointly with the Parties, Elmhurst, as depicted on Exhibit A attached hereto, shall:
- 6.5.1 Own, operate and maintain the existing 84-inch storm sewer that extends from Romans Road to the Arlington Cemetery Reservoir south of McMaster under the realigned County Line Road.
- 6.5.2 Own, operate and maintain the Arlington Cemetery Reservoir, in its entirety.
- 6.5.3 Assume twenty-five percent (25%) financial responsibility of the maintenance and electrical energy charges for the operation of the County's traffic signal and combination lighting at the County Line Road/ Romans Road/future I-294 Ramp R1 intersection.
- 6.5.4 Assume 100 percent (100%) percent financial responsibility of the maintenance and electrical energy charges for the operation of the County's traffic signal at the County Line Road/south McMaster driveway intersection.

- 6.5.5 Be responsible for one hundred (100%) percent of the costs involved with the future painting or black powder coating of the traffic signal equipment and combination lighting at the County Line Road/ Romans Road/future I-294 Ramp R1 intersection and at the County Line Road/south McMaster driveway intersection. In addition, Elmhurst agrees to the following conditions related to the black traffic signal and combination lighting equipment:
- 6.5.5.1 Elmhurst agrees to hire and pay the County's Electrical and Mechanical Item Maintenance ("EMIM") Contractor directly for all future painting and/or touch-ups for the traffic signal and combination lighting equipment.
 - 6.5.5.2 Elmhurst shall be fully responsible for any and all claims for warranty repair work and said work shall be coordinated through the County's EMIM Contractor.
 - 6.5.5.3 It is the responsibility of Elmhurst to inform and coordinate with the County's EMIM to paint or powder coat the traffic signal and lighting equipment that is replaced by the County with standard (galvanized) equipment due to knockdown.
 - 6.5.5.4 Upon receiving notification from the County to repaint any traffic signal installation or portion of the signal equipment and/or lighting, Elmhurst shall have thirty (30) days to issue a work order to the County's EMIM Contractor for completion of the painting or powder coating, weather permitting.
 - 6.5.5.5 Elmhurst agrees that the traffic signal head and pedestrian signal head latching devices shall not be painted black. If these latching devices are painted and the doors cannot be opened, or if the latching devices break off during use as a result of being painted, Elmhurst will be responsible to pay the County's EMIM Contractor to replace the signal head. The traffic signal control cabinet shall also not be painted.
 - 6.5.5.6 If it is determined by the County that the powder coated and/or painted surfaces are failing (such as cracking, peeling, paint not adhering to the surfaces, etc.) and the problems cannot be corrected, Elmhurst shall, at its sole expense, either: 1) remove the paint from the traffic signal equipment and leave it bare; or, 2) remove the failing paint and repaint the traffic signal equipment; or, 3) remove the affected traffic signal equipment and replace the same with that having a factory applied black powder coating, of said equipment as specified in the latest edition of the County's Traffic Signal Specifications in effect at the time of replacement. All options shall be coordinated with the County's EMIM Contractor and shall be completed to the satisfaction of the County.
 - 6.5.5.7 For any future painting, Elmhurst will be responsible for the costs to research and provide a report to the County on the proper procedures for preparing all surfaces, priming all surfaces and painting all surfaces for any maintenance or replacement of the traffic signal or combination lighting. All paint, primers and cleaning methods and materials must meet all current Illinois Department of Transportation and Environmental Protection Agency Standards and be approved by the County.

- 6.5.5.8 If in the course of the County EMIM Contractor performing routine repairs to the traffic signal equipment and scratching any of the painted surfaced, it will be the Elmhurst's responsibility to pay the County EMIM Contractor to touch up the paint at no cost to the County. The Village shall coordinate inspections with the County EMIM Contractor.
- 6.5.6 Be responsible for 100% of the maintenance costs of the Emergency Vehicle Preemption (EVP) system on the County's traffic signals at the County Line Road/Romans Road/future I-294 Ramp R1 intersection and at the County Line Road/south McMaster driveway intersection and acknowledge that Elmhurst and its respective Fire Department shall not have access to or on the County's traffic signal and the County will monitor the operational status of the EVP at no charge to Elmhurst and will inform Elmhurst should it detect fault with said EVP operations. As such, Elmhurst agrees to either enter into a separate agreement with County's Electrical Maintenance Contractor to pay for repairs to Elmhurst's EVP; or pick up, repair and return repaired EVP equipment to County's Electrical Maintenance Contractor for removal and reinstallation of Elmhurst's EVP equipment on or in the County's traffic signal.
- 6.5.7 By execution of this Agreement, Elmhurst acknowledges that it shall not have access to or on the County's traffic signal.

SECTION 7. GENERAL PROVISIONS

- 7.1 Governing Law and Venue. This Agreement shall be interpreted under, and governed by, the laws of the State of Illinois, without regard to conflicts of laws principles. Any claim, suit, action, or proceeding brought in connection with this Agreement shall be in the Circuit Court of Cook County and each Party hereby irrevocably consents to the personal and subject matter jurisdiction of such court and waives any claim that such court does not constitute a convenient and appropriate venue for such claims, suits, actions, or proceedings.
- 7.2 Default. A Party shall be in default hereunder in the event of a material breach by a Party of any term or condition of this Agreement including, but not limited to, a representation or warranty, where a Party has failed to cure such breach within thirty (30) days after written notice of breach is given to Illinois Tollway or Elmhurst by the County, setting forth the nature of such breach. Failure of a Party to give written notice of breach to another Party or Parties shall not be deemed to be a waiver of the Party's right to assert such breach at a later time. Upon default by a Party, the other Party or Parties shall be entitled to exercise all available remedies at law and in equity, including but not limited to termination of this Agreement upon thirty (30) days' notice to the defaulting Party or Parties.
- 7.3 Modification. This Agreement may not be altered, modified or amended except by a written instrument signed by all three (3) Parties. Provided, however, the Parties agree that provisions required to be inserted in this Agreement by laws, ordinances, rules, regulations or executive orders are deemed inserted whether or not they appear in this Agreement and that in no event will the failure to insert such provisions prevent the enforcement of this Agreement.
- 7.4 Binding Successors. The Parties agree that their respective successors and assigns shall be bound by the terms of this Agreement.

- 7.5 Force Majeure. None of the Parties shall be liable for failing to fulfill any obligation under this Agreement to the extent any such failure is caused by any event beyond such Party's control and which event is not caused by such Party's fault or negligence. Such events shall include but not be limited to acts of God, acts of war, fires, lightning, floods, epidemics or riots.
- 7.6 Time of the Essence. The obligations of the Parties as set forth in Sections 4 through 6 shall be performed in a timely manner such that it will not result in a delay of the Project timetable as determined by the County.
- 7.7 Access to Highways. It is understood and agreed by the Parties hereto that highway permits relative to the Project may be required of the County or the County's contractor(s) subsequent to the execution of this Agreement, to access right-of-way owned by another Party for purposes of geotechnical work, surveys and plan preparation at the locations covered by this Agreement in order to document insurance and liability requirements. The respective Party shall permit said access to the Party owned right-of-way for said work associated with the Project.
- 7.8 Permits. All Parties hereto agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of the permits listed in Section 4.4 Permits herein and agreements and in complying with all applicable Federal, State, and local regulations and requirements pertaining to work proposed for the Project.
- 7.9 Authorized Agents. The 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 the Party's infrastructure and/or right-of-way. All Parties may assign personnel to perform inspections on behalf of the respective Party of all work included in the Project that affects the Party's infrastructure and/or right-of-way, and will deliver written notices to the County Superintendent, Department of Transportation and Highways advising the County as to the identity of the individual(s) assigned to perform said inspections.
- 7.10 Final Inspection. The Parties shall be present and participate in the Final Inspection, and the scheduling of such Final Inspection shall be solely at the discretion of the County subject to the provisions of notice as required by Section 4.7 of this Agreement. The Illinois Tollway and Elmhurst shall submit final punch list items within seven (7) calendar days prior to the Final Inspection date as determined by the County. In the event that 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 County's representative of any deficiency, and shall thereafter deliver within five (5) calendar days a written list identifying such deficiencies to the County Superintendent, Department of Transportation and Highways. 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 County that the deficiencies have been remedied.
- 7.11 Notices. Unless otherwise specified, any notice, demand or request required under this Agreement must be given in writing at the addresses set forth below by any of the following means: personal service, overnight courier, mailed via certified mail, or electronic delivery.

TO THE COUNTY:

Mr. John Yonan, P.E.

Intergovernmental Agreement
County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

Superintendent
Cook County Department of Transportation and Highways
69 West Washington, Suite 2400
Chicago, IL 60602

TO THE ILLINOIS TOLLWAY:

The Illinois State Toll Highway Authority
2700 Ogden Avenue
Downers Grove, IL 60515
Attn: Chief Engineering Officer

TO ELMHURST:

The City of Elmhurst
209 North York Street
Elmhurst, IL 60126
Attn: Mayor

- 7.12 Entire Agreement. This Agreement constitutes the entire agreement between the Parties, merges all discussion between them and supersedes and replaces any and every other prior or contemporaneous agreement, negotiation, understanding, commitments and writing with respect to such subject matter hereof.

This Agreement may be executed in three (3) or more counterparts, each of which shall be deemed an original and all of which shall be deemed one and the same instrument.

- 7.13 Insurance. The County shall require that the Parties, their agents, officers and employees be included as additional insured parties in the General Liability Insurance that the County requires of its contractor(s) and that the Parties will be added as 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).

(This section is intentionally left blank)

Intergovernmental Agreement
County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

IN WITNESS WHEREOF, the County, the Illinois Tollway, and Elmhurst have caused this Agreement to be executed by their respective officials on the dates as shown.

EXECUTED BY COUNTY:

Toni Preckwinkle
President
Board of County Commissioners

This ____ day of _____ A.D. 2019.

ATTEST: _____
County Clerk
(SEAL)

RECOMMENDED BY:

Superintendent
County of Cook
Department of Transportation and Highways

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

Assistant State's Attorney

Intergovernmental Agreement
County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

EXECUTED BY THE ILLINOIS STATE
TOLL HIGHWAY AUTHORITY

By: _____
José R. Alvarez
Executive Director

Date: _____

By: _____
Michael Colsch
Chief Financial Officer

Date: _____

By: _____
Kathleen Pasulka-Brown
General Counsel

Date: _____

Approved as to Form and Constitutionality:

Robert T. Lane
Senior Assistant Attorney General
State of Illinois

Intergovernmental Agreement
County Line Road: Grand Avenue to Lake Street
Section: 18-W7331-00-RP
Federal Project No.: NT28 (066)

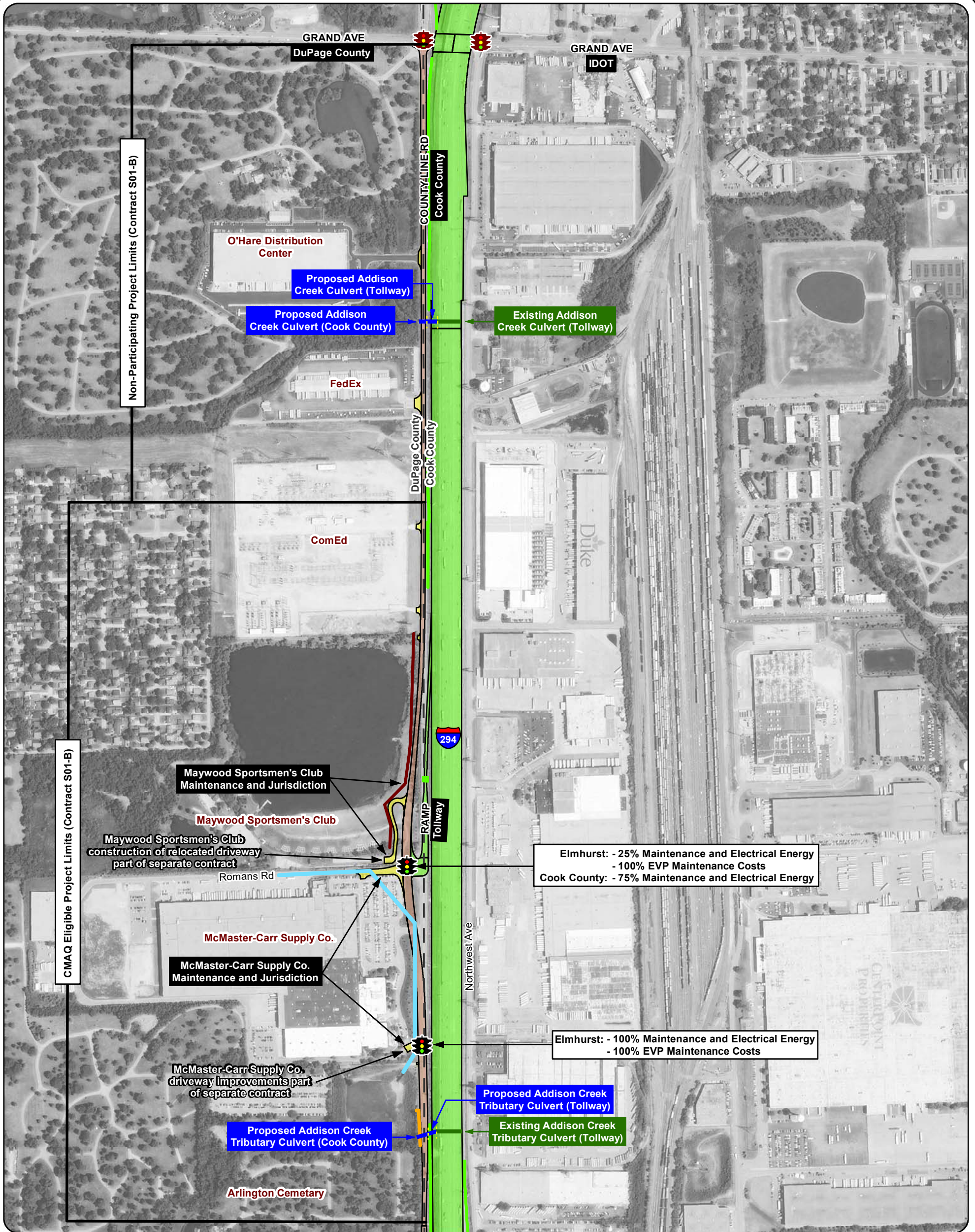
EXECUTED BY THE CITY OF ELMHURST:

THE CITY OF ELMHURST

By: _____
Steven M. Morley
Mayor

Date: _____

ATTEST: _____
City Clerk
(SEAL)



Elmhurst: - 25% Maintenance and Electrical Energy
 - 100% EVP Maintenance Costs
 Cook County: - 75% Maintenance and Electrical Energy

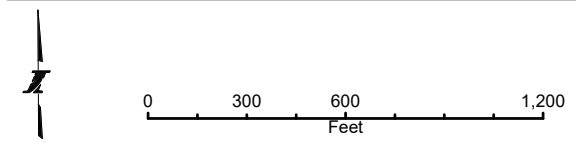
Elmhurst: - 100% Maintenance and Electrical Energy
 - 100% EVP Maintenance Costs

- Legend**
- Traffic Signal (Cook County)
 - Existing 84" Storm Sewer (Elmhurst)
 - Proposed Culvert (Tollway or Cook County)
 - Proposed Retaining Wall (Cook County)
 - Proposed Sight Screen (Private)
 - County Boundary Line
 - Cook County Maintenance/Jurisdiction
 - Driveway (Private)
 - Existing Culvert (Tollway)
 - Proposed Retaining Wall (Tollway)*
 - Toll Plaza (Tollway)*
 - Tollway Maintenance/Jurisdiction*
 - Tollway Bridge*
- * Improvements not included as part of Contract S01-B; Tollway to construct as part of separate EOWA contract(s).



Elgin O'Hare Western Access

Exhibit A
 Elgin O'Hare Western Access
 Contract S01-B
 I-294 and County Line Road Interchange
 Jurisdiction Map



STREET NAME
 Jurisdiction

EXHIBIT B - ESTIMATE OF COST PARTICIPATION (8/1/19)

DESCRIPTION	AMOUNT	CMAQ	COUNTY	NORTHLAKE	TOLLWAY
		COST	COST	COST	COST
CMAQ Grant Award (October 13, 2015)					
CMAQ Grant Award (Construction/Construction Engineering/ROW)	\$ 29,469,874				
Local Match	\$ 7,367,468				
South Project (Section: 16-W7331-00-RP) - Final Costs ^a					
South Project Construction Costs					
Construction (Final Bid)	\$ 27,667,287				
Non-Participating Final Bid Costs for 12" Watermain - "Northlake Work"	\$ 331,610				
CMAQ Eligible Construction Costs (Contract Award less Non-Participating Costs)	\$ 27,335,677				
80% of CMAQ Eligible Costs	\$ 21,868,541				
CMAQ Maximum Not to Exceed Federal Funding for Construction (Based on Executed UIGA) ^b	\$ 20,801,625				
CMAQ Eligible Final Bid Construction Costs for the Reconstruction of County Line Road - "County Work"	\$ 113,787				
County Cost Responsibility (20% Local Match of County Work)	\$ 22,757				
Illinois Tollway Local Match (CMAQ Eligible Construction Costs less CMAQ Not to Exceed Amount and County Cost Responsibility)	\$ 6,511,294				
South Project Construction Engineering Costs					
Construction Engineering Contract Award	\$ 3,743,405				
CMAQ Maximum Not to Exceed Federal Funding for Construction Engineering (Based on Executed UIGA) ^b	\$ 3,120,245				
CMAQ Eligible Construction Engineering Costs (80% of Construction Engineering Award)	\$ 2,994,724				
Northlake Construction Engineering Costs (10% of Construction Costs of Northlake Work)	\$ 33,161				
County Work Construction Engineering (15% of CMAQ Eligible Final Bid Construction Costs for the Reconstruction of County Line Road)	\$ 17,068				
County Construction Engineering Costs (20% local match of County Work Construction Engineering)	\$ 3,414				
Illinois Tollway Local Match (Construction Engineering Contract Award less CMAQ Eligible Construction Engineering and Northlake and County Construction Engineering)	\$ 712,106				
South Project Construction and Construction Engineering Cost Responsibilities					
Total South Project Construction Cost Responsibilities ^b	\$ 27,667,287	\$ 20,801,625	\$ 22,757	\$ 331,610	\$ 6,511,294
Total South Project Construction Engineering Cost Responsibilities	\$ 3,743,405	\$ 2,994,724	\$ 3,414	\$ 33,161	\$ 712,106
TOTAL SOUTH PROJECT COSTS (Construction + Construction Engineering)	\$ 31,410,691	\$ 23,796,349	\$ 26,171	\$ 364,771	\$ 7,223,401
Remaining CMAQ Funding					
Remaining CMAQ Funding to be Applied to Project (CMAQ Grant Award less the Total South Project CMAQ Cost Responsibility)	\$ 5,673,525				
Project (Contract S01-B) Costs ^c					
Construction (Estimate based on 100% design)	\$ 14,020,000				
CMAQ Eligible Project Construction Cost ^d	\$ 8,590,000	\$ 5,673,525	\$ -		\$ 2,916,475
80% of CMAQ Eligible Costs	\$ 6,872,000				
Non-Participating Project Construction Costs ^d	\$ 5,430,000	\$ -	\$ -		\$ 5,430,000
Construction Engineering (15% of construction)	\$ 2,103,000	\$ -	\$ -		\$ 2,103,000
TOTAL ESTIMATED COST RESPONSIBILITIES	\$ 16,123,000	\$ 5,673,525	\$ -		\$ 10,449,475

^a Cost responsibilities defined as part of separate multiparty intergovernmental agreement (South Project Agreement) executed February 21, 2019. Construction cost shown is updated from the South Project Agreement to account for the anticipated to be awarded contract.

^b The CMAQ eligible costs are defined in the Uniform Intergovernmental Agreement (UIGA) executed between the County and the Illinois Department of Transportation on February 14, 2019. The estimated total of 80% of the final bid CMAQ eligible costs for construction of the South Project is greater than the capped amount so only the capped amount is applied. The grant agreement capped amount for construction engineering is greater than 80% of the awarded contract for construction engineering, therefore the lesser amount (80% of the awarded construction engineering contract) is applied.

^c The remaining CMAQ value to be carried over from Contract I-18-4702 to the Project (Contract S01-B) is less than 80% of the CMAQ eligible portion of the construction costs of the Project, therefore the entire carry over amount will be applied to construction costs of the CMAQ eligible portion of the Project and the Illinois Tollway is responsible for all remaining costs for construction and construction engineering. The Illinois Tollway will reimburse the County for these costs.

RESOLUTION NO. 21866

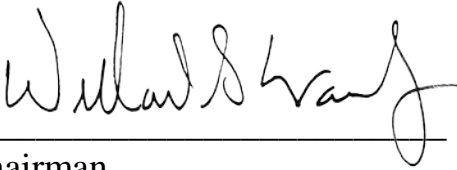
Background

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to enter into an Underpass Agreement (a.k.a. Construction and Maintenance Agreement) with BNSF Railway Company to set forth the parties’ respective obligations in connection with the construction and maintenance of the I-294 BNSF Bridge portion of the Central Tri-State Project.

Resolution

The proposed Underpass Agreement is approved in an amount not to exceed \$2,500,000.00 consistent with the terms and conditions set forth in the attached draft agreement. The General Counsel is authorized to prepare a final agreement, in substantial conformity with the attached agreement, as well as any other necessary documents, and the Chairman/Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said documents.

Approved by:



Chairman

UNDERPASS AGREEMENT

BNSF File No. BF10013691

Interstate 294 Underpass

U.S. D.O.T. No. 079518E

LS 0071

MP 0016.01

Chicago Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**"), and the Illinois State Highway Toll Authority, an instrumentality and administrative agency of the State of Illinois ("**Agency**").

RECITALS:

WHEREAS, BNSF owns and operates a line of railroad in and through the Village of Western Springs, and Hinsdale, State of Illinois; and

WHEREAS, Agency desires to improve the existing Interstate 294 underpass crossing by constructing a new crossing at separated grades to be known as the Interstate 294 Underpass and designated as D.O.T. No. 079518E;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1) SCOPE OF WORK

1. The term "**Project**" as used herein includes any and all work related to the reconstruction of the proposed Interstate 294 Underpass (hereinafter referred to as the "**Structure**"), more particularly described on the Exhibit A, which is attached hereto and incorporated herein, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation. During construction of the Structure, rail traffic will be temporarily relocated on a shoofly in the existing BNSF Right of Way and temporary easements to be acquired by Agency. Additionally, temporary controls during construction must comply with Section 8A-08, "Temporary Traffic Control Zones " of the Manual of Uniform Traffic Control Devices ("MUTCD"), U.S. Department of Transportation.

2) BNSF OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

1. Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand and No/100 Dollars (\$2,000), together with the Temporary Construction License Fee in the sum of \$_____ and No/100 Dollars (\$_____), the Permanent Easement Fee in the sum of \$_____ and No/100 Dollars (\$_____) and the Project Engineer Fee due under Article 2, Section 4 below, BNSF hereby grants to Agency, its contractors, subcontractors, agents, successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to construct the Structure across or upon the portion of BNSF's right-of-way described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- (a) Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;

- (b) Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate,

provided such facilities do not materially interfere with the Agency's use of the Structure;

- (c) Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate, provided such use or operations does not materially interfere with the Agency's reconstruction or use of the Structure; and
- (d) Require the Agency or its contractor to execute a Temporary Construction Crossing Agreement, for any temporary crossing requested to aid in the construction of this Project regardless of location relative to the requested easements.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Structure, or (ii) 48 months following the Effective Date. BNSF has the authority and property interests necessary to grant this Temporary Construction License and said license, together with the related rights given by BNSF to Agency, in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for reconstruction of the Structure only and shall not be used by Agency for any other purpose; provided, however, that it is understood by the parties that the Temporary Construction License provided herein shall expressly include, during the term thereof, all rights to use the property described in the Tollway Easement Agreement attached hereto as Exhibit B for all Easement Purposes as provided pursuant to the terms and conditions set forth therein. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Structure for any other purpose than as expressly provided herein. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. BNSF reserves the rights to grant similar rights to others subsequent to the date of this Agreement; provided, however, that in doing so, BNSF shall not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the Easement Fee, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (s) (hereinafter called, the "Tollway Easement") to enter upon and use that portion of BNSF's right-of-way described in Exhibit B-1 which is attached and incorporated ("Tollway Easement Areas") as is necessary to use and maintain the Structure, substantially in the form of Exhibit B attached to this Agreement ("Tollway Easement Agreement").

2. BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within twelve (12) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:

- (a) Procurement of materials, equipment and supplies necessary for the railroad work;
- (b) Preliminary engineering, design, and contract preparation;
- (c) Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C;
- (d) Furnishing engineering and inspection as required in connection with the construction of the Project;
- (e) Providing a contract project coordinator, at Agency's expense, to serve as a project manager for the Project;
- (f) Construction of temporary at-grade construction crossings following Agency's contractor applying for and receiving a temporary crossing permit at Agency's expense;
- (g) Construction of approximately 2,300 feet of shoofly alignment for each main track following construction of subgrade, subballast, and temporary underpass structure by Agency's contractor;
- (h) Construction of approximately 2,300 feet of final alignment for each main track following construction of subgrade, subballast, and final Structure by Agency's contractor;

3. BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.

4. In addition to the railroad work set forth in Article II, Section 2 above, BNSF will provide a BNSF-employed Project Engineer to coordinate Project schedule, submittal approvals, and work windows, to be paid for by Agency in a Lump Sum of \$225,000 upon execution of this Agreement. Should the project duration last beyond 36 months, Agency will pay an additional amount, not to exceed \$6,250 per month, for continued Project Engineer resources;

5. Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.

6. BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.

7. Excluding costs associated with Article 2, Sections 2(d) and (e) and Article 2, Section 4 above, during the construction of the Project, BNSF will send Agency's contractor, with a courtesy copy to Agency, progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency's contractor must reimburse BNSF for completed force-account work within ninety (90) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Agency's contractor, with a courtesy copy to Agency, a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency's contractor must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency's contractor under this section. Notwithstanding the foregoing, Agency shall retain ultimate responsibility for reimbursement to BNSF in the event that Agency's contractor fails to comply with the requirements set forth herein. As to costs associated with Article 2, Section 2(d), BNSF shall invoice Agency pursuant to the terms of this Section 7. As to costs associated with Article 2, Sections 2(e) and 4, BNSF shall invoice Agency upon full execution of this Agreement, unless the project duration lasts beyond 36 months at which point BNSF will invoice Agency pursuant to this Section 7.

3) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

1. Agency must furnish to BNSF plans and specifications for the Project. Four sets of said plans (reduced size 11" x 17"), together with two copies of calculations, and two copies of specifications in **English Units**, must be submitted to BNSF for approval prior to commencement of any construction. BNSF will give Agency final written approval of the plans and specifications substantially in the form of Exhibit E, attached to this Agreement and made a part hereof. Upon BNSF's final written approval of the plans and specifications, said plans and specifications will become part of this Agreement and are hereby incorporated herein. Any approval of the plans and specifications by BNSF shall in no way obligate BNSF in any manner with respect to the finished product design and/or construction. Any approval by BNSF shall mean only that the plans and specifications meet the subjective standards of BNSF, and such approval by BNSF shall not be deemed to mean that the plans and specifications or construction is structurally sound and appropriate or that such plans and specifications meet applicable regulations, laws, statutes or local ordinances and/or building codes.
2. Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
3. Agency must provide for and maintain minimum vertical and horizontal clearances, as required in Exhibit C and as approved by BNSF as part of the plans and specifications for the Project.
4. Agency must acquire all rights-of-way necessary for the construction of the Project, including the Tollway Easement Agreement as provided in Exhibit B.
5. At the option of BNSF, Agency will acquire, on behalf of BNSF and no cost to BNSF, its successors and assigns, permanent easements as necessary to support BNSF's track on the final alignment (hereinafter called, the "Permanent Easement"), substantially in the form of Exhibit H attached to this Agreement.
6. Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual (<http://www.bnsf.com/communities/faqs/pdf/utility.pdf>), for the installation or relocation of wire lines, pipe lines and other facilities owned by private persons,

companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

7. Agency must construct the Project as shown on the attached Exhibit A and do all work (“Agency’s Work”) provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency’s Work. The principal elements of Agency’s Work includes, but is not limited to:

- (a) Construction of the Structure;
- (b) Installation of temporary shoofly embankment and bridges;
- (c) All necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF’s right-of-way;
- (d) Placement of 12 inches of sub ballast on all track roadbeds for the shooflys and for the permanent replacement of the main tracks and storage tracks;
- (e) Placement of a waterproof membrane on the deck of the Structure;
- (f) Provide suitable drainage, both temporary and permanent;
- (g) Installation of a ramp along the south side of BNSF’s right of way in order to provide BNSF with permanent access for maintenance purposes;
- (h) Installation of signal pad and retaining wall along the south side of BNSF’s right-of-way;
- (i) Installation of temporary and permanent retaining walls to support the project construction and permanent improvement;
- (j) Installation of stormwater pipe casing under BNSF tracks for Village of Western Springs;
- (k) Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF;

8. Agency must apply and maintain said D.O.T. Crossing number 079518E in a conspicuous location on the Structure.

9. Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities.

10. For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, to the extent that such activity occurs above the deck surface or on BNSF right-of-way, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.BNSFContractor.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.

11. BNSF reserves the right to review plans for the Agency's maintenance work on the Structure that is above the deck surface or on BNSF right-of-way prior to the execution of such work, and may prohibit any such activity that, in BNSF's sole judgment, has the potential to interfere with safe railroad operations. The Agency shall reimburse BNSF for the actual costs incurred by the railroad for plan review, field inspection, and project management on all maintenance projects.

12. This agreement does not allow for Agency or BNSF to reconstruct or replace any of the structural elements of Structure over I-294 without the other entity's consent. If the Agency wishes to perform such work, BNSF may require it to enter into a separate agreement or amend this agreement accordingly. For the purposes of this paragraph, "reconstruct or replace" shall include any activity that involves the removal and replacement of any of the load carrying structural members with a new member of the same or different design. "Reconstruct or replace" shall not include maintenance activities such as concrete restoration, beam painting, or minor repairs".

13. Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.

14. Agency or its contractor(s) must submit four (4) copies of any plans (including two sets of calculations in **English Units**) for proposed shoring, falsework or cribbing to be used over, under, or adjacent to BNSF's tracks to BNSF's Manager of Public Projects for approval. The shoring,

falsework or cribbing used by Agency's contractor shall comply with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and all applicable requirements promulgated by state and federal agencies, departments, commissions and other legislative bodies. If necessary, Agency must submit for approval two (2) copies of a professionally engineered demolition plan, as set forth in Exhibit F, with applicable calculations to BNSF's Manager of Public Projects. The existing Interstate 294 Underpass will not be removed until BNSF approves Agency's demolition plan in writing.

15. Agency must include the following provisions in any contract with its Contractor(s) performing work on said Project:

- (a) The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The Contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The Contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The Contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
- (b) The Contractor will be responsible for the rearrangement of any facilities or lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- (c) Failure to mark or identify these lines will be sufficient cause for BNSF to stop construction at no cost to the Agency or BNSF until these items are completed.
- (d) In addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **TO THE EXTENT ALLOWABLE BY LAW THE LIABILITY ASSUMED BY**

PROVIDER WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

16. Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C, Exhibit C-1, and Exhibit F attached hereto and by reference made a part hereof.

17. Except as otherwise provided below in this Section, all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- (a) All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- (b) Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;
- (c) No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
- (d) To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's representative Ajibade Fashola (773-579-5092), or designated successor, eight (8) weeks advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and

expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.

- (e) The plans and specifications for the Project shall be consistent with the Tollway's Standard Specifications and must be in compliance with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F, attached to this Agreement and incorporated herein.

18. Agency must advise the appropriate BNSF Manager of Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager of Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project to accept the Project and verify that the surrounding property has been sufficiently cleaned and that the final condition of the former construction area is satisfactory.

19. TO THE FULLEST EXTENT ALLOWABLE BY LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE STRUCTURE BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED

BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. TO THE EXTENT ALLOWABLE BY LAW, THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

20. Agency must give BNSF's Manager of Public Projects written notice to proceed ("Notice to Proceed") with the railroad work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written notice to proceed is received from Agency.

21. Agency agrees to comply and cause its Contractor(s) performing work on said Project with the following obligations regarding soil disturbing and/or removal work on BNSF property on said Project: All disturbed or excavated soil materials from BNSF property will be properly managed, handled, transported and disposed of at a licensed Subtitle D landfill. Prior to disposal, all such soil materials will be sampled as required by applicable state and local laws and regulations and landfill requirements. Agency or its Contractor, as appropriate, will be identified as the generator of such soil materials on any documentation, including but not limited to manifests and waste profiles for landfill disposal. Soil materials from BNSF property shall not be disposed at any Clean Construction Demolition Debris (CCCD) landfills.

4) JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

1. All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written approval prior to the commencement of any such changes or modifications from the Ajibade Fashola (773-579-5092).

2. The work hereunder must be done in accordance with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and the detailed plans and specifications approved by BNSF.

3. Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. In such event, BNSF shall provide Agency with notice of reallocation upon determination of the need to do so. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

4. BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), in BNSF's opinion, prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Tollway Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of an apparent breach of this Agreement, the Temporary Construction License, or the Tollway Easement, and unless such breach is cured within 30 days' notice from BNSF or such reasonable additional time as may be approved by BNSF for such cure, BNSF may, but shall not be required to, immediately suspend any construction, maintenance or other work, permitted under the Temporary Construction License or the Tollway Easement until such compliance is restored. BNSF may terminate Agency's use of the Premises under the agreement(s) if Agency fails to restore compliance within 180 days of suspension or such additional time as may be approved by BNSF; provided, however, that the easement therefore shall not be terminated except as provided in the Tollway Easement. BNSF shall not terminate Agency's use of the existing roadway. The remedies set forth herein shall be in addition to, and not in limitation of, any other remedies that BNSF may have under this Agreement and the Tollway Easement, at law or in equity. Any waiver by BNSF of any default or defaults shall not constitute a waiver of any of

BNSF's rights for any subsequent default or defaults, nor shall any such waiver in any way affect BNSF's ability to enforce any section of this Agreement or the Tollway Easement. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

To: Chief Engineering Officer

Illinois State Toll Highway Authority

2700 Ogden Avenue

Downers Grove, Illinois 60515

and

Mike Wicks

Tollway Project Manager, I-18-4428

2700 Ogden Avenue

Downers Grove, Illinois 60515

5. Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction. If BNSF feels the situation is not being corrected in an expeditious manner, BNSF will immediately notify the Tollway's Chief Engineering Officer for appropriate corrective action.

6. The total actual cost of construction for the Project is presently estimated to be < %Agreement.Maximum% >, more particularly described (together with BNSF's Share) on Exhibit G attached hereto and incorporated herein.

7. Pursuant to this section and Article II, Section 6 herein, Agency, or Agency's contractor as set forth in must reimburse BNSF in full for the actual costs of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and

occupation taxes, and similar taxes), less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project.

8. All expenses detailed in statements sent to Agency pursuant to Article II, Section 6 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement.

9. The parties mutually agree that neither construction activities for the Project, nor future maintenance of the Structure once completed to the extent that such activities occur above the deck surface or on BNSF right-of-way, will be permitted during the fourth quarter of each calendar year. Emergency work will be permitted only upon prior notification to BNSF's Network Operations Center (telephone number: 800 832-5452). The parties hereto mutually understand and agree that trains cannot be subjected to delay during this time period.

10. Subject to the restrictions imposed by Article IV, Section 9 above, the construction of the Project will not commence until Agency gives BNSF's Manager of Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference D.O.T. Crossing No. 079518E and must state the time that construction activities will begin.

11. In addition to the terms and conditions set forth elsewhere in this Agreement, including, but not limited to, the terms and conditions stated in Exhibit F, BNSF and Agency agree to the following terms upon completion of construction of the Project:

(a) BNSF will, at its sole cost and expense, accept, own, and maintain its roadbed, track, any access ramp installed pursuant to the Project, any retaining wall required to support the access ramp, railroad drainage, and all other railroad facilities.

(b) Agency will own and maintain, at its sole cost and expense, the Structure, the highway, and appurtenances thereto, lighting, and drainage installed pursuant to this Agreement. BNSF may, at its option, perform maintenance on the Structure in order to avoid conflicts with train operations. BNSF will notify Agency prior to performing any such maintenance on the Structure. In the event such

maintenance involves emergency repairs, BNSF will notify Agency at its earliest opportunity. Agency must fully reimburse BNSF for the costs of maintenance performed by BNSF pursuant to this subsection (b).

- (c) Agency must, at Agency's sole cost and expense, keep the Structure painted and free from graffiti.
- (d) Agency must apply and maintain vertical clearance signs which consistently and accurately describe the minimum actual vertical clearance from the bottom of the Structure to the top of any pavement.
- (e) Agency agrees to reimburse BNSF for the cost of track surfacing due to settlement caused by the construction of the Structure for a period not to exceed two (2) years from the date of final inspection pursuant to Article III, Section 18.
- (f) Agency must provide BNSF with any and all necessary permits and maintain roadway traffic controls, at no cost to BNSF, whenever requested by BNSF to allow BNSF to inspect the Structure or to make emergency repairs thereto.
- (g) It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto. Notwithstanding the foregoing, it is expressly understood by the parties that the Agency has the right pursuant to this Agreement, and the Tollway Easement Agreement attached hereto and made a part hereof, to construct the structure as set forth in the Project plans and as necessary for the maintenance and operation of the toll highway system, and that BNSF has the right pursuant to this Agreement and the Tollway Easement Agreement to attach signals, signal posts, communication wires and other devices now or hereafter to be used by BNSF in the operation of its railroad to the re-constructed structure at its own expense; provided, however, that BNSF shall 1) obtain Agency's prior written approval which shall not be unreasonably denied, withheld or delayed; 2) be responsible for maintenance associated with said fixtures; and 3) be responsible for removing said fixtures at its cost if necessary for Agency purposes.
- (h) If Agency (including its contractors and agents) or BNSF, on behalf of Agency, performs (i) alterations or modifications to the Structure, or (ii) any maintenance or other work on the Structure with heavy tools, equipment or machinery at ground surface level horizontally within 25'-0" of the centerline of the nearest track, or (iii)

any maintenance or other work outside the limits of the deck of the Structure vertically above the top of the rail, then Agency or its contractors and/or agents must procure and maintain the following insurance coverage, which may be changed from time to time:

Railroad Protective Liability insurance naming only **BNSF** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy shall be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to **BNSF** prior to performing any work or services under this Agreement
- Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

As used in this paragraph, “**BNSF**” means “Burlington Northern Santa Fe, LLC”, “BNSF RAILWAY COMPANY” and the subsidiaries, successors, assigns and affiliates of each.

In lieu of providing a Railroad Protective Liability Policy, Agency, or its contractor, may participate in BNSF’s Blanket Railroad Protective Liability Insurance Policy if available to Agency or its contractors. The limits of coverage are the same as above.

12. Agency hereby grants to BNSF, at no cost or expense to BNSF, a permanent right of access from Agency property to BNSF tracks for maintenance purposes.

13. Agency must provide one set of as built plans (prepared in **English Units**) to BNSF, as well as one set of computer diskettes containing as built CAD drawings of the Structure and identifying the software used for the CAD drawings. The "as built plans" must comply with the BNSF Requirements for Construction of Grade Separation Projects set forth on Exhibit F and depict all information in BNSF engineering stationing and mile post pluses. The "as built plans" must also include plan and profile, structural bridge drawings and specifications, and drainage plans. All improvements and facilities must be shown.

14. Subject to the restrictions imposed by Article IV, Section 9 above and in accordance with the requirements of Article III, Section 9 above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **INSPECTION OR MAINTENANCE** purposes, and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.

15. In the event that BNSF shall deem it necessary or desirable in the future, in the performance of its duty as a common carrier, to raise or lower the grade or change the alignment of its tracks or to lay additional track or tracks or to build other facilities in connection with the operation of its railroad, BNSF shall, at its expense, have full right to make such changes or additions, provided such changes or additions do not change or alter the Structure herein proposed to be constructed and provided further, however, that should it become necessary or desirable in the future to change, alter, widen or reconstruct the Structure to accommodate railroad projects, the division of cost of such work, including any cost incidental to alteration of railroad or highway facilities made necessary by the alteration of the Structure shall be determined by a separate agreement.

16. Agency may, at Agency's sole expense, alter or reconstruct the highway components of the Structure if necessary or desirable, due to traffic conditions or pedestrian or other recreational traffic, provided, however, that any such alteration or reconstruction, to the extent that it occurs above the deck surface or on BNSF right-of-way, must receive BNSF's prior written approval as evidenced by either a supplement to this Agreement, or execution of a new agreement that provides for the termination of this Agreement. Furthermore, any alteration or reconstruction of the highway components of the Structure will be covered by a Commission Order.

17. Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Illinois and the Federal Highway Administration, for a period of three (3) years and as required by 30 ILCS 500/20-65.

18. The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.

19. In the event construction of the Project does not commence within two years of the Effective Date, BNSF may declare this Agreement will become null and void.

20. Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.

21. To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.

22. This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.

23. This Agreement may be signed concurrently by the parties hereto without affecting the validity hereof.

24. Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF Railway Company:

BNSF's Manager of Public Projects

Dan Peltier

80 44th Avenue NE

Minneapolis, MN 55421

Agency:

Illinois Tollway Chief Engineering Officer

Paul Kovacs

2700 Ogden Ave.

Downers Grove, IL 60515

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

By: _____

Printed Name: _____

Title: _____

WITNESS:

AGENCY

Illinois State Highway Toll Authority

By: _____
Willard S. Evans
Chairman/Chief Executive Officer

By: _____
Michael Colsch
Chief Financial Officer

By: _____
Kathleen R. Pasulka-Brown
General Counsel

Approved as to Form and Constitutionality

Robert T. Lane, Senior Assistant Attorney General

Exhibit A

Project Plans

Exhibit B
Form of Easement

EXHIBIT "A-1"

Premises

EXHIBIT "B-1"

Memorandum of Easement

EXHIBIT "C"

CONTRACTOR REQUIREMENTS

1.01 General:

- **1.01.01** The Contractor must cooperate with **BNSF RAILWAY COMPANY**, hereinafter referred to as "**Railway**" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of I-294 Tollway underpass (079815E) shoofly and reconstruction.
- **1.01.02** The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to **Rosa Martinez** or designated successor at Marsh, USA, 214-303-8519.
- **1.01.03** The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- **1.01.04** The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

Paul Kovacs
Chief Engineering Officer
Illinois Tollway

- **1.01.05** The Contractor is responsible for determining and complying with all applicable Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- **1.01.06** The Contractor must notify the Illinois State Highway Toll Authority at 630-241-6800 and Railway's Manager Public Projects, telephone number 763-782-3495, at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- **1.01.07** For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- **1.01.08** Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.
- **1.01.09** During construction of the Project, BNSF will send Contractor, with a courtesy copy to the Illinois Tollway, progressive invoices detailing the costs of the railroad work performed by BNSF (see, Exhibit ___ attached hereto and made a part hereof). Contractor must reimburse BNSF for completed force-account work within ninety (90) days of the date of the invoice for such work. Upon completion of the Project, BNSF will send Contractor, with a courtesy copy to the Illinois Tollway, a detailed invoice of final costs, segregated as to labor and materials, for each item in recapitulation shown on Exhibit _____. Contractor must pay the

final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Contractor under this section.

1.02 Contractor Safety Orientation

- **1.02.01** No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

1.03 Railway Requirements

- **1.03.01** The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- **1.03.02** The Contractor must notify the Railway's Division Engineer _____ at (_____) _____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- **1.03.03** The Contractor must abide by the following temporary clearances during construction:
 - 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts

- 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- **1.03.04** Upon completion of construction, unless otherwise approved, the horizontal clearances in the approved Project Plans dated [REDACTED] shall be maintained:
- **1.03.05** Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the Illinois State Highway Toll Authority and must not be undertaken until approved in writing by the Railway, and until the Illinois State Highway Toll Authority has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.
- **1.03.06** In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- **1.03.07** The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by the Illinois State Highway Toll Authority for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- **1.03.08** At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- **1.03.09** Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- **1.03.10** The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

1.04 Contractor Roadway Worker on Track Safety Program and Safety Action Plan:

- **1.04.01** Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and

work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.

- **1.04.02** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.

The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.

Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.

Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its property, including the License Premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.

Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

1.05 Railway Flagger Services:

- **1.05.01** The Contractor must give Railway's **Roadmaster (telephone _____)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's

position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.

- **1.05.02** Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:
 - **1.05.02a** When, upon inspection by Railway's Representative, other conditions warrant.
 - **1.05.02b** When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
 - **1.05.02c** When work in any way interferes with the safe operation of trains at timetable speeds.
 - **1.05.02d** When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
 - **1.05.02e** Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.
- **1.05.03** Flagging services will be performed by qualified Railway flaggers.
 - **1.05.03a** Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
 - **1.05.03b** Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
 - **1.05.03c** The cost of flagger services provided by the Railway will be borne by the Illinois State Highway Toll Authority. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase

actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**

- **1.05.03d** The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

1.06 Contractor General Safety Requirements

- **1.06.01** Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- **1.06.02** Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- **1.06.03** Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- **1.06.04** When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- **1.06.05** Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- **1.06.06** Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.

- **1.06.07** For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- **1.06.08** All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**
- **1.06.09 THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- **1.06.10** Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- **1.06.11** Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- **1.06.12** All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

1.07 Excavation:

- **1.07.01** Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and

disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Field Engineering Representative (_____)**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**

- **1.07.02** The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- **1.07.03** All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- **1.07.04** Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

1.08 Hazardous Waste, Substances and Material Reporting:

- **1.08.01** If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery: (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties: and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

1.09 Personal Injury Reporting

- **1.09.01** The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

Passenger on train (C)

Non-employee (N)

(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)

Contractor/safety sensitive (F)

Contractor/non-safety sensitive (G)

Volunteer/safety sensitive (H)

Volunteer/other non-safety sensitive (I)

Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates

Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates

Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595

or by Phone 1-800-697-6736

or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

(Name)

(Employee No.)

(Phone #)

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

INFORMATION REQUIRED TO BE COLLECTED PURSUANT TO FEDERAL REGULATION. IT SHOULD BE USED FOR COMPLIANCE WITH FEDERAL REGULATIONS ONLY AND IT IS NOT INTENDED TO PRESUME ACCEPTANCE OF RESPONSIBILITY OR LIABILITY.

I. Accident City/St: _____ 2. Date: _____ Time: _____
County: _____ 3. Temperature: _____ 4. Weather: _____
(if non BNSF location)

Mile Post / Line Segment: _____

5. Driver's License No (and state) or other ID: _____ **SSN (required):** _____

6. Name (last, first, mi): _____

7. Address: _____ City: _____ St: _____ Zip: _____

8. Date of Birth: _____ and/or Age: _____ Gender: _____
(if available)

Phone Number: _____ Employer: _____

9. Injury: _____ 10. Body Part: _____
(i.e., Laceration, etc.) (i.e., Hand, etc.)

II. Description of Accident (To include location, action, result, etc.):

12. Treatment:

- First Aid Only
- Required Medical Treatment
- Other Medical Treatment

13. Dr. Name: _____ Date: _____

14. Dr. Address:
Street: _____ City: _____ St: _____ Zip: _____

15. Hospital Name: _____

16. Hospital Address:
Street: _____ City: _____ St: _____ Zip: _____

17. Diagnosis: _____

REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490

EXHIBIT "C-1"

Agreement Between BNSF RAILWAY COMPANY and the CONTRACTOR

Railway File: _____

Agency Project: _____

Contractor Name (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 201_, with the Illinois State Highway Toll Authority for the performance of certain work in connection with the following project: I-294 Tollway underpass (079815E) shoofly and reconstruction. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for the Illinois State Highway Toll Authority (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including attorneys' fees), for injury or death to all persons,

including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **TO THE EXTENT ALLOWABLE BY LAW, THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.

Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.

In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **TO THE EXTENT ALLOWABLE BY LAW, THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**

It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) **TERM**

This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) **INSURANCE**

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

A. Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:

- ◆ Bodily Injury and Property Damage
- ◆ Personal Injury and Advertising Injury
- ◆ Fire legal liability
- ◆ Products and completed operations

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- ◆ The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to **Railway** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- ◆ Bodily injury and property damage
- ◆ Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- ◆ Additional insured endorsement in favor of and acceptable to Railway.
- ◆ Separation of insureds.
- ◆ The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:

- ◆ Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
- ◆ Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- ◆ Waiver of subrogation in favor of and acceptable to Railway.
- A. Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
- ◆ Endorsed to include the Pollution Exclusion Amendment
 - ◆ Endorsed to include the Limited Seepage and Pollution Endorsement.
 - ◆ Endorsed to remove any exclusion for punitive damages.
 - ◆ No other endorsements restricting coverage may be added.
 - ◆ The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
 - ◆ Definition of “Physical Damage to Property” shall be endorsed to read: “means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured’ care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway’s Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor’s care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487
Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.

These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to

Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.

Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

1) EXHIBIT "C" CONTRACTOR REQUIREMENTS

The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement

(<http://www.bnsf.com/communities/fags/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

2) **TRAIN DELAY**

Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.

For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.

Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.

The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.

Contractor and its subcontractors must give Railway's representative (_____) eight (8) weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.

Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

Contractor Name

BNSF Railway Company

By: _____

By: _____

Printed Name: _____

Name: _____

Manager Public Projects

Title: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____ Zip: _____

Fax: _____

Phone: _____

E-mail: _____

EXHIBIT D

[Insert Cost Estimate for Railroad Work here]

Exhibit E

Plan Approval Letter

Exhibit F

BNSF Requirements for Construction of Grade Separation Projects

Exhibit G

I-294 Underpass Grade Separation Project

Estimated Total Project Cost

EXHIBIT H

BNSF Permanent Easements on adjacent ROW

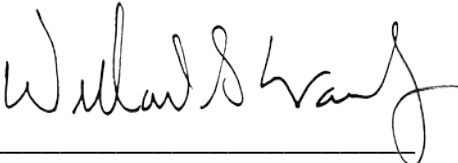
RESOLUTION NO. 21867

Background

It is in the best interest of the Illinois State Toll Highway Authority (“Tollway”) to settle an eminent domain matter concerning Tollway parcel EO-1B-12-064 and titled *ISTHA v. Larsen Enterprise, LP*, 2015 ED 0004.

Resolution

The proposed litigation settlement is approved consistent with the terms and conditions presented to the Board of Directors in Executive Session. The General Counsel is authorized to prepare an agreement and any other necessary documents, and the Chairman/Chief Executive Officer of the Tollway, subject to the approval of the Chief Financial Officer, is authorized to execute said documents.

Approved by: 
Chairman

RESOLUTION NO. 21868
AMENDING RESOLUTION NO. 21849

Background

Resolutions 19584, 21069 and 21451 authorized expenditures of up to \$115,000,000.00 for land acquisitions by The Illinois State Toll Highway Authority (“Tollway”) and any and all land acquisition fees, costs and expenses necessary for the Tri-State Tollway Project, Project No. RR-11-4010 (“Project No. RR-11-4010”). Resolution 21849 as preceded by Resolutions 21822, 21753, 21724, 21699, 21607, 21578, 21540, 21453, 21428, 21408, 21346, 21304, 21095, 20942 and 20771, identified specific parcels that were required for Tollway purposes. Resolution 21849 must be further amended to identify and add additional parcels and provide the Tollway’s Land Acquisition Unit the authority to acquire all parcels necessary for Project No. RR-11-4010, including fee title, permanent easements, temporary easements and access control. Pursuant to *ISTHA v. DiBenedetto*, 275 Ill. App 3d 400 (1st Dist. 1995), the Tollway is required to reasonably describe real property it may need to acquire by eminent domain. This Resolution, amending Resolution 21849, identifies additional parcels and satisfies this requirement.

Resolution

Acquisition is authorized for any and all needed real property and interests in real estate and includes, but is not limited to, the Identified Parcels listed on Exhibit A (“Identified Parcels”), which is attached hereto and incorporated herein by this reference. These acquisitions are necessary and convenient to secure all needed real property and interests in real estate for Project No. RR-11-4010. The Tollway’s Engineering Department, by and through its Land Acquisition Manager, together with authorized employees and agents, is authorized to acquire all necessary real estate interests associated with Project No. RR-11-4010 and, per Resolutions 19584, 21069 and 21451, to spend sums up to an amount not to exceed \$115,000,000.00 to pay for any and all land acquisition fees and costs including, but not limited to (i) consideration, settlements, purchase price, fees, costs, closing costs, deposits to close in escrow, relocation expenses, relocation benefits, relocation costs, title work, title insurers, agents, owners, attorneys, appraisers, negotiators, surveyors and other experts retained for the purpose of acquiring all needed real estate and interests in real estate, (ii) payment of preliminary just

RESOLUTION NO. 21868
AMENDING RESOLUTION NO. 21849

Resolution – Continued

compensation, final just compensation and damages, and (iii) any and all other acquisition costs, fees and expenses.

In the event all or part of the Identified Parcels cannot, with reasonable diligence, be purchased via negotiations, administrative documentation or settlement, the Land Acquisition Unit, upon the recommendation of the Land Acquisition Manager, the General Counsel and the Attorney General, is authorized and directed to acquire the same in the name of the Tollway by eminent domain.

The Executive Director, the Chief Operating Officer and/or Land Acquisition Manager, subject to then existing Land Acquisition policies and procedures and approval of the General Counsel, and consistent with applicable state and federal law, are authorized to negotiate and enter into any real estate contract for the acquisition or conveyance of all needed real estate for Project No. RR-11-4010, such contracts to be executed in accordance with applicable Tollway policy. The Land Acquisition Unit is authorized to continue to acquire and purchase property by and through escrow closings with its approved title insurance vendors, subject to then existing Land Acquisition policies and procedures and approval of the General Counsel, such contracts to be executed in accordance with applicable Tollway policy. The Chief Financial Officer is authorized to issue warrants from time to time to pay for any and all land acquisition fees and costs including, but not limited to (i) consideration, settlements, purchase price, fees, costs, closing costs, deposits to close in escrow, relocation expenses, relocation benefits, relocation costs, title work, title insurers, agents, owners, attorneys, appraisers, negotiators, surveyors and other experts retained for the purpose of acquiring all needed real estate and interests in real estate, (ii) payment of preliminary just compensation, final just compensation and damages, and (iii) any and all other acquisition costs, fees and expenses, necessary to acquire interests in all or part of all Identified Parcels needed for Project No. RR-11-4010, up to a sum not to exceed the aggregate sum of \$115,000,000.00.

Approved by: William S. Kravitz
Chairman

08/15/19

6.5/5

RESOLUTION NO. 21868
AMENDING RESOLUTION NO. 21849

Resolution – Continued- Exhibit A

PROJECT: RR-11-4010- IDENTIFICATION OF PARCELS

TRI-STATE TOLLWAY

EXHIBIT "A"
Project RR-11-4010
Tri-State Tollway

Parcel	PREVIOUSLY IDENTIFIED PARCELS PIN NUMBER/OR DESCRIPTION	County
TW-7-15-001	12-21-100-015, 12-21-100-016, 12-21-100-017 12-21-100-018, 12-21-100-019	Cook
TW-7-15-002	12-21-100-011	Cook
TW-7-15-003	12-20-301-034	Cook
TW-7-15-004	12-20-300-054, 12-20-300-055	Cook
TW-5-16-001	18-19-301-004, 18-19-301-005	Cook
TW-3A-16-001	18-34-105-021	Cook
TW-3B-16-001	18-29-100-020	Cook
TW-3B-16-006	18-28-300-067, 18-28-400-012	Cook
TW-7-16-005	12-30-100-009, 12-30-100-011 12-30-100-024, 12-30-100-025	Cook
TW-7-16-006	12-30-100-019	Cook
TW-7-16-007	12-30-100-020	Cook
TW-7-16-008	12-30-100-021	Cook
TW-7-16-009	12-30-102-001, 12-19-300-020	Cook
TW-7-16-001	03-36-204-002	DuPage
TW-7-16-011	12-19-400-111	Cook
TW-7-16-012	12-19-400-123	Cook
TW-7-16-013	12-19-400-157	Cook
TW-7-16-014	12-19-400-156	Cook
TW-7-16-015	12-19-400-069	Cook
TW-7-16-016	12-19-400-125	Cook
TW-7-16-017	12-19-400-087	Cook
TW-7-16-018	12-19-400-107	Cook
TW-3B-16-002	18-27-500-003, 18-28-501-001, 18-33-501-001	Cook
TW-3B-16-003	18-33-102-002, 18-33-201-003, 18-32-402-010 18-33-301-002, 18-27-300-008, 18-28-401-008	Cook

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PREVIOUSLY IDENTIFIED PARCELS

Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-3B-16-004	18-27-300-006, 18-28-401-002, 18-28-401-004 18-28-401-009, 18-28-401-010, 18-32-402-003 18-33-102-001, 18-33-201-001, 18-33-201-002 18-33-201-004, 18-33-301-001	Cook
TW-3B-16-005	18-28-400-011, 18-28-500-004, 18-28-200-028 18-28-200-033, 18-27-100-001, 18-28-200-030 18-28-400-004, 18-28-300-055, 18-28-400-006	Cook
TW-3B-16-007	THAT PART OF THE EXISTING SANTA FE DRIVE RIGHT OF WAY IN THE PLAT OF DEDICATION FOR SAID RIGHT OF WAY, BEING IN THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 26, 1976 AS DOCUMENT NUMBER 23687489	Cook
TW-3B-16-008	18-28-300-043	Cook
TW-3B-16-009	18-28-300-056, 18-28-300-055 18-28-300-042, 18-28-103-030	Cook
TW-3B-16-010	18-28-103-007, 18-28-103-008, 18-28-300-012 18-28-300-013, 18-28-300-017, 18-28-300-018 18-28-300-019, 18-28-300-022, 18-28-300-023	Cook
TW-3B-16-011	18-28-502-028	Cook
TW-3B-16-012	18-28-300-068, 18-28-400-013	Cook
TW-3B-16-013	18-28-200-032, 18-28-200-035, 18-28-200-036	Cook
TW-3B-16-014	18-28-300-041	Cook
TW-3B-16-015	18-28-103-029, 18-28-200-018, 18-28-103-032	Cook
TW-3B-16-016	18-28-103-001, 18-28-103-020, 18-28-103-034	Cook
TW-3A-16-003	18-34-104-028	Cook
TW-3A-16-004	18-34-105-020	Cook
TW-3A-16-005	THAT PART OF RUST TRAIL AS ESTABLISHED BY THE PLAT OF DINEFF'S FOREST VIEW, BEING A SUBDIVISION OF ALL THAT PART OF THE WEST HALF OF SECTION 27, ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 34, AND THAT PART OF THE NORTHEAST QUARTER OF SECTION 33, ALL IN TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO PLAT THEREOF RECORDED MAY 10, 1948 AS DOCUMENT NUMBER 14310191	Cook
TW-3A-16-006	18-34-104-014	Cook
TW-3A-16-008	18-34-102-004	Cook

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PREVIOUSLY IDENTIFIED PARCELS

Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-3A-16-009	18-34-102-003	Cook
TW-3A-16-011	18-34-102-011	Cook
TW-3A-16-007	18-34-105-001 & Rust Rail and Louis Drive	Cook
TW-5-16-067	18-06-321-003, 18-06-413-002, 18-06-413-001, 18-06-414-001, 18-06-419-031, 18-06-419-032, 18-06-419-016, 18-06-419-017, 18-06-419-018, 18-06-419-019, 18-06-420-020, 18-06-419-021, 18-06-419-022, 18-06-419-023, 18-06-419-024, 18-06-419-025, 18-06-419-026, 18-06-419-027, 18-06-419-028, 18-06-419-029, 18-06-419-030, 18-06-413-003	Cook
TW-5-16-068	18-06-319-001, 18-06-319-013, 18-06-320-001, 18-06-317-006, 18-06-317-008, 18-06-320-008, 18-06-320-012, 18-06-320-014, 18-06-320-015, 18-06-320-017, 18-06-320-016, 18-06-320-007, 18-06-321-002	Cook
TW-5-16-070	18-06-318-032	Cook
TW-6B-16-005	15-07-101-016	Cook
TW-7-16-062	12-16-115-032	Cook
TW-7-16-063	12-16-114-036	Cook
TW-7-16-064	12-16-114-037	Cook
TW-7-16-065	12-16-114-032	Cook
TW-7-16-066	12-16-113-021	Cook
TW-3B-16-017	18-28-102-006	Cook
TW-3B-16-018	18-28-102-005	Cook
TW-3B-16-019	18-28-102-023	Cook
TW-3B-16-020	THAT PART OF THE EXISTING MARIDON ROAD RIGHT OF WAY AS DEDICATED ON GREGOR'S SUBDIVISION PLAT, RECORDED SEPTEMBER 8, 1952 AS DOCUMENT NUMBER 15430017, BEING A SUBDIVISION OF THE WEST 200 FEET OF THE EAST 1027.90 FEET OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 38 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN	Cook
TW-3B-16-021	18-28-102-021	Cook
TW-3B-16-022	18-28-102-020	Cook

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PREVIOUSLY IDENTIFIED PARCELS

Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-3B-16-023	18-29-205-016	Cook
TW-3B-16-024	18-29-205-015	Cook
TW-5-16-059	18-07-103-001, 18-07-103-002, 18-07-103-003, 18-07-103-004, 18-07-103-005, 18-07-103-006, 18-07-103-007, 18-07-103-008, 18-07-103-009, 18-07-103-010, 18-07-103-011	Cook
TW-7-16-002	03-25-409-001, 03-25-409-002	DuPage
TW-7-16-003	03-25-400-004	DuPage
TW-7-16-004	03-25-400-006	DuPage
TW-7-16-054	12-16-307-029	Cook
TW-7-16-057	12-16-312-018	Cook
TW-7-16-060	12-16-115-023, 12-16-115-025	Cook
TW-7-16-067	12-16-113-017, 12-16-113-018, 12-16-113-023, 12-16-113-024	Cook
TW-7-16-068	12-16-205-023, 12-16-111-049	Cook
TW-7-16-071	12-16-205-019	Cook
TW-7-16-077	12-16-203-024	Cook
TW-7-16-053	12-16-307-041	Cook
TW-7-16-055	12-16-307-028	Cook
TW-7-16-059	12-16-111-048, 12-16-205-024	Cook
TW-7-16-078	THAT PART OF LAWRENCE AVENUE, A 66 FOOT WIDE STREET IN FAIRVIEW, BEING EBERHART AND ROYCE'S SUBDIVISION OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 9 AND THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 16, ALL IN TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPLE MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JUNE 8, 1891 AS DOCUMENT NUMBER 1483103	Cook
TW-7-16-079	THAT PART OF MONTROSE, THAT PART OF AGATITE AND THAT PART OF SUNNYSIDE AVENUES ALL IN INDIAN PARK ESTATES, BEING A SUBDIVISION IN SECTION 16, TOWNSHIP 40 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED JANUARY 14, 1939 AS DOCUMENT 12260059	Cook
TW-7-16-080	THAT PART OF BERTEAU AND DENLEY AVENUES AS SHOW ON VOLK BROTHERS HOME ADDITION TO SCHILLER PARK IN THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPLE MERIDIAN ACCORDING TO THE PLAT RECORDED MAY 20, 1924 AS DOCUMENT NUMBER 8427643	Cook

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PREVIOUSLY IDENTIFIED PARCELS

Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-6B-16-003	15-07-104-016	Cook
TW-7-16-019	12-30-300-007	Cook
TW-7-16-045	12-30-301-034	Cook
TW-5-16-011	18-19-102-014	Cook
TW-5-16-012	18-19-102-013	Cook
TW-5-16-013	18-19-102-012	Cook
TW-5-16-014	18-19-102-011	Cook
TW-5-16-015	18-19-102-016	Cook
TW-3A-16-072	08-35-109-012	Cook
TW-3A-16-081	23-01-106-012	Cook
TW-5-16-137	18-18-304-018	Cook
TW-5-16-139	18-19-102-015	Cook
TW-5-16-140	18-18-304-017	Cook
TW-6B-16-002	15-07-104-015	Cook
TW-6B-16-004	15-07-104-004	Cook
TW-6B-16-008	15-06-303-024	Cook
TW-7-16-043	12-20-300-054, 12-20-300-055	Cook
TW-7-16-056	12-16-307-004, 12-16-307-005 12-16-307-027, 12-16-307-032	Cook
TW-7-16-069	12-16-205-021	Cook
TW-3A-16-066	18-35-407-055	Cook
TW-3B-16-027	18-29-100-003, 18-29-100-027	Cook
TW-3B-16-029	THAT PART OF 71st PLACE 66 FOOT RIGHT OF WAY AS DEDICATED BY PLEASANT VIEW SUBDIVISION, BEING PART OF THE EAST 1171.96 FEET OF THE NORTH 40 ACRES OF THE NORTHWEST QUARTER OF SECTION 29, TOWNSHIP 33 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 11, 1949 AS DOCUMENT NUMBER 14650837	Cook
TW-3B-16-028	18-29-100-026	Cook

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PREVIOUSLY IDENTIFIED PARCELS		
Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-5-16-095	18-06-126-010	Cook
TW-5-16-098	18-06-126-009	Cook
TW-5-16-101	18-06-126-006	Cook
TW-5-16-103	18-06-126-005	Cook
TW-5-16-105	18-06-126-004	Cook
TW-5-16-107	18-06-126-002	Cook
TW-5-16-110	18-06-126-001	Cook
TW-5-16-130	18-06-126-007	Cook
TW-5-16-141	18-19-405-014, 19-19-495-015	Cook
TW-6C-16-008	06-12-419-014	DuPage
TW-6C-16-012	06-12-413-039	DuPage

ADDED IDENTIFIED PARCELS		
Parcel	PIN NUMBER/OR DESCRIPTION	County
TW-6C-16-003	15-18-107-018	Cook
TW-6C-16-006	06-12-419-016	DuPage
TW-6C-16-007	06-12-419-015	DuPage
TW-6C-16-009	06-12-419-002	DuPage
TW-6C-16-010	06-12-419-001	DuPage