

## **Exhibit A**

### **INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF DUPAGE AND THE CITY OF CHICAGO CONCERNING INSTALLATION AND OPERATION OF CERTAIN NAVIGATIONAL AID FACILITIES SUPPORTING O'HARE INTERNATIONAL AIRPORT**

This INTERGOVERNMENTAL AGREEMENT ("Agreement"), effective upon the last dated signature below, by and between THE COUNTY OF DUPAGE, Illinois, a body corporate and politic ("County"), and THE CITY OF CHICAGO, an Illinois home rule municipality ("City"), each individually referred to as "PARTY," and collectively referred to as "Parties."

#### **RECITALS:**

WHEREAS, the County by virtue of its power set forth in the "Counties Code" (55 ILCS 5/5-1001 *et seq.*) and the "Illinois Highway Code" (605 ILCS 5/5-101 *et seq.*) and the City by virtue of its power set forth in the "O'Hare Modernization Act" (620 ILCS 65/5, *et seq.*) and set forth in the Illinois Municipal Code (65 ILCS 5/1-1-1, *et seq.*) are authorized to enter into this AGREEMENT; and

WHEREAS, the City Council of the City has further authorized entry into this AGREEMENT pursuant to that Ordinance approved on April 11, 2007 (Journal of Proceedings of the City Council of the City of Chicago, pages 102492 – 102497); and

WHEREAS, the County and City are empowered to enter into this AGREEMENT pursuant to the authority granted in the Intergovernmental Cooperation Act, 5 ILCS 220/1, *et seq.*, and in Article VII, Section 10, of the Illinois Constitution of 1970; and

WHEREAS, the City owns and operates O'Hare International Airport and is implementing the O'Hare Modernization Program ("OMP") which includes construction of the new Runway 9R-27L extension and related improvements; and

WHEREAS, to support operations of new Runway 9R-27L, the City is completing installation of various navigational aid systems which are intended for transfer to the United States Department of Transportation, Federal Aviation Administration ("FAA") to support operation of the airfield and runway systems, and which said navigational aid systems will include installation of an approach light and sequenced flashing system ("ALSF") serving new Runway 9R-27L, including support structure (collectively, the "ALSF Facility"); and

WHEREAS, federal design requirements for spacing of ALSF system elements for Runway 9R-27L necessitate the installation of certain permanent improvements, including the ALSF Facility, underneath and through the York Road right-of-way and upon certain County-owned land adjacent to and abutting the right-of-way at the southwest corner of the intersection of Supreme Drive and York Road located within the municipal limits of the Village of Bensenville, Illinois (the "County Parcel"); and

WHEREAS, the County Parcel is an irregular-shaped parcel located within the Subdivision of Thorndale Distribution Park in Bensenville, Unit No. 10, pursuant to that certain Plat of Subdivision of Thorndale Distribution Park in Bensenville, Unit No. 10, dated August 13, 1990, and recorded on January 15, 1991, as document number R1991-004837, (the "Plat of Subdivision"); and

## Exhibit A

WHEREAS, the Parties acknowledge that pursuant to the Plat of Subdivision certain easements were identified within the County Parcel, including an identified ten foot (10') sidewalk easement and an identified ten foot (10') water main easement, each in the location and manner depicted within the Plat of Subdivision, and further that the recorded Plat of Subdivision appears to incorporate appropriate certification of corporate acceptance of the County and the Village concerning the matters identified and depicted therein; and

WHEREAS, the Parties further acknowledge that, as of the date of execution of this Agreement, the County Parcel has not been improved with any sidewalk improvements or water main facilities within the identified easement areas noted within the Plat of Subdivision, but rather is presently used and occupied for compensatory stormwater storage retention and floodway of an unnamed creek tributary to Willow Creek, serving and benefiting adjacent lands; and

WHEREAS, the County has received written consent from the Village of Bensenville through a letter dated February \_\_\_\_, 2023, stating the Village will abandon the sidewalk and watermain easements described and depicted on the Plat of Survey attached and incorporated herein on **Exhibit B** (said letter of consent is attached and incorporated as **Exhibit D**); and

WHEREAS, the Parties additionally acknowledge that, as of the execution of this Agreement, there are no pending or imminent plans for redevelopment of the County Parcel in a manner implicating discontinuance of its present use as compensatory stormwater storage retention and floodway of the unnamed creek tributary to Willow Creek, nor does the Village of Bensenville have any pending or imminent plans or proposals for installation of sidewalk or water main improvements within the identified easement areas depicted on the Plat of Subdivision; and

WHEREAS, the City and the County have engaged in substantive discussions as to various design variants for the elements of ALSF System to be located within the County Parcel and the adjacent York Road right-of-way in an effort to mitigate and/or limit, to the greatest extent possible, any impact or intrusion from installation of the ALSF System; and

WHEREAS, as a result of such design coordination, the final approved plans for the ALSF Structure will include a system of elevated structure and pedestrian bridge decking constructed upon piers and the installation of underground low and high voltage wireline and related equipment as depicted on **Exhibit A** and **Exhibit F** attached and incorporated herein, which is consistent with the County preserving the underlying compensatory stormwater storage retention and floodway utility of the County Parcel, and further consistent with planned improvement and expansion of roadway elements within the York Road right-of-way as generally depicted on **Exhibit C** and which is consistent with current FAA standards); and

WHEREAS, the City has further obtained necessary permit approvals from the FAA, the Illinois Department of Natural Resources ("IDNR"), and the Illinois State Toll Highway Authority ("Tollway"), each approving the City's installation of the ALSF Structures in such form and manner; and

WHEREAS, to accommodate the City's effort toward achieving the timely approvals for commencement of Runway 9R-27L flight operations, the Parties desire to set forth the terms and conditions of the City's Runway 9R-27L ALSF System improvements as it affects the County Parcel and York Road right-of-way and operations currently and in the future.

## Exhibit A

**NOW THEREFORE, in consideration of the mutual promises hereinafter set forth, the Parties agree as follows:**

### **1. Incorporation.**

a. All recitals set forth above are incorporated herein and made part hereof, the same constituting the factual basis for this Agreement.

b. The headings of the paragraphs and subparagraphs of this Agreement are inserted for convenience of reference only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

### **2. County Grant of Rights for Construction and Use.**

a. The City represents that the ALSF Facility to be installed is for a public purpose, to support aeronautical activities at O'Hare International Airport, and will be used exclusively for installation of underground high and low voltage wireline, approach light platform structure, and related equipment to serve the navigational aid systems supporting Runway 9R-27L, and will not be used for any other purpose, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

b. The City will install the ALSF Facility under and through the implicated portion of the York Road right-of-way and additionally upon the County Parcel in accordance with **Exhibit A** and **Exhibit F**.

c. The Parties understand and acknowledge that this Agreement will serve in lieu of a separate County Division of Transportation permit within York Road right-of-way for the installation and operation of certain navigational aid facilities supporting O'Hare International Airport, and, by execution of this Agreement the City agrees to be bound by the Highway Permit Conditions attached hereto as **Exhibit E** made a part hereof, and the DuPage County Highway Rights-of Way Permit and Fee Ordinance (ODT-0001A-06) incorporated herein by reference and amended from time to time including all insurance requirements as they exist on the date of execution of this Agreement.

d. Together with the rights and obligations under said Highway Permit conditions, the County hereby grants and conveys to the City additional right of entry and license in, upon, over, under, and through that portion of the County Parcel (adjacent to and outside of the York Road right-of-way) in the areas described and depicted on the Plat of Survey attached and incorporated herein as **Exhibit B**, for the purposes of the construction, installation, use, inspection, maintenance, repair, rehabilitation, replacement, and removal of the ALSF Facility, all in accordance with the terms and conditions of this Agreement.

### **3. Access and Maintenance.**

a. For avoidance of doubt, the Parties acknowledge that the physical structure and equipment encompassing the ALSF Facility will be located within 'Area 1' depicted on the Plat of Survey attached and incorporated herein as **Exhibit B**, with a portion of driveway located within 'Area 2', while the additional 'Area 3', 'Area 4', and 'Area 5' depicted on **Exhibit B** will not encompass any physical structure or improvement, but may be temporarily accessed by the City from time to time associated with installation, construction, use, inspection, maintenance, repair, rehabilitation, replacement, and removal of the ALSF Facility.

## **Exhibit A**

b. The Parties further acknowledge that the remaining portions of the County Parcel outside of and surrounding the locations where physical structure of the ALSF Facility is placed, are presently used for compensatory stormwater storage retention and floodway of the unnamed creek tributary to Willow Creek and will continue to be used for such purposes and/or other purposes that do not substantially interfere with use or access by the City to the ALSF Facility. Notwithstanding the foregoing, the County recognizes that the City's right and license to locate and use the ALSF Facility is exclusive as to the physical location of said structures and improvements situated in 'Area 1' as aforesaid, and the County shall not interfere or impact such right, nor allow or permit any person or entity to interfere or impact such right in any manner whatsoever.

c. In connection with its right of use or access, the City may install such signs and pavement markings in or upon the ALSF Structure, subject to the reasonable approval of the County, which it shall deem necessary or appropriate to enforce the prohibition of uses that substantially interfere with its rights of access.

### **4. Termination and Removal.**

a. If, after initial construction and installation of the ALSF Facility, (i) the City determines that ALSF Facility is no longer necessary to support aeronautical operations at O'Hare International Airport, (ii) the City determines it no longer requires the interests granted by the County hereunder, (iii) the City does not use the right herein granted on the County Parcel hereunder, (iv) the City ceases operation of the ALSF Facility for an uninterrupted period of three (3) consecutive years, or (v) the City continues in default in the performance of any provision of this Agreement for a period of sixty (60) days after written notice from the County to the City specifying such default, (or such longer period as may be reasonably required if the City promptly initiates the cure and diligently prosecutes the cure to completion); then the County may, at its reasonable discretion, terminate this Agreement by written notice to the City at the address listed in the "NOTICES" Article of this Agreement.

b. Prior to the effective date of any termination described in this Section, the City shall submit appropriate plans to the County concerning the City's removal of the ALSF Facility, or if applicable, and upon approval from the County, abandonment in place of such portions of the ALSF Facility located underground on County Parcel. Upon the County's written approval of the City's plans for removal of the ALSF Facility, the City shall, within ninety (90) days, proceed with such approved removal and/or abandonment and take such actions as are agreed upon to restore the impacted County Parcel to a reasonably similar condition as it was prior to City's installation of the ALSF Facility. If the City fails to remove and/or abandon the ALSF Facility and/or fails to restore the County parcel, as stated above, the County may remove/cause the removal of the ALSF Facility, restore the County Parcel and then charge the City.

### **5. Indemnity.**

a. To the maximum extent permitted by law, the City agrees to defend, indemnify and hold harmless the County, its employees and agents from and against any claim, demand or cause of action and any liability, cost or expense for personal injury or death or property damage proximately caused by negligent or wrongful acts or omission of the City, its employees, agents, contractors, subcontractors, or authorized parties, except from those proximately caused by negligence, willful and wanton or intentionally tortious actions of County or its agents, employees, or invitees.

## Exhibit A

b. In the event that this City's rights in this Agreement are assigned to the Federal Aviation Administration, an agency of the United States Government, the Federal Government, in addition to the City, will also be liable to persons damaged by any personal injury, death or injury to or loss of property if caused by the negligent or wrongful act or omission of an employee of the Federal Government while acting within the scope of his or her office or employment under circumstances where a private person would be liable in accordance with the law of the place where the act or omission occurred, all in accordance with the subject to the conditions, limitations and exceptions set forth in Federal Tort Claims Act of 1948, as amended (28 USC 2671 et. seq.).

### 6. General Provisions

a. All City activities on the County Parcel shall be undertaken in accordance with applicable law.

b. Nothing in this Agreement shall be construed or deemed to have conveyed or granted to the City any rights, title, interest, authority, or approval over or as it relates to the balance of the County Parcel outside of the ALSF Facility, including any approval of the use or development of the County Parcel.

c. This Agreement shall be freely assignable by the City to the FAA for aviation purposes, or such other relevant governmental entities or agencies.

d. In the event any term or provision of this Agreement shall for any reason be held invalid illegal or unenforceable by any court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision thereof, and this Agreement shall be interpreted and construed as if such term or provision, to the extent the same has been held to be invalid, illegal or unenforceable, had never been contained herein.

e. The Agreement, together with any exhibits constitutes the entire agreement of the Parties on the subject matter hereof. It is understood and agreed to by the Parties hereto that no oral or other promise of any character made by any individual allegedly speaking for either party shall be binding under this Agreement unless expressly stated herein.

f. The Parties hereto agree that the laws of the State of Illinois will govern this Agreement for all purposes including, but not limited to, deterring the validity of this Agreement, the meaning of its provisions, and the rights, obligations and remedies of the Parties hereto.

g. The Parties hereby warrant that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, brokerage fee, percentage or contingent fee, except *bona fide* employees for the purpose of securing business.

h. No member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise thereupon; but this provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

i. The City shall have no obligation to pay any real estate taxes assessed against the County Parcel.

## Exhibit A

j. Any written notice or document required or permitted to be delivered hereunder shall be deemed to be delivered five (5) business days following the date of deposit in the United States Mail, postage prepaid, Certified Mail, or the next day following deposit via a recognized overnight delivery service, addressed to the Parties hereto at the respective addresses set forth below:

If to the County: County of DuPage  
Division of Transportation  
421 N County Farm Road  
Wheaton, IL 60187  
ATTN : Christopher C. Snyder, P.E.

If to the City: City of Chicago Dept. of Aviation  
Attn: Commissioner  
10510 W. Zemke Rd.  
PO Box 66848  
Chicago, Illinois 60666

WITH A COPY TO:

City of Chicago Dept. of Aviation  
Attn: General Counsel  
10510 W. Zemke Rd.  
PO Box 66848  
Chicago, Illinois 60666

AND:

City of Chicago Dept. of Aviation  
Attn: Deputy Comm. of Real Estate  
10510 W. Zemke Rd.  
PO Box 66848  
Chicago, Illinois 60666

k. The rights conferred and obligations incurred pursuant to this Agreement shall run with the land, and shall be binding on, inure to the benefit of and be enforceable by the Parties and their respective legal representatives, successors, and assigns.

**Exhibit A**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written above.

**AGREED BY:**

**COUNTY OF DUPAGE**

By: \_\_\_\_\_  
Christopher C. Snyder, P.E.  
Director of Transportation/County Engineer

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

**CITY OF CHICAGO**

By: \_\_\_\_\_  
Commissioner of Aviation

Approved as to Form/Authority:

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

By: \_\_\_\_\_  
Spec. Asst. Corporation Counsel

**WITH CONSENT BY:**

**Exhibit A**

**EXHIBIT A**

**ALSF DESIGN SPECIFICATIONS (DATED OCT. 27, 2022)**

*[See immediately following page(s)]*

DRAFT



**Exhibit A**

**EXHIBIT B**

**PLAT OF SURVEY**

*[See immediately following page(s)]*

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