

ORIGINAL

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DuPAGE AND THE COUNTY OF COOK
FOR THE ELGIN O'HARE/I-390 CORRIDOR ENHANCEMENTS
PHASE III CONSTRUCTION
DuPAGE COUNTY SECTION NO. 14-00245-05-LS**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2025, between the County of DuPage (hereinafter referred to as "DuPAGE"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois, and the County of Cook (hereinafter referred to as "COOK"), a body corporate and politic, with offices at 69 W. Washington Street, Chicago, Illinois. DuPAGE and COOK are hereinafter sometimes individually referred to as "PARTY" or together as the "PARTIES."

RECITALS

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

WHEREAS, DuPAGE has agreed through a Memorandum of Understanding with the TOLLWAY, dated December 9, 2014, to assume a lead role in developing and refining corridor and location specific aesthetic, architectural and/or enhancement features and improvements and to work closely with the TOLLWAY, partner agencies and corridor communities on design and implementation (hereinafter the "PROJECT"); and

WHEREAS, DuPAGE has secured Illinois Transportation Enhancement Program ("ITEP") funding for certain corridor enhancements along Route 390; and

WHEREAS, DuPAGE and COOK have previously entered into an intergovernmental agreement (DuPAGE Resolution DT-R-0123-16) to share professional Phase I engineering costs of the PROJECT, which reimbursement has been made in full by COOK; and

WHEREAS, DuPAGE and COOK have previously entered into an intergovernmental agreement (DuPAGE Resolution DT-R-0138-18) to share professional Phase II design engineering costs of the PROJECT, which reimbursement has been made in full by COOK; and

WHEREAS, DuPAGE and COOK have previously entered into an intergovernmental agreement (DuPAGE Resolution DT-R-0285-19 hereinafter referred to as "PREVIOUS AGREEMENT") to share construction and construction engineering costs of the PROJECT; and

WHEREAS, the PREVIOUS AGREEMENT expired on December 31, 2022 with no invoicing or payments between the PARTIES for construction and construction engineering costs; and the PARTIES still intend to share construction and construction engineering costs in this new agreement (hereinafter "AGREEMENT"); and

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

WHEREAS, this cooperative 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:

1.0 INCORPORATION

1.1 All recitals set forth above are incorporated herein and made part thereof, the same constituting the factual basis for this AGREEMENT.

1.2 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 thereof.

2.0 PHASE III CONSTRUCTION

2.1 DuPAGE is the lead agency for construction of the PROJECT as hereinabove referenced.

- 2.2 COOK agrees to reimburse DuPAGE fifty percent (50%) of the actual local share of construction costs, with COOK's share estimated to be \$162,876.75 as shown in Amended Exhibit A attached hereto.
- 2.3 COOK agrees to reimburse DuPAGE fifty percent (50%) of the actual cost of construction engineering, with COOK's share estimated to be \$55,236.60, as shown in Amended Exhibit A attached hereto.
- 2.4 COOK agrees to reimburse DuPAGE within ninety (90) days after receipt of properly documented invoice(s) from DuPAGE after execution of this AGREEMENT for the full amount of the estimated final cost of construction and construction engineering for the PROJECT (as described in Sections 2.2 and 2.3 above), a total of \$218,113.35.
- 2.5 COOK further agrees to reimburse DuPAGE the balance, if any exists, of its share for the final cost of Phase III construction and construction engineering, with a not to exceed total of \$230,237.00 upon a final invoice received by DuPAGE from the Illinois Department of Transportation ("IDOT") for any balance due after facilitating the ITEP funding for this PROJECT.

3.0 MAINTENANCE - RESPONSIBILITIES

- 3.1 It is understood by the PARTIES that maintenance responsibilities for elements of the PROJECT are detailed in a separate Intergovernmental Agreement previously entered into between the PARTIES (DuPAGE Resolution DT-R-0310-20).

4.0 GENERAL PROVISIONS

- 4.1 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.

5.0 INDEMNIFICATION

- 5.1 DuPAGE shall indemnify, hold harmless and defend COOK, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense,

arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, DuPAGE's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.

5.1.1 DuPAGE and COOK acknowledge that DuPAGE has made no representations, assurances or guaranties regarding DuPAGE's or any successor's or assign's authority and legal capacity to indemnify COOK as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that DuPAGE, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless COOK, or any person or entity claiming a right through COOK, or in the event of change in the laws of the State of Illinois governing DuPAGE's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the PARTIES' rights and obligations provided for therein.

5.2 COOK shall indemnify, hold harmless and defend DuPAGE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and actions, including costs, fees and expense of defense, arising from, growing out of, or related to, any loss, damage, injury, death, or loss or damage to property resulting from, or connected with, COOK's negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.

5.2.1 DuPAGE and COOK acknowledge that COOK has made no representations, assurances or guaranties regarding COOK's or any successor's or assign's authority and legal capacity to indemnify DuPAGE as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that COOK, or any successor or assign, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless DuPAGE, or any person or entity claiming a right through DuPAGE, or in the event of change in the laws of the State of Illinois governing COOK's or any successor's or assign's indemnification authority, such occurrence(s) shall not affect the validity and enforceability of the remainder of this AGREEMENT or the PARTIES' rights and obligations provided for therein.

- 5.3 Nothing contained herein shall be construed as prohibiting DuPAGE, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. Pursuant to Illinois law, 55 ILCS 5/3-9005, any attorney representing DuPAGE, who is not already an Assistant State's Attorney, is to be appointed a Special Assistant State's Attorney, as provided in 55 ILCS 5/3-9008. DuPAGE's participation in its defense shall not remove COOK's duty to indemnify, defend and hold DuPAGE harmless, as set forth above.
- 5.4 Nothing contained herein shall be construed as prohibiting COOK, its officials, directors, officers, agents and employees, from defending through the selection and use of their own agents, attorneys and experts, any claims, suits, demands, proceedings and actions brought against them. COOK'S participation in its defense shall not remove DuPAGE's duty to indemnify, defend, and hold COOK harmless, as set forth above.
- 5.5 Neither PARTY waives, by these indemnity requirements, any defenses or protections available to them under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1 et seq., or any other applicable law, by virtue of the provisions set forth in this Section or any other Section of this AGREEMENT.
- 5.6 Any indemnity as provided in this AGREEMENT shall not be limited by reason of the enumeration of any insurance coverage herein provided.

6.0 ENTIRE AGREEMENT

- 6.1 This AGREEMENT represents the entire AGREEMENT between the PARTIES with respect to the PROJECT and supersedes all previous communications or understandings whether oral or written.

7.0 NOTICES

- 7.1 Any notice required hereunder shall be deemed properly given to the PARTY to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, postage prepaid, to the PARTY'S address

or sent by confirmed electronic mail delivery. The address of each PARTY is as specified below; either PARTY may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

COOK COUNTY:

Cook County Department of Transportation and Highways
69 W. Washington Street, 24th Floor
Chicago, IL 60602
ATTN: Jennifer "Sis" Killen, P.E., PTOE
Superintendent
Phone: 312.603.1601
Email: Jennifer.killen@cookcountyil.gov

DuPAGE COUNTY:

County of DuPage Division of Transportation
421 N. County Farm Road
Wheaton, IL 60187
ATTN: Stephen M. Travia, P.E.
Director of Transportation
Phone: 630.407.6900
Email: Stephen.travia@dupagecounty.gov

8.0 AMENDMENT, MODIFICATION OR TERMINATION OF THIS AGREEMENT

- 8.1 No modification or amendment to this AGREEMENT shall be effective until approved by the PARTIES in writing.
- 8.2 This AGREEMENT terminates upon completion of the PROJECT and the payment by COOK of the final invoice submitted by DuPAGE, or October 31, 2029, whichever date is earlier.

9.0 NON-ASSIGNMENT

- 9.1 This AGREEMENT shall not be assigned by either PARTY without the written consent of the other PARTY, whose consent shall not be unreasonably withheld.

10.0 AUTHORITY TO EXECUTE/RELATIONSHIP

- 10.1 The PARTIES hereto have read and reviewed the terms of this AGREEMENT and by their signature as affixed below represent that the signing party has the authority to execute this AGREEMENT and that the PARTIES intend to be bound by the terms and conditions contained herein.

10.2 This AGREEMENT shall not be deemed or construed to create an employment, joint venture, partnership or other agency relationship between the PARTIES.

11.0 GOVERNING LAW

11.1 This AGREEMENT shall be governed by the laws of the State of Illinois as to both interpretation and performance.

11.2 The forum for resolving any disputes concerning the PARTIES' respective performance, or failure to perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

12.0 SEVERABILITY

12.1 In the event any provision of this AGREEMENT is held to be unenforceable or invalid for any reason, the enforceability thereof shall not affect the remainder of the AGREEMENT. The remainder of this AGREEMENT shall be construed as if not containing the particular provision and shall continue in full force, effect, and enforceability, in accordance with its terms.

13.0 FORCE MAJEURE

13.1 Neither PARTY shall be liable for any delay or nonperformance of their obligations caused by any contingency reasonably beyond their control, including, but not limited to, Acts of God, war, civil unrest, labor strikes or walkouts, fires and natural disasters.

14.0 CONFLICTS OF INTEREST

14.1 DuPAGE has no actual knowledge that any director, officer, agent or employee of DuPAGE has an interest, whether directly or indirectly, in any contract or the performance of any work pertaining to this AGREEMENT; represent, either as agent or otherwise, any person, trust or corporation, with respect to any application or bid for any contract or work pertaining to this AGREEMENT; or take, accept or solicit, either directly or indirectly, any money or thing of value as a gift or bribe or means

of influencing his or her vote or actions. Any contract made and procured in violation of this provision is void and no funds under this AGREEMENT may be used to pay any cost under such a contract.

15.0 RECORDS MAINTENANCE; REVIEWS AND AUDITS

15.1 DuPAGE shall maintain during the term of this AGREEMENT and for a period of three (3) years thereafter complete and adequate financial records, accounts and other records to support all PROJECT expenditures.

15.2 DuPAGE will give COOK access to all books, accounts, records, reports, files, and other papers pertaining to the administration, receipt and use of all COOK funds to facilitate any reviews or audits.

IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed in duplicate counterparts, each of which shall be considered as an original by their duly authorized officers as of the date first above written.

EXECUTED BY COUNTY OF COOK, ILLINOIS

This _____ day of _____, 2025.

Signature on file

Toni Preckwinkle, President
Cook County Board of Commissioners

Signature on file

ATTEST: _____
Cook County Clerk
(Ink Seal)

APPROVED
BY THE BOARD OF COOK COUNTY COMMISSIONERS

JUL 24 2025

COM _____

RECOMMENDED BY:

Signature on file

Jennifer "Sis" Killen, PE, PTOE, Superintendent
Cook County Department of Transportation & Highways

APPROVED AS TO FORM:

Eileen O'Neill Burke, Cook County State's Attorney

Signature on file

June 27, 2025

Assistant State's Attorney Signature

EXECUTED BY COUNTY OF DuPAGE, ILLINOIS

This _____ day of _____, 2025.

By: _____
Deborah A. Conroy, Chair
DuPage County Board

ATTEST: _____
Jean Kaczmarek, County Clerk
(Ink Seal)

AMENDED EXHIBIT A									
ESTIMATED FINAL COSTS SECTION NO. 14-00245-05-LS									
Type of Work	FEDERAL		DuPAGE		COOK		TOLLWAY		TOTAL
	\$	%	\$	%	\$	%	\$	%	
Landscaping Improvements/Plantings							\$61,284.00	100.0%	\$61,284.00
Remaining Construction Costs	\$880,872.00	73.0%	\$162,876.76	13.5%	\$162,876.75	13.5%			\$1,206,625.51
Construction Engineering	\$0.00	0.0%	\$55,236.60	50.0%	\$55,236.60	50.0%			\$110,473.20
Total	\$880,872.00		\$218,113.36		\$218,113.35		\$61,284.00		\$1,378,382.71

Notes:

Federal construction cost is maximum \$880,872.00 per DuPage County Resolution DT-R-0045-20.

Tollway cost is for "planting of trees, shrubs and evergreens" per Resolution DT-R-0259-19.

Remaining costs are split between DuPage County and Cook County per this Intergovernmental Agreement, and previously Resolution DT R-0285-19.

Phase I and Phase II Engineering are covered by separate Intergovernmental Agreements.
See Resolutions DT-R-0123-16 and DT-R-0138-18.

Final construction cost is still subject to IDOT project finalization.
Although we have no indication that the final cost will differ from that shown above.

I, MONICA GORDON, County Clerk of Cook County, in the State of Illinois aforesaid and keeper of the records and files of said Cook County, do hereby certify that The Board of Commissioners of The County of Cook, at their regular meeting held on July 24, 2025, passed the following Resolution:

R-25-2991

RESOLUTION

Sponsored by

THE HONORABLE TONI PRECKWINKLE

PRESIDENT OF THE COOK COUNTY BOARD OF COMMISSIONERS

RESOLVED, by the members of The Board of Commissioners of Cook County, Illinois, on behalf of the County of Cook, to authorize and direct its President to execute, by original signature or authorized signature stamp, two (2) copies of an Intergovernmental Agreement with the County of DuPage, said Agreement attached, wherein the DuPage County will be the lead agency for Phase III construction and construction engineering for Elgin O'Hare I-390 Corridor Enhancements Project; that the County of Cook will reimburse the County of DuPage for its share of construction and construction engineering costs (estimated total County of Cook share \$218,113.35) under Cook County Section:19-EOCOR-00-PV; and, the Department of Transportation and Highways is authorized and directed to return two (2) copies of this Resolution with Agreement to the County of DuPage for further processing.

All of which appears from the records and files of my office.

APPROVED
BY THE BOARD OF COOK COUNTY COMMISSIONERS

JUL 24 2025

(SEAL)
COM _____

IN WITNESS WHEREOF I have hereunto set my hand and affixed the SEAL of said County at my office in the City of Chicago, in said County, this 24th day of July A.D. 2025.

Signature on file

County Clerk