

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE COUNTY OF DU PAGE
AND THE VILLAGE OF BENSENVILLE
FOR THE CONSTRUCTION AND MAINTENANANCE RESPONSIBILITIES
OF CH 8/YORK ROAD MULTI-USE PATH
SECTION NO.: 24-00171-09-FP**

This Intergovernmental Agreement (hereinafter referred to as "AGREEMENT") is entered into this _____ day of _____, 2024, between the County of DuPage (hereinafter referred to as the "COUNTY"), a body corporate and politic, with offices at 421 North County Farm Road, Wheaton, Illinois, and the Village of Bensenville (hereinafter referred to as the "VILLAGE OF BENSENVILLE"), a municipal corporation with offices at 12 S. Center Street, Bensenville, Illinois 60106. The COUNTY, and the VILLAGE OF BENSENVILLE are hereinafter sometimes individually referred to as a "PARTY" or together as the "PARTIES."

RECITALS

WHEREAS, in order to promote the public welfare and facilitate vehicular traffic by providing convenient, safe, modern and limited access highways within and through the State of Illinois, the Illinois State Toll Highway Authority ("TOLLWAY") intends to construct the I-490 Toll Highway connecting the Jane Addams Memorial Tollway (I-90) with the Tri-State Tollway (I-294) along the west side of O'Hare International Airport ("O'Hare Airport") as part of the ILLINOIS TOLLWAY's Elgin O'Hare Western Access ("EOWA") project; and

WHEREAS, the EOWA project includes the reconstruction of York Road from south of Gateway Road to south of Devon Avenue ("PROJECT"); and

WHEREAS, the COUNTY requested that the TOLLWAY expand the ORIGINAL YORK ROAD SCOPE to include the re-construction of a shared-use path on the west side of York Road, from Gateway Road to South Thorndale Ave, in the VILLAGE OF BENSENVILLE, Section #24-00171-09-FP (hereinafter referred to as the "YORK ROAD PATH"); as shown in Exhibit A; and

WHEREAS, the COUNTY also requested the TOLLWAY expand the shared-use path from South Thorndale Avenue to Ramp Q5 in the VILLAGE OF BENSENVILLE (hereinafter referred to as the "YORK ROAD NEW PATH") also shown in Exhibit A; and

WHEREAS, the COUNTY, and the VILLAGE OF BENSENVILLE desire to establish their respective responsibilities toward engineering, right-of-way acquisition, utility relocation, construction, funding, jurisdiction and future maintenance responsibilities of the YORK ROAD PATH and YORK ROAD NEW PATH (hereinafter sometimes referred to together as the "PATHS"); and

WHEREAS, a cost estimate has been prepared for each of the PARTIES' share of the PATHS, and the approximate costs is agreeable to the PARTIES, as referenced in Exhibit B, attached hereto and incorporated herein; and

WHEREAS, the COUNTY by virtue of its power set forth in "Counties Code" (55 ILCS 5/5-1001 *et seq.*) and "Illinois Highway Code" (605 ILCS 5/5-101 *et seq.*) and the VILLAGE OF BENSENVILLE by virtue of its power set forth in the "Illinois Municipal Code" (65 ILCS 5/1-1-1 *et seq.*) are authorized to enter into this AGREEMENT; and

WHEREAS, a cooperative intergovernmental agreement is appropriate and such an agreement is authorized and encouraged by Article 7, Section 10 of the Illinois Constitution and Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.*).

NOW, THEREFORE, in consideration of the premises, the mutual covenants, terms, and conditions herein set forth, and the understandings of each PARTY to the other, the PARTIES do hereby mutually covenant, promise and 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 hereof.

2.0 SCOPE OF YORK ROAD PATH AND YORK ROAD NEW PATH

- 2.1. The COUNTY, and the VILLAGE OF BENSENVILLE agree to cooperate in and make every effort to cause the construction of the YORK ROAD PATH and YORK ROAD NEW PATH.
- 2.2. The YORK ROAD PATH includes reconstruction of the sidewalk on the west side of York Road to an 8-foot wide shared-use path and driveway aprons from Gateway Road to South Thorndale Avenue.
- 2.3. The YORK ROAD NEW PATH will involve the new construction of an 8-foot wide shared-use path from South Thorndale Avenue to Tollway Ramp Q5 (north of South Thorndale Avenue) in the VILLAGE OF BENSENVILLE, as depicted in Exhibit A.

3.0 RESPONSIBILITIES OF THE COUNTY AND VILLAGE OF BENSENVILLE

- 3.1. The VILLAGE of BENSENVILLE, through a separate agreement with the TOLLWAY will assume all costs, including construction, design and construction engineering of the YORK ROAD NEW PATH and will invoice the COUNTY for 5/8 cost of said path.
- 3.1.a The COUNTY agrees to pay the VILLAGE OF BENSENVILLE fifty (50%) percent of its estimated share of the YORK ROAD NEW PATH cost, including design engineering and construction engineering costs, as attached hereto in Exhibit B, upon TOLLWAY award of the contract for the YORK ROAD NEW PATH based upon as-bid unit prices within sixty (60) days of receipt of a properly documented invoice from the VILLAGE OF BENSENVILLE.
- 3.1.b The COUNTY agrees to pay the VILLAGE OF BENSENVILLE thirty (30%) percent of its estimated share of the YORK ROAD NEW PATH cost, including design engineering and construction engineering costs, as attached hereto in Exhibit B, one year after the award of the contract by the TOLLWAY for the YORK ROAD NEW PATH based upon as-bid unit prices within sixty (60) days of receipt of a properly documented invoice from the VILLAGE OF BENSENVILLE.
- 3.1.c Upon completion of the YORK ROAD NEW PATH and based upon the documentation of final costs and quantities, and a final invoice, the COUNTY agrees to reimburse the VILLAGE OF BENSENVILLE for the balance of their share of the YORK ROAD NEW PATH cost within sixty (60) days of receipt of a properly documented invoice from the VILLAGE OF BENSENVILLE.
- 3.1.d Any work on the YORK ROAD NEW PATH performed by TOLLWAY covered by this AGREEMENT and billed to the COUNTY, will be reimbursed by the VILLAGE of BENSENVILLE to the COUNTY subject to the terms herein, within sixty (60) days of receipt of a properly documented invoice from the COUNTY.
- 3.2. The COUNTY, through a separate agreement with the TOLLWAY, agreed that the TOLLWAY will assume the overall responsibility and manage the PROJECT, which includes the PATHS and in the best interest of all PARTIES. The COUNTY, and the VILLAGE OF BENSENVILLE, shall grant the TOLLWAY, its employees, contractors and agents, a right-of-entry for ingress and egress onto, over, under and above the PARTIES' property within the boundaries of the PROJECT and the YORK ROAD PATH for the purpose of constructing the PROJECT and the PATHS,

and consent to the TOLLWAY's request for any and all permits, right of access (ingress and egress), temporary use of PARTIES' property and right of way necessary for the PROJECT and the YORK ROAD PATH without charge. The PARTIES shall not unreasonably withhold any permit for right-of-entry or temporary use of their property and right of way. Upon completion of the PROJECT, the right-of-entry shall terminate.

3.3. The COUNTY and the VILLAGE OF BENSENVILLE shall require the general contractor selected for the YORK ROAD PATH to name the COUNTY and the VILLAGE OF BENSENVILLE as an additional insured for the Commercial General Liability as stated in the Special Provisions section of the contract for the PROJECT and the YORK ROAD PATH.

3.4. The COUNTY has agreed to reimburse the TOLLWAY one hundred percent (100%) for the YORK ROAD PATH construction costs at the actual cost incurred by the TOLLWAY. This actual cost is the bid, or change order, unit price submitted by the TOLLWAY'S contractor for the 8-foot-wide YORK ROAD PATH items times the actual quantity of items installed as a part of the YORK ROAD PATH authorized in writing or via e-mail by the TOLLWAY.

The COUNTY will be responsible for the construction costs for 5-feet of width (5/8 share) of the YORK ROAD PATH; and

3.4.a The VILLAGE OF BENSENVILLE agrees to reimburse the COUNTY for construction costs for 3-feet of width (3/8 share) of the YORK ROAD PATH that lies within the boundaries of the VILLAGE OF BENSENVILLE (See EXHIBIT B).

3.5 The COUNTY has agreed to reimburse the TOLLWAY for design engineering based on five percent (5%) of the construction costs for the YORK ROAD PATH; and

3.5.a The VILLAGE OF BENSENVILLE agrees to reimburse the COUNTY for design engineering based on five percent (5%) actual construction cost of 3-feet of width (3/8 share) of the YORK ROAD PATH that lies within the boundaries of the VILLAGE OF BENSENVILLE (See EXHIBIT B).

3.6 The COUNTY has agreed to reimburse the TOLLWAY for construction engineering based on ten percent (10%) of the construction costs for the YORK ROAD PATH; and

- 3.6.a The VILLAGE OF BENSENVILLE agrees to reimburse the COUNTY for construction engineering based on ten percent (10%) actual construction cost of 3-feet of width (3/8 share) of the YORK ROAD PATH that lies within the boundaries of the VILLAGE OF BENSENVILLE (See EXHIBIT B).
- 3.7. The VILLAGE OF BENSENVILLE will be responsible for acquiring all easements, permanent and/or temporary, and all right-of-way necessary for constructing the YORK ROAD PATH.
- 3.8. The COUNTY and the VILLAGE OF BENSENVILLE acknowledge that when the final plans are completed for the PROJECT, including design of the PATHS, the PARTIES agree to accept said plans.
- 3.9. The VILLAGE OF BENSENVILLE agrees to pay the COUNTY fifty (50%) percent of its estimated share of the YORK ROAD PATH cost, including design engineering and construction engineering costs, as attached hereto in Exhibit B upon TOLLWAY award of the contract (approx. 04/2025) for the YORK ROAD PATH based upon as-bid unit prices within sixty (60) days of receipt of a properly documented invoice from the COUNTY.
- 3.10. The VILLAGE OF BENSENVILLE agrees to pay the COUNTY thirty (30%) percent of its estimated share of the YORK ROAD PATH cost, including design engineering and construction engineering costs, as attached hereto in Exhibit B, one year after the award of the contract by the TOLLWAY (approx. 04/2026) for the YORK ROAD PATH based upon as-bid unit prices within sixty (60) days of receipt of a properly documented invoice from the COUNTY.
- 3.11. Upon completion of the YORK ROAD PATH and based upon the documentation of final costs and quantities, and a final invoice, the VILLAGE OF BENSENVILLE agrees to reimburse the COUNTY for the balance of their share of the YORK ROAD PATH cost within sixty (60) days of receipt of a properly documented invoice from the COUNTY.

4.0 MAINTENANCE

- 4.1 The VILLAGE OF BENSENVILLE, upon completion of the construction of the PATHS, shall own, operate and maintain the entire YORK ROAD PATH, including the YORK ROAD NEW PATH, that lies within the boundaries of the VILLAGE OF BENSENVILLE.

5.0 INDEMNIFICATION

5.1 The COUNTY shall, indemnify, hold harmless and defend the VILLAGE OF BENSENVILLE, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, 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, the COUNTY'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law.

The COUNTY does not hereby waive any defenses or immunity available to it with respect to third parties.

5.2 The VILLAGE OF BENSENVILLE shall, indemnify, hold harmless and defend the COUNTY, its officials, officers, employees, and agents from and against all liability, claims, suits, demands, proceedings and action, 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, the VILLAGE'S negligent or willful acts, errors or omissions in its performance under this AGREEMENT to the extent permitted by law. The VILLAGE does not hereby waive any defenses or immunity available to it with respect to third parties.

5.3 The COUNTY and the VILLAGE OF BENSENVILLE acknowledge that none have made representations, assurances or guaranties regarding their or any successor's or assign's authority and legal capacity to indemnify the other as provided for in this AGREEMENT. In the event a court of competent jurisdiction holds that any, or any successors or assigns, is deemed to lack the lawful authority or ability to indemnify, defend or hold harmless the other, or any person or entity claiming a right through either, or in the event of change in the laws of the State of Illinois governing their 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.

5.4 Nothing contained herein shall be construed as prohibiting either the COUNTY, or the VILLAGE OF BENSENVILLE, 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 the COUNTY, 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. The COUNTY or the VILLAGE OF BENSENVILLE's participation in its defense shall not remove the other's duty to indemnify, defend, and hold the other harmless, as set forth above.

- 5.5 Neither of the PARTIES waive, release or otherwise compromise, by these indemnity provisions, any defenses or protections under the Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1 *et seq.*) or otherwise available to it, or to the other PARTIES, under the law. There are no third-party beneficiaries of these mutual indemnifications or 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. Except with respect to occurrences arising before the completion of the YORK ROAD PATH, the VILLAGE OF BENSENVILLE, and the COUNTY'S indemnification under Section 5.0 hereof shall terminate when the YORK ROAD PATH is completed and the COUNTY, and VILLAGE OF BENSENVILLE assume their maintenance responsibilities as set forth in Section 4.0 hereof.

6.0 GENERAL

- 6.1 It is understood and agreed by the PARTIES hereto that this AGREEMENT is intended to address the YORK ROAD PATH and YORK ROAD NEW PATH and no changes to existing roadway and appurtenance maintenance and/or jurisdiction are proposed.
- 6.2 Whenever in this AGREEMENT, approval or review of either the COUNTY or the VILLAGE OF BENSENVILLE is provided for, said approval or review shall not be unreasonably delayed or withheld.
- 6.3 In the event of a dispute between the COUNTY and the VILAGE OF BENSENVILLE, and/or representatives, in the preparation of the plans and specifications, or changes thereto, or in carrying out the terms of this AGREEMENT, the County Director of Transportation and the Village of Bensenville Village Manager shall meet and resolve the issue.
- 6.4 No later than fourteen (14) days after the execution of this AGREEMENT, each PARTY shall designate a representative to the other PARTY who shall serve as the full time representative of said PARTY during the carrying out of the construction of the YORK ROAD PATH. Each representative shall have authority, on behalf of such PARTY, to receive notices and make

inspections relating to the work covered in this AGREEMENT. Representatives shall be readily available to the other PARTIES.

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

7.0 ENTIRE AGREEMENT

7.1 This AGREEMENT represents the entire AGREEMENT between the PARTIES with respect to the YORK ROAD PATH and YORK ROAD NEW PATH and supersedes all previous communications or understandings whether oral or written.

8.0 NOTICES

8.1 Any notice required shall be deemed properly given to the PARTIES, to be notified at the time it is personally delivered or mailed by certified mail, return receipt requested, to the PARTIES' addresses. The address of each PARTY is specified below. Either PARTY may change its address for receiving notices by giving notices thereof in compliance with the terms of this subsection.

Village of Bensenville

717 E. Jefferson Street
Bensenville, Illinois 60106
ATTN: Joseph Caracci
Director of Public Works
Phone: 630.350.3435
Email: jcaracci@bensenville.il.us

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

9.0 AMENDMENT OR MODIFICATION OF THIS AGREEMENT

9.1 No modification or amendment to this AGREEMENT shall be effective until approved by the PARTIES in writing.

10.0 NON-ASSIGNMENT

10.1 This AGREEMENT shall not be assigned by any of the PARTIES without the written consent of the other PARTIES, whose consent shall not be unreasonably withheld.

11.0 AUTHORITY TO EXECUTE/RELATIONSHIP

11.1 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.

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

12.0 GOVERNING LAW

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

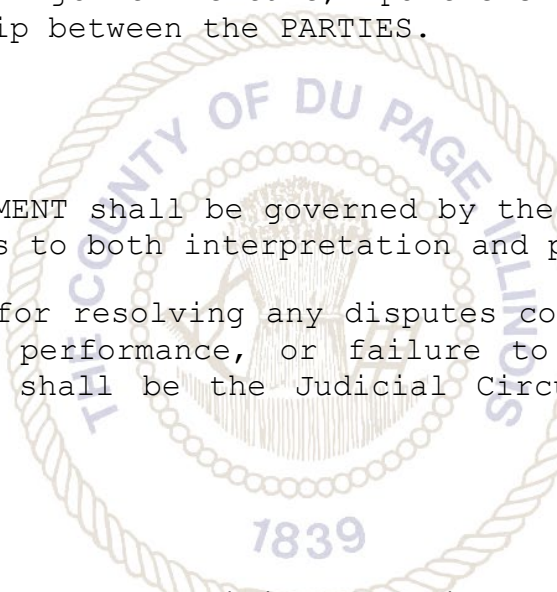
12.2 The forum for resolving any disputes concerning the PARTIES' respective performance, or failure to perform, under this AGREEMENT, shall be the Judicial Circuit Court for DuPage County.

13.0 SEVERABILITY

13.1 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.

14.0 FORCE MAJEURE

14.1 None of the PARTIES shall be liable for any delay or non-performance of their obligations caused by any contingency beyond their control including but not limited to Acts of God, war, civil unrest, strikes, walkouts, fires or natural disasters.



15.0 COUNTERPARTS

15.1 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 in the same instrument.

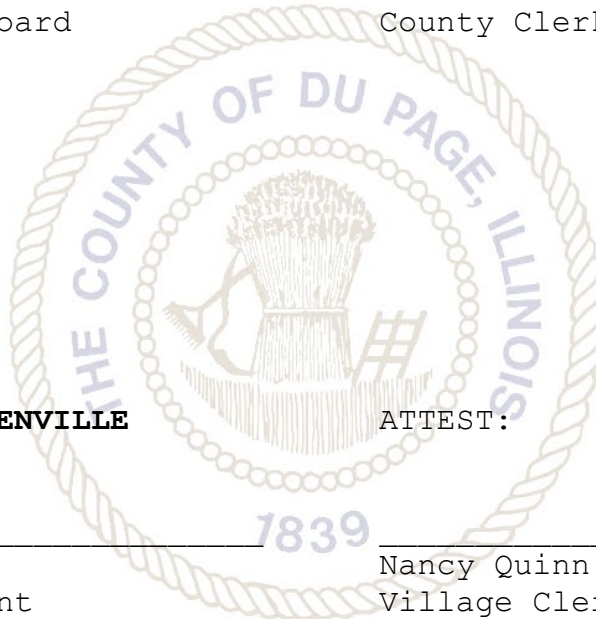
IN WITNESS whereof, the PARTIES set their hands and seals as of the date first written above.

COUNTY OF DU PAGE

ATTEST:

Deborah A. Conroy, Chair
DuPage County Board

Jean Kaczmarek
County Clerk



VILLAGE OF BENSENVILLE

ATTEST:

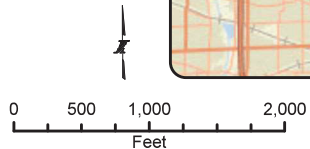
Frank DeSimone
Village President

Nancy Quinn
Village Clerk



LEGEND

- Proposed Shared Use Path Limits**
- Path in Elk Grove Village (Replacement)
 - Path in Village of Bensenville (New)
 - Path in Village of Bensenville (Replacement)
 - Other Illinois Tollway Improvements
 - County Boundary
 - Municipal Boundary



Elgin O'Hare Western Access

EXHIBIT A
 Elgin O'Hare Western Access
 York Road Reconstruction
 Proposed Shared Use Path Along York Rd
 July 31, 2024

EXHIBIT B
BENSENSVILLE ESTIMATE OF COSTS FOR YORK ROAD PATH

		ESTIMATED COSTS	DuPAGE COUNTY SHARE	VILLAGE OF BENSENSVILLE SHARE
YORK ROAD PATH (Gateway Rd to South Thorndale Avenue)	Construction	\$508,000	\$317,500	\$190,500
	Design Engineering	\$25,400	\$15,875	\$9,525
	Construction Engineering	\$50,800	\$31,750	\$19,050
TOTAL BIKE/PED REPLACEMENT		\$584,200	\$365,125	\$219,075

YORK ROAD NEW PATH (South Thorndale Ave to Ramp Q5)*	Construction	\$267,000	\$166,875	\$100,125
	Design Engineering	\$13,350	\$8,344	\$5,006
	Construction Engineering	\$26,700	\$16,688	\$10,013
TOTAL NEW PATH		\$307,050	\$191,906	\$115,144

TOTAL RESPONSIBILITIES FOR PATHS	\$891,250	\$557,031	\$334,219
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