

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

This INTERGOVERNMENTAL AGREEMENT (“AGREEMENT”) is entered into by and between THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY, an instrumentality and administrative agency of the State of Illinois (“ILLINOIS TOLLWAY”), and the COUNTY OF DUPAGE, a body politic and corporate of the State of Illinois (“COUNTY”), individually referred to as “PARTY,” and collectively referred to as “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 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;

WHEREAS, the ILLINOIS TOLLWAY had planned to include in the EOWA project the resurfacing of York Road from south of South Thorndale Avenue to south of Supreme Drive (“ILLINOIS TOLLWAY YORK ROAD SCOPE”);

WHEREAS, other EOWA project improvements located along or adjacent to York Road include the reconstruction of Supreme Drive from Thomas Drive to York Road, improvements along South Thorndale Avenue from York Road to Sievert Court, the installation of black coated traffic signals at the intersection of South Thorndale Avenue and York Road and at the intersection of Ramp Q5 and York Road, Emergency Vehicle Preemption (“EVP”) at the South Thorndale Avenue and York Road intersection, and guardrail/barrier installation along York Road from south of South Thorndale Avenue to south of Supreme Drive, (“ORIGINAL EOWA SCOPE”);

WHEREAS, the COUNTY requested that the ILLINOIS TOLLWAY expand the ORIGINAL YORK ROAD SCOPE to include the reconstruction of York Road from Gateway Road to Devon Avenue (excluding the York Road dry-land bridge over the Willow Creek Floodplain and the York Road at-grade railroad crossing with Progressive Rail south of South Thorndale Avenue), and also include (i) construction of a shared use path on the west side of York Road from Gateway Road to South Thorndale Avenue in the Village of Bensenville and from Pan Am Boulevard to Devon Avenue in Elk Grove Village, (ii) traffic signal modernization at the intersection of Foster Avenue and York Road, (iii) LED illuminated signage installation at the South Thorndale Avenue and York Road and proposed O’Hare Airport egress ramp (“Ramp Q5”) and York Road intersections, (iv) transitional lighting installation, and (v) minor deck and guardrail repairs on the dry-land bridge over the Willow Creek Floodplain. The above-listed items are collectively referred to as “COUNTY REQUESTED IMPROVEMENTS;”

WHEREAS, the ILLINOIS TOLLWAY agrees to include the COUNTY REQUESTED IMPROVEMENTS in place of and in addition to the ILLINOIS TOLLWAY YORK ROAD SCOPE that was part of the EOWA project;

WHEREAS, construction of the shared use path along the west side of York Road from Gateway Road to South Thorndale Avenue and from Pan Am Boulevard to Devon Avenue (“SHARED USE PATH”) is consistent with the COUNTY’S Elgin O’Hare Western Access Bicycle and Pedestrian Plan, established 2017;

WHEREAS, on July 21, 2021, the COUNTY and the ILLINOIS TOLLWAY executed a Letter of Understanding (“LOU”) outlining their general understanding with regard to the COUNTY’s request that the ILLINOIS TOLLWAY include the COUNTY REQUESTED IMPROVEMENTS in its EOWA project;

WHEREAS, this AGREEMENT concerns the scope of work for the COUNTY REQUESTED IMPROVEMENTS and the ORIGINAL EOWA SCOPE that will be included in the following ILLINOIS TOLLWAY construction contracts (“PROJECT”):

- Contract Work Package N19-A, York Road Reconstruction (“CONTRACT N19-A”), which includes the reconstruction of York Road from Gateway Road to Foster Avenue, minor deck and guardrail repairs on the dry-land bridge over the Willow Creek Floodplain, the reconstruction of York Road from Pan Am Boulevard to Devon Avenue, and the reconstruction of Supreme Drive from Thomas Drive to York Road. It also includes drainage improvements, pavement markings, traffic signal modernization at the intersection of Foster Avenue and York Road, and all other work necessary to complete the contract in accordance with the approved plans and specifications;
- Contract Work Package N19-B, York Road Reconstruction from Foster Avenue to South of Supreme Drive (“CONTRACT N19-B”), which includes the reconstruction of York Road from Foster Avenue to south of Supreme Drive, improvements along South Thorndale Avenue from York Road to Sievert Court, the installation of black coated traffic signals at the intersection of South Thorndale Avenue and York Road and the intersection of Ramp Q5 and York Road, including EVP, LED illuminated signage and transitional lighting installation. It also includes construction of a shared use path and driveway apron reconstruction from Gateway Road to South Thorndale Avenue and from Pan Am Boulevard to Devon Avenue, drainage improvements, pavement markings, and all other work necessary to complete the contract in accordance with the approved plans and specifications.

See PROJECT Location Map, attached as Exhibit 1.

WHEREAS, the ILLINOIS TOLLWAY and the COUNTY will enter into separate intergovernmental agreements, as required, concerning right of way acquisition, utility relocation, funding and maintenance and jurisdiction for the PROJECT.

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

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

WHEREAS, the COUNTY, 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 agree as follows:

I. ENGINEERING

- A. The ILLINOIS TOLLWAY agrees to perform preliminary and final design engineering, obtain necessary surveys, and prepare the final plans and specifications for the PROJECT. During the design and preparation of the plans and specifications, the ILLINOIS TOLLWAY shall submit the plans and specifications to the COUNTY for review and comment at the following stages of plan preparation:

30% Complete (concept)

60% Complete (preliminary)

95% Complete (pre-final)

100% Complete (final)

- B. The ILLINOIS TOLLWAY will promptly deliver the final approved plans and specifications for the PROJECT to the COUNTY.
- C. The COUNTY shall review the plans and specifications within thirty (30) calendar days of receipt. If the ILLINOIS TOLLWAY does not receive comments or objections from the COUNTY within this time period, or receive a request for an extension of time (which request shall be reasonably considered), the COUNTY shall be deemed to have approved of the plans and specifications. In the event of disapproval within the above time period, the COUNTY will detail its objections to the proposed plans and specifications in writing for review and consideration by the ILLINOIS TOLLWAY.
- D. The PARTIES shall work cooperatively to address and resolve any review comments and objections. Any dispute concerning the plans and specifications shall be resolved in accordance with Section IX.D. of this AGREEMENT.
- E. The ILLINOIS TOLLWAY agrees to assume overall responsibility for the PROJECT, including assuring that all permits and approvals (*e.g.*, from the Illinois

Department of Natural Resources, Metropolitan Water Reclamation District of Greater Chicago, Illinois Environmental Protection Agency, etc.) and joint participation and/or force account agreements (*e.g.*, County, Municipal, Railroad, Utility, etc.) as may be required for the PROJECT, are secured by the PARTIES in support of general schedules and deadlines. The PARTIES agree to cooperate, insofar as their individual jurisdictional authorities allow, with the timely acquisition and clearance of such permits and approvals and in complying with all applicable federal, state, and local regulations and requirements pertaining to work in connection with the PROJECT.

- F. The COUNTY shall grant the ILLINOIS TOLLWAY and consent to the ILLINOIS TOLLWAY's request for any and all permits, rights of access (ingress and egress), temporary use of its property and right of way necessary for the PROJECT without charge. The COUNTY shall not unreasonably withhold any permit for right of access or temporary use of its property and right of way.

II. RIGHT OF WAY

- A. The ILLINOIS TOLLWAY, at its own expense, shall acquire all necessary rights of way (both permanent and temporary) as needed for the construction of the ORIGINAL EOWA SCOPE pursuant to the approved plans and specifications.
- B. The ILLINOIS TOLLWAY agrees to identify necessary rights-of-way (both permanent and temporary) required for the COUNTY REQUESTED IMPROVEMENTS.,
- C. The COUNTY shall acquire, or cause to be acquired, all necessary rights-of-way (both permanent and temporary) as needed for construction of the COUNTY REQUESTED IMPROVEMENTS pursuant to the approved plans and specifications.
- D. The ILLINOIS TOLLWAY agrees to provide space for SHARED USE PATH construction as part of the PROJECT where constructable within existing COUNTY right of way.
- E. The transfer of property interests between the PARTIES is not required for this PROJECT, nor is the transfer of any interest in land deemed necessary for the future maintenance and operation of the PARTIES' respective facilities. Therefore, it is understood by the PARTIES that there will be no exchange of any property interests pursuant to this AGREEMENT.

III. UTILITY RELOCATION

- A. The ILLINOIS TOLLWAY agrees to provide the COUNTY, as soon as they are identified, the locations (existing and proposed) of public and/or private utility

facilities within existing and proposed COUNTY right of way which require adjustment as part of the PROJECT.

- B. The ILLINOIS TOLLWAY agrees to make all reasonable efforts to minimize the number of utility adjustments required for PROJECT construction.
- C. The COUNTY agrees to make arrangements for, and issue all permits for, the PROJECT and cooperate with necessary adjustments to existing utilities located within existing or proposed COUNTY right of way without charge of permit fees to the ILLINOIS TOLLWAY.
- D. The COUNTY, or its assigns, shall be responsible for utility relocations exclusively required for the SHARED USE PATH to be constructed as part of CONTRACT N19-B. The COUNTY will cause all utility companies to protect, adjust, relocate, or remove utility facilities in conflict with the SHARED USE PATH at no cost to the ILLINOIS TOLLWAY.

IV. CONSTRUCTION

- A. The ILLINOIS TOLLWAY shall advertise and receive bids, provide construction engineering inspections for, and cause the PROJECT to be constructed in accordance with the PROJECT plans and specifications.
- B. After award of the construction contract(s), any proposed deviations from the plans and specifications that affect the COUNTY shall be submitted for approval prior to commencing such work. The COUNTY shall review the proposed deviations within thirty (30) calendar days of receipt. If the ILLINOIS TOLLWAY does not receive comments or objections from the COUNTY within this time period or receive a request for an extension of time (which request shall be reasonably considered), the COUNTY shall be deemed to have approved of the deviations to the plans and specifications. In the event of disapproval within the above time period, the COUNTY will notify the ILLINOIS TOLLWAY in writing, and the ILLINOIS TOLLWAY will review and respond to the COUNTY.
- C. After award of the construction contract(s), assuming there are no proposed deviations from the plans and specifications that affect the COUNTY, the ILLINOIS TOLLWAY shall provide no less than fourteen (14) calendar days written notice to the COUNTY prior to commencing work on the PROJECT.
- D. The COUNTY and its authorized agents shall have all reasonable rights of inspection (including pre-final and final inspection) during the progress of work included in the PROJECT. The COUNTY may assign personnel to perform inspections relative to all work included in the PROJECT and will notify the Chief Engineering Officer of the ILLINOIS TOLLWAY, in writing, of the identity of the individual(s) assigned to perform said inspections.

- E. The PARTIES shall work cooperatively to address and resolve the review comments and any objections. Notices required to be delivered by PARTIES pursuant to this AGREEMENT shall be delivered as indicated in Article IX.J. of this AGREEMENT.
- F. The ILLINOIS TOLLWAY shall require its contractor(s) working within the COUNTY's right of way to comply with the indemnification provision in Section 107.26 of the ILLINOIS TOLLWAY Supplemental Specifications to the Illinois Department of Transportation Standard Specifications for Road and Bridge Construction ("ILLINOIS TOLLWAY Supplemental Specifications"), issued March 2023, or the indemnification provision in the applicable version of the ILLINOIS TOLLWAY Supplemental Specifications subsequently in effect. In addition, the ILLINOIS TOLLWAY shall require its contractor(s) working on the PROJECT to comply with indemnification Special Provision 108 in the contract documents.
- G. The COUNTY agrees, following PROJECT completion and acceptance by the COUNTY, to the extent permitted by law, to indemnify and hold the ILLINOIS TOLLWAY and its employees, officers, directors, and agents harmless from all claims for death, injuries and damages to persons or property relating to the access, use, maintenance of the PROJECT improvements constructed by the ILLINOIS TOLLWAY for the COUNTY.
- H. The ILLINOIS TOLLWAY shall require that (i) the COUNTY, and its agents, officers and employees, are included as additional insureds in the General Liability Insurance the ILLINOIS TOLLWAY requires of its contractor(s), and (ii) the PARTIES are 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).
- I. Upon completion of 70% and 100% of all PROJECT construction contracts, the ILLINOIS TOLLWAY shall notify the COUNTY, and the COUNTY shall inspect the PROJECT not later than fifteen (15) calendar days after said notice of 70% completion. If the COUNTY does not perform a final inspection within twenty-one (21) calendar days after receiving notice of completion of 100% of all PROJECT construction contracts or does not, within said 21-day period, make alternative inspection arrangements mutually acceptable to the PARTIES, the PROJECT shall be deemed accepted by the COUNTY. At the request of the COUNTY, the ILLINOIS TOLLWAY's representative shall join in inspections. In the event said inspections disclose work that does not conform to the approved final plans and specifications, the COUNTY's representative shall give immediate verbal notice of deficiencies to the ILLINOIS TOLLWAY's representative and shall thereafter deliver a written list of such deficiencies to the Chief Engineering Officer of the ILLINOIS TOLLWAY within fifteen (15) calendar days of providing verbal notice. Deficiencies thus identified shall be subject to joint re-inspection upon completion of corrective work. The COUNTY shall perform such joint re-

inspections within ten (10) calendar days after the ILLINOIS TOLLWAY notifies the COUNTY that the deficiencies have been remedied.

- J. The ILLINOIS TOLLWAY shall have the right, following consultation with the COUNTY, and in accordance with the Canceled Items Provision in Section 109.06 of the most current version of the ILLINOIS TOLLWAY Supplemental Specifications, to cancel or alter any or all portions of the work due to circumstances either known or unknown at the time of bidding or arising after entering into the contract(s).
- K. In order to avoid PROJECT delays, the PARTIES agree that the ILLINOIS TOLLWAY shall have the right to eliminate all or portions of the SHARED USE PATH construction from the PROJECT if any necessary right of way acquisition or utility relocation exclusively required for the SHARED USE PATH is pending at the time of construction and its inclusion in the PROJECT's construction would cause a delay to the PROJECT completion.

V. FINANCIAL

- A. Except as otherwise identified in this AGREEMENT, the ILLINOIS TOLLWAY agrees to pay all PROJECT-related engineering, construction engineering and construction costs subject to reimbursement by the COUNTY as described below.
- B. The PARTIES agree that preliminary and design engineering costs shall be computed as 5% of actual construction costs, and construction engineering shall be computed as 10% of actual final construction costs.
- C. The PARTIES agree that the estimated cost of the PROJECT is \$32,630,100, comprised of: \$28,374,000 for construction, \$1,418,700 for design engineering (5% of construction costs), and \$2,837,400 for construction engineering (10% of construction costs). The PROJECT improvements consist of the ORIGINAL EOWA SCOPE and COUNTY REQUESTED IMPROVEMENTS with cost responsibilities described as follows:
 - 1. The ILLINOIS TOLLWAY is for the costs associated ORIGINAL EOWA SCOPE part of the PROJECT, which includes design engineering estimated at \$260,950 (5% of construction costs), construction engineering estimated at \$521,900 (10% of construction costs) and construction costs estimated at \$5,219,000, for a total estimated cost of \$6,001,850.
 - 2. The COUNTY is responsible for the costs associated with the COUNTY REQUESTED IMPROVEMENTS, which includes design engineering estimated at \$1,157,750 (5% of construction costs or "COUNTY DESIGN COSTS"), construction engineering estimated at \$2,315,500 (10% of

construction costs) and construction costs estimated at \$23,155,000, for a total estimated cost of \$26,628,250.

- D. The PARTIES agree that the ILLINOIS TOLLWAY is responsible for costs that would have been associated with the ILLINOIS TOLLWAY YORK ROAD SCOPE and are not included as part of the PROJECT costs. The cost of the ILLINOIS TOLLWAY YORK ROAD SCOPE is \$1,835,000, which will be applied as a credit against the construction and construction engineering costs associated with the COUNTY REQUESTED IMPROVEMENTS (“ILLINOIS TOLLWAY CREDIT”).
- E. The COUNTY agrees to the pay the ILLINOIS TOLLWAY for the COUNTY DESIGN COSTS in the following installments:
1. Upon executing this AGREEMENT, the ILLINOIS TOLLWAY shall invoice the COUNTY for the first installment of thirty (30) percent of the COUNTY DESIGN COSTS, for an estimated amount of \$347,325.
 2. Upon award of CONTRACT N19-A, the ILLINOIS TOLLWAY shall invoice the COUNTY for the second installment of thirty (30) percent of the COUNTY DESIGN COSTS, for an estimated amount of \$347,325.
 3. Upon award of CONTRACT N19-B, the ILLINOIS TOLLWAY shall invoice the COUNTY for the third installment of twenty (20) percent of the COUNTY DESIGN COSTS, for an estimated amount of \$231,550.
 4. Upon completion of CONTRACT N19-B, the ILLINOIS TOLLWAY shall invoice the COUNTY for the final installment of the COUNTY DESIGN COSTS based on final actual costs, for a total estimated of \$231,550.
- F. The PARTIES agree that the estimated cost associated with construction and construction engineering of the COUNTY REQUESTED IMPROVEMENTS (“COUNTY CONSTRUCTION COSTS”) is \$25,470,500 less the \$1,835,000 ILLINOIS TOLLWAY CREDIT, for a total estimated cost of \$23,635,500. More specifically, the estimated COUNTY CONSTRUCTION COSTS are described as follows:
1. The estimated cost to the COUNTY for CONTRACT N19-A is \$13,426,000 for construction costs and \$1,342,600 (10% of construction costs) for construction engineering, for a total estimated cost of \$14,768,600.
 2. The estimated cost to the COUNTY for CONTRACT N19-B is \$9,729,000 for construction costs and \$972,900 (10% of construction costs) for construction engineering, for a total estimated cost of \$10,701,900.

3. As set forth above, the ILLINOIS TOLLWAY CREDIT to be applied against the COUNTY CONSTRUCTION COSTS is \$1,835,000.
- G. The COUNTY agrees to the pay the ILLINOIS TOLLWAY for the COUNTY CONSTRUCTION COSTS in the following installments:
1. 30 days after the award of CONTRACT N19-A, the ILLINOIS TOLLWAY shall invoice the COUNTY for the first installment of fifty (50) percent of the COUNTY CONSTRUCTION COSTS for CONTRACT N19-A, estimated at \$7,384,300, less the \$1,835,000 ILLINOIS TOLLWAY CREDIT, for an estimated amount of \$5,549,300.
 2. One (1) year after the award of CONTRACT N19-A, the ILLINOIS TOLLWAY shall invoice the COUNTY for the second installment of thirty (30) percent of the COUNTY CONSTRUCTION COSTS for CONTRACT N19-A, for an estimated amount of \$4,430,580.
 3. Upon completion of CONTRACT N19-A, the ILLINOIS TOLLWAY shall invoice the COUNTY for the third installment of the final actual COUNTY CONSTRUCTION COSTS for CONTRACT N19-A, for a total estimated amount of \$2,953,720.
 4. 30 days after the award of CONTRACT N19-B, the ILLINOIS TOLLWAY shall invoice the COUNTY for the fourth installment of fifty (50) percent of the COUNTY CONSTRUCTION COSTS for CONTRACT N19-B, for an estimated amount of \$5,350,950.
 5. Upon completion of CONTRACT N19-B, the ILLINOIS TOLLWAY shall invoice the COUNTY for the final installment of the final actual COUNTY CONSTRUCTION COSTS for CONTRACT N19-B, for a total estimated amount of \$5,350,950.
- H. The PARTIES agree that upon receipt of each properly documented invoice from the ILLINOIS TOLLWAY, the COUNTY shall pay the invoice within sixty (60) calendar days of receipt.
- I. With the exception of the ILLINOIS TOLLWAY CREDIT, the COUNTY and the ILLINOIS TOLLWAY shall be responsible for the actual costs associated with the PROJECT described in the Recital section of this AGREEMENT and as detailed above. All payments shall be based upon actual final costs.
- J. In the event contract bid prices are substantially higher than those contained in the engineers' estimate or due to COUNTY budgetary constraints, the COUNTY shall have the ability to request reduction of or elimination from the PROJECT improvements for which the COUNTY bears payment responsibility. The COUNTY shall be responsible for costs incurred for improvements for which the

COUNTY would have been responsible prior to notifying the ILLINOIS TOLLWAY of requested reduction or elimination of said improvements.

- K. The COUNTY may request, after the construction contracts are let by the ILLINOIS TOLLWAY, that the ILLINOIS TOLLWAY add supplemental work or more costly substitute work that increases the total costs of the PROJECT. The ILLINOIS TOLLWAY will cause said supplemental work or substitute work to be added to the construction contracts, provided that said work will not delay construction of the PROJECT. Based on the reimbursement schedules set forth in Section V.E. and Section V.G. of this AGREEMENT, the COUNTY shall pay, in full, for costs increases associated with any supplemental work or more costly substitute work it requests.

VI. MAINTENANCE - DEFINITIONS

- A. As used herein, the terms “maintenance” or “maintain” mean keeping the facility being maintained in good and sufficient repair and appearance. Such maintenance includes full responsibility for the construction, removal and replacement of the maintained facility when needed, and unless specifically excluded in Article VII. MAINTENANCE - RESPONSIBILITIES, other activities including but not limited to:
1. “Routine maintenance,” which refers to 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,” which refers to the integrity of the grade separation structure, including abutments and piers, bridge girders/beams, bridge deck, expansion joints, parapet walls and drainage structures;
 3. “Signal maintenance,” which refers to all aspects of installation, repair, replacement, timing, and operation of traffic signals, including signal loops, signal supports or bases, interconnects to Ramp Queue Detection Warning Systems, traffic signal interconnect cable and conduit, and power, but shall not include permanently installed variable message signs or temporary signals or signs relating to construction or repair projects;
 4. “Lighting maintenance,” which refers to all aspects of installation, repair, replacement, and operation of roadway lighting including power, but shall not include temporary lighting relating to construction or repair projects; and
 5. “Emergency maintenance,” which refers to any maintenance activity which must be performed immediately in order to avoid or repair a condition on the roadway or right of way causing or threatening imminent danger or destruction to roadway facilities or rights of way of the PARTIES, the motoring public, or public health, safety, or welfare, including but not limited to chemical or biological removal or remediation, or response to acts of God or terrorism.

- B. The term “drainage facilities” means both open and enclosed systems. The term “drainage structures” only refers to enclosed systems and includes those elements of the drainage facility affixed to the bridge superstructures downstream from the scupper or manholes/catch basins/culverts/restrictor plates/other drainage infrastructure required to tie into drainage systems.
- C. The terms “notify,” “give notice” and “notification” mean 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.
- D. The terms “be responsible for” or “responsibility” mean 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.

VII. MAINTENANCE - RESPONSIBILITIES

- A. The COUNTY agrees to maintain, or cause to be maintained, South Thorndale Avenue and York Road (excluding the at-grade railroad crossing with Progressive Rail) in their entirety, including, but not limited to the York Road dry-land bridge over Willow Creek Floodplain; the black coated traffic signals along York Road where it intersects with both South Thorndale Avenue and Ramp Q5, including EVP, LED illuminated signage, and transitional lighting; the traffic signal at Foster Avenue and York Road; and drainage. The COUNTY also agrees to maintain, or cause to be maintained, the SHARED USE PATH and any work the ILLINOIS TOLLWAY includes in the PROJECT for the COUNTY at its request, in its entirety.
- B. The PARTIES agree that each PARTY has the duty to perform such regular inspections, surveys, and reviews as are reasonably necessary to fulfill their respective obligations under this AGREEMENT.

VIII. ADDITIONAL MAINTENANCE PROVISIONS

- A. During construction, the COUNTY shall continue to maintain all portions of the PROJECT within its existing maintenance/jurisdictional responsibilities that are not to be improved or maintained by the construction contractor(s) pursuant to the approved plans and specifications.

- B. 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 maintenance responsibility of the COUNTY, or its assigns.

IX. GENERAL PROVISIONS

- A. The PARTIES understand and agree that this AGREEMENT constitutes the complete and exclusive statement 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 any of the PARTIES is provided for, said approval or review shall not be unreasonably delayed or withheld.
- C. In a timely manner following execution of this AGREEMENT, each PARTY shall designate in writing a representative who shall serve as the full-time representative of said PARTY during the term 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.
- D. In the event of a dispute between the PARTIES relative to the performance of this AGREEMENT, the Chief Engineering Officer of the ILLINOIS TOLLWAY and the County Engineer of the COUNTY, or their authorized designees, shall meet to resolve the disputed issue. In the event they cannot mutually agree on the resolution of a dispute concerning the plans and specifications for the PROJECT or the performance of this AGREEMENT in reference to the PROJECT, the decision of the Chief Engineering Officer of the ILLINOIS TOLLWAY shall be final. In the event they cannot mutually agree on the resolution of a dispute concerning the COUNTY's requested work, utilities, facilities, or roadways, the decision of the County Engineer of the COUNTY shall be final, provided that decision does not delay delivery of the PROJECT or detrimentally impact the maintenance and operation of the Toll Highway.
- E. This AGREEMENT may be executed using electronic signatures and 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. This AGREEMENT may only be modified in writing, which writing must be executed by duly authorized representatives of the PARTIES and the Illinois Attorney General.
- G. Unless otherwise agreed to in writing by all PARTIES, this AGREEMENT shall become null and void if the contracts covering the construction work contemplated herein are not awarded within five (5) years of the date this AGREEMENT takes effect.

- H. This AGREEMENT shall be binding upon and inure to the benefit of the PARTIES and their respective successors and approved assigns.
- I. The failure by the PARTIES to seek redress for violation of any condition or covenant of this AGREEMENT or the failure of either PARTY to insist upon strict performance of any condition or covenant of this AGREEMENT shall not constitute a waiver of any breach or subsequent breach of such condition or covenant or any terms, conditions, rights, or remedies in or due under this AGREEMENT. No provision of this AGREEMENT shall be deemed waived by either PARTY unless such provision is waived in writing.
- J. All written reports, notices and other communications related to this AGREEMENT shall be in writing and shall be personally delivered, mailed via certified mail, overnight mail delivery, or electronic mail delivery to the following persons at the following addresses:

To the ILLINOIS TOLLWAY: The Illinois Toll Highway Authority
2700 Ogden Avenue
Downers Grove, Illinois 60515
Attn: Chief Engineering Officer
mnashif@getipass.com

To the COUNTY: The DuPage County Division of Transportation
Jack T. Knuepfer Administration Building
421 North County Farm Road
Wheaton, Illinois 60187
Attn: County Engineer
William.Eidson@dupageco.org

- K. The PARTIES agree that they must maintain books and records related to the performance of this AGREEMENT for a minimum of five (5) years from the last action taken pursuant to this AGREEMENT, including documents sufficient to verify the amounts, recipients and uses of all funds disbursed in conjunction with or pursuant to the terms of this AGREEMENT. The PARTIES further agree to cooperate fully with any audit and to make their books and records, and books and records within their custody or control, available to the Illinois Attorney General, the Illinois Auditor General, the Illinois Tollway Inspector General (“IG”), COUNTY auditors, State of Illinois internal auditors, the ILLINOIS TOLLWAY Department of Internal Audit, the ILLINOIS TOLLWAY, the COUNTY, or any other governmental entity with monitoring authority, upon reasonable notice and during normal business hours. *See 30 ILCS 500/20-65.*
- L. The COUNTY recognizes that pursuant to Section 8.5 of the Toll Highway Act, 605 ILCS 10/8.5, the IG is authorized to conduct investigations into certain matters, including but not limited to allegations of fraud, waste, and abuse, and to conduct reviews. The COUNTY shall fully cooperate in any IG investigation or review and

shall not bill the ILLINOIS TOLLWAY for such time. Cooperation includes (i) providing access to all information and documentation related to the performance of this AGREEMENT, and (ii) disclosing and making available all personnel involved in, connected with, or having knowledge of the performance of this AGREEMENT.

- M. The introductory Recitals included at the beginning of this AGREEMENT are agreed to and incorporated into this AGREEMENT.

SIGNATURE PAGES TO FOLLOW

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

COUNTY OF DUPAGE

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

Attest: _____
Jean Kaczmarek, County Clerk

Date: _____

THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY

By: _____

Arnaldo Rivera
Chair/CEO

Date: _____

By: _____

Cathy R. Williams
Chief Financial Officer

Date: _____

By: _____

Kathleen R. Pasulka-Brown
General Counsel

Date: _____

Approved as to Form and Constitutionality

Assistant Attorney General